

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable R. Lawton McIntosh, Circuit Court Judge

MARION POWELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001923

APPENDIX

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STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS

CASE NO'S.:

2011-GS-07-00778
2011-GS-07-00779
2011-GS-07-00780
2011-GS-07-00781
2011-GS-07-00782
2011-GS-07-00783
2011-GS-07-00784
2011-GS-07-00786
2011-GS-07-00787

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

ORIGINAL

MARION BENJAMIN POWELL

DEFENDANT

NOVEMBER 18, 19, 20, 21, & 22, 2013

TRANSCRIPT OF TRIAL

BEAUFORT, SOUTH CAROLINA

B E F O R E:

HON. BROOKS GOLDSMITH, JUDGE; AND A JURY.

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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1 BEGIN DAY ONE, MONDAY, NOVEMBER

2 18, 2013, 11:25 A.M.

3 BAILIFF: All rise. The Honorable Brooks Goldsmith
4 presiding.

5 BY THE COURT:

6 THE COURT: Good morning, ladies and gentlemen.
7 Please be seated. I understand Judge Mullen promised
8 that we were going to get moving and pick two juries
9 before lunch. I hope we can do it.

10 Solicitor, are you ready to call your case?

11 MR. SHELDON: Yes, sir. Your Honor. May it please
12 the court.

13 THE COURT: Certainly.

14 MR. SHELDON: Thank you. The State calls the State
15 versus Marion Benjamin Powell, Indictment Number 2011-GS-
16 07-00778 for burglary in the first degree; 2011-GS-07-
17 0779 for kidnaping; 2011-GS-07-00780 for kidnaping; 2011-
18 GS-07-00781 for kidnaping; 2011-GS-07-00782 for
19 kidnaping; 2011-GS-07-00783 for kidnaping; 2011-GS-07-
20 00784 for armed robbery; and 2011-GS-07-00786 for
21 possession of a weapon during the commission of a violent
22 crime; and 2011-GS-07-00787 for unlawful possession of a
23 firearm.

24 Thank you, Your Honor.

25 THE COURT: Thank you. Mr. Lee, are you ready to

1 proceed?

2 MR. LEE: We're ready, Your Honor.

3 THE COURT: Ladies and gentlemen, the indictments
4 that you just heard published a moment ago, or referred
5 to a moment ago, refer to an incident that occurred at
6 the home of one Senora Jones, or at least, allegedly
7 occurred at the home of Senora Jones involving, her four
8 children, on October the 25th, 2010, at her home in
9 Bluffton, South Carolina. And I tell you all that
10 because, in just a minute, I'm going to ask you some
11 questions to determine whether or not you should sit on
12 this jury. But before I do that, I'm going to ask the
13 attorneys involved in the case if they will stand,
14 identify themselves and any potential witnesses that may
15 be called in the case. And after they do all that, then
16 I'll ask you some questions.

17 We'll begin with the State..

18 MR. SHELDON: Thank you, Your Honor. May it please
19 the court.

20 My name is Ben Sheldon. I'm an assistant solicitor
21 here in Beaufort County and I work for the elected
22 solicitor, Mr. Duffie Stone, here, helping. For those of
23 you all that may not be from South Carolina or new to
24 South Carolina, the solicitor in South Carolina is the
25 district attorney.

1 Mr. Ben Coppage will be assisting me in the trial.
2 He is also an assistant solicitor.

3 As well as my investigator, Steve Bazzle, with the
4 solicitor's office, formerly from Colleton County
5 Sheriff's office.

6 Also, James, otherwise known as Jimmy, Duke with the
7 Bluffton Police Department, an investigator, will also be
8 assisting me in this trial.

9 Thank you, Your Honor.

10 THE COURT: Any other potential witnesses that might
11 be called?

12 MR. SHELDON: Yes, Your Honor. Thank you.

13 John Gobel with the Beaufort County Sheriff's
14 office; Andrew Rice of the Beaufort County Sheriff's
15 office; James or Jimmy Duke of the Bluffton Police
16 Department; Craig Karafa of the Beaufort County Detention
17 Center; Keith, otherwise known as Sal, Chisolm of
18 Yemassee, South Carolina; Thomas, otherwise known as
19 Bucket, General of Yemassee, South Carolina; Kawani
20 Bradshaw of Yemassee, South Carolina; Marion, otherwise
21 known as Nip, Moultrie of Yemassee, South Carolina;
22 Senora Jones from Greater Atlanta, Georgia, formerly of
23 Bluffton, South Carolina; Cleven Jones of Greater Atlanta
24 Georgia, formerly of Bluffton, South Carolina; juvenile
25 A.H. formerly of Bluffton, South Carolina; Donald

1 Scott Chandler, the Bluffton Police Department; Dawn
2 Crawford of the Bluffton Police Department; Michelle
3 Mayers of the Bluffton Police Department; Michael Coxwell
4 of Stokes Honda; Derrick Adams of Yemassee, South
5 Carolina; Eric Riley of Savannah, Georgia; Deborah Goff
6 of the State Law Enforcement Division; Christine Wilson
7 of the Beaufort County Sheriff's office; Steven Thomas of
8 the Hardeeville Police Department; Benjamin Troy Brown of
9 Yemassee, South Carolina; Jeremiah Fraser of the Beaufort
10 County Sheriff's office; Dylan Hightower of the
11 Fourteenth Circuit Solicitor's office; Steve Bazzle of
12 the Fourteenth Circuit Solicitor's office; Kenya Hagood
13 of Burton, South Carolina, and also of Charlotte, North
14 Carolina; Paulette Moultrie of Seabrook, South Carolina
15 also Charlotte, South Carolina; Roger Heaton of the
16 Fourteenth Circuit Solicitor's office; Jay Lemacks of
17 Walterboro, South Carolina with the Colleton County
18 Sheriff's office; and Pam Brown of the Beaufort County
19 Sheriff's office; in addition to Mr. Lee; Melanie Smith
20 of the Beaufort County Sheriff's office and emergency
21 911.

22 Thank you, Your Honor.

23 THE COURT: Thank you, Mr. Sheldon. Mr. Lee?

24 MR. LEE: Thank you, Your Honor. May it please the
25 Court.

1 Good morning. My name is Scott Lee. I'm a lawyer
2 here in Beaufort. I have my own practice doing primarily
3 criminal defense.

4 This is my client, Marion Powell. In addition to
5 the witnesses that Mr. Sheldon listed, I have witnesses.
6 Doctor Lori Vanwallendael, who is a psychologist at
7 University of North Carolina in Charlotte.

8 VOIR DIRE, BY THE COURT:

9 THE COURT: Thank you, Mr. Lee.

10 Now, ladies and gentlemen, first question. And if
11 you need to respond to the question, I'll ask you if you
12 would please stand, give us your juror number, state your
13 name and try to speak distinctly, so we can understand
14 what you are saying.

15 Has any member of jury panel ever been related by
16 blood or related by marriage to any of the witnesses that
17 have just been identified to you, to any of the attorneys
18 involved in the case or to the defendant himself? If so,
19 please stand.

20 Has any member of the jury panel ever had a close
21 personal or social relationship with any of the attorneys
22 involved in the case or with any of the witnesses that
23 have been identified or with the defendant himself? If
24 so, please stand.

25 And I'm going to start on my far left with the

1 gentleman who I'm now pointing to. Let me try that.

2 Your name and number, sir?

3 JUROR NUMBER 227: My name is Robert Neal, 227.

4 THE COURT: Yes, sir.

5 JUROR NUMBER 227: I know Mr. Michael Coxwell. He's
6 a good friend of mine.

7 THE COURT: Did you say that he is or was a good
8 friend?

9 JUROR NUMBER 227: He is.

10 THE COURT: He is a good friend?

11 JUROR NUMBER 227: Yes, sir. He's not at Stokes
12 Honda, but he is still a good friend of mine.

13 THE COURT: How long have you known him?

14 JUROR NUMBER 227: Fifteen years at least.

15 THE COURT: This year, how many times would you
16 guesstimate you've seen him and had a conversation with
17 him?

18 JUROR NUMBER 227: More than 30 times probably.

19 THE COURT: Okay. In the past 30 days, how many
20 times?

21 JUROR NUMBER 227: Not seen him in person probably
22 in the last month.

23 THE COURT: Okay

24 JUROR NUMBER 227: But I talked to him a couple
25 times at least.

1 THE COURT: Okay. And would that relationship that
2 you just described interfere with your ability to be a
3 fair and impartial juror in this case?

4 JUROR NUMBER 227: I would think not. I just know
5 Michael really well.

6 THE COURT: I'm sorry. Say it one more time.

7 JUROR NUMBER 227: I just know Michael really well.
8 He's a good friend of mine. We're pretty good friends.
9 I mean, he's a good guy.

10 THE COURT: Let me ask you this. To the best of
11 your knowledge, has he discussed this case with you?

12 JUROR NUMBER 227: No, sir.

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

14 And yes, ma'am. Your name and number?

15 JUROR NUMBER 290: Amanda Smith, 290.

16 THE COURT: Yes, ma'am.

17 JUROR NUMBER 290: Just up until about a month ago I
18 worked for Pam Brown's husband, Andy Brown. She was one
19 of the listed, so, we talked often, but I no longer work
20 there.

21 THE COURT: And you worked for how long with that
22 individual?

23 JUROR NUMBER 290: Seven years.

24 THE COURT: Where did you all work?

25 JUROR NUMBER 290: Pam's husband, Andy, owns

1 Carolina Auto Trim and I worked for him. He was my
2 employer for seven years.

3 THE COURT: I see. How often did you see him in an
4 average week?

5 JUROR NUMBER 290: Him or her? My employer?

6 THE COURT: Your employer.

7 JUROR NUMBER 290: All day, every day.

8 THE COURT: All right. And what about her?

9 JUROR NUMBER 290: Couple times a week she would
10 either call or come up.

11 THE COURT: Okay. And that's the sole relationship
12 that you had?

13 JUROR NUMBER 290: Yes, sir.

14 THE COURT: All right. Would that interfere with
15 your ability to be a impartial juror?

16 JUROR NUMBER 290: No, sir.

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

18 And yes, ma'am?

19 JUROR NUMBER 111: My name is Chelie Gillespie,
20 number 111. I used to work for dispatch. I worked under
21 Bellamy for two-and-a-half years. This was nine years
22 ago. I also know Jeremiah Fraser. Our sons played
23 football a long time ago.

24 THE COURT: Okay. And that's the only relationship?

25 JUROR NUMBER 111: Yes, sir.

1 THE COURT: Would that interfere with your ability
2 to be a fair and impartial juror?

3 JUROR NUMBER 111: No, sir.

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

5 Yes, sir?

6 JUROR NUMBER 201: Yes, sir. My name is Danny
7 Mcalhany, juror 201. I know Mr. Michael Coxwell, as
8 well. I've known him approximately about 30 years, and
9 it wouldn't have anything to do with anything in this
10 case but I do know him.

11 THE COURT: You've known him for about 30 years?

12 JUROR NUMBER 201: Yes, sir.

13 THE COURT: And in the past year, have you visited -
14 have you all visited each other's homes?

15 JUROR NUMBER 201: Yes. Well, I would say more on a
16 social aspect. That's for - his brother-in-law, so, I
17 see them on Christmas holidays and vacation.

18 THE COURT: I see.

19 JUROR NUMBER 201: But probably in the last 30 days,
20 I've probably seen him three times.

21 THE COURT: Would that fact interfere with your
22 ability to be a fair and impartial juror?

23 JUROR NUMBER 201: No, sir.

24 THE COURT: Okay. Thank you, sir.

25 JUROR NUMBER 201: Yes, sir.

1 THE COURT: And yes, sir. Your name and number?

2 JUROR NUMBER 82: Richard Deuel, number 82. Mike
3 Coxwell is my next door neighbor. We see each other in
4 passing. We don't have a close relationship but we
5 report to each other and I don't think this would have
6 any impact on my ability to serve.

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

8 BAILIFF: Another one standing, Your Honor. Two
9 more standing.

10 THE COURT: I'm sorry. I'll let you go first. Yes,
11 sir?

12 JUROR NUMBER 131: I'm Mark Guillard, 131. I've
13 been here 25 years, so, I know Scott. We don't have a
14 personal relationship, but I take care of their pets, so,
15 I don't, you know, I think I could be an impartial juror
16 but, you know.

17 THE COURT: How many pets do they have?

18 JUROR NUMBER 131: Well, Scott's got one and Ben has
19 got one.

20 THE COURT: Okay. Thank you very much.

21 JUROR NUMBER 131: Yes, sir?

22 JUROR NUMBER 98: William Fabian, Juror 98. And
23 I've had a brief encounter with Mr. Lee. He was an
24 attorney for Brays Island at one point several years ago
25 I believe. And I might have, I'm not sure, I think I

1 might recognize the name, but I might have worked with
2 the defendant's mother for several years at Brays Island.

3 MR. LEE: Brenda Powell?

4 JUROR NUMBER 98: Brenda Powell.

5 MR. LEE: She did.

6 THE COURT: And that would have been how long ago?
7 You said for several years, but.

8 JUROR NUMBER 98: Four years ago for about eight
9 years maybe that I worked with her for about eight I want
10 to say and that would be about four years ago.

11 THE COURT: The last time, you mean? The last time
12 would have been about four years ago?

13 JUROR NUMBER 98: When she was my employee, it was
14 four years ago. I may add that we are Facebook friends,
15 as well.

16 THE COURT: Now, would that interfere with your
17 ability to be a fair and impartial juror in this case?

18 JUROR NUMBER 98: Yes. I believe it might.

19 THE COURT: All right. I want to thank you for
20 standing.

21 THE COURT: Has any member of the jury panel ever
22 been represented by any of the attorneys involved in this
23 case. If so, please stand.

24 Has any member of the jury panel or a member of your
25 immediate family a former or present law enforcement

1 employee? If so, please stand.

2 Yes, sir. Your name and number.

3 JUROR NUMBER 26: Carpenter Faith, Number 26. My
4 dad, who is deceased, was retired from the South Carolina
5 Highway Patrol.

6 THE COURT: And how long ago would that have been?

7 JUROR NUMBER 26: He retired in 1983.

8 THE COURT: '83. All right. Thank you, sir. And
9 yes, ma'am.

10 JUROR NUMBER 145: Rebecca Hill, Number 145.

11 THE COURT: Number 145.

12 JUROR NUMBER 145: And my son is employed by the
13 federal government and he was an officer at one time. He
14 works for the NSD.

15 THE COURT: Okay. Thank you, ma'am. Lady in the
16 back. Yes, ma'am?

17 JUROR: My husband is a Beaufort County Sheriff's
18 deputy.

19 THE COURT: I've got to get your name and number.
20 I'm sorry.

21 JUROR NUMBER 256: I'm sorry. It's Abby Riccobene
22 and 256.

23 THE COURT: Now, say it one more time.

24 JUROR NUMBER 256: My husband is a deputy sheriff
25 for Beaufort County.

1 THE COURT: He is currently one?

2 JUROR NUMBER 256: Yes.

3 THE COURT: Okay. Thank you, ma'am. And Yes,
4 ma'am?

5 JUROR NUMBER 313: Kyleen Thomas, 313.

6 THE COURT: 313..

7 JUROR NUMBER 313: My nephew is a state
8 trooper/detective but it's with the Arizona State
9 Department.

10 THE COURT: Okay. Thank you, ma'am. And yes,
11 ma'am?

12 JUROR NUMBER 204: Eileen McGinnis, 204. And my dad
13 who is deceased was a local cop, and that's like 20 years
14 ago.

15 THE COURT: Thank you, ma'am. Yes, ma'am?

16 JUROR NUMBER 33: Susan Brewer, Number 33. My son
17 is a police officer, canine, with Charleston County.

18 THE COURT: Say that last part again.

19 JUROR NUMBER 33: Charleston County.

20 THE COURT: Yes, ma'am. Your name and number?

21 JUROR NUMBER 4: My name is Mary Aiken, Juror Number
22 4. My daughter is the head clerk of coding in Bluffton,
23 South Carolina.

24 THE COURT: Okay. Thank you.

25 Is any member of the jury panel or member of your

1 immediate family employed by the Fourteenth Circuit
2 Solicitor's office? If so, please stand.

3 Is any member of the jury panel or member of your
4 immediate family ever been the victim of a burglary, a
5 kidnaping, a robbery or a similar violent crime? If so,
6 please stand. Okay.

7 MR. SCOTT: Your Honor, would you consider allowing
8 people to approach the bench so there is no problem with
9 people hearing what they are saying on this question?

10 THE COURT: Say this one more time.

11 MR. SCOTT: Would you consider allowing these people
12 to walk up to the bench for privacy sake to address this
13 question?

14 THE COURT: Okay. I will. I will when we get their
15 names and numbers. I want to get everybody's name and
16 number first. Let's start over here with juror number 4,
17 I think.

18 JUROR NUMBER 4: Mary Aiken.

19 THE COURT: All right. Thank you. I'll catch you
20 in just one minute. Yes, ma'am?

21 JUROR NUMBER 154: 154.

22 THE COURT: Yes, ma'am?

23 JUROR NUMBER 78: 78, Dellinger.

24 THE COURT: What is it?

25 JUROR NUMBER 78: Dellinger.

1 THE COURT: And your number is?

2 JUROR NUMBER 78: 78.

3 THE COURT: 78. So I missed it. And directly
4 behind you?

5 JUROR NUMBER 272: It's 272, Sandra Schwab.

6 THE COURT: Okay.

7 JUROR NUMBER 145: Rebecca Hill, 145.

8 THE COURT: 145, okay. Thank you. Yes, sir?

9 JUROR NUMBER 7: Number 7, John Amarino.

10 THE COURT: Number 7.

11 JUROR NUMBER 290: 290, Smith.

12 THE COURT: Okay, and I've forgotten your number.

13 JUROR NUMBER 227: 227, Robert Neal.

14 THE COURT: And behind you?

15 JUROR NUMBER 220: It's 220, Christopher Morris.

16 THE COURT: All right. I'll see you one at a time
17 down front.

18 BAILIFF: You want me to line them up, Judge, or do
19 you want to call them?

20 THE COURT: Line up here.

21 BAILIFF: Are you ready, Your Honor?

22 THE COURT: Yes.

23 INDIVIDUAL VOIR DIRE:

24 BAILIFF: Number 227, Mr. Neal.

25 JUROR NUMBER 227: My wife was a victim of a violent

1 crime when she was young right here in Beaufort County.

2 THE COURT: Your wife was a victim of a crime?

3 JUROR NUMBER 227: Yes.

4 THE COURT: Here in Beaufort County?

5 JUROR NUMBER 227: Yes.

6 THE COURT: How long ago approximate?

7 JUROR NUMBER 227: Probably 30 years. She was
8 raped. Her boyfriend was killed. David Currence was his
9 name.

10 THE COURT: Was there a prosecution?

11 JUROR NUMBER 227: No. Never found.

12 THE COURT: Okay. Well, do you think that fact
13 would interfere with your ability to be a fair and
14 impartial juror in this case?

15 JUROR NUMBER 227: No, sir.

16 THE COURT: All right. Thank you.

17 BAILIFF: Number 220, Mr. Morris.

18 JUROR NUMBER 220: How are you doing, Your Honor. I
19 was kidnaped and molested when I was six years old by a
20 stranger.

21 THE COURT: No kidding.

22 JUROR NUMBER 220: Yes, sir.

23 THE COURT: Was it in this part of the world?

24 JUROR NUMBER 220: Yes, sir. It was on Hilton Head
25 Island.

1 THE COURT: Okay. Was there any prosecution?

2 JUROR NUMBER 220: Actually, they did catch the guy.
3 So, luckily, I made it through it.

4 THE COURT: Yeah. This case involves something akin
5 to a home invasion type thing.

6 JUROR NUMBER 220: Okay.

7 THE COURT: Where some men came in and tied some
8 people up and robbed them.

9 JUROR NUMBER 220: Okay.

10 THE COURT: Including children. Now, that does not
11 involve any molestation that I know of.

12 JUROR NUMBER 220: Okay.

13 THE COURT: But now, would the facts that you've
14 just related to us cause you a problem in serving as a
15 juror in this case?

16 JUROR NUMBER 220: No, sir. I don't believe it
17 would.

18 THE COURT: Do you think you could be a fair and
19 impartial juror?

20 JUROR NUMBER 220: Yeah, I think so.

21 THE COURT: Okay. All right. Thank you, Mr.
22 Morris.

23 MR. LEE: Can you follow up a little bit. I think
24 we need a little bit of, respectfully, stronger answer
25 than I believe. I know it's uncomfortable. I'm not

1 trying to push you.

2 JUROR NUMBER 220: Yeah. Yeah, I can. Yes, ma'am.

3 Yes, I think I could do it, yes.

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

5 MR. LEE: Thank you.

6 BAILIFF: Ms. Smith, Number 290.

7 JUROR NUMBER 290: Our liquor store was robbed, once
8 burglarized, whatever during - not during business hours.

9 THE COURT: Oh, at night?

10 JUROR NUMBER 290: Yes.

11 THE COURT: Anyone get hurt?

12 JUROR NUMBER 290: No, no. I was -

13 THE COURT: How long ago was that?

14 JUROR NUMBER 290: About two-and-a-half years ago.

15 I just got the call from the alarm people, you know. I
16 had to go there 2:00, 3:00 in the morning.

17 THE COURT: Okay. Would that interfere with your
18 ability to be a fair juror in this case?

19 JUROR NUMBER 290: I wouldn't imagine so. I don't
20 know.

21 THE COURT: Okay. Thank you, Ms. Smith.

22 BAILIFF: Ms. Schwab, Number 272, Your Honor.

23 THE COURT: Ms. Schwab. Yes, ma'am. How are you
24 doing?

25 JUROR NUMBER 272: How are you doing? My husband

1 was shot when he was trying to help a woman and her child
2 and the ex-husband didn't like it and he shot him so it
3 was pretty bad. Shot him in the head.

4 THE COURT: How long ago was that?

5 JUROR NUMBER 272: It's been about 40 years.

6 THE COURT: How many?

7 JUROR NUMBER 272: Forty.

8 THE COURT: Forty years ago, but he is okay, but he
9 survived it?

10 JUROR NUMBER 272: Yes, sir.

11 THE COURT: Okay. Where?

12 JUROR NUMBER 272: It was in Cleveland, Ohio.

13 THE COURT: Was there a prosecution?

14 JUROR NUMBER 272: Yeah.

15 THE COURT: Of the case?

16 JUROR NUMBER 272: Yeah. They sent him to jail.

17 THE COURT: Well, would that fact interfere with
18 your ability to be a fair juror in this case?

19 JUROR NUMBER 272: I don't think so.

20 THE COURT: Okay. Thank you, Ms. Schwab.

21 JUROR NUMBER 272: Thank you.

22 BAILIFF: Ms. Hill, Number 145, Your Honor.

23 THE COURT: I had an aggravated burglary happen to
24 my father and me about three years ago. He was living in
25 Arkansas and I went to help him. A lady was trying to

1 marry him and he is elderly. He's 93 and she was trying
2 to take over, you know, marry him for his money and
3 everything. And then, she tried to break in when I was
4 there and was screaming, and the sheriff had to haul her
5 off.

6 THE COURT: Okay.

7 JUROR NUMBER 145: This was in Arkansas.

8 THE COURT: No kidding. Okay.

9 JUROR NUMBER 145: And as soon as he was released on
10 bail - jail, we plan - he lives here on Hilton Head now,
11 so I got him back.

12 THE COURT: How long ago?

13 JUROR NUMBER 145: That was about three years.

14 THE COURT: Three years ago.

15 JUROR NUMBER 145: And I guess about 25 years ago,
16 we had - our house was burglarized. And in a separate
17 incident, some neighbors shot into the house and missed
18 us, but it was pretty frightening. So, I thought I
19 should tell you.

20 THE COURT: And that was where?

21 JUROR NUMBER 145: That was in Stone Mountain,
22 Georgia, back then. That three years ago was in Arkansas
23 when I went to help my dad and he - we had lost my
24 brother, so I went to take care of my mother.

25 THE COURT: Would those facts interfere with your

1 ability to be a fair and impartial juror in this case?

2 JUROR NUMBER 145: I'm not sure. I think I would be
3 against any burglar, so.

4 THE COURT: Yeah.

5 JUROR NUMBER 145: But I guess that's -

6 THE COURT: Well, what we're looking for is a juror
7 who will listen to the evidence and judge it fairly.

8 JUROR NUMBER 145: Okay.

9 THE COURT: And make a decision based on the law.

10 JUROR NUMBER 145: I'll try to be.

11 THE COURT: Based on the law that is given to you
12 and put aside any personal prejudice that you might have?

13 JUROR NUMBER 145: Yes.

14 THE COURT: All right. Are you going to be able to
15 do that or not and if you can't do it, we wouldn't want
16 you to sit on the jury.

17 JUROR NUMBER 145: I'll try to.

18 THE COURT: Well, let me ask you this. I know you
19 said you would try to, but do you think you could?

20 JUROR NUMBER 145: I don't.

21 THE COURT: You're not sure you can?

22 JUROR NUMBER 145: No, because it was so recent what
23 happened to my dad.

24 THE COURT: Okay. Well, I guess this is just
25 something similar. It's breaking into a home.

1 JUROR NUMBER 145: Right. It's frightening. Yeah.

2 THE COURT: Ms. Hill, I respect your situation and
3 your feelings.

4 JUROR NUMBER 145: Thank you.

5 MR. LEE: Are you going to excuse her?

6 THE COURT: Yeah. I think I'm going to do that,
7 yeah.

8 BAILIFF: Ms. Dellinger, Number 78, Your Honor.

9 JUROR NUMBER 78: I've been in banking 30 some
10 years, but I worked in North Carolina. I've been in
11 three bank robberies.

12 THE COURT: Have you personally been a victim of
13 three bank robberies or been in a bank that was robbed?

14 JUROR NUMBER 78: I was the manager at one when we
15 were robbed twice. And then, I was just a banking
16 officer in one, and it was a violent, very violent
17 robbery. So, I guess -

18 THE COURT: How long ago was that robbery?

19 JUROR NUMBER 78: Twenty years.

20 THE COURT: Are you in banking now?

21 JUROR NUMBER 78: Yeah.

22 THE COURT: I'm not sure which bank is it. I may
23 not want to put my - I'm just kidding you.

24 JUROR NUMBER 78: BB&T.

25 THE COURT: How long has it been since you last I'm

1 going to call it witnessed a bank robbery?

2 JUROR NUMBER 78: Probably 15 years.

3 THE COURT: Okay. And were you present all three
4 times?

5 JUROR NUMBER 78: Yes.

6 THE COURT: And what about the violence? Did the
7 violence actually involve you directly?

8 JUROR NUMBER 78: There were three men and they hit
9 the doors and came in with big weapons and made us lay on
10 the floor, and they took our manager to the vault and
11 held a gun on his head. They cleaned us out in three
12 minutes. And then, of course, they were caught in
13 Tennessee, and we had to go to court for a couple weeks,
14 but they were convicted.

15 THE COURT: All right. Well, -

16 JUROR NUMBER 78: They shot at our local policeman.

17 THE COURT: They what?

18 JUROR NUMBER 78: They shot at our local policeman.

19 THE COURT: Oh, he was trying to.

20 JUROR NUMBER 78: And it was very odd. They were
21 notorious gangsters.

22 MR. LEE: They weren't -

23 JUROR NUMBER 78: It was like something you saw on
24 T.V.

25 MR. SCOTT: Oh, gosh.

1 JUROR NUMBER 78: Yeah.

2 THE COURT: Well, would those facts that you just
3 related to us interfere with your ability to be a fair
4 and impartial juror in this case?

5 JUROR NUMBER 78: I don't think it would, because
6 I'm honest and I'm fair and I would listen to the trial
7 and decide what should be decided. I would think - I
8 mean, they always kick me off because of that, but you
9 know. I've never been really given a chance.

10 MR. LEE: Can you ask her if you had a case that
11 involves less than three people going in with guns,
12 putting people on the floor, if that would - that memory
13 of that would stimulate her terror, and between that, if
14 that affects her ability?

15 THE COURT: The allegations in this case are that
16 involve a weapon and people were forced to get on the
17 floor -

18 MR. LEE: Three people.

19 THE COURT: - as you've described.

20 JUROR NUMBER 78: Um-hmm. Um-hmm. Three people?

21 MR. LEE: Yeah.

22 THE COURT: Well, I don't know how it would, because
23 there are circumstances for everything. I don't want to
24 dishonestly answer you, because I don't think it would
25 affect but.

1 THE COURT: Okay.

2 JUROR NUMBER 78: I just had to be honest and tell
3 you that.

4 THE COURT: I'm glad you did. Thank you very much.

5 JUROR NUMBER 78: Thank you.

6 BAILIFF: Mr. Amarino, Number 7, Your Honor.

7 THE COURT: Yes, sir, Mr. Aminero?

8 JUROR NUMBER 7: My sister was kidnaped at gun
9 point.

10 THE COURT: Your sister?

11 JUROR NUMBER 7: My sister.

12 THE COURT: Was kidnaped?

13 JUROR NUMBER 7: At gun point.

14 THE COURT: At gun point?

15 JUROR NUMBER 7: Yeah.

16 THE COURT: And approximately how long ago?

17 JUROR NUMBER 7: This would have been early 80's. I
18 was in the fourth grade.

19 THE COURT: What?

20 JUROR NUMBER 7: I was in the fourth grade. So,
21 yeah, it's been the 80's.

22 THE COURT: Lord. Was it by somebody she knew?

23 JUROR NUMBER 7: No. Just an off-the-street
24 abduction.

25 THE COURT: Was anybody prosecuted or arrested?

1 JUROR NUMBER 7: Yes.

2 THE COURT: Which, arrested or charged? Do you
3 remember all those facts?

4 JUROR NUMBER 7: My parents filtered a lot so, I
5 mean, I was only in the fourth grade so I think they
6 tried to filter a lot out, but I remember, in the fourth
7 grade, it was an impact.

8 THE COURT: Okay. Well, this doesn't involve a true
9 abduction like you've described, but in our case, the
10 allegations are that there were people held against their
11 will and made to get on the floor and those kind of
12 things, tied up, with a gun. But would those facts that
13 you've just described to us interfere with your ability
14 to serve as a fair and impartial juror in this case?

15 JUROR NUMBER 7: I think I can make my own decision
16 based on the facts.

17 THE COURT: Okay. Your history then, you don't
18 think would interfere with your ability to be fair?

19 JUROR NUMBER 7: No. I mean, I understand it.

20 THE COURT: Okay.

21 JUROR NUMBER 7: A case is a case and facts are the
22 facts.

23 THE COURT: Facts are facts. All right. Thank you,
24 sir.

25 JUROR NUMBER 7: All right. Thank you.

1 BAILIFF: Ms. Aiken, Number 4, Your Honor.

2 THE COURT: Yes, ma'am?

3 JUROR NUMBER 4: I have three half brothers that
4 basically have similar charges.

5 THE COURT: You have similar charges against them?

6 JUROR NUMBER 4: They was convicted and sentenced.

7 THE COURT: Oh. You've got three half brothers who
8 have been convicted of similar charges to the ones we're
9 talking about here?

10 JUROR NUMBER 4: Yes.

11 THE COURT: Oh, I see. The last time one was
12 convicted was approximately how long ago?

13 JUROR NUMBER 4: Oh. All of them was about 20
14 something years.

15 THE COURT: Twenty-something years ago?

16 JUROR NUMBER 4: (Nodded head)

17 THE COURT: Okay. All right. Would that fact
18 interfere with your ability to be a fair juror in this
19 case?

20 JUROR NUMBER 4: Huh-uh.

21 THE COURT: Is that no?

22 JUROR NUMBER 4: No.

23 THE COURT: All right. Thank you, Ms. Aiken.

24 BAILIFF: Ms. Houston, Number 154, Your Honor.

25 THE COURT: Ms. Houston. Yes, ma'am.

1 JUROR NUMBER 154: Is this a pedophile case?

2 THE COURT: Pedophile? This is not a pedophile
3 case.

4 JUROR NUMBER 154: I understand, but you asked about
5 crime regarding - I'm sorry.

6 MR. LEE: Judge, I'm going to ask her voir dire.
7 When you said a pedophile case, you were referring to
8 something that went on in your life or a relative's life?

9 JUROR NUMBER 154: Yes. Yes. Actually, I tried to
10 house the young man that was accused and was sentenced
11 and probated, and he lived with me for a little while in
12 an attempt for about six months trying to rehabilitate,
13 and he couldn't live with his family. They lived fairly
14 close by, but he lived with me so I was being a friend to
15 their family.

16 THE COURT: I see. And he was charged with being a
17 pedophile?

18 JUROR NUMBER 154: Abusing his siblings.

19 THE COURT: I see. And you helped out and let him
20 stay with you for a period of time?

21 JUROR NUMBER 154: Yeah. Until he did it again, and
22 he was re-jailed.

23 THE COURT: I see. Okay. Now, would that affect or
24 interfere with your ability to be fair and impartial?

25 JUROR NUMBER 154: No. No.

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

2 JUROR NUMBER 154: Thank you.

3 THE COURT: Anything else?

4 MR. LEE: (Shook head)

5 MR. SHELDON: Thank you.

6 THE COURT: Let me tell the Clerk. Juror 172 I'm
7 striking for cause.

8 MADAM CLERK: 172?

9 THE COURT: 272. Did I say 172?

10 MADAM CLERK: 272. That's the only one?

11 THE COURT: That's all.

12 Next question ladies and gentlemen. Any member of
13 the jury panel formed or expressed an opinion about any
14 issues or matter involving this case? If so, please
15 stand.

16 Is any member of the jury panel aware of any bias or
17 any prejudice that they may have toward either the State
18 or to the defendant in this case? If so, please stand.

19 Is there any member of the jury panel who is a
20 member of the grand jury who issued the indictments in
21 this case? If so, please stand.

22 Is any member of the jury panel a member of or a
23 contributor to any group which has as its primary concern
24 the promotion of law enforcement or promotion of victim's
25 rights. And those groups would include but not be

1 limited to MADD, SADD, CAPA or such a similar groups. If
2 so, please stand.

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

8 Any additional questions not already requested from
9 the State?

10 MR. SHELDON: No. Thank you, Your Honor.

11 THE COURT: From the defense?

12 MR. LEE: No, sir, Your Honor.

13 THE COURT: Do we have anybody to talk to that has
14 additional questions?

15 MR. SHELDON: Not from the State, Your Honor.

16 THE COURT: Okay.

17 MR. LEE: May we approach on one witness?

18 THE COURT: Yes.

19 THE COURT: Bear with us, ladies and gentlemen. The
20 computer is randomly selecting names now. They will be
21 called one at a time.

22 THE COURT: Do you have a question?

23 MR. LEE: No, sir. That was not my question. I
24 imagine there might be a bench question.

25 ON-THE-RECORD BENCH CONFERENCE, OUT

1 OF PRESENCE OF JURORS.

2 THE COURT: The Clerk told me that a juror stood up
3 and said they weren't sure they could be a fair and
4 impartial juror in the case.

5 MR. LEE: Right.

6 MR. SHELDON: Oh, they did?

7 THE COURT: So I've got it down here so I told her
8 and I'm striking juror 98 for cause. Which one did you
9 ask?

10 MR. LEE: I would request you consider striking 256.
11 She's married to a Beaufort County Sheriff's deputy.
12 Beaufort County is in part, - particularly if the last
13 comes in this case, and he is an active duty deputy for
14 the Beaufort County Sheriff's Office, and I would ask
15 that she be stricken for cause.

16 THE COURT: All right. Her husband is active duty?

17 MR. LEE: Right now, yes.

18 THE COURT: And -

19 MR. LEE: His colleagues are going to be witnesses.

20 THE COURT: The primary investigating body in this
21 case?

22 MR. SHELDON: Bluffton Police Department is
23 involved, as to what type of 404(b) evidence comes in,
24 that would involve the investigation of the Beaufort
25 County Sheriff's Office, as well. But there is going to

1 be one witness from Beaufort County Sheriff's Office, at
2 least Andrew Rice, no matter what. The State would ask,
3 if she says she can be a fair and impartial juror, I'm
4 not planning on calling her husband as a witness. I
5 think this happens regularly, but on behalf of trials in
6 Beaufort County and other counties, the 14th Circuit and
7 it's not something struck for cause, in my experience.
8 Obviously, I defer to the Court's wisdom.

9 MR. LEE: If the sheriff's office wasn't involved at
10 all, I would agree, but I think this is too close.

11 THE COURT: Rice is going to that about what? What
12 is the nature of Price's testimony?

13 MR. SHELDON: Mr. Price is the authenticating
14 witness of one of the jail, one of the parties at the
15 jail phone call. Byron Young, he was investigated
16 multiple times before, and recently was in two active
17 investigations. He also called him on his cell phone
18 number, so he authenticates Byron's cell phone number, as
19 well as authenticates his voice. He will also be testify
20 on 404(b) evidence and the other evidence that Clevon
21 Jones was under active surveillance with the Beaufort
22 County Sheriff's Office at the time of the armed robbery.

23 THE COURT: And what was that juror's number?

24 MR. SHELDON: 256.

25 THE COURT: Oh, I see. All right. I'll grant the

1 motion for cause on 256.

2 MR. SHELDON: Thank you, Judge.

3 MR. LEE: 80 has been struck, too.

4 COURT REPORTER: What was his number?

5 MR. LEE: 98.

6 MR. SHELDON: 89

7 MR. LEE: She already knew about 98. I already told
8 her. All right. 256.

9 THE COURT: 256, we are going to strike for cause,
10 too.

11 MADAM CLERK: Okay. 256.

12 THE COURT: 256.

13 END BENCH CONFERENCE.

14 BAILIFF: May I approach a second, Your Honor?

15 OFF-THE-RECORD DISCUSSION, THE COURT

16 AND BAILIFF.

17 THE COURT: In just a moment, ladies and gentlemen,
18 the computer is going to randomly arrange the names of
19 jurors to be called one at a time.

20 Each side has a limited number of opportunities to
21 what is called strike a juror or refuse to seat a juror
22 without having to give a reason or any cause, and just
23 prefer not to have juror 142. That's all I have to say.
24 And the computer is Now, cooperating.

25 MADAM CLERK: Judge, do you want them to just stand

1 in their place?

2 THE COURT: Okay. We're ready for jury selection.
3 Madam Clerk, we're ready to start.

4 JUROR SELECTION BY MADAM CLERK:

5 MADAM CLERK: Juror number 227, Robert Neal. What
6 says the State?

7 MR. SHELTON: Please present the juror.

8 MADAM CLERK: What says the defense?

9 MR. LEE: Please excuse Mr. Neal.

10 MADAM CLERK: Juror number 288, Calvin Smalls. What
11 says the State?

12 MR. SHELTON: Please present Mr. Smalls.

13 MADAM CLERK: What says the defense?

14 MR. LEE: Please seat Mr. Smalls.

15 MADAM CLERK: Juror number 96, Carolyn Engle. What
16 says the State?

17 MR. SHELTON: Please present Ms. Engle.

18 MADAM CLERK: What says the defense?

19 MR. LEE: Please seat Ms. Engle.

20 MADAM CLERK: Juror number 74, P. DeHebreard. What
21 says the State?

22 MR. SHELTON: Please present Mr. DeHebreard.

23 MADAM CLERK: What says the defense?

24 MR. LEE: Please sit Mr. DeHebreard.

25 MADAM CLERK: Juror number 86, Edward Diehl. What

1 says the State?

2 MR. SHELDON: Please present Mr. Diehl.

3 MADAM CLERK: What says the defense?

4 MR. LEE: I'm sorry. What was the number?

5 MADAM CLERK: I'm sorry. Juror number 86.

6 MR. LEE: Please seat Mr. Diehl.

7 MADAM CLERK: Juror number 173, Janet Kelly. What
8 says the State?

9 MR. SHELDON: Please present Ms. Kelly.

10 MADAM CLERK: What says the defense?

11 MR. LEE: Please seat Ms. Kelly.

12 MADAM CLERK: Juror number 33, Susan Brewer. What
13 says the State?

14 MR. SHELDON: Please present Ms. Brewer.

15 MADAM CLERK: What says the defense?

16 MR. LEE: Please present Ms. Brewer.

17 MADAM CLERK: Juror number 45, Kenneth Camp. What
18 says the State?

19 MR. SHELDON: Please present Mr. Camp.

20 MADAM CLERK: What says the defense?

21 MR. LEE: Please excuse Mr. Camp.

22 MADAM CLERK: Juror number 284, David Simpson. What
23 says the State?

24 MR. SHELDON: Please present Mr. Simpson.

25 MADAM CLERK: What says the defense?

1 MR. LEE: Please excuse Mr. Simpson.
2 MADAM CLERK: Juror number 197, Richard Manley.
3 What says the State?
4 MR. SHELDON: Please present Mr. Manley.
5 MADAM CLERK: What says the defense?
6 MR. LEE: I'm sorry. The wrong one.
7 MADAM CLERK: Juror number 197.
8 MR. LEE: Please excuse Mr. Manley.
9 MADAM CLERK: Juror number 297, Ann Starr. What
10 says the State?
11 MR. SHELDON: Please excuse Ms. Starr.
12 MADAM CLERK: Juror number 278, Richard Sherman.
13 What says the State?
14 MR. SHELDON: Please present Mr. Sherman.
15 MADAM CLERK: What says the defense?
16 MR. LEE: Please seat Mr. Sherman.
17 MADAM CLERK: Juror number 334, Patricia Whitehead.
18 What says the State?
19 MR. SHELDON: Please present Ms. Whitehead.
20 MADAM CLERK: What says the defense?
21 MR. LEE: Please seat Ms. Whitehead.
22 MADAM CLERK: Juror number 122, Linda Graves. What
23 says the State?
24 MR. SHELDON: Please present Ms. Graves.
25 MR. LEE: Please seat Ms. Graves.

1 MADAM CLERK: Juror number 167, Gary Joyner. What
2 says the State?

3 MR. SHELDON: Please present Mr. Joyner.

4 MADAM CLERK: What says the defense?

5 MR. LEE: Please seat Mr. Joyner.

6 MADAM CLERK: Juror number 246, Nancy Promislow.
7 What says the State?

8 MR. SHELDON: Please present Ms. Promislow.

9 MADAM CLERK: What says the defense?

10 MR. LEE: Please excuse Ms. Promislow.

11 MADAM CLERK: Juror number 141, Cherie Hepfner.
12 What says the State?

13 MR. SHELDON: Please present Ms. Hepfner.

14 MADAM CLERK: What says the defense?

15 MR. LEE: Please present Ms. Hepfner.

16 MADAM CLERK: Juror number 313, Kyleen Thomas. What
17 says the State?

18 MR. SHELDON: Please present Ms. Thomas.

19 MADAM CLERK: What says the defense?

20 MR. LEE: Please excuse Ms. Thomas.

21 MADAM CLERK: Juror number 29, Anne Bowman. What
22 says the State?

23 MR. SHELDON: Please present Ms. Bowman.

24 MADAM CLERK: What says the defense?

25 MR. LEE: Please seat Ms. Bowman.

1 MADAM CLERK: Now, we will be selecting our first
2 alternate. Juror number 201, Danny Mcalhany. What says
3 the State?

4 MR. SHELDON: Please present Mr. Mcalhany.

5 MADAM CLERK: What says the defense?

6 MR. LEE: Please seat Mr. Mcalhany.

7 MADAM CLERK: Now, we'll be choosing our second
8 alternate. Juror Number 63, Sasha Collier. What says
9 the State?

10 MR. SHELDON: Please present Ms. Collier.

11 MADAM CLERK: And what says the defense?

12 MR. LEE: Please seat Ms. Collier.

13 BY THE COURT:

14 THE COURT: Now, any matters of law the Court needs
15 to consider considering composition or selection of the
16 jury from the State?

17 MR. SHELDON: None, Your Honor. Thank you.

18 MR. LEE: None from the defense.

19 THE COURT: Ladies and gentlemen, we're getting
20 ready to go to lunch until 2:00 o'clock. We have to pick
21 another jury and we have some matters of law that - I'm
22 sorry. We not going to do it at 2:00 o'clock at all.
23 Are we?

24 BAILIFF: Whatever you say, Your Honor.

25 THE COURT: I forgot about that. We've got too many

1 jurors, too many things going on for jurors. We're not
2 going to begin this trial until tomorrow morning at 9:30,
3 so we have an afternoon full of motions that we need to
4 hear on this case. So I'm going to ask you to be back
5 here tomorrow morning at 9:30 to begin the trial of the
6 case.

7 I'll remind you of a couple of things. Don't talk
8 to anybody about this case. Don't try to do any research
9 about this case and don't let anybody talk to you about
10 this case. Tomorrow we'll start the trial of the case.
11 Any problems with 9:30 tomorrow?

12 Ladies and gentlemen, you're excused.

13 BAILIFF: Go with Mr. Cramer, please.

14 THE COURT: Ladies and gentlemen, we're getting
15 ready to play musical chairs.

16 BAILIFF: We're going to move to another set of
17 lawyers and another set of jurors, come in and pick the
18 jury, and hopefully finish before lunch.

19 Thank you.

20 JURORS LEAVE COURTROOM 12:22 P.M.

21 OFF THE RECORD 12:23 P.M.

22 BACK ON THE RECORD 2:08 P.M.

23 MOTIONS:

24 THE COURT: Mr. Sheldon and Mr. Lee, you all ready
25 for motions?

1 MR. LEE: Yes, sir, Your Honor.

2 MR. SHELDON: Yes, sir, Your Honor. Thank you.

3 THE COURT: You may proceed.

4 MR. SHELDON: Thank you, Your Honor. Mr. Lee and I
5 have spoken about most of this beforehand, and I think we
6 would like to go ahead and knock out what we can knock
7 out either by consent or what is fairly easy to figure
8 out.

9 THE COURT: Sure.

10 MR. SHELDON: First, the motion to sequester
11 witnesses.

12 We're waiting for the victims to arrive. They're
13 traveling here from Atlanta. They should be here any
14 moment, and they're necessary for the *Neal v. Biggers*
15 hearing. State consents to that.

16 One issue is that we have three victims in the case,
17 ostensibly, that will be here, husband, wife and
18 daughter. I don't know if there will be another son or
19 daughter who will be here, as well. There's really four
20 victims. The State would rather have the witnesses
21 sequestered than have them all here to hear everyone's
22 testimony.

23 What we're going to try to propose to the victims is
24 that the mother stay, and have the rest sequestered, and
25 have the husband take care of the kids. And also, so the

1 kids don't have to stay in here and listen to the details
2 of this case.

3 THE COURT: Mr. Lee, you agree?

4 MR. LEE: Yes, sir. Agree.

5 MR. SHELDON: Defense's next motion is a motion to
6 determine the admissibility of prior bad acts. We'd like
7 to take that up after some other motions if that's all
8 right with the Court.

9 Notice of Motion and Motion to Determine the
10 Admissibility of Statements. That's also the State's
11 motion within the 404(b) motion. We can take that up
12 later if it pleases the Court.

13 Notice of Motion and Motion to Determine the
14 Admissibility of Prior Convictions. This is defendant's
15 motion and the State has no intention to, first of all,
16 admit defendant's prior conviction as part of it's corpus
17 delicti case in its presentation of the case. And if he
18 takes the stand, the State's position would be that it
19 would be premature to rule on that now until at the time
20 the State had rested to determine whether it would be
21 admissible, and also, whether he actually took the stand
22 and testified to whether he opens the Court up to such a
23 statement.

24 THE COURT: Is there any argument about -- is there a
25 disagreement over what if he did testify?

1 MR. LEE: Well, that Motion, Your Honor, is just
2 under 609 in the event that he chooses to testify and we
3 can wait until the State finishes the case.

4 Obviously, I just need a ruling before I can advise
5 him what my opinion is and he makes the ultimate decision
6 about whether to testify, but it appears there are two
7 prior convictions that there may be a little bit of
8 argument over as far as there within the ten years and
9 they carried more than a year, but I think it will be
10 *State versus Culp* argument as far as maybe some
11 similarity, but we can wait until the end of this case.
12 That suits me.

13 THE COURT: Okay.

14 MR. SHELDON: That will please the State, Your
15 Honor.

16 The Notice of Motion and Motion to Reveal Deals.
17 The State understands this to be the motion to reveal any
18 deal made to Mr. Eric Riley who is currently in the South
19 Carolina Department of Corrections serving a ten-year
20 sentence for attempted armed robbery.

21 That attempted armed robbery was when he attempted
22 to rob a person, Jamal Jefferson, in Beaufort County of
23 drugs, and also, Kenya Hagood, who is going to be a
24 person that is going to a subject of some of this trial,
25 was also there. And the armed robbery went bad when Ms.

1 Hagood got the jump on Mr. Riley and shot him four times.
2 And it's believed, because she only had four shells that
3 were missing from her weapon, that this co-defendant must
4 have shot and returned fire once, as well, because he was
5 shot five times, Eric Riley was, in that case.

6 The deal is this, and it's what I've told Mr. Riley.
7 We did not know of his statement, know of his knowledge,
8 alleged knowledge until Tuesday of last week when we met
9 with him at the Department of Corrections and it is this.

10 If he testifies truthfully, it's a proffer
11 agreement. Any information that he gave to us during the
12 interview would not be used against him that is new that
13 it turns out to be true.

14 And further, should he then either cooperate fully
15 and testify truthfully, which truthful testimony means
16 that his testimony is consistent to other facts and other
17 evidence, then the State would recommend downward
18 departure on his sentence. There is no number. There is
19 no - actually, I think it would be misleading for me to
20 give anyone a number on that, because it is not up to the
21 solicitor's office. It's only a recommendation that we
22 may make.

23 THE COURT: Any questions about the deal, Mr. Lee?

24 MR. LEE: No, sir. I think we should clarify,
25 however, the part about what he has to do, which is

1 testify consistent to other facts or evidence.

2 If that's what he meant, that's what he meant, but I
3 just wanted to make sure that I had it right and not
4 misquote anybody while Mr. Riley is on the stand.

5 MR. SHELTON: It's testify truthfully and how we
6 determine as to whether he is testifying truthfully or
7 not or whether we're going to recommend anything to him,
8 is whether if he testifies in evidence that is
9 consistent. If he gets what he told us first, and then,
10 evidence that is consistent with what we already knew
11 from the case.

12 MR. LEE: And I assume consistent with his prior
13 written statement?

14 MR. SHELTON: Yes. Consistent with his prior
15 written statement, because, otherwise, he would not be
16 testifying truthfully.

17 MR. LEE: Okay. And as far as when the State refers
18 to downward departure, Your Honor, I believe - I think
19 it's 17-25-65, which is a relatively new provision
20 similar to the federal courts, which allows post
21 conviction within a year if someone comes back and
22 provides substantial assistance to the solicitor and
23 makes a motion in front of a judge for a downward
24 departure of an already imposed sentence. That's my
25 understanding of what he is offering.

1 MR. SHELDON: Yes, and then our recommendation would
2 be the downward departure in front of the judge. We've
3 not given any recommendation other than that.

4 And to be clear about consistencies. The
5 consistency must also be his consistency in telling about
6 his involvement with the previous armed robbery, if that
7 comes up and not mitigating any of that involvement, as
8 well...

9 So all the facts that we know in evidence in his
10 case, all the facts that we have that would be presented
11 in evidence in this case that the State already knew
12 before we met with him. We have to compare those to what
13 he said and that would be enforced as to whether the
14 State, he has any agreement or not.

15 THE COURT: Okay. I think I understand.

16 MR. LEE: I assume there are no other witnesses that
17 are getting any kind of deals to testify?

18 MR. SHELDON: Uh-huh.

19 THE COURT: All right. What else?

20 MR. SHELDON: Next would be the admissibility of
21 prior bad acts. I think that that is - then the other
22 one that Mr. Lee has is a motion to exclude any statement
23 made or allegedly made by the defendant to Derrick Adams.

24 To give the Court some background on this. It's
25 included accurately, at least the facts of it are, within

1 the defendant's motion, and it's defendant's motion so I
2 don't want to -- if he wants to argue it first.

3 MR. LEE: It will only take a little while but --

4 MR. SHELDON: What the State is proposing to do is
5 that Mr. Derrick Adams told Kawani Bradshaw in Big Estate
6 area, in a yard in Big Estate, Kawani's account of the
7 event is that Mr. Adams was walking back from work and
8 Mr. Adams -- and Mr. Bradshaw gave him a ride. He got to
9 Mr. Bradshaw's house -- he got to Mr. Adams' yard or the
10 yard he was dropping him off in. I don't want to say
11 anything that I'm not sure exactly. I don't know it was
12 a yard and a house that he dropped him off at, and they
13 were discussing Mr. Bradshaw's case.

14 Mr. Adams had been incarcerated with the defendant
15 at the Beaufort County Detention Center. Excuse me, Mr.
16 Adams had. Mr. Adams told Mr. Bradshaw according to Mr.
17 Bradshaw that the defendant, Mr. Marion Powell, was
18 telling people that he was robbing -- told him that he
19 robbed drug dealers so he would get a time-served
20 sentence. That he was telling folks that the people he
21 robbed were drug dealers so he would get a time-served
22 sentence. That's the statement that allegedly Marion
23 Powell told Derrick Adams.

24 We interviewed Derrick Adams after hearing this from
25 Kawani Bradshaw. Derrick Adams is cousins with Mr.

1 Powell as well as Kawani Bradshaw being cousins with Mr.
2 Powell.

3 Mr. Adams vehemently denies making the statement to
4 Mr. Bradshaw. He admits to talking to Mr. Bradshaw. He
5 admits to talking to him in the yard. He admits to
6 talking about the case, but he denies that Mr. Scooter
7 Powell, Marion Scooter Powell, said anything to him about
8 Mr. Bradshaw.

9 I've read the defense attorney's motion, and it is
10 accurate that the State intends to call first Mr.
11 Branshaw - Adams to ask him if he told Mr. Bradshaw this
12 about the defendant or specifically first ask him if Mr.
13 Powell told him anything while he was in jail about the
14 charges. And if he denies it, he's not said that he did,
15 the State intends to call Mr. Bradshaw to enter Mr.
16 Adams' statement to Mr. Bradshaw into evidence.

17 The State's position is that the rule under 613(b)
18 is not intended to imply that any statement that is made
19 by a defendant to another party can't be admitted under
20 the rule.

21 I think what that actually is intended to prohibit
22 but intended to show is that you don't have to have the
23 witness deny the statement the defendant made it to them.
24 You don't have to call the defendant to the stand or
25 party opponent to the stand to have them deny the

1 statement to get the statement into evidence. I think
2 the statement automatically comes into evidence, because
3 it's an admission by a party deponent. So I don't think
4 that is actually how the rule fits into this framework.

5 Instead, the State contends that the person who made
6 the inconsistent statement to Mr. Adams, not Mr. Powell,
7 his statement as an admission would come in either way.

8 It's Mr. Adams' statement, which is the inconsistent
9 statement to Mr. Bradshaw; not Mr. Powell's statement.

10 It's not hearsay. It's non-hearsay. It's an
11 admission by a party opponent so it's - hearsay rules
12 apply whether really Mr. Adams testifies or not. We're
13 trying to show the jury the context of how the statement
14 was eluded, was first made.

15 The State would submit that as non-hearsay, the
16 hearsay rules don't apply or they apply with - obviously,
17 hearsay would apply, but it's not hearsay. So,
18 therefore, an admission is an admission.

19 If it comes in and someone hears it because of the
20 well-established rules of evidence and the well-
21 established common law before the rules of evidence
22 because there is reliability there that otherwise doesn't
23 exist.

24 Rule 613, we would argue, applies to when a witness
25 says something to another witness or another person, and

1 is confronted - do you see what I'm talking about?

2 Thank you, Your Honor. I'll sit down. I think
3 that's all our motions.

4 MR. LEE: Judge, this is a small sample of how
5 complicated a lot of these things in this case are. It
6 has some pretty interesting evidentiary rules.

7 It's our position that this - first of all,
8 admissions by party opponents or defendants in this case,
9 we believe are so important that the Court absolutely
10 needs to make sure that they are reliable because of the
11 prejudice that it comes to, even in civil court.

12 It says party opponent. It doesn't even say
13 defendant, but even in General Sessions court, obviously,
14 it's a lot more serious, because it's going to be a
15 statement floating out there and I think that you really
16 need to go through this very carefully to make sure that
17 it's reliable as a gatekeeper of the evidence.

18 We really need to make sure that it's reliable
19 what's being said and the way that the State intends to
20 do this is not by calling Kawani Bradshaw, who,
21 apparently, has this information, calling him first. The
22 objection would be hearsay. Mr. Bradshaw, isn't it true
23 that Mr. Adams, you know, told you something. Objection,
24 hearsay wouldn't come in.

25 What they're trying to do is then flip it around and

1 manipulate the order in which they call the witness
2 knowing full well what this witness is going to say. And
3 just because it doesn't fit into their theory, they're
4 going to put him up on the stand, have him say something
5 for the sole purposes of impeaching him and backdooring
6 some information, some very important information, that
7 they normally would not be able to get out. So, you know
8 beside the fundamental problem of them, you're calling it
9 in a different order, it's not like they can be surprised
10 when he gets up there and says, I never made that
11 statement. Well, you know, we believe that you did.

12 The other -- so I believe that -- we believe that,
13 under 613, it doesn't come in, because 613 does not apply
14 to admissions of the party opponent, which, clearly, I
15 guess, clearly, depending on whose version you believe of
16 what was said, comes in.

17 There are hearsay problems, because I wrote it down.
18 And there are three different things I just heard Mr.
19 Sheldon say about what exactly was said according to them
20 by Mr. Powell.

21 The summary that I got a couple weeks ago said that
22 Mr. Powell was floating a story around the jail. So
23 that's version number one.

24 Mr. Sheldon just said that Marion Powell was telling
25 people. And then, he said he told him. And then, he

1 said he was telling folks. So, there are four different
2 versions that we even had about what supposedly was said,
3 because, if it's word on the street or word at the jail
4 or he said, he said, he said, yet even more layers of
5 hearsay. And the problem is, it is getting so far
6 afield, and it's such an important thing, that it's
7 clearly not reliable and should not be admitted into
8 evidence. So, the one problem is - the main problem -
9 again, we don't even know exactly what they claim was
10 said, because they keep telling me - I keep hearing
11 different things.

12 The other thing is that the statement allegedly
13 says, he was just robbing drug dealers.

14 Well, that causes a lot of problems anyway. Is that
15 an admission to the crime that he is on charge for - that
16 he's on trial for? I don't know, because, certainly,
17 they're not going to take the position that the woman and
18 the children were drug dealers. I think they're going to
19 try to suggest that Mr. Jones was.

20 Is it referring to that event? Is it referring to
21 other robberies of drug dealers, which is what the
22 State's theory is, which this conveniently fits into?

23 I don't know, but you have 404 problems. You have
24 hearsay problems. You have 403 problems. You have
25 relevance problems with all of that. And this, just

1 quite simply, is not clear to being the best evidence.
2 And particularly because it's of such an important
3 nature, we just believe that, number one, 613 shouldn't
4 even apply. They shouldn't even be able to do it in the
5 first place.

6 If you do read that differently, then we believe
7 that other problems inherent in that statement. There's
8 no way to redact it or do anything to make it come in and
9 satisfy the requirements of it being reliable under the
10 rules of evidence.

11 THE COURT: You have anything further?

12 MR. SHELDON: No. And that's why we would call -
13 and Kawani Brad - we just point out, obviously, that
14 Kawani Bradshaw would be able to testify and say exactly
15 what was said and wasn't said to him as part of - not
16 necessarily. Please don't hold my different recollection
17 of what Mr. Bradshaw told me to the facts of what was
18 actually said to Mr. Bradshaw.

19 The State would also state that -

20 MR. LEE: Can I just respond to that real quick?

21 THE COURT: Yes, sir.

22 MR. LEE: He's interviewed Mr. Bradshaw. There's
23 nothing in any reports or anything, other than what Mr.
24 Sheldon generously sent to me that puts us on any type of
25 notice about what was said. And so, I hear that

1 floating-the-story-around-the-jail thing. And then, in
2 court today, I hear his version. I don't know if that
3 was also said or what, but if there's going to be another
4 version on the stand, the problem is it just gets so far
5 afield from the central issue in this case, which is the
6 identity of the persons or people that went into the
7 house in Bluffton that day. And the problem is getting
8 farther and farther away -

9 THE COURT: Well, you might not know the answer but
10 you have to tell him what the question is going to be.

11 MR. SHELTON: Correct. Yeah.

12 THE COURT: And the question is going to be?

13 MR. SHELTON: The question is going to be - to Mr.
14 Bradshaw or to Mr. Adams?

15 THE COURT: I keep getting -

16 MR. SHELTON: Adams is the one that was - and let me
17 - I think - Mr. Adams says that he knows that -

18 THE COURT: That's the question to Mr. Adams?

19 MR. SHELTON: Yes, to Mr. Adams. The question to
20 Mr. Adams was - first of all, I'm going to ask Mr. Adams
21 - I won't ask him this in front of the jury, but for
22 purposes of this and I believe I showed this to Mr. Lee,
23 Mr. Adams says he knows of the incident with Kawani
24 Bradshaw. He knows of the incident - they talked about
25 the incident with - and he knows of the other two

1 incidents that he is currently on trial for - well, not
2 on trial for, but charged with. And then Mr. Adams said
3 that he spoke with - Mr. Bradshaw told me that Mr. Adams
4 told him that he spoke with Mr. Powell, and Mr. Powell
5 told him that he was telling people that he was robbing
6 drug dealers in order to get a time-served sentence.

7 Yes, sir.

8 THE COURT: Okay.

9 MR. SHELDON: So the relevance, Your Honor, for the
10 State is not only the admission that he was robbing
11 people, but it also duck tails into the relevance of the
12 404(b) evidence in general. And the fact that whether it
13 is convenient or not, it's what the State's case is going
14 to intend to show, is that this was the motive of every
15 single armed robbery that he committed.

16 MR. LEE: Judge, I think your question to him was
17 what question are you going to ask Mr. Adams.

18 THE COURT: What is the question that you're going
19 to ask -

20 MR. SHELDON: Mr. Adams.

21 THE COURT: Derrick Adams.

22 MR. SHELDON: Did you speak with Mr. Powell. Okay.
23 Did you speak with him in the detention center. Did he
24 say anything to you about his pending charge here today.

25 MR. LEE: No. He is answering no, correct?

1 MR. SHELDON: I don't know what he is going to say.
2 I mean, what he told me first was -- what he told me was
3 no but when he is under oath I don't know what he is
4 going to say, but I just suspect that he would say no.
5 Then I'll say, in the jail did he say anything to you
6 about what he was doing related to his charges and --

7 MR. LEE: And I would object and say that's a
8 leading question on direct.

9 THE COURT: Think about this. Isn't the purpose of
10 this rule -- it did sound like to me what you were asking
11 is what the rule contemplates the Court would do under
12 the interpretation under the rules. I thought that you
13 were saying that the rule would permit you to call
14 Derrick Adams, ask Derrick Adams. For instance, I don't
15 know what you'd ask him.

16 MR. SHELDON: Right.

17 THE COURT: Do you know Kawani Bradshaw?

18 MR. SHELDON: Yes. And then, what I would ask is --
19 I would ask him that first to set a foundation. And
20 then, I would ask him, do you know Kawani Bradshaw. Did
21 you have a conversation with him in his yard about a
22 month ago. Where did that take place. What did you all
23 talk about. Did you tell Mr. Bradshaw that X.

24 THE COURT: And that's leading. That's what he is
25 talking about. You tell him A, B, C.

1 MR. LEE: Judge, he is leading him down the primrose
2 path where he wants him to go, but that rule is designed
3 so, if a witness gets up there and says I was riding in a
4 red car, for example, and they'd given a previous written
5 statement -- and they'll say, well, didn't you give a
6 previous statement to Officer Duke saying it was a green
7 car. No, I never made that statement. That's where that
8 rule comes in. You then get the statement he gave to
9 Duke or whoever it is, and you have to advise him of the
10 substance of it and when it was made and who it was made
11 to and all that. And then, at that point, you can use
12 extrinsic evidence.

13 He's not testifying substantially to anything that
14 they are impeaching him on. He is saying he didn't make
15 the statement at all, and they want to get their theory
16 going or based on somebody's denial making it a statement
17 and they can't -- without leading, they can't even get in
18 for him to deny the actual statement that they are trying
19 to get in.

20 THE COURT: If I asked a witness did you say A, B,
21 C. It's a yes or no. Did you say A, B, C. That's not a
22 leading question. Is it? Isn't that asking him, answer
23 this question, did you tell Billy Bob A, B, C.

24 MR. LEE: I think that that definitely would be a
25 leading question. The way you question a witness is say,

1 you know, tell us what you know about it. Have them
2 testify whatever it might be -

3 THE COURT: A leading question suggests the answer,
4 that you're telling him what to say.

5 MR. LEE: Well, they are doing that indirectly. I
6 mean, even if they can't directly say that, indirectly
7 doing the same thing by their proposed way of doing this.
8 I mean, they are getting to the same point.

9 I mean, I think we all agree that they can't lead
10 and they can't say, isn't it true that you said this, but
11 now you're saying, you know, then, actually, he didn't
12 say it. I mean, the whole process is the problem is
13 because they are essentially using hearsay and using, I
14 think in violation of Rule 613, to get where they want to
15 get and it's not like - it's not the classic prior
16 inconsistent statement, because he is not making a - I'm
17 trying to think of a good example, Your Honor.

18 I've never seen it done this way before. I mean, he
19 is denying making the statement, but they can't get out
20 on direct, I don't think, what they need to get out.

21 I've done a horrible job explaining it, but I think
22 that the problem is this stuff is throughout the case and
23 this is a single issue, but the entire case is the same
24 rigamarole, and their theory of what happened and all
25 these other things are tangentially involved, and there's

1 co-conspirators uncharged making statements about this.
2 I mean, this is horribly unreliable evidence. I mean, as
3 a matter of law, this shouldn't even come in because it
4 is so unreliable. You're allowing a person, Kawani
5 Bradshaw, who has everything to gain by blaming Marion
6 Powell, because, allegedly, he has been assaulted by him
7 and everything else, to come in and say it and you say,
8 well, you can cross-examine all you want, but the problem
9 is, I shouldn't have to do that, because this is such -
10 Derrick Adams apparently has nothing to gain or lose on
11 this thing and I just think the way they're doing it is
12 completely wrong.

13 I think 613 excludes this exact thing that they're
14 trying to do. I think, fundamentally, that it is not
15 fair to do it in this way. And if they have a statement
16 that they want to use if somebody may be denies making
17 it, unless they have better evidence than they do, I
18 don't think it comes in and that's just - they're just
19 going to have to use something else.

20 MR. SHELDON: First of all, Your Honor, I point out
21 that under the defense's interpretation of the rule in
22 question, the State would never, ever be able to get in a
23 prior inconsistent statement.

24 Secondly, in reality these two witnesses, especially
25 Kawani Bradshaw, has everything to lose when testifying

1 against Mr. Powell; not everything to gain.

2 They live in the same neighborhood. He is his
3 cousin. This is a small area. It's very rural and
4 Beaufort County has a slow police response. He's been
5 involved with drug distribution, and kind of has to
6 answer up for years and years a little bit of background
7 information, and all the witnesses in this case are
8 fearful of retaliation.

9 Mr. Bradshaw does not even want to testify so to say
10 that he has everything to gain, even though he was an
11 alleged victim of Mr. Powell, who actually has pending
12 charges against him currently, while I understand where
13 Mr. Lee is coming with that from representing his client,
14 it's really, I think in reality, not true.

15 In fact, the State would not be trying to present
16 the evidence if we did not think that Mr. Adams was also
17 fearful of retaliation, and that's the reason he is
18 denying the statement now, and that we do not firmly
19 believe that the statement wasn't made to Mr. Bradshaw.

20 THE COURT: Mr. Lee, I hate to tell you this. In a
21 prior life I was a practicing attorney. I used this the
22 way the Solicitor proposes to use it. I was trying to
23 see if you could convince me I was wrong -

24 MR. LEE: Well, maybe the defense's lawyer didn't
25 object.

1 THE COURT: - the way I interpret it.

2 MR. LEE: Well, Judge, I think the problem, the
3 inherent problem is, is exactly what is involved here,
4 which is a statement allegedly by the defendant. I think
5 that's why it's different and the statement that you
6 never get a prior inconsistent statement. Sure you can.
7 And if his statement dealt with something besides an
8 alleged statement made to him by the defendant, I think
9 they would be perfectly able to do this. But the problem
10 is you have a statement by the defendant that is the
11 substance of the testimony, whereas, the typical
12 situation is, well, didn't you know so and so, didn't you
13 give a statement saying the car was blue. No. I never
14 made that statement. Then you use the statement that
15 they made and you bring it in.

16 This has a whole different level, whole different -
17 another tier, that's involved, number one. And number
18 two, it is so important that's why it's given this
19 special protection under 613. It is so important because
20 it is a statement by the defendant that is inculpatory.

21 Now, I don't know how you interpret that and I don't
22 know how we would ever redact it and not cause, you know,
23 - and quite frankly, if you apply 403, which I think you
24 pretty much do to everything now, I think that 403, in
25 conjunction with this, would absolutely prohibit that

1 statement from coming in.

2 THE COURT: All right. I've heard the argument. I
3 understand your argument, Mr. Lee. I'm going to deny
4 your motion as to - that motion as to this. That brings
5 us to what?

6 MR. LEE: I'm not re-arguing, but as stated, you're
7 going to let it in as stated in his - I mean, what
8 exactly are we letting in? That he said that he was just
9 robbing drug dealers? That's coming in?

10 THE COURT: Is that the question?

11 MR. SHELTON: The statement is that he was - his
12 statement - Adams' statement to, and Steve Bazzle
13 interviewed Kawani Bradshaw asking him specifically what
14 he said with our office too, so that gives an independent
15 witness. Mr. Lee, I'm letting you know that. His
16 statement is that he was telling people that he was
17 robbing drug dealers in order to get a time-served
18 sentence.

19 MR. LEE: Don't we have to at least establish on the
20 stand that he said it to Mr. Bradshaw, because,
21 otherwise, you have more hearsay that clearly is not
22 admissible.

23 MR. SHELTON: I apologize. It's not Mr. Bradshaw.

24 MR. LEE: Mr. Adams.

25 MR. SHELTON: Mr. Adams.

1 MR. LEE: Don't we have to establish that this
2 alleged statement was indeed made to Mr. Adams, not just
3 some rumor that was floating around that Mr. Adams may
4 have heard from somebody else? Because, if it is, there
5 are other levels of hearsay. Even if Adams wanted to get
6 up and say, I heard or it was floating around the jail,
7 and I heard people say that Marion Powell was saying this
8 to them, that wouldn't be admissible, because it's
9 hearsay. If Mr. Adams, who is denying, but even if he
10 didn't deny making the statement to Bradshaw.

11 We have to figure out what the substance of it is,
12 number one. And number two, floating around the jail? I
13 mean, there's 250 people over there.

14 I mean, don't we have to at least make sure there is
15 not a level of -- another level of hearsay or two or five
16 or ten that we have to deal with before that statement is
17 even admissible?

18 THE COURT: I thought he was talking about that he
19 was going to say the defendant told him that it was
20 floating around the jail.

21 MR. SHELDON: Well, the defendant told him he was
22 telling people that he was robbing drug dealers so he
23 would get a time-served sentence. That's what Mr.
24 Bradshaw told our office and told Mr. Bazzle of our
25 office.

1 MR. LEE: As long as we're clear on that, because,
2 if it's - the summary that I have from Mr. Sheldon, which
3 is the only place that it's memorialized talks about he
4 was floating a story around the jail, and that's a lot
5 different than he said this specifically to me.

6 MR. SHELDON: That was my email to him to tell him
7 that I had -

8 THE COURT: That was just your spin.

9 MR. SHELDON: My spin on it, correct, in order to
10 let him know there was this possible witness that I was
11 trying to prepare.

12 THE COURT: It never occurred to me that you would
13 think you get into evidence a rumor.

14 MR. SHELDON: Right. Exactly. No. My
15 understanding is, is that Mr. Adams told Mr. Bradshaw
16 that it's levels of this that Powell told him that he was
17 telling people that he was robbing drug dealers in order
18 to get a time-served sentence.

19 THE COURT: That's what your investigator says -

20 MR. SHELDON: Yes.

21 THE COURT: - he told him?

22 MR. SHELDON: Yes. And he is right here.

23 MR. LEE: Obviously, I don't think - I guess there
24 is no better way to recollect exactly what this fellow
25 said unless they have some notes or recordings or

1 something like that as to exactly what the substance of
2 the statement was from Kawani Bradshaw.

3 Do you have anything? Do you any notes or
4 recordings or anything?

5 MR. SHELDON: No. All I have is I specifically
6 asked Mr. Bazzle to call him and - Investigator Bazzlr
7 with our office - and ask him specifically what Mr. Adams
8 told him and that's specifically is what I just told the
9 Court.

10 Is that correct.

11 MR. BAZZLE: Yes.

12 MR. LEE: Judge, can I - obviously, I understand
13 you've made your ruling. Could I at least suggest while
14 objecting to the ruling that, prior to Mr. Bradshaw
15 testifying, could we maybe have an in-camera or something
16 with him off the record just so we don't get down the
17 road and have a mistrial. Because, I mean, there are
18 some legitimate concerns. I believe that, if he
19 testified one way, it would be admissible, I believe; and
20 other ways, it would be inadmissible, depending what
21 exactly was said.

22 MR. SHELDON: I'd be fine with that, Your Honor.

23 THE COURT: State agrees?

24 MR. SHELDON: Uh-huh.

25 MR. LEE: And I guess, of course, -

1 THE COURT: You'll have to remind us when we get to
2 that point.

3 MR. SHELDON: Yeah.

4 MR. LEE: And I guess as far as Mr. Sheldon, I'm not
5 trying to try his case for him, but as far as him making
6 promises to the jury before that's done, I guess that's
7 the risk he takes if he does that?

8 Your Honor, for the record, can I just have -- are
9 you -- is your ruling that the last sentence in 613(b)
10 where it says this provision does not apply to admissions
11 of a party opponent as defined in rule 801(d)(2), is it
12 your ruling that that provision does not apply to this
13 case? Am I misreading that or that -- can you specify as
14 to your interpretation of that just for the record?

15 THE COURT: Let me get 801(d)(2) out.

16 MR. LEE: Your Honor, I have copies right here.
17 I'll be glad to pass them up.

18 THE COURT: It's not attached?

19 MR. LEE: No, it was not attached to it.

20 THE COURT: Well, Mr. Sheldon, what do you say about
21 that?

22 MR. SHELDON: Rule 613, Your Honor?

23 THE COURT: I'm sorry?

24 MR. SHELDON: Rule 613? I'm sorry, which --

25 THE COURT: Well, 613 but what Mr. Lee is referring

1 to is 801(b)(2).

2 MR. SHELDON: I'm sorry, Your Honor. I was not
3 reviewing it as you were. I should have done it. Well,
4 the State, and forgive me if I'm going down the wrong
5 path here with what you're asking me, but the State
6 submits that a statement, it is an admission by a party
7 opponent. It's not hearsay. And just as non-hearsay is
8 an admission, I'm not saying this is statement against
9 interest, but it's the only thing I can think of that
10 would be similar to it. The statement against interest
11 being non-hearsay, if it's passed down the road. It's
12 still admissible as an exception to the hearsay rule.

13 Under another theory, you could say that the reason
14 that 613 doesn't apply to this is because admission
15 against the party opponent comes in because it's an
16 admission and it has a degree of probative value, and
17 also, reliability, based on it being an admission. And
18 maybe I'm not answering the question you want me to
19 answer.

20 THE COURT: He said the last sentence of 613.

21 MR. SHELDON: Correct. How it does not apply to
22 801.

23 THE COURT: It says that this does not apply as
24 admissions of a party opponent.

25 MR. SHELDON: The State's position with that is

1 that, an interpretation of that rule is that what it is
2 saying under that rule is that you don't have to apply
3 this test to admissions of party opponents. Not that -
4 because the statement that we're talking about is Derrick
5 Adams' inconsistent statement; not Marion Powell's
6 inconsistent statement.

7 Marion Powell's inconsistent statement is not
8 inconsistent. His statement is an admission.

9 The State believes, and I did not prepare to have in
10 court anything to document this, but I think that what
11 this rule - and I believe I have the notes in front of me
12 and I could take some time to review them for 613. What
13 that rule is intended to show is, you do not have to go
14 through those hoops, if you will, in order to get an
15 admission against a party opponent into evidence if it is
16 an inconsistent statement. Those come in automatically.

17 MR. LEE: Judge. Judge.

18 THE COURT: Oh, I see what you're saying.

19 MR. LEE: Their position though, would give less
20 protection to an admission by a party opponent,
21 particularly in a criminal context. Even if you said
22 something to the police, you've got to make sure it was
23 voluntarily given and nothing was promised or was it
24 coerced or anything like that. So the State's
25 interpretation of 613(b), that last paragraph, would say,

1 would have to be, we're going to give -- we're not going
2 to make you do all this stuff for an admission of a party
3 opponent if it says if we get in a situation, all you
4 have to do is say, well, the defendant told me that
5 without having to say isn't it true that the statement
6 was made on such and such date to this person and can go
7 through all the things to give the person a chance to --
8 there would be no reason to take these --

9 THE COURT: Isn't that true? Can't a witness merely
10 say the defendant -- let's suppose the witness is not of
11 law enforcement.

12 MR. LEE: Right.

13 THE COURT: Can't the witness say I'm his next door
14 neighbor and he told me he committed the crime?

15 MR. LEE: Absolutely, but the problem is we have
16 another layer here, and this is why this is coming into
17 play.

18 If Derrick Adams got on the stand and said Marion
19 Powell told me that this, this, this, clearly, that would
20 come in and there, would be no hearsay objection.

21 The problem is that's not what happened. There is
22 another layer there and the substance of the statement
23 that they're trying to get in is an admission by a party
24 opponent.

25 If the substance of the statement was whether the

1 car was red or blue, then you wouldn't even have to read
2 that last statement, because it wouldn't apply. The rule
3 would apply.

4 If it is an admission of a party opponent, it's
5 saying, essentially, you know, it says the provision -
6 and provision (b) is extrinsic evidence of prior
7 inconsistent statement witness. So, if he says this
8 provision doesn't apply, he crossed through that. And
9 so, you don't even have a Section (b), and with no
10 Section (b), they're stuck with what the answer is, and
11 they cannot prove it extrinsically by putting someone
12 else up on the stand and saying it was an inconsistent
13 prior statement. That's what that last sentence does.
14 Provision does not apply. So, if it doesn't apply, it's
15 gone. So, all you have would be (a) examining a witness
16 concerning prior statement.

17 MR. SHELDON: The State's position is that the final
18 sentence allows whether it is plaintiff's lawyer or the
19 state, whoever it is, or a defense attorney, to not have
20 to actually get the party opponent on the stand and have
21 them accept the prior inconsistent statement. That's the
22 intent behind that sentence.

23 THE COURT: I agree. There are other witnesses
24 other than the defendant that are party opponent. You've
25 got to give him the opportunity to admit or deny.

1 MR. LEE: But what is said was - it says the
2 provision does not apply to admissions of party opponent.
3 It doesn't specifically say when a party opponent is
4 testifying.

5 THE COURT: I agree, but you don't have to put the
6 party opponent up and ask them, isn't it true you told
7 him maybe you committed a crime. They can just get up
8 and say it. At any rate, that's the way that I interpret
9 it, that it doesn't apply.

10 MR. LEE: And we're going to have an in-camera to
11 find out exactly what this guy is going to say?

12 THE COURT: Right.

13 MR. LEE: Okay.

14 THE COURT: Which moves us next to?

15 MR. SHELDON: I would think it would naturally carry
16 us into the prior bad acts evidence since it is kind of
17 tied together, Your Honor.

18 It's the State's motion. I would rely on my brief,
19 and first of all, say exactly what we are trying to enter
20 into evidence, because there is a lot there.

21 THE COURT: A lot there?

22 MR. SHELDON: There's a lot there. First of all,
23 the reason - I'll talk about first, relevance. Why it's
24 even relevant.

25 In the home invasion involving Mill Creek, it's

1 alleged that two of the defendants either partially did
2 not have their faces covered or completely did not have
3 their faces covered. One of those defendants was Mr.
4 Powell, who completely did not have his face covered.

5 There is another defendant who had his face
6 completely covered, over his nose, and then down to his
7 eyes. That defendant was, according to Ms. Jones, 5-
8 foot, seven inches tall, to her estimation, and I believe
9 160, 170 pounds. I don't have it directly in front of
10 me, but it's something to that nature.

11 The defendant that had his face uncovered, which
12 assailant, which the State admits was the defendant, was
13 the one who went upstairs first for the children, and
14 then went into her room second.

15 He remained calm relative to the other people and
16 was the lookout. Went up and down the stairs. Made sure
17 and kept an eye on Ms. Jones to make sure she was lying
18 down. Ordered her around and was the last one to leave.

19 Ms. Jones at one time pleaded with him and spoke
20 with him directly and have the other defendants believe
21 him, and also, when she told him that her mother and her
22 sister may be coming home, he went and got shoe strings
23 in order to tie them up.

24 In the case further, Cleven Jones, I'm not saying he
25 is an active drug dealer or not, but his prior history is

1 consistent with the prior histories of every other
2 defendant - every other victim, rather, that the
3 defendant is alleged to have targeted. He has a federal
4 drug distribution conviction. He was, in the State's
5 opinion, the target of this armed robbery and he was not
6 home.

7 All of the other defendants that the defendant
8 targeted - victims that the defendant targeted were also
9 previous drug dealers, or admittedly at the time,
10 involved in dealing drugs. And actually, one had
11 subsequently received a conviction for possession with
12 intent to distribute marijuana, second offense.

13 In his statement to Mr. Riley, his alleged statement
14 to Mr. Riley, and it is incorporated in one of
15 defendant's motions. It's easy to - it's a lot shorter
16 than my motions. I apologize, Your Honor. The defendant
17 told him that he duct taped lots of people he robbed. He
18 said that Kenya had sent him on multiple robberies. He
19 also said that he assumed that the Mill Creek people were
20 drug dealers, because the other people he robbed were
21 drug dealers. I might be para-phrasing but that's in his
22 statement.

23 A month before the incident, Mr. Powell and Mr.
24 Byron Young, evidence shows, at the same time, called -
25 Mr. Powell sent a text message. And then, Mr. Young

1 called a Mr. Marion Moultrie, otherwise known as Nip.
2 And in that event, he threatened if he did not pay him,
3 Byron Young did, to tie up his wife and kids.

4 In the armed robbery with Thomas General, Marion
5 Powell had his face uncovered. His co-conspirator, co-
6 assailant, whatever you want say, is not charged, but is
7 Byron Young. It's not that we're not going to charge
8 him. That's one of the reasons the State asked for a
9 continuance in this case, because we're still building
10 the case.

11 Byron Young was covered in a similar fashion as to
12 the way his face was covered in the Mill Creek home
13 invasion. Marion Powell's face was uncovered. Marion
14 Powell tied up Bucket, otherwise known as Thomas General,
15 otherwise known as Bucket.

16 Marion Powell remained relatively calm compared to
17 the other assailant and talked to him and actually
18 threatened him and told him trying to extort from him who
19 other drug dealers were in the area, what other money
20 they had - who were people that had money, rather, in the
21 area.

22 At a minimum, Your Honor, the State would seek to
23 admit the fact that they targeted Thomas General.
24 General was tied up: General identifies Marion Powell as
25 his assailant. This occurred within around two months

1 prior to this armed robbery. That the roles in the armed
2 robbery were similar. That Mr. General is also a
3 convicted drug dealer and that that is the modus operandi
4 for what they do.

5 Drug dealers don't often report crimes. In fact,
6 only after they terrorized the entire neighborhood did
7 anyone actually, besides the first case, report the
8 crime, the Thomas General's case.

9 Troy Brown is tied in with Thomas General's case
10 because Byron Young called him and said that we already
11 robbed your boy, Bucket. You're going to be next.

12 Troy Brown, in an interview with us, told us that he
13 also threatened to kidnap his mother and kill his father.
14 Troy Brown also is a convicted drug dealer.

15 And that firmly establishes with clear and
16 convincing evidence that Byron Young and Marion Powell
17 were the assailants in the Thomas General case and the
18 State would use that case, focus on that incident, to
19 show identity, common scheme or plan, motive and intent.

20 If this were one isolated incident, then we really
21 wouldn't have a leg to stand on but they were targeting
22 multiple individuals the same and it's all documented
23 with the same backgrounds.

24 Now, while this case is tangentially connected to it
25 because it's not in the same area, while inside the house

1 they demanded the money and dope.

2 They waited, when Ms. Jones told them other people
3 were going to be coming, Marion Powell got the strings
4 and tied them up. He used string in the Thomas General
5 case to tie up Thomas General.

6 And without any reference to any of these acts, the
7 statements that we have already conditionally approved
8 into evidence and the statement made, the whole
9 confession to Riley, is somewhat out of context.

10 For example, he says that he ties up - that he robs
11 drug dealers, they rob multiple drug dealers. That he -
12 he says duct tape but he says he ties all of his victims
13 up. He threatened to kidnap. He kidnaped allegedly one
14 person; threatened to kidnap two other people's family
15 members within two months of kidnaping and holding at gun
16 point this family who happens to have a husband who has a
17 prior drug record. All the other assailants have prior
18 drug records.

19 The statement that he was telling people he was
20 robbing drug dealers so that he could - so that he'll get
21 a time-served sentence actually eludes to the entire
22 motive behind every single case. This is who he targets.
23 This is why he targets them. And then, in the statement
24 to Eric Riley, when he says that he was mad with Kenya
25 Hagood who set him up on the robbery because she didn't

1 do her homework because the kids were home, that also
2 shows that it didn't fit within the plan, if you will.
3 It didn't fit with the overall plan. He is mad at her,
4 because now we've got kids involved. They weren't
5 supposed to be there. So now, he is stuck with it, and
6 here we are today.

7 I understand, Your Honor, there are a lot of parties
8 at play here and I tried to explain it as clearly as I
9 can, but the logical relevance we believe is strong based
10 on all the similar situation of every single victim, and
11 also, the similar manner in which the crimes were carried
12 out. The similar matter in how each party behaved
13 themselves. The fact that we know, at least allegedly
14 know, or have a witness testify, that Marion Powell was
15 involved with each one, and I detailed in my memo how
16 each is relevant to common scheme or plan, identity,
17 motive and intent.

18 As far as clear and convincing evidence, Your Honor,
19 we have a statement available from Thomas General if you
20 would like to review it. There's a statement from Eric
21 Riley.

22 Thomas General is also Mr. Powell's cousin. Mr.
23 Powell is much younger than him, but he grew up in the
24 same area. Again, it's the same argument that I made
25 earlier that, instead of having everything to gain by

1 testifying, they actually have very much to lose by
2 testifying.

3 It's not within the rules of engagement that you
4 testify against people involved in the drug practice in
5 court and actually can end up with a literal mark on your
6 back to be killed later. I'm not saying that in jest.
7 I'm not saying that because it's actually true.

8 So we believe his statement should carry much weight
9 as with Marion Moultrie's, as with Benjamin Troy Brown.

10 At a minimum, we think that the involvement with
11 Thomas General's case is the strongest and the most
12 pertinent to this case, the way it was carried out, and
13 at least they were making or trying to extort money from
14 other drug dealers in the Big Estate area.

15 I left out, Your Honor, as well, that -- if I just
16 keep talking and you want me to sit down, please let me
17 know. Sometimes I have a habit of doing that.

18 That within the broader investigation the sheriff's
19 office actually witnessed Mr. Cleven Jones' car in the
20 area of Grays Hill, which I'm sure you know if you drive
21 through it in Beaufort County, that is not far from the
22 same area here and a lot of the drug activity that takes
23 place is connected in those areas. That is near where
24 the defendants were committing their or alleged to commit
25 their crimes beforehand, or Mr. Powell was, and it also

1 shows a connection there of Mr. Jones not only being a
2 prior drug dealer, but also in that area.

3 Furthermore, when Mr. Jones first moved to Beaufort
4 County, he moved to the Yemassee area of Beaufort County.
5 His father is a minister in Detroit, and his father sent
6 him down here. He came down here because his father's
7 friend was a minister in Yemassee, and actually, they
8 went to that church the entire time they were there. So,
9 it's not like these folks were just dropped out of the
10 sky into the Mill Creek in Bluffton; they actually have
11 connections with the same area.

12 So despite the invasion taking place in Mill Creek,
13 the defendant has connections with Yemassee, and also,
14 Grays Hill and was having an affair with a woman who is
15 from a similar area.

16 THE COURT: All right. Thank you.

17 MR. LEE: I guess the first place to start is to
18 make sure that I have clear the incidents, the prior bad
19 acts that Mr. Sheldon is attempting to introduce and from
20 what I've heard it was the threat to Marion Moultrie -
21 please correct me if I'm wrong - the threat to Marion
22 Moultrie over the phone by Byron Young. Is that right?

23 MR. SHELTON: The email, the text message, and the
24 threat were sent at the same time.

25 MR. LEE: Okay.

1 THE COURT: You want to let me slow down and catch
2 up with you and make sure I've got that, the same thing
3 that I'm talking about. You've got the photograph?

4 MR. SHELDON: The photograph and the phone call that
5 were sent contemporaneously, one from Marion Powell and
6 the phone call was made from Byron Young on 9-21-2010, I
7 believe, in which Mr. Young states that, we'll kidnap
8 your wife and kids.

9 THE COURT: Okay.

10 MR. LEE: That's number one. Number two is the
11 Thomas General armed robbery from 8-16-2010, correct?

12 MR. SHELDON: Correct.

13 MR. LEE: Okay. Number 3 is the telephone
14 conversation from Byron Young to - is it Troy Brown?

15 MR. SHELDON: Correct. Benjamin Troy Brown.

16 MR. LEE: Saying I will kidnap your mother and kill
17 your father?

18 MR. SHELDON: Correct. After saying that we already
19 robbed your boy, Bucket. Who is Thomas General, Your
20 Honor.

21 MR. LEE: And anything else? Any other incidents
22 you're trying to use?

23 MR. SHELDON: There is one other incident that I
24 mentioned in my memo, which is where Byron Young calls
25 Marion Powell - excuse me, calls Kawani Bradshaw and asks

1 him to drop the charges against Marion Powell. The
2 actual armed robbery in that case, I do not believe has
3 anything to do with Byron Young. That's Marion Powell so
4 we're not trying to use that. We're trying to use Byron
5 Young calling and trying to get Mr. Bradshaw to drop the
6 case against his, I say co-conspirator, because this is a
7 series of crimes that are so connected in motive and
8 intent.

9 MR. LEE: Your Honor, my first position would be if
10 there was a case where this was allowed that was even
11 close, even close, I would love to see it, because there
12 isn't one. And if the Solicitor had one that was even
13 close to this, I'm sure he would have submitted it to
14 Your Honor.

15 I have done an extensive check in the Lyle issues
16 and by way of history, Lyle was a forgery case out of
17 Aiken. That's the way this whole thing started back in
18 the 20's and to where we are today. But I would
19 respectfully suggest that, in addition to talking about
20 these, I can go through every exception if you want me
21 to. I mean, he listed all of them. I don't think -
22 again, I don't even think they're even close, but I'll be
23 glad to go through each exception to tell you why it
24 doesn't apply to this case and a little bit of a history
25 of what those type exceptions usually deal with. But I

1 would first say if there was a case that was even close,
2 you'd see it, and there's not one.

3 I also would suggest to you that the very nature of
4 the story he just told you is going to completely, at
5 best, confuse the jury; at worst, do exactly what
6 propensity evidence they're worried about doing, which is
7 having a jury decide something on an improper basis.

8 Rule 404(b), in *Lyle*, are rules of exclusion, not
9 inclusion. The default, if you will, is to not let it
10 in, because it does go to character, which clearly is not
11 a - is not something that the State can typically get
12 into. And the language is clear. The reason is clear.
13 And what the *Lyle* case said is propensity evidence effect
14 is to predispose the mind of the juror to believe the
15 defendant guilty, and thus, effectually, to strip him of
16 the presumption of innocence.

17 The case goes on to say is in a criminal case, the
18 law must be the most thoroughly on guard against allowing
19 the doing of an act to be proved by a propensity to do
20 it.

21 The law also, and I think, which is probably right
22 on point with this, a case called *Fonseca*, F-O-N-S-E-C-A,
23 talks about evidence of other distinct crimes committed
24 by the accused may not be adduced merely to raise an
25 inference or to corroborate the prosecution's theory of a

1 defendant's guilt of a particular crime charged.

2 That's why we're here. Because they developed this
3 theory and they need to somehow pigeon hole these into
4 it. But I would submit to you that the very look that
5 was on your face when everybody was in here about this,
6 this, this, and he was having an affair with this girl,
7 and she was having an affair with another girl, and all
8 these things, that is not *Lyle*. That is not an
9 appropriate case for *Lyle*.

10 *Lyle* says, look, we'll make an exception with this
11 very dangerous type of evidence, but you better be able
12 to show the court, and you better be able to show the
13 judge, and it must be - according to *Lyle*, if the court
14 does not clearly perceive the connection between the
15 extraneous criminal transaction and the crime charged,
16 that I, it's logical relevancy, that you should be given
17 the benefit of the doubt, and the evidence should be
18 rejected. That's what *Lyle* is all about.

19 It is almost a presumption that it's not coming in
20 unless you have these very limited circumstances. And I
21 will tell you, typically, - I think there is a huge
22 problem with the relevance, because it is so far out
23 there, that a jury is going to not be able to figure it
24 out. Like I said, well, gee, he sounds like a bad, bad
25 dude. Even if he didn't prove this one, let's talk about

1 all this other stuff that he has done, even though it
2 doesn't have to be proved beyond a reasonable doubt,
3 they're going to convict him on this based on that other
4 stuff and that's clearly what Lyle wants to avoid.

5 Mr. Sheldon talked about it proves identity. I've
6 gone through most of the cases. The identity cases
7 almost always involves some type of ballistics, matching
8 a gun, a specific gun, from one crime to another.
9 Showing that the defendant stole a gun two weeks prior.
10 Showing that bullets match up in a first case match up
11 with one in a second case.

12 The only other I.D. I saw where it was allowed was
13 the *Dickerson* case, which talks about the victim had been
14 what they call overkill. He was excessively beaten and
15 they said that the defendant's drug use would tend to be
16 admissible to show identity to explain the overkill.
17 Other than that, it always seems like it's a gun or a
18 ballistics-type case for identity.

19 Motive or intent. The law says that they're very,
20 very close. And what the court has done is really said,
21 look, we need to break these down into sexual cases and
22 non-sexual cases. And typically, where you see Lyle be
23 admitted now are on these sexual cases. Showing someone
24 has a propensity in the - there's no typical case, but
25 the case you see the most is either prior lewd acts with

1 children being the same victim or prior acts with like
2 the sister who was the same age, it happened in the bed
3 at the same age while the mom was at work or while the
4 uncle was there on vacation. And they've really loosened
5 it up a little bit for the sex cases but not the non-
6 sexual cases.

7 And typically, motive or intent only comes in if it
8 is something - almost an element of the crime. So the
9 motive and intent in the Lyle case, you'll see where it
10 was permitted for things like a burglary ABHAN case,,
11 which is *State versus Sweat*. And they allowed a prior
12 criminal domestic violence against the victim to come in
13 to show motive. And the court said the defendant was
14 driven by anger over the victim, causing him to go to
15 jail. That's the type of stuff Lyle is talking about.

16 It said it also showed intent. Again, assault and
17 battery with intent to kill, it was showing intent,
18 because the prior CDV would show that he maliciously
19 sought to inflict harm on the victim and her new
20 boyfriend who was in the picture.

21 That's a motive intent that you see or other ones
22 are *Johnson*, which is a case, actually, from Jasper
23 County.

24 Somebody is hitchhiking. A guy in an R.V. picks him
25 up. He ends up killing the R.V. driver and then he is

1 driving the R.V. with a dead body in it and he gets blue
2 lighted by a trooper. The trooper is coming into the RV
3 and he shoots him.

4 Well, clearly, the event from earlier is going to
5 come in, because it is going to show his motive for doing
6 it. So, the point is, they are very, very clear. And
7 it's really gotten to the point, in my opinion, that,
8 with non-sexual Lyle cases, it's almost kind of morphed
9 into a *res gestae* type of thing where they're saying,
10 look, you need to show that it is so intrinsically part
11 of the crime the person is on charge for that you really
12 can't even do - you can't prove it and it's not fair to
13 split them up. That's almost what the Lyle motive and
14 intent has morphed into.

15 I don't think he alleged Adams a mistake or
16 accident, so, I won't go into that. But common plan or
17 scheme is where you see a lot of the Lyle cases come
18 from. And again, almost all of them involve,
19 unfortunately, lewd acts and CSC with a minor and that
20 sort of thing. And -

21 THE COURT: Help me out on something. I can't
22 remember this, and I can't get my Internet to connect to
23 a website I need to go to. What were the facts in the
24 Cheezborough case?

25 MR. LEE: Cheezborough was a barber shop and that's

1 one of the ones for intent. Cheezborough, I believe was
2 a death penalty case that Bill Nettles tried, but that
3 was a barber shop murder and the gun got traced back to a
4 previous - I think they robbed a taxi cab. I don't
5 remember if it was a barber shop first or the taxi cab
6 first, but it was ballistics and it was a gun that was
7 traced back to the two, and it said that, certainly, that
8 that does. And that's a perfect example of the type of
9 evidence that we're talking about and the type of
10 evidence that is going to withstand review on appeal,
11 quite frankly, because every time - not every time but
12 the advance sheets are littered with Lyle cases. And
13 getting back to what I said initially, if there was a
14 case that was even close, I'm sure we would have seen it
15 and the Solicitor would have presented it. And I would
16 submit to you the reason there is not a case that is even
17 close to allowing this much to come in is because the
18 trial judges are smart enough not to let it in. So, it
19 doesn't even go up on appeal. So, there's no cases for
20 us to judge a similar fact pattern as we have here.

21 But getting to the common plan or scheme, which is
22 one of the reasons the courts have said, and there is a
23 case called *Clasby*, which I'd be glad to pass up if you'd
24 like me to. But what it says is, a common scheme or plan
25 exception is perhaps the most difficult exception to

1 apply, because, in the context of other exceptions, like
2 motive and I.D. that we talked about, the relevance or
3 lack of relevance of the prior bad act is more easily
4 discerned; and a lot of times, because the crime charged
5 contains some type of element such as intent, that the
6 state needs to prove that it's directly linked to the bad
7 act evidence. So, the common plan or scheme is what is
8 the most difficult.

9 And again, talking about *Lyle* and the relevancy
10 analysis for common plan or scheme, says the relevancy
11 analysis that the court has to undergo should be
12 subjected to rigid scrutiny by the court in light of the
13 consideration that the inevitable tendency of such
14 evidence, meaning propensity evidence, is to raise a
15 legally spurious presumption of guilt in the minds of the
16 jurors. That's the underlying part of it.

17 Now, what do you do on a common plan or scheme?
18 That, typically, what the court says is the judge must
19 clearly perceive the connection, but it also suggests,
20 and what the courts say in *State versus Smith* and *Clasby*
21 says look, at a minimum, compare the crime you're charged
22 for versus the crime that they want to bring in. Look at
23 the similarities and look at the dissimilarities.

24 That's, essentially, the first way to look at it, so
25 if we do that, I think you have to break it down by each

1 one. If we do that on the first one, he said was Byron
2 Young made a threat to Marion Moultrie saying, I'm going
3 to tie up your wife and kids. Well, how does that differ
4 from the home invasion over in Bluffton?

5 Well, number one, it never was face-to-face. It was
6 over the phone versus going to somebody's house. It was
7 somebody that he knew versus somebody they don't know in
8 Bluffton. It was again, transported telephonically
9 rather than something happening.

10 Mr. Moultrie apparently is one of the Yemassee,
11 where all these other people seem to be from. The Jones
12 things happened in Bluffton.

13 There is - you know, it's Mr. Byron Young who is
14 making the call who, apparently, you know, ears must be
15 burning today, because all we seem to be doing is talking
16 about Byron Young who they can say all they want about a
17 matching description. Three years later he has never
18 been charged with any of this stuff. If they're trying
19 to use him as one of the lynchpins to try to get all this
20 stuff in, so as to the phone call and the Mill Creek,
21 there's no similarities whatsoever. There are nothing
22 but dissimilarities that I could go on and on and on
23 about.

24 The Jones thing involved three people going in. The
25 other one involved one person calling on the phone. But

1 also I should point out, the Moultrie one was a phone
2 call by Byron Young, as well as a text. Is that right,
3 Mr. Sheldon?

4 MR. SHELDON: Yes. Text sent by Marion Powell.

5 MR. LEE: And I would point out, too, that, despite
6 what they're -- where they're talking about, about the how
7 they're making together, the report on Moultrie actually
8 has the message that was sent via text. And essentially,
9 he is accusing him of trying to, I wouldn't use the
10 language but, have sex with his girl. So, the language
11 in that text from Mr. Powell is talking about girls.
12 It's not talking about drugs. It's not talking about
13 hammering somebody or kidnaping or anything like that the
14 one from Young, I guess the telephone conversation, said
15 something about kidnaping his wife and children so they
16 could get to him, whatever that means.

17 So there's no similarity whatsoever between those
18 events at all that would justify even getting past that
19 prong of Lyle before you even get to 403 and the other
20 ones you looked at.

21 The second one he talked about is the Thomas
22 General. Well, how do those two compare? Well, Thomas
23 General happened on 8-16-2010 at [REDACTED], which
24 is in Big Estate, which is in the Yemassee area.

25 The Jones incident happened in Bluffton. I have

1 MapQuest. I'll be glad to pass it up if need be. It is
2 37.58 miles from ■ Lantana Lane to ■ Oaksdale Road in
3 Bluffton, and it's supposed to take you at least 53
4 minutes to drive there according to MapQuest.

5 The Jones incident, again, was a home invasion where
6 purses were stolen, computers, jewelry, clothes, money.
7 There were three participants in the Jones thing. The
8 victims apparently were strangers in the Jones' thing
9 that he is trying to enter.

10 Did it involve drugs? Depends who you talk to, but
11 certainly, the people who were there, the wife and the
12 little girl, were not drug dealers. So, how does that
13 compare to Thomas General?

14 Well, Thomas General allegations are not a home
15 invasion but that Mr. General claims, a week after it
16 happened by the way, when he reported it, that Marion
17 Powell called him to come to somebody else's house so
18 they could smoke some weed. And he got there and a gun
19 was pointed at him. That he and Mr. Powell, according to
20 Mr. General and whoever else was there, which he later
21 identified as Byron Young, took his money, his keys and
22 his phone and drove the victim from his house into the
23 woods somewhere and allegedly tied him up so. And as far
24 as the tying up thing, I should go back to the home
25 invasion thing. The only reference at all to tying up in

1 the Jones case was, at one point, someone said that
2 suspect number 2 went and got some shoe laces.

3 I think, again, their assumption is that someone was
4 going to be tied up, but I mean, there were six people in
5 the house, or five, because there was more on the way,
6 but three participants in Jones; two participants in the
7 General case.

8 The victims in Jones apparently were strangers; in
9 General, relative, certainly, an acquaintance. So those
10 cases really could be no farther apart from each other if
11 they had tried. It is a completely different scenario,
12 taking in light the police reports and stuff that
13 allegedly happened in each one.

14 Clearly, that doesn't meet the *Lyle* requirement of
15 having the similarities outweigh the dissimilarities. In
16 fact, I don't think there is any - I'd be hard-pressed to
17 think of any similarities in those cases whatsoever.

18 The third thing that he intends to try to use is
19 that Byron Young again, who hasn't been charged with any
20 of this stuff, called Troy Brown and said;

21 *I'm going to kidnap your mother and*
22 *kill your father just like we did Bucket,*
23 *who is Thomas General.*

24 Again, compare it to Jones. There was a phone call
25 versus an actual person - person to person. It's three -

1 it's one person on the phone call versus three in Jones.

2 It is - Brown is an acquaintance. Jones were
3 strangers. So there is no - there is nothing there that
4 is similar whatsoever.

5 Mr. Brown, again, lives in the Big Estate, Yemassee
6 area and this other stuff happened in Bluffton, so I
7 don't even think they make it past that logical relevancy
8 step that is so important, Judge, even getting to - to
9 get to the question.

10 I don't think they can satisfy any of the - I don't
11 think they can satisfy logical relevancy. I don't think
12 they can satisfy that it falls within any of the
13 exceptions to Lyle, and without - and in fact, if Mr.
14 Riley - he mentioned something about Mr. Riley said that
15 Mr. Powell said he duct taped his victims and that that
16 somehow talks - it means tying up, and that's a
17 similarity that's completely contrary to any of the
18 evidence that is out there.

19 The only person who claims to have been tied up was
20 Thomas General, who reported the crime a week later, and
21 a couple days later, actually brought the cord into BCSO,
22 the sheriff's office, that he allegedly was tied up with.
23 And that's in the report if you'd like to see that.

24 So again, I don't think they even get past the
25 relevancy portion. Again, I don't think they can meet

1 one of the exceptions. And certainly, if we need to
2 argue 403, I certainly will, but I have not seen any *Lyle*
3 case, Judge, that is even close to this. And this is a
4 poster child case for what *Lyle* is all about and what it
5 is supposed to keep out and just - I mean, it takes Mr.
6 Sheldon ten pages in his Brief just to try to tie some of
7 this stuff together and I think in and of itself shows
8 how tenuous it is, but also how complicated it is. And
9 at a minimum, it is going to confuse the jury beyond
10 compare. At worst, and what I feel more certain would
11 happen, would be that the jury would take that propensity
12 evidence and tend to make their decision on an emotional
13 ground or, you know, holding all these other things
14 against him. You know, panning him out as a bad dude.
15 So I understand why he is trying to do it. Can't blame
16 him for trying to do it. If I was a prosecutor, I'd try
17 and do it, too, but I don't even think it's close, Your
18 Honor. And I would respectfully ask that they not be
19 permitted to introduce this under 404(b) in *Lyle*.

20 THE COURT: Mr. Sheldon, do you want to respond at
21 all?

22 MR. SHELTON: Very briefly.

23 The one thing I - just something I left out and this
24 gets into 404(b), as well, but I'd like to point out, and
25 I have it in my brief, that the very nature of the way

1 the sheriff's office came or the Bluffton police
2 department came upon this individual as a defendant is
3 because of these other acts and what they saw as a
4 similarity between these acts in connection of Clevel
5 Jones with the other victims in northern Beaufort County.

6 The State - I understand that these are very unique
7 circumstances and if I had a case on point I would - that
8 specifically, I would obviously give it to the Court. I
9 don't - and I can't believe I tell you that, obviously.

10 However, these facts are very unique in 404(b).
11 Evidence oftentimes is, and it needs to be in order for
12 it to be even considered.

13 What the State rests it's argument upon is the
14 similarity of the motive of the victims. The similarity
15 of the identity of the victims. Defense counsel is very
16 correct to point out when 404(b) oftentimes comes in it
17 is because a firearm was used that was connected between
18 two crimes.

19 In this case, we have a case where folks grew up
20 with the defendant, identified the defendant in other
21 crimes. And then, we have someone who does not know the
22 defendant; identify the defendant in a six-card lineup.
23 So, I.D. evidence in this case is actually very strong as
24 far as it's the same person.

25 But really, we rest our argument with common scheme

1 or plan, principally. They way they were carried out.
2 The victims involved with the case. The threats matching
3 the actual carried out crime that was done on October 25,
4 2010. Those threats equal the crime.

5 This is never an easy argument to make to get 404(b)
6 evidence in. I concede that.

7 Your Honor, we do think that there is a logical
8 relevance here. We also think that there is clear and
9 convincing evidence that these other incidents actually
10 occurred. And then, looking at the 403 analysis, and
11 this is - may seem upside down, but because the facts in
12 the first case are so heinous, I don't think that the
13 jury is going to look at these other facts and say, oh
14 this guy is a bad guy. We want to convict him. They
15 actually may raise more questions as far as how did they
16 get over there. What does this have to do with that case
17 and I understand that.

18 However, without this in context, the jury is not
19 going to be able to understand how the defendant is a
20 suspect; how that defendant was in the stream of conduct
21 that really came to a figure head on October 25, 2010;
22 and then, disappeared, having gotten into that for five
23 months, until he gave himself in on March 27, 2010.

24 I think that is also something to consider when we
25 look at cases that Lyle evidence doesn't exist or 404(b)

1 cases may not exist, but this specific set of facts.
2 Well, there is never a box you can fit in any type of
3 case, especially 404(b) evidence and say, well, this is
4 this and this is this. It just doesn't occur oftentimes.
5 Most of the time, people are apprehended in the midst of
6 armed robbery, a string of armed robberies.

7 These we think have a connection. We think the
8 threats have a connection, and principally, if we look at
9 the victims of the crimes, the way they were carried out,
10 and the parties involved with how they were carried out,
11 we think there is a logical connection.

12 THE COURT: Thank you, Mr. Sheldon.

13 MR. SHELTON: Thank you, Your Honor.

14 THE COURT: I agree with Mr. Lee. I think the
15 evidence as you see that you want to enter can seem
16 prejudicial to the defendant. I grant the defense's
17 motion to disallow those prior bad acts.

18 What's next?

19 MR. SHELTON: Thank you, Your Honor.

20 That would lead to a motion I do not have written,
21 but I make orally, in that, with these bad acts being not
22 allowed, the State would request, because of the jail
23 phone calls, that we are going to get to in a moment,
24 some of the same witnesses that were victims of the prior
25 bad acts to testify limitedly, so only that they know

1 that Byron Young and Marion Powell and I will defer to
2 defense on how they want to be -- how he wants me to
3 phrase the question, because there is some 404(b)
4 evidence either associated with each during the summer
5 and fall of 2010 or were close -- I will proffer,
6 associated with each other, closely associated with each
7 other in the fall -- in the late summer and early fall of
8 2010, in order to bring relevance and bring a foundation
9 for the conversations between Mr. Young and Mr. Powell.

10 MR. LEE: And call associate -- I mean, I think
11 friends would be the most -- the best way to do it. I
12 mean, I think that's probably -- I'll say I don't want to
13 use running buddies or, you know, something that would be
14 prejudicial to him, but I mean, they were friends. I
15 mean, he has never denied having a friendship with Byron
16 Young so. That suit you?

17 MR. SHELDON: Yes. That's fine.

18 THE COURT: They were friends during that summer?

19 MR. SHELDON: They were close personal friends, I'd
20 say. Or closely --

21 THE COURT: Okay.

22 MR. SHELDON: -- spent a lot of time with each other.

23 THE COURT: Close friends?

24 MR. SHELDON: Close friends.

25 MR. LEE: I'm not sure we necessarily agree with

1 that. I just don't want to - if they want to make a
2 connection, they can make a connection. I mean, he
3 called him and he talked on phone at the jail a hundred
4 times. I mean, that's pretty self evident that they were
5 friends. Right?

6 MR. SHELDON: That all occurred after the fact.

7 MR. LEE: I think I would say that they were friends
8 and they hung out, and family - however you want to do
9 it, but I think close personal friends or close friends
10 is a little far afield. I don't think we agree to that,
11 but maybe they can -

12 MR. SHELDON: Well, the State would prefer to call
13 them associates, or were associated with each other,
14 obviously, but I'm trying to -

15 MR. LEE: I mean, I don't - I'll leave that to the
16 State, Your Honor, but I mean, you know, we - there's no
17 gang connotation or anything like that that they're
18 trying to do. And if they call them something and can't
19 prove it, I think the jury will hold it against them, so.

20 THE COURT: All right.

21 MR. SHELDON: And the - that also brings us then,
22 Your Honor, before we get into the *Biggers* motion, to the
23 statements to exclude certain references by Eric Riley.

24 The reason that we're talking - I won't - some
25 association with him, Byron Young, I think is relevant,

1 because Mr. Riley's statement incorporates Mr. Young in
2 the act of the home invasion by at least by saying that
3 his understanding is that Byron Young was Marion's
4 partner in all of his armed robberies, including the home
5 invasion.

6 I'm not saying that we get into all the armed
7 robberies, but he does - Marion did allegedly confess to
8 Mr. Riley, so we have to focus now on what is allowed
9 within that confession and what is not.

10 It may be something, also, I mean, the State would
11 submit that we could - the State would like to know what
12 is going to be allowed and what is not allowed in before
13 opening statements. However, if it would please the
14 Court, we could have - Mr. Riley is going to be here
15 Thursday morning. We can always put him on the stand,
16 but I'd much rather have it determined ahead of time.

17 And Your Honor, I have a - I actually have the
18 actual written statement of Mr. Riley here. I can make
19 it a court's exhibit if you'd like to review it.

20 WRITTEN STATEMENT OF MR. RILEY

21 MARKED COURT'S EXHIBIT NUMBER 1.

22 THE COURT: All right, sir. Go ahead. Do you have
23 a summary of it?

24 MR. SHELDON: Sure. I'll give you a summary. The
25 summary is, is that Mr. Riley and Mr. Powell were

1 incarcerated together in the detention center. Mr. Riley
2 had been involved with an attempted armed robbery where
3 the - not the targeted victim, but one of the victims who
4 happened to be there ended up being there was a woman
5 named Kenya Hagood.

6 Kenya Hagood got the jump on him as co-defendant and
7 shot Mr. Riley four times. The transaction was around
8 drugs.

9 Kenya Hagood always denied that, and also, did not,
10 as Mr. Riley says, keep it on the streets. So he had a
11 beef, and it's no question he has a beef with Kenya
12 Hagood.

13 The similarity, the reason they started to share
14 things with each other, according to Mr. Riley, is
15 because Mr. Powell also had a beef with Ms. Hagood. That
16 is because Ms. Hagood sent him on an armed robbery to
17 Mill Creek, as you recall, you reviewed in my brief, and
18 in that armed robbery, there was supposed to be a dude
19 and a baby moma there.

20 However, when he got there, the mother had the
21 children and she didn't do her homework.

22 In the context of that, he says that Byron Young
23 would commit all the armed robberies with him. Let me
24 get it out so I don't misquote anything. He said it
25 eventually got out in the jail. They blamed him for

1 being a snitch, which the State come up in a - after
2 meeting with the victims in February, learned about an
3 affair and a connection between Kenya Hagood and a woman
4 that the victim was having an affair with; developed a
5 theory of how Kenya Hagood may be behind this targeted
6 armed robbery independently.

7 However, when that got out in the jail and her name
8 came up, suddenly people in the jail thought someone,
9 including Mr. Powell, thought someone had snitched and
10 they believe it may have been Eric Riley.

11 Mr. Riley apparently tried to set up a hit on Hagood
12 through Byron Young. Mr. Powell introduced Mr. Young to
13 him as his partner, according to Mr. Riley -

14 MR. LEE: Is that in his statement?

15 MR. SHELDON: I'm not sure. I know he said that.

16 MR. LEE: Judge, one of the problems I have is -

17 MR. SHELDON: Can I finish?

18 MR. LEE: Well, yeah.

19 MR. SHELDON: Sorry. So I know Kenya sent Scooter
20 and Lil Lil on multiple robberies, and I've highlighted -
21 I'm reading what Mr. Lee has highlighted with what he has
22 a problem with.

23 Another dude named Trevon Millage sent Kenya a
24 letter asking why she was snitching on me and not keeping
25 it in the street. She sent two letters back explaining,

1 and in those letters, she mentioned a couple of other
2 names.

3 I don't really care about that, but what I do care
4 about, Your Honor, is that what I need to know is, I
5 think that, in the context of what he confesses, in the
6 context of he commits his armed robberies with Byron
7 Young, it's going to be very hard for him to testify
8 about what Mr. Powell told him in a very limited fashion.

9 I believe the confession is a confession, and if it
10 happens to touch on other crimes that he committed, well,
11 then, that's not the State's fault.

12 The defendant said that allegedly; not the State.
13 Of course, Mr. Riley would be subject to lots of cross-
14 examination, I'm sure, with all kinds of motives for him
15 to testify. However, I think the jury can take Mr.
16 Riley's credibility into consideration, and most, if not
17 all, of the statement that Mr. Powell said to Mr. Riley
18 as a confession should come in.

19 He admitted to going into a house where there were
20 kids and a mother of the kids. That was set up. That he
21 said that - and some of the things that he said didn't
22 actually happen, but the State would submit this is just
23 normal puffery within the jail house making each other
24 look stronger than they otherwise are.

25 He talks about he picked up one of the kids or he

1 threw one of the kids into the other or something to that
2 effect.

3 I know that Mr. Powell did threaten to kill Ms.
4 Senora Jones and that he did -- was the one who was
5 principally involved with the kids inside of the home
6 invasion. And there is really no other way for Mr. Riley
7 to know of this information besides Mr. Powell telling
8 him about it.

9 Just because a confession touches on other crimes
10 does not -- I do not think would prohibit the State from
11 using that confession in it's whole context. Otherwise,
12 it's very hard for Mr. Riley to testify accurately. If
13 he is limited to what he can testify to, what the truth
14 is, what the truth he can testify to is, then, that is
15 very prejudicial to the State, because he going to have
16 to think about what he can say and what he can't say, and
17 at the same time, he is going to be cross-examined
18 vigorously, I'm sure, by defense counsel.

19 I think that everything that is incriminating that
20 Mr. Powell actually told him should be fair game for the
21 State to bring out of Mr. Riley.

22 THE COURT: I'm not sure I fully understand exactly
23 what Mr. Riley is going to say that -- I've got Mr. Lee's
24 Motion to Exclude Testimony and --

25 MR. LEE: And here is a highlighted copy that has

1 those particular phrases highlighted.

2 THE COURT: Thank you.

3 MR. LEE: Mr. Sheldon, do you have a highlighted
4 one, too?

5 MR. SHELDON: No. That's all right. Thank you.
6 I've got the Motion here.

7 MR. LEE: Here.

8 MR. SHELDON: Thank you.

9 THE COURT: Are you looking at your Motion?

10 MR. LEE: Yes, sir.

11 THE COURT: The motion number 1 -

12 MR. LEE: Right.

13 THE COURT: Defendant told me duct tape.

14 MR. LEE: Right. That's the 404(b) problem I was
15 listing to start with and, you know, I would disagree
16 with Mr. Sheldon. I mean, just because somebody admits
17 something, confesses to something, doesn't mean that
18 everything comes in.

19 I mean, somebody could be, you know, on a DUI video
20 tape saying this is the third time I've gotten a DUI.
21 Just because they say it and just because it's true
22 doesn't mean it's coming in. And that's what the rules
23 of evidence are for. So, I believe each one of these
24 statements does violate at least one rule of evidence, so
25 it should be excluded. This doesn't even - I know he

1 told me that he duct taped a lot of the folks he robbed.
2 Besides it not being true, it also suggests a lot of the
3 folks he robbed, it suggests, again, other prior bad acts
4 that certainly can't be proved by clear and convincing
5 evidence. Can't show any nexus between them. We don't
6 even know what he is talking about.

7 THE COURT: All right. That's objection number one.

8 MR. LEE: Yes, sir. And under *Lyle*, under 403, as
9 well as relevance, we do have objections. 402, 403,
10 404(b) *Lyle*.

11 THE COURT: Go ahead.

12 MR. LEE: The second one is saying I spoke not
13 through the phone but through the glass with Lil Lil, who
14 is Byron Young, and he said he was going to handle it
15 after my cousin gave me half the money he was charging.

16 That, according to the State, is - or according to
17 Mr. Riley, is an agreement between Riley's cousin and Mr.
18 Young to kill Kenya Hagood. I don't think that has
19 anything to do with Mr. Powell, and particularly this
20 case.

21 I think it clearly is prejudicial with probative
22 value that Mr. Young and that this guy's cousin were
23 going to - talk about maybe doing something to somebody.
24 I don't know the relevance of that whatsoever.

25 I think it's a 403 problem, as well as 402.

1 THE COURT: Let me -- in this case, let me go to Mr.
2 Sheldon. Help me out on that one. What -- number two.
3 What's that all about?

4 MR. SHELDON: Number two is this individual that we
5 brought up, Kenya Hagood, was the person that we believe
6 set up the armed robbery and has two different
7 connections possibly with the victim -- with the victims.

8 The most direct connection is that she was close,
9 personal friends and rumored to be the lovers of a woman
10 who Mr. Jones was having an affair with.

11 She knew that Mr. Jones lived in Mill Creek. That's
12 the woman that -- the only reason the State would submit
13 it's relevant, first of all, it's kind of a totality of
14 the confession.

15 Secondly, Powell speaking to Young through the jail
16 phone in a visit when this conversation takes place but
17 it's through the glass. It's not through the phone. So
18 Powell is right there when it happens, and it shows the
19 nexus between Powell and Kenya Hagood, which it's really
20 this case is -- that's the reason -- you know, I haven't
21 put on the record that we were seeking more time to try
22 this case, because these pieces are coming together now,
23 albeit three years later, in preparation for the trial of
24 this case. She is another -- she is alleged by the State
25 as a conspirator in this case. It's how this case came

1 to be.

2 The connection with Kenya in this context is that
3 Powell and Riley had a beef with Kenya and that Powell
4 was setting up - helping him set up a hit on her with
5 Byron Young.

6 If that doesn't need to be spoken about, you know,
7 the State is really fine with striking that. I'm just
8 answering the Court's question about it, but the State
9 does find it very important to establish a connection
10 between Mr. Powell and Kenya Hagood.

11 THE COURT: Let me go - I'm just having a hard time
12 figuring out what is relevant, but let me go to Number 3,
13 then.

14 MR. LEE: Okay. That says I know that Lil, - Byron
15 Young, supposedly threatened somebody on one of
16 Scooter's, the defendant's cases, and this person isn't
17 testifying in the trial. This person I think moved
18 somewhere in Georgia after the threat.

19 Again, whether this unindicted co-conspirator's name
20 keeps popping up for whatever reason hasn't been charged
21 with the Thomas General case; hasn't been charged in the
22 Mill Creek case, even though they are convinced that
23 these guys run together and commit all these crimes,
24 Byron Young has never been charged with anything that
25 we've been talking about.

1 So the fact that Byron Young - it even says
2 *supposed*, which would indicate to him that somebody must
3 have said it who heard it from somebody else. So, if
4 another person is supposedly threatening someone in one
5 of his cases, which we have a problem there, too, and the
6 person isn't testifying in the trial.

7 I don't know of anybody who isn't testifying at
8 trial. I do know - it says this person, I think, moved
9 somewhere in Georgia after the threat. I do know from
10 Mr. Sheldon that the Jones moved to Atlanta, Georgia
11 after this happened, but I asked him earlier today did
12 they receive any threats from Byron Young or anybody
13 else, and he wasn't aware of any.

14 So there is absolutely no basis for it. There's no
15 probative value whatsoever. It's already going to be a
16 Lyle problem is they are going to somehow argue that
17 Marion Powell got Byron Young to supposedly threaten
18 somebody and have them not come to court. It just opens
19 up too many questions and it answers none. I mean, there
20 is no probative value whatsoever in that statement. If
21 anything, it goes to bad character evidence and I guess
22 it - who knows where that even came from. So, I don't
23 believe that is reliable at all. It just further muddies
24 up the water. And besides that, it doesn't appear to be
25 true.

1 THE COURT: What about it, Mr. Sheldon? I'm having
2 trouble figuring that one out, too.

3 MR. SHELTON: Well, the only thing that I'll say
4 about that, Your Honor, is, I agree it's not in the heart
5 of this issue. It's the fact that we do have victims
6 that did move to Georgia after this. The statements that
7 the State is proposing, we haven't gotten to from the
8 jail, do have conversations between Byron Young and
9 Marion Powell.

10 Part of the State's case is showing that Byron Young
11 is involved with this. Not - obviously, he is not the
12 defendant on trial. However, this is one of the three
13 people that are involved in this case.

14 It shows what Young's involvement is continuing
15 after the fact. If we want - I'm not going to fight the
16 court or fight that issue too strongly. I just wanted to
17 bring out why I think it would be relevant.

18 MR. LEE: Glad to hear we're not fighting today.

19 Four, I think is pretty straight forward. I know
20 Kenya has sent Scooter and Lil Lil on multiple robberies.

21 Again, you run into the bad act, you know. Did this
22 once. Did it other times type of problem. We don't know
23 the source of the information, whether it was hearsay.
24 And you know, certainly, there is no probative value
25 whatsoever. He is already going to say that Kenya is the

1 one who sent him. So, the only thing that is different
2 than they already would have was it was multiple
3 robberies, which, clearly, under your prior ruling, I
4 believe, as well, under the 404(b) Lyle, that should be
5 struck for that reason, as well.

6 MR. SHELDON: It's the same thing as before. It's
7 establishing a nexus between Byron Young, and also,
8 Powell in these -- because of the four, basically this is
9 falling apart for the State's argument. The State's
10 argument is -- I concede that because of the 404(b) motion
11 ruling.

12 If, however, there are jail tapes between Lil Lil,
13 being Byron Young, and Marion Powell that are in
14 existence where they talk about the State is going to try
15 to show this incident. And it shows -- if it -- as long as
16 the State is not prohibited from him saying that on this
17 robbery, then the State would consent to that, being that
18 so long as he is not prohibited from saying that he
19 believes that, from Powell, that Byron Young was sent on
20 this robbery, the one at hand.

21 THE COURT: I'm not sure I understand.

22 MR. SHELDON: If --

23 THE COURT: Who is going to say --

24 MR. SHELDON: Riley.

25 THE COURT: Riley is going to say what?

1 MR. SHELTON: That -

2 THE COURT: What you want him to say?

3 MR. SHELTON: What I want - on multiple armed
4 robberies, he says that they committed the armed
5 robberies together. As long as he says that this one
6 could be in - however we want to phrase it, he says that
7 Byron Young, he believes Byron Young was involved in this
8 armed robbery. From what Mr. Powell told him, Byron
9 Young was involved with this armed robbery, as well,
10 being the armed robbery of the trial, then I'll consent
11 to the multiple armed robberies being taken out.

12 MR. LEE: I can't stipulate to what his witness is
13 going to say. I don't know what the guy is going to say
14 but I know what he - what I believe he shouldn't be able
15 to say is there were multiple robberies, because it
16 violates the rules of evidence.

17 I don't know if he is asking me to agree to that,
18 but I don't know what the guy is going to say, but if he
19 says there were multiple robberies, I believe that we
20 have a big problem, and I think we should be entitled to
21 an instruction, if you rule in our favor, saying instruct
22 your witness not to say that at the risk of a mistrial,
23 and also, at the risk of essentially, you know, possible
24 double jeopardy concerns that they have if they are
25 violating a previous order to not introduce that. I know

1 he isn't going to do it intentionally - to do that, so
2 I'm just saying he can't say multiple robberies.

3 If he wants to say Byron and Marion committed this
4 robbery, I don't think there is an objection to do that.
5 Really I don't think there is an objection to it.

6 MR. SHELDON: That's what I'm - that's what I'm
7 proposing is that he is able to say that Byron Young went
8 on this one with Marion Powell, because Byron Young - he
9 is not going to say this, but the statement says that
10 Byron Young committed the robbery, and Marion Powell, he
11 told us - Marion Powell. Byron Young and Marion Powell
12 committed their robberies together. Okay.

13 THE COURT: Help me out on that.

14 MR. SHELDON: Okay.

15 THE COURT: Let's see if I understand it.

16 MR. SHELDON: Okay.

17 THE COURT: Riley, -

18 MR. SHELDON: Correct.

19 THE COURT: - you think, is going to say that Marion
20 Powell told him he committed this robbery -

21 MR. SHELDON: Right.

22 THE COURT: - along with - I've forgotten. Somebody
23 else.

24 MR. SHELDON: That he committed all of his armed
25 robberies with Byron Young. I'm not proposing he says

1 that. I'm saying that is what he told us.

2 So, logically, within all those armed robberies,
3 this armed robbery would be one of those armed robberies
4 and I would proffer for Mr. Riley to testify that he told
5 him that he committed this armed robbery with -- that
6 Marion Powell committed this armed robbery with Byron
7 Young.

8 THE COURT: Mr. Lee?

9 MR. LEE: I'm not sure what the guy is going to say.
10 I don't think there is a legal objection to that, but I
11 would have to wait and see what the guy's testimony is.
12 I just think -- I just don't think he can say multiple
13 robberies.

14 THE COURT: I don't know there is any legal
15 objection of any kind. If Riley says, and I'm not trying
16 to have anybody put words in his mouth, that Powell told
17 him he committed this robbery/kidnaping.

18 MR. LEE: Obviously, they wouldn't be calling him if
19 he wasn't going to say that.

20 MR. SHELTON: Right. And we know that he said that
21 Powell committed this. He said that he committed --
22 Powell -- he said -- Riley said that Powell told him that
23 he committed all of his armed robberies with Byron Young.
24 That he was his partner in all of his armed robberies.

25 He did not specifically tell me that this one, he

1 committed this one with him. He said he committed all of
2 his armed robberies with him. So, what I'm asking - and
3 I understand Mr. Lee's problem. I'm not asking him to
4 stipulate to what he is going to say and what he is not
5 going to say, because, obviously, I have to instruct him
6 on what parts of his statement he can say and can't say
7 anyway. What I'm asking is that I can instruct him to
8 say that Marion Powell, because he - he can't say it,
9 because Byron Young committed all his armed robberies /
10 with Marion Powell or vice versa; that I know he
11 committed this one with him, as well.

12 But a ruling on this issue would say that he cannot
13 say that. However, what I am asking is exactly what the
14 Court just recommended, is that he says that Byron Young
15 - Marion Powell told him he committed this armed robbery
16 with - Marion Powell committed this armed robbery with
17 Byron Young.

18 THE COURT: Have we already said we were going to
19 have an in-camera with Riley? I can't remember if we
20 have or not.

21 MR. SHELTON: Yeah.

22 MR. LEE: I think so.

23 MR. SHELTON: I offered it. I said we could -
24 because he will be Thursday morning, and we'll try to
25 have him here by 9:00 o'clock, if you want to do that

1 before that before the jury comes in.

2 THE COURT: That brings us to number five.

3 MR. LEE: And I'm sure he is going to try to use
4 that. Are you?

5 MR. SHELDON: No. I don't plan on using that.

6 THE COURT: Okay.

7 MR. LEE: So that's not an issue.

8 THE COURT: Okay.

9 MR. LEE: So it sounds like -

10 THE COURT: So I've heard argument on all of them.

11 MR. LEE: Yes, sir.

12 THE COURT: And it's my understanding number five is
13 agreed to?

14 MR. LEE: Yes, sir.

15 THE COURT: I can't remember whether I ruled on it
16 or not but I think I ruled on number 2.

17 MR. SHELDON: Yes, Your Honor. And Number 3.

18 THE COURT: And Number 3?

19 MR. SHELDON: And Number 4.

20 THE COURT: Number 4?

21 MR. SHELDON: Would be limited -

22 MR. LEE: Where it says multiple robberies.

23 THE COURT: And I think, therefore, I also agree and
24 grant Number 1, which brings us to does anybody need a
25 break?

1 MR. LEE: I was going to ask if we could have a
2 five-minute break.

3 MR. SHELDON: Yeah.

4 THE COURT: Court is in recess for five minutes.

5 OFF THE RECORD 4:00 P.M.

6 BACK ON THE RECORD.

7 MR. SHELDON: Your Honor, I think that Mr. Lee and I
8 have come to an agreement as far as how to conduct this
9 procedure, if it pleases the Court. First, obviously,
10 it's the defendant's burden for us to show by
11 preponderance of the evidence line-up procedures are
12 somehow is unduly suggested. And then, I think the
13 burden then shifts to us to show that by totality of the
14 circumstances. So, I'm just going to turn the floor over
15 to Mr. Lee.

16 MR. LEE: Thank you. Your Honor, may it please the
17 Court. Your Honor, in order to try to speed this up a
18 little bit, Mr. Sheldon and I have discussed something.
19 And we're trying to avoid having one witness testify.
20 But if I could pass something up. It's an email from Mr.
21 Sheldon to me, dated Friday, September 27th. And what
22 that is, Judge, that is a summary of Mr. Sheldon's
23 discussion with a woman who works in the what's called
24 the Intelligence Unit at the Beaufort County Sheriff's
25 Office. And it kind of goes through and talks about that

1 she doesn't have any specific training on how to do
2 lineups. But if we can just kind of stipulate to the
3 facts that are in here, I think it would prevent me from
4 having to call her as a witness. And we can briefly tell
5 you kind of what we agreed about, and I think it will
6 save some real time today.

7 MR. SHELDON: Agreed, Your Honor.

8 THE COURT: All right. Do we need to have a copy of
9 this marked?

10 MR. SHELDON: Yeah, we probably should do that.

11 THE COURT: We should have it Court's Exhibit Number
12 2, I'm told.

13 PHOTO LINEUP MARKED COURT'S EXHIBIT

14 NUMBER 2.

15 MR. LEE: Do you have the lineup?

16 MR. SHELDON: This right here. This is the actual
17 lineup itself.

18 MR. LEE: The guidelines.

19 MR. SHELDON: This is the lineup that is at issue
20 for Mr. Powell that, actually, where the same lineup was
21 shown twice to Ms. Jones, as well as her ten-year-old
22 daughter, [A.H.]. So just for the Court to review, this
23 is the lineup that was shown to Ms. Jones and her
24 daughter.

25 THE COURT: Okay.

1 MR. LEE: So where I will start, Your Honor, is as
2 in the *Neil versus Biggers* hearing, the first question
3 for the Court to decide at this point, and again, we have
4 an expert eye witness I.D. coming later in the week, but
5 just for the purpose of this, I'm obviously not calling
6 her to present any testimony from her, but the two things
7 to look at was the process overly-suggestive, and if it
8 was, was the I.D. reliable notwithstanding the
9 suggestiveness?

10 It's our position, based upon several things that
11 the photo lineup that was submitted to Senora Jones and
12 her daughter was overly-suggestive. Without going into
13 too many details, it's our position that the photo array
14 was conducted in a manner that was substantially certain
15 to lead to the selection of Mr. Powell in the lineup.
16 And again, we have some interesting legal questions.

17 I would liken this case more to almost a show-up
18 situation, rather than the standard photo array, because
19 the issue is to suggestiveness. How much does that
20 person stick out from the people around him? And I would
21 point out that the - and I'll go into some of the things
22 Mr. Sheldon's going to have to establish. But the lineup
23 was done roughly the next morning. It happened at night
24 so it was done the next morning, so there was a short
25 amount of time there.

1 But Senora Jones and her daughter went to the
2 Bluffton Police Department. The description that was
3 given up to that point that's contained in the Incident
4 Report is that there's three individuals, and their
5 position is that Mr. Powell was Subject Number 2 on the
6 description. And the description that was given on
7 Chandler's 10/26 report:

8 *Suspect Number 2, black male; six-foot,*
9 *one inch; 180 pounds; black pants; black*
10 *t-shirt; no facial hair; short afro; flared*
11 *nostrils. Had silver handgun in his right hand.*

12 And then, the description of the two others were of
13 shorter black males.

14 So, what we have, and I think everybody would agree,
15 is this, the distinguishing characteristic is what they
16 referred to as flared nostrils. There was also in one of
17 these reports Ms. Jones apparently got the kids together
18 after it happened and talked to them about what happened
19 anywhere from five to ten minutes. But at any rate, the
20 description in play at the time that they looked at the
21 photo lineup was short Afro, flared nostrils. Flared
22 nostrils is a very unique type of characteristic.

23 And the next day, when the photo array was set up,
24 and again, the process apparently is - let me back up a
25 second. Bluffton P.D. contacted - or was contacted with

1 Northern Beaufort County Sheriff's Office, who,
2 apparently, said, look, there's four gentlemen who you
3 may want to put in a photo lineup or that we suspect of
4 similar crimes in Northern Beaufort County. It was Byron
5 Young; it was Marion Powell; it was - I just lost my
6 train of thought -

7 MR. SHELTON: Raymond Singleton and Travis Holmes.

8 MR. LEE: Raymond Singleton and Travis Holmes. So,
9 that's the information that they had. And once they had
10 that what's called the Intelligence Unit through the
11 Sheriff's office, which, until this case I had never
12 heard of, was - was asked to create a six-person photo
13 array.

14 The Intelligence Unit at the Beaufort County
15 Sheriff's Department - or at least at this time and as
16 far as photo lineups consist of, a woman who has no law
17 enforcement training, and I think she's called an analyst
18 or something is her title now. But admittedly, and you
19 can see by the email, she has no specific training as to
20 lineups other than being trained how to use the computer
21 system to pull up pictures of subjects, which they do
22 through the booking process to use it as what are called
23 fillers.

24 And this email kind of goes through how they - how
25 they did this. And I would just point out that, when Mr.

1 Sheldon spoke with her, she, actually, herself was very
2 surprised that she was the individual who created the
3 lineup and pointed - this is the lady that created it -
4 pointed out that Mr. Powell's mouth was slightly open,
5 and she normally would not have created a lineup of only
6 his mouth open. She had a record on the computer that
7 confirmed it was her that created it.

8 So it's our position, Your Honor, that the fillers,
9 the people that aren't the suspect, bear no real
10 resemblance at all to - to Mr. Powell, first of all. And
11 that the lineup is so suggestive as to who the suspect is,
12 because the five others pretty much look similar, with Mr.
13 Powell being Number 6 does not - the problem is made worse
14 by the fact that the - the specific characteristic, the
15 flared nostrils that they talked about, is greatly
16 enhanced by the photo that they chose to put in the photo
17 lineup. And that photo, again, it not only has his mouth
18 partly open, but his head is leaning back. And that, as
19 you can imagine, accentuates the flared nostril look that
20 is - other than short Afro and weight and height, was the
21 defining characteristic that the witnesses gave of the
22 person who - who was Suspect Number 2.

23 They have access to the jail records of the pictures.
24 They could have used another photograph. Apparently, she
25 has no training in doing this. And you know, it was

1 nevertheless shown to the victims.

2 It is our position that, again, it's so suggestive
3 that any - any person selecting from it is going to
4 automatically pull Mr. Powell's - point to his picture,
5 which is what happened. So that is - is essentially our
6 position on this. I think that the best way to do it is
7 to look at the photo lineup if you've never seen it
8 before, and ask yourself does anybody stick out?

9 You know, if I said, somebody with flared
10 nostrils - you know, do you see anybody with flared
11 nostrils, that picture is going to jump out at you. And
12 that is the problem with suggestiveness, because that is -
13 that's what the law tries to avoid. And in the fairness
14 of making these photo lineups, it's not anybody has to
15 look identical. But particularly, if there's a limited
16 description of something, and not only is the person - the
17 suspect, the only person that has that defining
18 characteristic, but is actually accentuated by the
19 photograph.

20 And we would believe that, as a matter of law, based
21 upon that and what was known at the time, that it was
22 unduly suggestive. I think the facts as far as whether it
23 was reliable or not probably are pretty well agreed to.

24 And Mr. Sheldon, if he wants to just go through
25 those, if I disagree, I'll say something. But I think

1 rather than calling a witness, I think he can probably
2 relate what that is because there is a video of the photo
3 lineup process. So, I think we're both pretty familiar of
4 how that - you know, what happened on the lineup.

5 THE COURT: Okay. Thank you, Mr. Lee. Mr. Sheldon.

6 MR. SHELTON: Your Honor, if you haven't had a chance
7 to review the lineup yourself.

8 THE COURT: I have.

9 MR. SHELTON: Thank you, Your Honor. The State will
10 point to one case that's cited in it's brief as *State v.*
11 *Turner*, The Supreme Court of South Carolina, Number 2007.
12 I have a copy if you would like to have it, unless you
13 already had a chance to review it.

14 THE COURT: Sure. I have not had a chance to look at
15 it. Thank you.

16 MR. SHELTON: I also have a copy for defense counsel.

17 MR. LEE: I have one.

18 MR. SHELTON: And this is - this case - the specific
19 facts in this case were that the Court found that the
20 lineup was not unduly suggestive, so it didn't get across
21 the first hurdle. And then, the Court did eventually rule
22 that, nevertheless, even if it was unduly suggestive, it
23 was still reliable. But the Court's ruling in this case,
24 *State v. Turner*, was that the first part was not unduly
25 suggestive, which is the stance we are presently in, in

1 this argument.

2 Now, first of all, in this case, *State v. Turner*,
3 defense submitted that it was unduly suggestive, because
4 the background photo's colors were different in four of
5 the six actual pictures within the lineup. They are
6 purple, and I believe it was a light grey or a light
7 color. Our Supreme Court ruled that that was not unduly
8 suggestive, despite the fact that the defendant in that
9 case appeared before the light colored background, which
10 would logically point to that person as opposed to the
11 others.

12 Our court also cites CEG at the bottom of Page 2 of
13 the copy I gave you, and I cited it in my motion in
14 support of admissibility of the evidence. If you go to, I
15 think it's 697 of the S.E.2nd, right below the factors,
16 after saying it's not unduly suggestive, it cites multiple
17 cases where, similarly, some other lineups were determined
18 to be not impermissibly suggestive.

19 One of those cases includes *U.S. v. Lincoln*, the
20 Ninth Circuit from 1974. And in that case, the photo was
21 in color, and the other photos of the individuals in the
22 lineup were in black and white. And that was ruled not
23 unduly suggestive.

24 In *Burgess versus State*, from Alabama Court of
25 Appeals in 1998, the appellant was wearing a black jacket

1 - or he was standing before a blank wall while others were
2 standing in front of a curtain did not render it unduly
3 suggestive. So he was the only person in front of a wall,
4 where the other people were standing in front of a
5 curtain.

6 And then, in *State v. Holmes*, the appellant's photo
7 was placed in the top, center position of the lineup. It
8 had a lighter background shade than the other photos.
9 That did not render the lineup unduly suggestive.

10 And then, finally *State v. Gullett* from, I think,
11 it's Missouri - sorry about that. I'm not that good at my
12 state abbreviations. The fact the appellant's photo was
13 in color and was slightly larger than the other photos,
14 which were in black and white, did not render the lineup
15 unduly suggestive.

16 So I think that this hurdle of getting to unduly
17 suggestive - and this is a fairly high hurdle to cross. I
18 think that's because of the description from the
19 suggestive. It has to be unduly suggestive; not just
20 suggestive.

21 I also think that the Court's language in *Turner* that
22 - and I'm trying to point to it specifically in the case,
23 Your Honor, but I can't find it right now. However, it's
24 that it's impossible to find six identical people or
25 people - every lineup is going to have some differences

1 involved.

2 In this case, there are many, many similarities
3 involved. Ms. Brown states in the email that I sent Mr.
4 Lee, summarizes her statement to me that, in this case
5 specifically, they get a name; she pulls that person; and
6 then, she looks for people of similar characteristics.
7 She's not pulling it based on the characteristics of the
8 descriptors of the filler. She's pulling it on the
9 characteristics of the person she sees in front of her.

10 In this case, you see that every individual has about
11 the same width neck. Everyone has almost the exact same
12 skin tone. Everyone does have what seems to be large
13 nostrils. The nostrils of everyone are apparent, albeit
14 defendant's is cocked back more than the rest. There are
15 others that are slightly cocked back or slightly turned to
16 the right or to the left.

17 Also contained in this lineup you see, I think it's
18 Number 3 in the lineup where his lips are pursed and he's
19 turned to the side and not quite looking at the camera.
20 There are slight variations with every single person
21 contained within the lineup. The defendant is the only
22 person with their mouth slightly open.

23 The State argues that that is not unduly suggestive,
24 considering that the haircut is substantially the same,
25 the skin tone is almost identical, each person has a

1 similarly-shaped and sized nose. You can see the nostrils
2 of every individual in the lineup, wearing the same orange
3 shirt. The background is all concrete behind it. The
4 similarities far exceed the one thing that stands out - or
5 the two things that stand out with the defendant, which is
6 his head is slightly cocked back and his mouth slightly
7 open.

8 You can point out two things in every other
9 individual in that lineup that are slightly different from
10 the other people, as well.

11 To that extent, the State would argue it is not
12 unduly suggestive, particularly when you consider the case
13 law that's established on this topic.

14 THE COURT: Thank you, Mr. Sheldon.

15 MR. SHELDON: Thank you, Your Honor.

16 THE COURT: Anything else, Mr. Lee?

17 MR. LEE: Judge, I think the case he cited, the
18 difference is because it's some physical factor in the
19 lineup, the change, whether it's a background color or
20 whether it's the type of shirt they have on or whatever.
21 The problem and why this is different is because the
22 distinguishing feature that was used in this lineup, the
23 information they had was the flared nostrils. And you
24 know, the difference is you can - everybody else, you
25 know, they're not up, because it's shaded under everybody

1 else's nose. If you look at Powell, there's light
2 underneath there and you can see the entire round part of
3 his nostril. And that is -- that is the problem, is that
4 he's the only one where that's the case.

5 So the other cases, all the ones he cited, talk about
6 different backgrounds and color versus black and white.
7 But what they don't talk about is the one distinguishing
8 characteristic that was in place at the time is not
9 exhibited by the five fillers. And that is essentially a
10 guarantee that the person is going to pick that one, and
11 it is highly, highly suggestible. It's the one thing that
12 he has. It's the one thing that they talk about, and it's
13 the one thing that he exhibits that the other ones don't.
14 And so, based upon that, we respectfully suggest that it
15 was unduly suggestive.

16 And I would also point out that the -- well, just to
17 clear up the testimony, my understanding when Mr. Sheldon
18 said that the fillers were matched to the suspect rather
19 than to the identification or the description that was
20 given by the victims. Is that right?

21 MR. SHELDON: Correct, yeah.

22 MR. LEE: Well, Judge, that's not the way you're
23 supposed to do it. The -- and again, it goes to the
24 suggestibility problem.

25 You aren't supposed to try to find five people that

1 look like the suspect. You're supposed to find five
2 people that match the description. If you -- that's the
3 proper way to do it, if you have a description. And
4 neither one of the other five, in our opinion, would be
5 described by anyone as having flared nostrils. And so, I
6 think that that is such an important part, and it's not --
7 it's not talking about a background or, you know, a little
8 bit of facial hair, a little bit of facial hair there or
9 color versus black and white. It is the predominant
10 description that the witnesses gave that -- and that's the
11 reason we believe it's overly suggestive.

12 THE COURT: All right. I find that it was not unduly
13 suggestive but for another reason. That, if somebody were
14 to -- if I were taking a test and somebody told me to pick
15 out, mark the number of individuals on this photo lineup
16 that had flared nostrils, I probably would mark four out
17 of the six. So I don't find that to be unduly suggestive.

18 The other things that I find are important is that
19 the most of the witnesses had a good opportunity to
20 observe the person that they described, who was not
21 wearing any disguise or anything to cover himself up. He
22 was there with them for what I would call an extended
23 period of time. Most of the identification was done --
24 photo lineup, excuse me, was done, it sounds to me, within
25 24 hours, the next day. And that the mother of the

1 victims who did the identification appear to be very
2 confident from what I understand, of their decision that
3 they - I don't want to say immediately, but almost
4 immediately and separately picked them out.

5 For all those reasons, I would deny defense motion
6 relating to the identification.

7 What's next?

8 MR. LEE: One thing that relates to this
9 identification, Your Honor, is a motion I filed to exclude
10 testimony, and it is essentially instructing the State and
11 the witnesses not to in any way state the reason that the
12 defendant was placed in the photo lineup, which is
13 Northern Beaufort County, or sheriff's office, said, hey,
14 this guy, Marion Powell, and three others are suspected of
15 doing similar things in Beaufort County.

16 I move and particularly based on your previous Lyle,
17 I think it's appropriate, but your Lyle ruling, but I
18 would just ask that no testimony be elicited saying that
19 the reason that Powell is even in this photo lineup is
20 because they suspected him of some stuff in Northern
21 Beaufort County.

22 THE COURT: Mr. Sheldon.

23 MR. SHELTON: I do not plan to use that now that our
24 404(b) motion has been denied. Thank you.

25 MR. LEE: The only other thing I know that we can re-

1 visit.

2 THE COURT: So the motion is granted.

3 MR. SHELTON: Thank you.

4 MR. LEE: It's good to hear that every once in a
5 while.

6 Can we go back to the first - the first thing we
7 argued was that Rule 613(b) motion to exclude the
8 testimony with Derrick Adams and Kawani Bradshaw.

9 I think the way we can fix that, Judge, because the
10 statement that we objected to that is apparently going to
11 come in with something to the effect defendant was
12 floating the story he told them that he was just robbing
13 drug dealers.

14 Obviously, in light of your 404(b) ruling, I think we
15 ought to clarify exactly what he's going to be able to say
16 in relation to multiple robberies - or multiple drug
17 dealers, because that's what it says. And the saying drug
18 dealers connotes that there's multiple incidents involved,
19 particularly when the victims in this case are going to be
20 a ten-year-old girl and her mom.

21 And I think the way to handle it is that we said we
22 may be able to talk to Kawani Bradshaw or get his
23 testimony in camera before he starts in order to avoid
24 that problem.

25 MR. SHELTON: And Your Honor, I think that, also, the

1 statement can still come in without implicating him in
2 other robberies. Because in his confession to Eric Riley,
3 he said that the mother of the children and the father,
4 the dude, were supposed to be home, and not the children.
5 So even if it's drug dealers in the context of the mother
6 and the father, the husband and wife, you could still
7 consider that dealers and not a string of other armed
8 robberies.

9 THE COURT: All right. We'll see what he's going to
10 say.

11 MR. LEE: Okay.

12 THE COURT: Okay.

13 MR. SHELDON: One other thing, Your Honor, I forgot
14 to bring up, and it's my fault for not bringing it up when
15 I was bringing in the 404(b) evidence, the jail tapes.
16 The jail tapes, whether the admissions by the defendant
17 can come in. The State is moving - is proffering each
18 into evidence as an admission by the defendant on his
19 proffering one jail tape where Mr. Young tells him that:

20 *I know you ain't going to snitch. I*

21 *ain't going to snitch on you.*

22 Either as an admission or in the alternative, as a
23 statement by a co-conspirator, as an admission by a co-
24 conspirator.

25 I think the evidence that Mr. Young took part in the

1 armed robbery with this description, the description
2 matching him, as well as Mr. Powell's confession to Riley
3 saying that he committed the armed robbery with him, also,
4 the fact that he spoke with him. And I need to correct
5 something in my brief. He said over a hundred. I counted
6 and somehow it's over 60 times since he's been there. So
7 it's still a very - a lot of times, but over 60 times.

8 THE COURT: Phone calls.

9 MR. SHELDON: Phone calls. And those phone calls
10 continued until, I believe, August or September of this
11 year, possibly June or July or August of this year, that
12 there's a continued involvement of the two. And that
13 statement is an admission by a co-conspirator in the fact
14 that he's - in the case that I cited says that he's trying
15 to allay his fears that he is telling him basically how to
16 proceed. That you don't snitch on me. I'm not going to
17 snitch on you. Be real, be a hundred. Be a hundred
18 percent. So, that type of mentality is what he's telling
19 him to maintain.

20 I think the nature of the conversation where he says:

21 *I'm not going to - I know you ain't*

22 *going to snitch. I ain't going to snitch*

23 *on you,*

24 is very evident from the context of the other
25 evidence in the case. That is the first tape that we're

1 looking to admit into evidence.

2 The next one is a tape where Mr. Powell is speaking
3 with Mr. Young, and they talk about how they're trying to
4 get, being us, a co-d on their case, a co-defendant on the
5 case. This is all in my brief, and I tried to have it
6 written down in my brief.

7 THE COURT: I'm looking at it. I'm following.

8 MR. SHELDON: Thank you.

9 And in that, Mr. Powell is trying to tell Mr. Young
10 in code who that is, and Mr. Young is not following. And
11 then, he goes on to say, *Shorty*, which is, you know, code
12 for a female, and Mr. Young still isn't following. And he
13 says, *old girl*. Mr. Young still isn't following. He says
14 before that:

15 *It's like some 'expletive' on the outside*
16 *looking in,*
17 which all, I believe, is relevant in the context of
18 Mr. Riley's confession - excuse me, Mr. Powell's
19 confession to Mr. Riley that Kenya Hagood set it up. That
20 would be on the outside looking in.

21 She's a female, and this conversation took place just
22 a couple of weeks after the State first came up with its
23 actual understanding that Kenya Hagood may be a party to
24 this crime. That's still being flushed out to the State
25 and disclosed that to defendants. And Mr. Powell speaks

1 in this conversation that I had a lawyer's visit - this is
2 what he was telling me. And I don't like necessarily
3 using this, trying to draw lawyer visits into a
4 conversation that could be admitted to trial.

5 However, we do think it's very relevant in the fact
6 that they're ID'ing a female on the outside looking in. I
7 can establish when that information was discovered by us
8 through the investigator that was with me when we
9 determined that this is a theory of the case and this will
10 probably who sent them on the armed robbery, being Kenya
11 Hagood, when that was disclosed. And then this
12 conversation came up shortly thereafter.

13 So we would - I would submit that and proffer that
14 evidence as an admission by the defendant.

15 Finally, and I think it's the final admission. I'm
16 trying to introduce the jail tapes. That admission is
17 where Mr. Young - Mr. Powell tells Mr. Young that he had
18 sent him a letter and asked him if he'd gotten it. And
19 Mr. Young says that he hadn't. And he tells him that
20 what's in it is what he needs to -

21 I got it. I wrote it to you so you know
22 what's what when you meet with the lawyer.

23 Mr. Young is apparently going to be meeting with Mr.
24 Lee. And I plan to introduce that evidence as relevant,
25 because this is still going on. He's still - why does he

1 need to send - my argument to the jury would be, why does
2 he need to send this letter to this guy to tell him what
3 to say when he meets with his lawyer?

4 I think it's an admission by him, considering the
5 overall context of their relationship, the context of Mr.
6 Young now being implicated in a home invasion by Mr.
7 Powell's mouth, as well as him fitting the description of
8 one of the people that are in the home invasion, also
9 fitting the theory that - and really, the facts at this
10 point that Ms. Hagood arranged this armed robbery and
11 they're still working in concert with each other.

12 MR. LEE: Judge, first, fundamentally, I mean, I have
13 an issue with anything that talks about what a defendant
14 and his lawyer speak about. I mean, you know, it puts me
15 in a position maybe as a witness to say what did you talk
16 about with your client. I think that so much of what Mr.
17 Sheldon is talking about is purely speculation on his part
18 to fit his theory that he's had on this case, you know,
19 saying that these things are admissions and that that's
20 the basis for introducing them. You know, he - he - in
21 some stages, he talked about this is an inside joke.
22 Well, that's not - you know, that's not for him to decide,
23 saying that somebody can't understand something, and that
24 shortly after he divulged something to me. And then,
25 shortly after I had a jail visit with my client, then my

1 client is talking to someone else, I mean, it just - it
2 really gets into some areas that I don't think we want to
3 - we don't want to deal with. I mean, it's so speculative
4 that I don't think that it's relevant. And I think that,
5 you know, that any probative value is clearly outweighed
6 by the prejudicial effect.

7 Judge, what it makes us look like, and I mean, me and
8 my client, is that, okay, well, me and Marion and Byron
9 Powell were going to - Marion was going to tell Byron what
10 to say, and then Byron was going to come say it to me, and
11 then I was just going to make sure that that's what got in
12 court.

13 I mean, it suggests that all three of us are up to
14 something, almost to commit a fraud on - on the court. I
15 mean, he's saying they're getting their stories straight,
16 all that. We don't know that. That's complete
17 speculation on the State's part.

18 And the problem I have is the - you know, how it
19 reflects on me; that, if there's something that comes in
20 that says that my client says, hey, Young, you know, go
21 see my - go see my lawyer, let's get our stories straight
22 before you go see him. Again, it would suggest that I
23 would be part of some effort to introduce, according to
24 State, false testimony or false evidence into a
25 proceeding. And obviously, I take that very seriously,

1 you know, as - I don't think he's - I know he's not doing
2 that, Judge, but it's the impression that the jury gets.
3 And if they think that I'm some slime ball lawyer who's
4 trying to help a defendant; that he's doing everything he
5 can to show his bad character, along with this Byron Young
6 guy who he's not going to say anything about; I just think
7 it confuses the issues; and it runs the risk of the jury
8 really making a decision based on something that's not
9 before them and that has nothing to do with this case,
10 which the issue is identity in this case. And that just
11 goes so far afield of why we're here and what the case is
12 about that I don't think that anything involving in
13 talking to the lawyer, me, should be - should come in at
14 all.

15 And so, the - I mean, I guess I have no way of having
16 Mr. Sheldon interpret or put whatever spin he wants on
17 these other conversations, particularly the ones, which
18 refer to me and try to say, well, there was a legal visit
19 on such and such date, and then Powell called Young or
20 Young called Powell, and Powell said:

21 *Hey, I met with my lawyer. There's some*
22 *funny stuff going on,*
23 *and speaking in code and:*

24 *Get your stuff straight so you can go*
25 *talk about it. Let's get our stories straight*

1 *so I can go talk to my lawyer.*

2 I just think the whole thing is improper for
3 admission, and I think that, while they may want to
4 speculate as to what all that means, I don't think it's
5 appropriate for it to come in. It has no probative value
6 whatsoever.

7 And it would almost get into 494(b). I guess they're
8 suggesting that Powell and Young and maybe me are, you
9 know, going to commit a fraud on the court, or at least
10 Young and Powell were planning to do that, which I don't
11 think is part of a conspiracy that they can prove or show.

12 MR. SHELDON: I apologize, Your Honor. I didn't
13 bring up the Mill. I skipped over that. I should have
14 been looking through my brief, the Mill Creek incident in
15 addition. Obviously, this crime occurred in Mill Creek.
16 In this conversation out of nowhere, Young says:

17 *I got a female.*

18 *Huh?*

19 *You know, I got this.*

20 And then, he pauses and he says:

21 *She stays in Mill Creek.*

22 And then, Powell says:

23 *I don't know where the hell that is.*

24 And then, Young goes:

25 *I know.*

1 And then, Powell starts laughing.

2 I think, in the context of this case, with the other
3 evidence, I think that's very relevant. It's akin. And I
4 think the jury can determine whether, I think, it's
5 relevant in the context of the case and other facts of the
6 case that are going to be presented.

7 I think it's also the preponderance of the jury to
8 determine. And Mr. Lee, obviously, can argue that's not
9 relevant to them. However, they can argue - listen to it
10 and determine whether it's an inside joke or not.

11 It's akin to me saying to Mr. Lee, yeah - or Mr. Lee
12 saying to me, rather, that, well, you had a little too
13 much fun last night. And then, the next morning I go, I
14 don't know what you're talking about, laughing. You know,
15 I think it's - that's the context of that conversation.

16 I think that is actually one of, if not the most
17 probative conversation in all of it. And I am in no way
18 suggesting that he is involved in any type of conspiracy,
19 and I don't think the jury will consider that. I think
20 the jury and the intent of the State is to show that his
21 client is, not him. And that, actually, his client was
22 not committing - he's not involved in committing a fraud
23 to the court; that his client was involved in committing a
24 fraud, not just to the court, but also - I'm not going to
25 argue this, but for the sake of what's relevant, but the

1 kind of criminal activity that is continuing with this
2 defendant. And they need to know what they're going to
3 say to their own lawyer in order to make sure that the
4 lawyer has his facts straight, not that the lawyer is
5 going to be collusive or --

6 THE COURT: Those are two separate phone
7 conversations?

8 MR. SHELDON: Correct, Your Honor.

9 So, focusing on the Mill Creek one, since I brought
10 that up. Obviously, this home invasion happened in Mill
11 Creek. Mill Creek isn't a town. Mill Creek is a
12 residential neighborhood that is in Bluffton.

13 THE COURT: And the defense objection to the Mill
14 Creek conversation is that it's just not relevant?

15 MR. LEE: Yeah. You know what, frankly, I don't know
16 if we have much of an objection to the Mill Creek
17 conversation. I just think that - but, yeah, I will start
18 with relevant and go to 403 and just point out, too - I
19 mean, they - it may be just fodder for the jury. But you
20 know, they've been in jail two-and-a-half years. So what
21 he's charged in doing occurred in this Mill Creek
22 subdivision. And you know, there's - people respond to
23 different things differently. And maybe laughing is not
24 appropriate, but you know, it doesn't mean that he
25 committed a crime. And I just don't see how laughing

1 about that, even if laughing is relevant, probative at all
2 as to whether or not he was - he was there, whether he
3 committed the crime.

4 And clearly, that's why he's in jail, Judge, because
5 of something they accused him of doing in Mill Creek. So
6 I don't - he doesn't say, I've been to Mill Creek. I
7 mean, he just - that's the place that the people that he's
8 saying are lying on him and he's been sitting in jail for
9 two-and-a-half years waiting for his trial. So I don't
10 see any relevance to it, and I don't see any probative
11 value to it. I think prejudicial effect is there,
12 because, under 403(2), as far as confusing the issues and
13 all the elements of 403, I think, are present as to why
14 that's not good, reliable evidence that should come in.

15 THE COURT: Let me go back to the cause of law here.
16 And the portion of that conversation that the State thinks
17 is irrelevant is the part that the defendant says:

18 *So you know what's up, what's what.*

19 MR. SHELTON: Two portions, Your Honor. The very
20 beginning - he talks about this a lot, and I'm obviously
21 not going to try to admit all of these jail conversations
22 into evidence. He says:

23 *Have you ever checked the mail,*
24 *at the very beginning.*

25 THE COURT: Right, right?

1 MR. SHELDON: He's sending him letters. And then, -
2 and then he talks about with the letters that he hasn't
3 gotten it, and he sent him a letter to let him know what's
4 what.

5 Without Byron Young also being implicated in the
6 armed robbery, I don't think is very relevant. He's just
7 talking to a friend and sent him a letter, telling him
8 what's what. Because he's also implicated in one of the
9 armed robberies, fits Byron Young's description, I think
10 it's relevant, because he's instructing him through a
11 letter with what he should say where he can't say it over
12 the phone, because he knows it's going to be heard, I
13 think that -

14 THE COURT: Well, he doesn't say over the phone that
15 that's what he's doing either, does he?

16 MR. SHELDON: All he says is -

17 THE COURT: *Sent you a letter so you'll know what's*
18 *what.*

19 MR. SHELDON: Yeah.

20 *So you'll know what's what when you meet*
21 *with my lawyer. I know you. I understand.*

22 My point is that, if it wasn't inculpatory, if it
23 wasn't an admission, he would have said it over the phone.
24 And he's sending him a letter to instruct him on what to
25 say to his lawyer.

1 I see where you're headed with this, Your Honor, and
2 I obviously respect your opinion. I can't - and I'm also
3 viewing this from the context of the totality of the
4 circumstances of the whole case where - all the facts in
5 the case. So there are multiple assailants in this case.
6 Obviously, two still haven't been completely apprehended
7 or charged yet. And this individual was implicated by
8 Powell's alleged confession to someone he was in jail
9 with, so there's a nexus there. And he's sending him
10 letters for things he can't say over the phone, arguably.
11 That would be my argument. And that he's sending it to
12 his attorney, and he's telling his, what I would say, co-
13 defendant what to say to his attorney. Now, I know that's

14 -

15 THE COURT: You're reading a lot into that.

16 MR. SHELDON: I am. However, I think that's what it
17 is.

18 MR. LEE: I also would suggest a lot of us have a bad
19 habit of saying you know what I'm saying. And if you read
20 where it says:

21 *That's why I write you, so that when*
22 *you call, you know what I'm saying, you'll*
23 *know what's what.*

24 So, if that you know what I'm saying is just a pause
25 that some of us use um and some of them use you know, if

1 that doesn't - I don't think that means you'll know what
2 I'm saying and you'll tailor your testimony to what I am
3 saying about my - my case. So, I think that, that is
4 misinterpreted, based on what the transcript shows. And
5 also, I would suggest to you -

6 THE COURT: How about this, allow the lawyer letter of
7 the conversation?

8 MR. LEE: I'll be quiet on that.

9 THE COURT: I'm going to admit the Mill Creek
10 conversation.

11 MR. LEE: So, May 21, 2013 is out. Is that the right
12 one?

13 THE COURT: Hold on. Just one minute. The which one?

14 MR. SHELDON: May 21st.

15 MR. LEE: May 21st, 2013.

16 THE COURT: That's the one that's out.

17 MR. LEE: Okay.

18 MR. SHELDON: And Mill Creek is in.

19 MR. LEE: And April 25, 2013 is in. And then, -

20 THE COURT: Now, what would be your position about the
21 snitch?

22 MR. LEE: That speaks about speaking with his lawyer
23 visit and talking about somebody trying to do some funny
24 stuff.

25 MR. SHELDON: So that's the one from December the

1 20th, I believe.

2 THE COURT: Yeah, December 20th is what I'm looking
3 at, Page 6.

4 MR. SHELDON: And this is the statement that I would
5 proffer as evidence as a statement of the co-conspirator
6 and a statement by an admission by a sense to the
7 statement by Mr. Powell. But I believe it would more fall
8 in line with the statement of a co-conspirator. This is
9 Byron Young talking, and not Mr. Powell about this.

10 Now, the context of the conversation is just before
11 this conversation - this part of the conversation took
12 place, they are talking about how people don't - Mr.
13 Powell is talking about how people don't like him. And I
14 have no idea who those people are, candidly. But he's
15 saying the folks don't like him, because whether - I'm
16 paraphrasing here, but when push comes to shove, I'm going
17 to - basically, I'm going to hang. If I have to hang or
18 if I have to get - I can't remember the words. If I'm
19 going to fry, I'm going to fry. I'm not going to snitch,
20 basically is what he's saying.

21 And then in response to that is when Mr. Young says,
22 I know you're not going to snitch. He says:

23 *I ain't going to snitch on you.*

24 I think that is incredibly relevant. And I also
25 think that, under the case I cited - my memo fell apart.

1 It's too long to staple. I'm just going to hold it
2 together.

3 THE COURT: The part I have fell out, also.

4 MR. SHELDON: Right. And it's in the last portion of
5 my argument in my memorandum, that what is the gist - what
6 is the test of admitting a co-conspirator statement?
7 First of all, a co-conspirator doesn't need to be indicted
8 in order to be a co-conspirator, and doesn't need to be
9 charged with conspiracy.

10 The facts, though, have to show that a conspiracy,
11 first of all, exists. A conspiracy is two people working
12 with an agreement to commit, obviously, an unlawful act.
13 The nature of this case, the Mill Creek home invasion,
14 involves people having to plan and work an agreement
15 together. Mr. Powell allegedly confessed to Mr. Riley
16 that Byron Young was one of the folks he commits his
17 robberies with, including this one. Mr. Young meets the
18 description of one of the armed robbers in this case.

19 There are multiple people involved in this case, not
20 just Mr. Powell and Mr. Young, but a third assailant. And
21 on the State's theory of the case, also Kenya Hagood. So
22 at least three other people. That when Mr. Powell then
23 says that:

24 *That's why people don't like me. If*

25 *I have to fry, I have to fry.*

1 Basically telling Mr. Young that, look, don't worry,
2 I'm holding it down. Mr. Young then says:

3 *I know you.*

4 And we don't have to speculate on what he means by
5 that, because Mr. Young replies:

6 *I know you're not going to snitch. I*
7 *ain't going to snitch on you.*

8 Those statements can be construed to allay - or not
9 just construed, but are intended to allay his fears of if
10 he would snitch on him, encourage him to continue to not
11 snitch, to keep quiet about the situation and would be in
12 furtherance, therefore, of the conspiracy.

13 THE COURT: And you have evidence - some evidence that
14 the two of them were, in fact, involved?

15 MR. SHELDON: Correct. Marion Powell's confession to
16 Riley, as well as the statement - as well as he, Marion.
17 Byron Young fits the description of one of the other
18 assailants. The description was one of the assailants
19 with his face covered and his head covered. He would not
20 have been able to be identified by the victims.

21 As well as the other jail tape that we'll probably
22 get to next where he's talking to Mr. Young about the
23 details of - now, this is encoded in context of someone on
24 the outside looking in. And then, he says, *Shorty*. And
25 he says:

1 Oh, man, you're usually faster than this.

2 Well, anyway, he's talking about - really speaking of
3 the State, I think it's clear with the rest of the facts
4 that he's speaking of Kenya Hagood.

5 MR. LEE: Judge, I think it's hard to continue a
6 conspiracy more than two years after one person has been
7 arrested and been in jail the entire time. This happened
8 October 25, 2010. This conversation is December 20, 2012.
9 So Mr. Powell has been in jail the entire time during that
10 time. I'm not exactly sure what conspiracy the State is
11 basing this exception on. Clearly, someone spilling the
12 beans is not deemed to be an action pursuant to in
13 furtherance of - pursuant to a conspiracy.

14 So, if spilling the beans cannot be an act of
15 furtherance of a conspiracy, how can their theory of not
16 spilling the beans be deemed to be an act in furtherance
17 of the conspiracy? If an admission is not, how can a non-
18 admission not be? And what is the conspiracy that they
19 are engaging in? The act of the conspiracy, if there was
20 one, and if they were involved, has long been completed.
21 And that was on October 25, 2012. So any conspiracy has
22 been over for two years.

23 So to say that this fits into this exception, I don't
24 think it does at all. And you know, I think that all this
25 - we don't know what they're talking about, what incident.

1 It might be something else. But when you start bringing
2 snitch and snitch this and snitch that, I think you run
3 into a problem with - with having the jury, you know, read
4 too much into things and to make a decision based on
5 something else.

6 You know, I haven't made an issue of it too much
7 today, but I just think what you have to keep in your
8 mind, Judge, is it's real easy three years down the road
9 for them to now be saying, Byron Young matches a
10 description of Victim Number 1 in the Mill Creek. That
11 was three years ago. And if they had this mountain of
12 evidence that they wanted to Lyle in and all of this kind
13 of stuff, Byron Young hasn't been charged with - with Mill
14 Creek. And if they have such a strong case based upon
15 Byron Young primarily and they put it all together, Byron
16 Young hasn't been charged. And at some - I realize that,
17 technically, you don't have to be an indicted conspirator
18 for this to happen, but at some point, you really have to
19 question the connection that they're trying to show.

20 And the problem is, they were trying to, you know,
21 use one thing to prove another. They're trying to say,
22 well, Eric Riley, who last week when we found out we did
23 have to try the case for sure, we got Eric Riley to flip,
24 because we promised him to do a downward departure. And
25 Eric Riley is saying exactly what we think.

1 So I just say that, for the background, Judge, that
2 the reason that co-conspirator statements or you know,
3 exception to the hearsay rule is, because it's two people
4 actively engaged and, you know, it's reliable and
5 everything else. But, number one, the object of the
6 conspiracy is long, long gone in this. If they were - if
7 Powell and Young, for example, had a conspiracy for Powell
8 to beat up somebody in jail that Young didn't like, maybe
9 something - you know, there might be some kind of
10 conspiracy you have with him in jail. Or if they were
11 planning something, there might be some kind of
12 conspiracy. But something that happens two years down the
13 road and they're talking about, I'm not going to snitch
14 and you're not going to snitch. I mean, snitch, does a
15 snitch have to be telling the truth? No.

16 It's our position Mr. Riley is a snitch, but he
17 doesn't know what he's talking about. So, you know, do we
18 have to talk about what snitch means and what it doesn't?
19 So anyway, I just think it opens up too many doors, Judge.
20 It raises a lot more questions for the jurors than it
21 answers. And I mean, if - if they can't prove their case
22 without a two-year-old back-and-forth using code words and
23 using snitch, I mean, this isn't going - this isn't going
24 to make a difference. But we think that it could lead a
25 jury to come to a conclusion that it was inappropriate and

1 unfounded based upon an improper basis. And for that
2 reason, that statement should be suppressed, as well.

3 THE COURT: All right. Thank you.

4 Do you need to respond?

5 MR. SHELTON: Very briefly, Your Honor, if it pleases
6 the Court.

7 The State understands the position that it's been
8 three years of a lot of this evidence. Obviously, the
9 confession of Eric Riley didn't occur until this year - in
10 the last year. These conversations didn't occur until
11 last year. We didn't know about Eric Riley's knowledge of
12 this whatsoever. We were going to interview him about
13 something completely different until last Tuesday. So a
14 lot of this information about Byron Young is new.

15 Furthermore, I think you can establish a continued
16 conspiracy to commit armed robbery and criminal actions
17 based upon 60 jail phone calls made specifically from
18 Powell to Riley, jail visits. And if you look at the
19 context of these conversation, I think it's -

20 THE COURT: I will allow the December 28th phone
21 conversation.

22 MR. SHELTON: Thank you, Your Honor.

23 THE COURT: Now, did we skip one in the middle of
24 that?

25 MR. SHELTON: The only one remaining, Your Honor,

1 that has not been ruled upon is the one about - where he
2 talks about Shorty or old girl. I don't think Your Honor
3 has made a ruling on that one. And that was from, I
4 think, August the - I mean, excuse me, March the 7th or
5 March the 9th.

6 THE COURT: March the 9th.

7 MR. LEE: Yeah. Again, the problem is he's speaking
8 about his lawyer's visits, and my previous objections
9 would - or arguments would go to that for the same reasons
10 as the other lawyer conversations.

11 MR. SHELDON: I think that the evidence, Your Honor,
12 is very relevant and probative under the State's case,
13 because it fits perfectly into what Mr. Powell told Mr.
14 Riley as far as someone on the outside looking in, a
15 female, Shorty, and then also talking about Byron's
16 involvement. He's trying to get Byron to pick up on who
17 I'm talking about here. Come on, get me here. Get me to
18 listen, basically. Mr. Young is not following.
19 Eventually he does, but out of frustration, Mr. Powell
20 moves on. So these are all statements made by Mr. Powell.

21 This isn't the same issue we have with the previous
22 co-conspirator statement. These are issues where, if you
23 take in the - I think it's clear. I don't think you have
24 to speculate much on this conversation. I think you can
25 look at this conversation, look at the confession to

1 Riley, and then look at the other circumstantial evidence
2 that we will present in the case; that Ms. Hagood knows
3 Mr. Jones, that it's very probative and very relevant.

4 MR. LEE: I would also argue that some of that's
5 privileged. I mean, he's talking about things that he,
6 Mr. Powell, things he and I talked about. Although, he
7 may have waived the privilege by us speaking on the phone
8 about it.

9 THE COURT: Sorry, what?

10 MR. LEE: I'm sorry. I was thinking he may have some
11 privilege there, but I believe if he does say it to a
12 third party, he's probably waived that. I believe what
13 he's trying to do is summarize his meeting with me, too,
14 to Mr. Young and to tell me in his words, I guess, what
15 the update was when I first heard from Mr. Sheldon that
16 there was, apparently, some type of connection in his mind
17 between Bluffton and Big Estate and Marion Powell and
18 Cleven Jones, because at that point, there didn't seem to
19 be any connection whatsoever. And you know, him
20 suggesting that, you know - and at that point, I had heard
21 the names Kenya Hagood, Paulette Moultrie.

22 And I think him repeating what his lawyer said to his
23 friend, I don't see any relevance or significance or
24 probative value whatsoever in that. And again, it almost
25 puts me in the position where I have to talk about what I

1 told my client, because they're going to say, Oh, this is
2 evidence that he was involved and that he knows that Kenya
3 Hagood is a snitch or whatever the case may be. When in
4 fact, there is a perfectly innocent explanation for how we
5 obtained that information. That I say it looks like Kenya
6 Hagood is involved in all this stuff somehow, do I have to

7 -

8 THE COURT: Well, wait a minute. What I'm reading
9 from March 9, to the probative portion, doesn't have her
10 name in it at all. Doesn't have it at all.

11 MR. LEE: Yeah, but - it doesn't have her name, but
12 their theory is that Shorty is code word for a girl and
13 that old girl, you lost me boy, he's slow. And that
14 they're going to establish he's talking about a girl. And
15 then, through their other evidence, mainly through Riley,
16 they're going to show that was Kenya Hagood. So he was
17 talking about Kenya Hagood here. It's such a tenuous
18 thing, Your Honor. That's the main problem.

19 MR. SHELDON: Your Honor, if it pleases the Court, at
20 the beginning of that statement, they talk about trying to
21 make a co-defendant out of somebody. And then, Young
22 says:

23 *So, they're trying to make a co-d out of*

24 *who?*

25 And then, Powell says:

1 *No, there ain't nothing to it.*

2 Basically, somebody is trying to run their mouth
3 about some shit on the outside looking in.

4 THE COURT: Right.

5 MR. SHELDON: Kenya Hagood would be on the outside
6 looking in.

7 THE COURT: Okay.

8 MR. SHELDON: *Yeah, you feel me?*

9 And then, Young says:

10 *Yeah, yeah, you heard me?*

11 And then, Young, trying to get him to understand.

12 *I'm trying to get a co-d?*

13 And then, Powell says:

14 *About Shorty. Shorty?*

15 - Impatiently, Powell then says:

16 *Shorty, old girl.*

17 Then:

18 *Man, you lost me.*

19 And it says - and then Powell says:

20 *Man, come on. You're usually faster*

21 *Anyway, your brain usually faster.*

22 Well, anyway, he's trying to tell Young without
23 telling Young that we know about Kenya. I think it's very
24 clear from the context based on the confession, based on
25 other information that ties Ms. Hagood to this case.

1 THE COURT: I suspect I already know a lot more about
2 this case than the jury is going to know. I'm having a
3 hard time figuring this one out.

4 MR. SHELDON: Well, the State's submission for it
5 would be that they are talking about - they're using this
6 - when you look at it in the context of on the outside
7 looking in, *old girl, Shorty*, these guys aren't going to
8 say anything directly over the phone about it, obviously.
9 They're speaking in code, and this is - I think the jury
10 can look at it and use their own brains to interpret it,
11 or I can argue what it means to them in order to make it
12 relevant. If it's too much of a confusion, I understand,
13 Your Honor.

14 THE COURT: I think it's going to be confused, because
15 when - here's the way it works, of course, is you're going
16 to play some stuff for the jury. You're not going to be
17 able to tell them why they're listening to this stuff
18 until way, two days later or something like that.

19 MR. SHELDON: What I plan to do is, after Riley
20 testifies, we're putting the jail tapes in, without giving
21 too much of my case away.

22 THE COURT: If I can't find it's too prejudicial, I'll
23 let that in.

24 MR. SHELDON: Thank you, Your Honor.

25 MR. LEE: Do you believe that it would confuse the

1 issues, mislead the jury, consideration of a waste of time
2 and needless presentation?

3 THE COURT: Well, it may be a little needless, but I
4 don't think it's going to take up too much time, I hope,
5 because we've already put some other stuff in.

6 MR. SHELTON: Correct, Your Honor. We have these
7 jail tapes spliced down to copies to where we can just
8 play short drives of them so we won't have to listen to
9 them. We don't have to worry about anything being
10 submitted that shouldn't be submitted. And otherwise, it
11 would be pared down.

12 MR. LEE: Are we going to redact anything about the
13 lawyer visit and saying that, you know, he's talking about
14 me? He said it doesn't hurt me. It only helps me. They
15 tried to get me a co-defendant. I mean, am I going to be
16 quoted through my client during the trial what I'm
17 defending him on?

18 MR. SHELTON: He's saying it to the third party. I
19 don't intend - I didn't try to put this into his mouth.
20 He said it himself. I don't think there's any way to take
21 that out without them understanding - without being able
22 to show them the context of what was said. Obviously, I
23 would never do anything to somehow try to step in the
24 boundaries of lawyer/client privilege, but as soon as he
25 talks about it with somebody else, that privilege is gone.

1 MR. LEE: I mean, he said it was a good visit, but he
2 had told me somebody was trying to do some funny shit. I
3 mean, that indicates that I am the one who's telling him
4 that somebody's trying to do some funny - excuse my
5 language - funny shit. I just think that, that just puts
6 me in a heck of a position, because it sounds like I'm
7 doing some things I shouldn't be doing, which, obviously,
8 I tell the Court I did not do anything like that. But it
9 just - it kind of impeaches my character as well, and I'm
10 a reflection of him.

11 THE COURT: I really don't see it that way. I really
12 just see it as him saying his lawyer told me what's going
13 on, what's going on. What's going on is they're trying to
14 put another co-defendant in this case. Anyhow, all right,
15 what's next?

16 MR. SHELTON: I think that concludes everything, Your
17 Honor, for today.

18 MR. LEE: Can I make one more argument?

19 THE COURT: One more argument.

20 MR. LEE: If he is saying something that I said, it's
21 hearsay. And so, I think that might be a hearsay
22 objection for them saying he said, meaning me, like -

23 THE COURT: It's not being offered for the truth of
24 the matter; is it?

25 MR. LEE: It is by them, yeah.

1 THE COURT: Not that statement.

2 MR. LEE: Well, the - let's see. He had told me
3 somebody in there is trying to do some funny shit. That's
4 clearly hearsay. He said it doesn't hurt me. It only
5 helps me. They tried to get me a co-defendant, basically.

6 MR. SHELDON: I don't think it's hearsay. I think
7 that, in the context of them telling Byron Young this,
8 about somebody doing some funny stuff, I don't think that
9 that is hearsay on behalf of - first of all, I'm not
10 offering that portion up for the truth of the matter
11 asserted, the funny-ass shit or anything like that. What
12 I'm offering for the truth of the matter asserted is the
13 - what he's trying to identify who that co-defendant is
14 when he says Shorty. Why is he - and the fact about
15 Shorty is that, that's not something that Scott Lee told
16 him, Shorty. He's telling Byron Young in code who - he's
17 trying to get Byron Young to understand who it is.

18 THE COURT: Yeah. They're offering it as to explain
19 what he said will be explained.

20 MR. LEE: I've never seen any proof showing that
21 Shorty means Kenya Hagood.

22 THE COURT: I don't either.

23 MR. LEE: Well, I mean, if they can't do that, is it
24 just him?

25 THE COURT: I don't know. You'll argue that to the

1 jury, I guess.

2 MR. SHELDON: I want to fit it in with what -

3 MR. LEE: I respectfully ask if there's any
4 information that I haven't been provided that connects the
5 word *Shorty* to Kenya Hagood, I would like to have it since
6 this statement is coming in. I haven't seen anything like
7 that.

8 MR. SHELDON: No. I think it's a logical conclusion
9 to make that there is a female involved on the outside of
10 this case looking in, and he's trying to tell his co-
11 defendant that it's Shorty, that Shorty is a girl, and
12 that, therefore, Shorty is Kenya Hagood.

13 THE COURT: All right. So court is adjourned until
14 9:30 tomorrow morning.

15 MR. SHELDON: Thank you, Your Honor.

16 OFF THE RECORD 5:19 P.M.

17 BEGIN DAY TWO, TUESDAY, NOVEMBER 19,

18 2013, 9:21 A.M.

19 BY THE COURT:

20 BAILIFF: All rise. The Honorable Brooks Goldsmith
21 presiding:

22 THE COURT: Please be seated, ladies and gentlemen.

23 MR. LEE: So far, so good, Your Honor.

24 MR. SHELDON: A couple of matters I'd like to bring
25 before the court before we get started this morning.

1 Firstly, with yesterday's pre-trial rulings towards
2 the end of day. I didn't think of this until overnight.
3 However, tomorrow afternoon, right now, I could push the
4 witnesses forward from Thursday, but I wouldn't be able to
5 finish starting at around 1:00 or 2:00 as we need to, with
6 Mr. Lee having a parole hearing in the morning, tomorrow
7 afternoon.

8 I will be able to finish with everyone if I move
9 those witnesses to Thursday morning, and I wanted to put
10 before the court if the court was comfortable with it. I
11 mean, I would obviously prefer to go forward full steam
12 all the way through the trial.

13 Mr. Lee had thought that this case was only going to
14 be basically a two-day case until last week, and out of
15 courtesy to him and respect for his work he has already
16 done on the parole hearing, and trying to do everything we
17 can to make sure that he can go to that parole hearing in
18 that morning.

19 With that in mind, I can finish everything on
20 Thursday without calling any witnesses on Wednesday. And
21 wondered if, instead of bringing the jury back on
22 Wednesday, and then on Thursday, and we have to have the
23 jury back on Friday, because Mr. Lee's expert isn't
24 available until Friday, I'm proposing to have the jury to
25 take Wednesday off. But I don't - just wanted to put that

1 before the court and have you decide what you think is
2 best.

3 If Mr. Lee's expert could be here on Thursday, then I
4 would absolutely want to put everything together on
5 Wednesday, but since that is not a possibility. She has
6 some commitments in Charlotte.

7 THE COURT: She can't be here any time on Thursday?

8 MR. LEE: Your Honor, she is a college professor at
9 UNC Charlotte. She has a final exam she has to give from
10 9:30 to 12:30 and she just said there was no way that she
11 could get somebody to substitute. Even if she left
12 Charlotte at 12:30, she wouldn't get here until 5:00 at
13 the very earliest, and that's if she left there and came
14 straight here. But I certainly consent to me doing it for
15 my benefit, I understand that, we'd certainly consent to
16 doing so.

17 And as far as Friday, I mean, I think the only
18 witness that I perceive calling Friday in my case is the
19 expert, so I wouldn't expect testimony Friday morning to
20 go very long. We can close and you can charge them, and I
21 think they can have the case before lunch.

22 I don't think either one of us wants the jury - or
23 any of us want the jury here late Friday afternoon, but
24 you never know what these juries are going to do, for
25 better or worse.

1 THE COURT: Yeah.

2 MR. SHELDON: And I'd obviously like to move forward.
3 You know, we could finish the case today and tomorrow,
4 however, this - I'm trying to think of a way to make a way
5 so it's less disjointed. And with the fact that the jury
6 is probably going to have to come back on Friday anyway,
7 instead of having to come back every day of the week, come
8 four days a week instead of five days a week if we can
9 help that.

10 If there's any way that I could think of to have my
11 case finished by tomorrow in time for Mr. Lee to get his
12 expert in here tomorrow, I would do it. I have right now,
13 I believe, ten or eleven witnesses lined up today and it's
14 hard for me to foresee how long those are going to be.
15 And I don't want to over book today, and then not know
16 what we're going to have the rest of the week.

17 THE COURT: Well, refresh my memory about this
18 schedule tomorrow.

19 MR. LEE: Yes, sir. And again, I apologize in
20 advance. Up until a few weeks ago, we really did think we
21 could finish this Tuesday.

22 I have a long-standing commitment to be at Ridgeland
23 Correctional Institute at 7:45 tomorrow morning for a
24 parole hearing that is supposed to start at 9:00. They
25 schedule all of them at 9:00. I've had the case for six

1 months and have, you know, put a tremendous amount of work
2 into it. And it's not something you can just schedule the
3 next day. The parole hearings are spaced out. So, that's
4 what I have.

5 In an abundance of caution, I suggested that
6 Wednesday afternoon, because I really have no idea when
7 they are going to get to me tomorrow. I'm going to be
8 there at 7:45 signing in. All of them are scheduled for
9 9:00. I may go at 9:01 or I may go at I don't know when,
10 so it may have been an issue me getting back anyway but I
11 was just going to have to see what I could do up there as
12 far as making sure I can get heard and then get back here.

13 THE COURT: Which is an hour-long drive?

14 MR. LEE: Yeah. Forty-five minutes or so. It's not
15 - the problem is they have all of them scheduled at 9:00,
16 and there is no way to know whether you are first or last.

17 MR. SHELDON: If we could start, and there's no way
18 to know, and I don't - if it starts at 9:00, best case
19 scenario, he could be out by 10:30 maybe; and then get
20 here by 11:15, 11:30 best case scenario. Am I speaking -
21 is that correct, Mr. Lee?

22 MR. LEE: Yes.

23 MR. SHELDON: So, even if we then started early and
24 took lunch early and had the jury come in at say 12, I
25 believe that we have - I would need to get Eric Riley

1 here, which I can do tomorrow. Which, he is coming from
2 Ridgeland Correctional Institute, actually, right now. So
3 I could have him here. I could probably finish my case
4 tomorrow, but that would still leave the issue with the
5 expert.

6 I don't know if we could finish my case and have the
7 expert here tomorrow unless we just want to work -

8 THE COURT: Yeah.

9 MR. SHELDON: - unless we work through the night; and
10 then have the jury come back in the morning; and then do
11 closings in the morning on Thursday. That would be the
12 only way I could foresee it.

13 THE COURT: All right. Well, let's re-visit this
14 thing at the end of the day today with that in mind, and
15 we'll probably end up having to give the jury Wednesday or
16 Thursday off, one or the two.

17 MR. SHELDON: Right. Okay. The only think I will
18 need to do is, I have an SCDC transport already arranged
19 for tomorrow morning, and I'll need to let them know as
20 soon as possible to either change it, which is not a huge
21 problem, but it definitely needs to be by 3:00 or 4:00
22 o'clock probably.

23 THE COURT: Okay. You're anticipating that you're
24 going to probably end up with three hours' worth of stuff
25 after today?

1 MR. SHELDON: After today I image we'll have about -
2 it depends on the cross-examination of Eric Riley. I
3 imagine that could be substantial and we also have three
4 motions in limine to still hear. So, all together, I'd
5 say it's more four to five hours, conservatively. It may
6 be less than that, but I don't think to count on it to be
7 less than that would be reasonable.

8 THE COURT: Why don't we try to do this on Thursday
9 then.

10 MR. LEE: Judge, and if we finish early Thursday, we
11 can be prepared to have a charge conference and
12 everything, even though I haven't put up my witness yet.
13 We can fill in time Thursday afternoon.

14 THE COURT: Okay.

15 MR. LEE: If that suits the court.

16 THE COURT: All right.

17 MR. SHELDON: And it won't be a problem. I've spoken
18 to Ms. Mary Jordan Lempesis, the administrative solicitor.
19 It won't be a problem getting things to do in here
20 tomorrow afternoon. They'll have plenty of pleas, and I
21 think they can move things they had planned for Thursday,
22 if necessary, to fill up so we don't waste much time.

23 THE COURT: All right. Anything else?

24 MR. LEE: I would have one quick issue. I've never
25 tried a case in front of Your Honor before, and I know

1 judges do it differently. Could you tell me ahead of
2 time, your reasonable doubt charge. Whether you charge
3 *State versus Manning, Victor versus Brasco* or a hybrid of
4 the two?

5 THE COURT: A hybrid. I do both.

6 MR. LEE: Okay. So, the hesitate-to-act language
7 will be in your charge?

8 THE COURT: Yes. I just quit arguing with people
9 about it. So, I said, well, I'll just put it in.

10 MR. LEE: Well, all judges do it differently, Judge.
11 We had a judge here quite a while back that said it's so
12 confusing he didn't charge reasonable doubt at all. There
13 are some cases that say that's okay, but it seems to be
14 the kind of bedrock of criminal law so I never understood
15 not charging it, but every judge is different. I just
16 wanted to make sure before I did my opening, what you were
17 going to --

18 THE COURT: Yeah. I do a hesitate to act short, and
19 then do a lengthier --

20 MR. LEE: Yes, sir. Judge, the only other issue that
21 I know that is out there, and I spoke to Mr. Sheldon about
22 this, there is a little bit of confusion about one of the
23 charges, which is possession of a weapon by a prohibited
24 person. Under that statute, it tells if you've been
25 convicted of a crime of violence. It's my understanding

1 from Mr. Sheldon that they're not proceeding on the
2 possession of a weapon by a convicted felon, and he is not
3 going to read that charge to the jury, and he is not going
4 to subsequently try to prove up a conviction for a felony
5 as an element of that charge. And that's my
6 understanding.

7 MR. SHELDON: That's correct. The way that that - I
8 saw that indictment this morning. I should have checked
9 it earlier, much prior to this matter. I think it only
10 provides notice for unlawful possession of a handgun, and
11 not unlawful possession of a person during the commission
12 of a violent offense, and that would be what - because
13 that would be what he is convicted of. It would be ABWIK,
14 and not the new violent crime statute, the 16-23-500. And
15 under that, even if it was that statute, I don't think
16 that's a principle matter. I don't think that's an
17 element for the jury to hear. So, I agree with Mr. Lee.
18 I'm not going to go into his assault with intent to kill
19 conviction.

20 THE COURT: All right.

21 MR. LEE: And if I could just look at the photo
22 lineups that were introduced yesterday, and then I'll be
23 ready to go.

24 MR. SHELDON: Finally, Your Honor, pursuant to the
25 *Neil v. Biggers* motion yesterday, if I may make my

1 memorandum -- I understand that you reviewed my
2 memorandum.

3 THE COURT: I did.

4 MR. SHELDON: And took the facts into consideration.

5 THE COURT: I did take the facts into consideration
6 that were stated that were not opposed in that --

7 MR. SHELDON: They're not opposed in my memorandum.
8 I'd like to make that a court's exhibit. Thank you.

9 THE COURT: We actually do have another issue, of
10 course, nobody knew about. The Bailiff just handed me a
11 note, apparently, from Juror 278, Richard Sherman.

12 And the handwritten note says:

13 *I have owned two shooting ranges where*
14 *I was involved with two sheriff departments*
15 *and the National Sheriff's Association. I*
16 *was involved with concealed carry and self*
17 *defense courses.*

18 I take it that's a matter of disclosure is all. All
19 right.

20 MR. LEE: Judge, I would say this. I certainly would
21 have struck him had I known he had such a close
22 relationship with law enforcement. That was one of the
23 questions we specifically asked. And I think him not
24 responding, I would ask that the first alternate be seated
25 and he be excused.

1 MR. SHELDON: I can't recall the voir dire, all the
2 voir dire off the top of my head, Your Honor. I know the
3 question that was asked as always is, is are you or any of
4 your close immediate family members, I believe it is,
5 employed with law enforcement. I may be paraphrasing
6 that. I don't know if any question was asked that do you
7 have a close connection with any law enforcement agencies.
8 I don't know that the question was asked are you a
9 contributor to any -

10 THE COURT: Are you a contributor to.

11 MR. SHELDON: To.

12 THE COURT: And nobody responded.

13 MR. SHELDON: Nobody responded.

14 THE COURT: To the contributor to question.

15 MR. SHELDON: Contributor to so I think that would
16 probably - sorry.

17 THE COURT: What I asked him - here is what my
18 recollection is about what I asked. Are you or any member
19 of your immediate family, former or present, law
20 enforcement, member of law enforcement. I asked one about
21 being employed with the solicitor's office and then I went
22 to victims of crime question. I don't think -

23 MR. LEE: Wasn't there something about close personal
24 friends being in law enforcement?

25 THE COURT: It may have been requested. It wasn't

1 part of the voir dire. That was number two.

2 MR. LEE: Right.

3 THE COURT: And of course, he doesn't say.

4 MR. SHELTON: And I believe there was a question
5 about being a contributor to MADD or SADD or anything like
6 that nature.

7 THE COURT: Right.

8 MR. LEE: Didn't he say he was associated with the
9 National Sheriff's Association?

10 THE COURT: Say again.

11 MR. LEE: Didn't he say he was associated with the
12 National Sheriff's Association or something like that?

13 THE COURT: I have owned two shooting ranges where I
14 was involved with two sheriff departments and the National
15 Sheriff's Association.

16 MR. LEE: Your Honor, I certainly think that the
17 National Sheriff's Association would be kind of a catchall
18 in the question you asked as far as the victims rights
19 organizations and that sort of thing, and I would point
20 out - I only used six peremptories. I had ten. And
21 certainly, that is of great concern to us.

22 We certainly would have exercised a peremptory strike
23 on Mr. Sherman had he divulged that as he should have.

24 THE COURT: All right. The question was, is any
25 member of the jury panel - is there any member of the jury

1 panel who is a member of or a contributor to any group,
2 which has as its primary concern the promotion of law
3 enforcement or victim's rights.

4 MR. LEE: I would assume the National Sheriff's
5 Association promotes law enforcement by the very name of
6 it.

7 THE COURT: But he doesn't say he was a contributor
8 to them, and that's the question. Are you a member of or
9 are you a contributor to. He is disclosing here,
10 apparently, that he worked - he owned two shooting ranges
11 or he was involved with.

12 MR. LEE: I think that the very - the fact that he
13 went home, I guess, and thought about it, and felt it
14 important enough to direct to the court's attention,
15 indicated in his mind that he should have responded
16 differently to whatever question it was that the Court
17 asked. And we can sit there and you know, split hairs on
18 the wording, but Mr. Sherman heard the questions, did not
19 respond, and now has come back on his own volition and
20 essentially says, hey, apparently, I should have
21 responded. So, I think that - I think that speaks for
22 itself, quite frankly, and never in a million years would
23 we seat somebody who had worked closely with the sheriff's
24 office and National Sheriff's Association and we have
25 plenty of strikes left.

1 MR. SHELDON: Your Honor, I don't believe - I think
2 the question would be if he displayed any dishonesty in
3 the voir dire, and I don't believe, under what he tells
4 you in that note, that he has displayed any dishonesty.
5 His affiliation with or he works with, but he doesn't say
6 he is a contributor to.

7 Many, many small business owners, whether they own
8 shooting ranges or whether they have a restaurant,
9 oftentimes work with sheriff's office or other types of
10 law enforcement associations. I think that this actually
11 shows his candor towards the court and makes sure that he
12 has answered correctly, but I do not think that he has
13 withheld anything that was specific within the voir dire.

14 MR. LEE: The problem is, they are supposed to be
15 candid pursuant to their oath as jurors to answer the
16 questions as they see fit and I think, you know, that's a
17 per se violation - or not a violation, but an answer he
18 should have given and we would have struck him. If you're
19 not inclined to do it per se excuse him, Your Honor, I
20 would respectfully ask that he be brought out and
21 questioned, because I think, quite frankly, the court is
22 reading a lot into that note that is inconsistent with
23 what he is actually saying.

24 THE COURT: All right. I'm inclined to bring him out
25 and ask him a few questions. I was going to ask him how

1 long ago did this happen the last time, over what period
2 of time. If he says he owned two shooting ranges, where
3 was this. I'm just guessing that it wasn't here in this
4 county with these people, with these officers, but I want
5 to ask him about that.

6 Now, what else, of the questions besides being can
7 you still be fair?

8 MR. SHELDON: I would defer to Mr. Lee, because
9 that's not -- I don't think he has said anything that is
10 inconsistent with your voir dire.

11 MR. LEE: I just -- if you're going to bring him back
12 in and not automatically excuse him, I would just ask that
13 you ask him those questions. Ask him if he would have any
14 difficulty in being fair and impartial. But I would ask
15 the court to be very careful to frame it so that it's not
16 phrased -- you wouldn't be unfair and impartial, because
17 people just don't want to answer that question. You know,
18 they don't want to admit that they would not be fair and
19 impartial. I would just ask that it would be more of a
20 open colloquy rather than --

21 THE COURT: I understand what you're saying, but of
22 course, we had two people yesterday tell us that they
23 couldn't be fair and impartial.

24 MR. SHELDON: Yeah. We had a lot of people who said
25 they thought they could and that sort of thing, too, as

1 well. And I would also point out just for the record that
2 I haven't gone through all my strikes, but I certainly
3 know that Number 45 I struck. I struck him, because he
4 was a firefighter. So, my strike strategy as it always
5 does, is to strike anybody with any connection to the law
6 enforcement. And certainly, someone who works closely
7 with the two sheriff's office and with the National
8 Sheriff's Association would have been a lot higher on my
9 priority strike list than someone who actually was the
10 same race, but I struck him anyway, because he was a
11 firefighter. I think there is a connection between
12 firefighters and law enforcement, so you know, that guy
13 being seated goes to the absolute heart of what I was
14 trying to do in striking this jury and had plenty of
15 strikes left and would have exercised it on Mr. Sherman.

16 THE COURT: All right. Ask Mr. Sherman if he would
17 please step in and we'll bring him - we'll just have him
18 stand right there, and I'm just going to talk to him for a
19 few minutes.

20 COURT REPORTER: The State's memo in support of
21 introduction of identification evidence is Court's Exhibit
22 Number 4.

23 STATE'S MEMO IN SUPPORT OF

24 INTRODUCTION OF IDENTIFICATION

25 EVIDENCE MARKED COURT'S EXHIBIT NUMBER 4.

1 BAILIFF: Your Honor, Mr. Sherman.

2 THE COURT: Hello, Mr. Sherman. How are you doing?

3 MR. SHERMAN: Very good.

4 THE COURT: I appreciate your note. I've got a note.

5 MR. SHERMAN: I just need clarification on the
6 question that was asked us but I misunderstood it.

7 THE COURT: Well, let me ask you a few questions
8 about that.

9 MR. SHERMAN: Okay.

10 THE COURT: Your note indicates that you owned two
11 shooting ranges at one time?

12 MR. SHERMAN: Yes. One out of Lakewood, New Jersey
13 and the other just out of Aiken, South Carolina.

14 THE COURT: Out of Aiken, South Carolina. Okay. Did
15 any of the current members of Beaufort County Sheriff's
16 Department or Bluffton Police Department participate at
17 your ranges?

18 MR. SHERMAN: Not in Bluffton, but I hosted a dinner
19 for all the sheriff's in South Carolina to dinner for with
20 conjunction with sheriff out of Aiken and hosted all of
21 the sheriffs from the State of South Carolina to come
22 there.

23 THE COURT: Okay. How long ago would that have been?

24 MR. SHERMAN: That would have been in 1995.

25 THE COURT: Okay. And the last time you had a

1 shooting range would have been approximately how long ago?

2 MR. SHERMAN: Well, I'm still involved with the
3 shooting range in New Jersey.

4 THE COURT: Okay.

5 MR. SHERMAN: And one of the things that we're
6 involved with in up there is concealed carry permits. In
7 South Carolina, I know a lot of people go through training
8 of that, and a lot of self defense with illegal entry and
9 how you conduct yourself with the use of a firearm.

10 THE COURT: When someone is breaking into your house?

11 MR. SHERMAN: Right. In other words, not to take the
12 stance, but to take a punch and do like that.

13 THE COURT: Okay. Do you currently have any close
14 friends who are members of law enforcement?

15 MR. SHERMAN: Yes.

16 THE COURT: And how do you have close friends? In
17 New Jersey?

18 MR. SHERMAN: Like some are in New Jersey; some are
19 still in South Carolina. Mostly my involvement with the
20 range in Jersey. One of the key detectives on the State
21 Police of New Jersey, Richard Mullinaro, he is an
22 instructor at the range up there, and I worked with him
23 overseeing course development.

24 THE COURT: All right. You gave us this note to
25 disclose your background?

1 MR. SHERMAN: Right. When I understood the question
2 yesterday, or misunderstood the question, I thought that
3 you were asking was anybody in law enforcement a spouse or
4 relative.

5 THE COURT: Right.

6 MR. SHERMAN: The answer that question was no, and
7 that's why I didn't stand up. Afterwards, when you
8 discussed it, and I said, but I've been involved not only
9 on the Olympic side and kind of at the beginning of
10 homeland security with the development of different
11 sheriffs in the National Sheriff's Association to any
12 newcomer out of Washington, D.C.

13 Then I started looking at it, and I said there are a
14 lot of thing and I felt very unease with it. I also got
15 sick last night thinking about it, and I said, I've got to
16 just give full disclosure.

17 THE COURT: Well, let me ask you this question.

18 MR. SHERMAN: Okay.

19 THE COURT: In light of all these disclosures that
20 you made, do you think that would interfere with your
21 ability to be a fair and impartial juror?

22 MR. SHERMAN: Not at all.

23 THE COURT: You think, despite your connection with
24 law enforcement, past and present, that you could still be
25 a fair and impartial juror?

1 MR. SHERMAN: I believe I could. I thought my
2 knowledge might assist with it..

3 THE COURT: All right. Any other questions?

4 MR. LEE: Your Honor, one thing. He said something
5 about some discussions last night. Was that at home with
6 your wife or with the jurors?

7 MR. SHERMAN: No. Actually, with -

8 MR. LEE: The Bailiff.

9 MR. SHERMAN: This gentleman here, and then another
10 member of the court here, Jack Cummings.

11 MR. LEE: Yeah.

12 MR. SHERMAN: Because, again, I was confused. And I
13 wasn't too sure which way to go. And knowing that it
14 should have been something that was disclosed. I didn't
15 know when the question came up. And then, when they had
16 the one question about burglary, I was never involved in a
17 burglary.

18 MR. LEE: Right.

19 MR. SHERMAN: But I've never had that happened, but
20 have instructed people on how to conduct themselves or
21 been involved with that, that answer was yes. And then,
22 it just bothered me so much last night and not getting
23 much sleep either.

24 MR. LEE: I didn't either.

25 MR. SHERMAN: But that's - I only contacted - and I

1 don't know anything about the case. I don't even know the
2 Defendant's name or whatever.

3 MR. LEE: Right.

4 MR. SHERMAN: And I didn't disclose a lot, but with
5 the laundry list that was given with the items.

6 MR. LEE: Yes.

7 MR. SHERMAN: - there was a couple points in there
8 that I felt -

9 MR. LEE: Sure.

10 MR. SHERMAN: - I didn't want to go through the case
11 and all of a sudden, something come out and have a
12 mistrial.

13 MR. LEE: Thank you.

14 THE COURT: Okay.

15 MR. SHERMAN: So even the ride in was -

16 MR. LEE: Judge, he said something about Jack
17 Cummings, which I believe is a bailiff maybe with the City
18 of Beaufort. Could you get him to follow up on - did you
19 call Mr. Cummings or -

20 MR. SHERMAN: Yes. To ask him what I should do.

21 MR. LEE: Okay.

22 MR. SHERMAN: And he said to come in and talk to the
23 judge. And again, that was very brief, very general.

24 MR. LEE: Yeah.

25 MR. SHERMAN: And just said it was a criminal case

1 and that it involved a home entry and that my background
2 with that. And he said that I should just come and get a
3 point of clarification, because I didn't understand, but I
4 didn't discuss - we haven't started the case.

5 THE COURT: Right. Okay.

6 MR. LEE: And again, just to reiterated, I believe
7 that his response as far as would he have difficulty with
8 law enforcement and all that, I think he said he - I don't
9 want to put words in your mouth, but it wasn't an
10 unequivocal answer when he asked you that question, if I
11 recall.

12 MR. SHERMAN: I believe I would be a good juror and
13 would listen to the case. I don't know what is expected
14 of me, but you know, as far as my background is concerned
15 and what I do, again, I don't know if that would have been
16 a disqualifier yesterday. Again, I'm prepared to serve.

17 THE COURT: One more time then. Do you believe that,
18 in light of what you've just told us, in light of your
19 entire background, that you could nevertheless be a fair
20 and impartial juror?

21 MR. SHERMAN: Yes.

22 THE COURT: You could listen to the evidence and be
23 fair and weigh it and be fair to both sides?

24 MR. SHERMAN: Yes.

25 THE COURT: All right. Thank you, Mr. Sherman.

1 MR. LEE: Can you ask him one more question, Your
2 Honor?

3 THE COURT: Yes.

4 MR. LEE: Ask him would he feel any compulsion
5 towards law enforcement just because of his prior
6 experience.

7 THE COURT: Would you feel any loyalty or compulsion
8 toward law enforcement?

9 MR. SHERMAN: No.

10 MR. LEE: Okay.

11 MR. SHERMAN: No. I believe the rule of law. I
12 don't take one side or the other. I would listen to all
13 the facts.

14 THE COURT: Thank you, Mr. Sherman. I appreciate it.

15 BAILIFF: Thank you, Your Honor.

16 THE COURT: Thank you for your disclosure.

17 COURT REPORTER: Court's Exhibit 5 is the note.

18 NOTE MARKED COURT'S EXHIBIT NUMBER 5.

19 MR. LEE: Your Honor, I would renew my objection to
20 renew my objection to excuse him. He did at one point
21 provide an answer that was not unequivocal about whether
22 or not he would be fair. And perhaps most importantly, we
23 just learned he hosted a dinner for all the sheriffs,
24 which Beaufort County sheriffs would have gone to. I
25 realize it was in 1995. However, may be the most

1 troubling thing as to me is that he, after being I'm sure
2 advised when they left yesterday, not to talk to anybody
3 about the case, he did, in fact, talk to the Bailiff,
4 which is understandable. The fact he made a phone call to
5 someone to tell them about being on jury duty and ask him
6 a specific question concerns me greatly, because we don't
7 know exactly what was conveyed in that, and it is a direct
8 admonition that's made to jurors as to not independently
9 look into things. And I think that that is a reason in
10 and of itself to, in an abundance of caution, to excuse
11 Mr. Sherman.

12 Again, he - his involvement with law enforcement is a
13 lot more than what he divulged in the letter that was sent
14 out. I think that was borne out by his testimony. So, I
15 can just tell you that there is no way in the world, with
16 all respect to Mr. Sherman, that I would have sat him on
17 the jury if one tenth of that would have been revealed.
18 And I think the fact that he was concerned about what he
19 heard and the way he should have responded indicates that
20 he should have responded, and had he done what he was
21 supposed to do, we would have struck him.

22 THE COURT: All right. Thank you. Mr. Sheldon?

23 MR. SHELTON: Your Honor, I greatly defer to the
24 court's wisdom on this matter. I'll just point out he
25 says he can be a fair and impartial juror. And I believe

1 the question that he was most concerned about was the
2 question about ever being involved with a burglary. He
3 didn't feel that he answered the question about law
4 enforcement dishonestly. However, I defer to the wisdom
5 of the court. Whatever decision you make, obviously, Your
6 Honor.

7 THE COURT: I don't think there was any intent on his
8 part to deceive the court or give inaccurate information
9 to the court. The questions he answered were, in fact,
10 did involve what he disclosed to us here.

11 MR. LEE: And I don't mean to suggest he was
12 dishonest.

13 THE COURT: Right.

14 MR. LEE: I'm not suggesting that argument at all.

15 THE COURT: Right. I'm sure that, if we had brought
16 each of the jurors out here and permitted an examination
17 of each of them into their background, that there would be
18 many reasons that you might chose to strike them had you
19 known certain information about them.

20 Therefore, I'm going to deny your motion.

21 MR. LEE: I just point for the record there are two
22 alternates that are ready to be seated if necessary back
23 there. So please note my objection for the record.

24 THE COURT: I understand. Now, are we ready for the
25 jury?

1 MR. SHELTON: May I take a very quick bathroom break.
2 I'll be very fast. Thank you.

3 THE COURT: All right. Five minutes.

4 MR. SHELTON: Thank you.

5 OFF THE RECORD.

6 BACK ON THE RECORD.

7 THE COURT: All right. Let's see if we can get the
8 jury in.

9 BAILIFF: Yes, Your Honor.

10 Your Honor, the jury is entering.

11 JURORS ENTER COURTROOM 10:01 A.M.

12 THE COURT: If you all will just remain standing for
13 a moment, you won't have to sit down and get back up.

14 Good morning and welcome, ladies and gentlemen. The
15 first thing we are going to do is have our Clerk
16 administer to you your oath as jurors.

17 MADAM CLERK: If you will raise your right hand
18 please. Do you solemnly swear or affirm that you shall
19 well and truly try and true deliberance make between the
20 State of South Carolina and the accused at the bar, and a
21 true verdict give, according to the evidence so help you
22 God?

23 RESPONSES BY JURORS.

24 THE COURT: Be seated, ladies and gentlemen.

25 As you heard yesterday, the Defendant, Marion

1 facts of the case in your presence, because, you, ladies
2 and gentlemen, are the sole judges of the facts in the
3 case.

4 In just a minute, the attorneys will make opening
5 statements to you where they tell you what they think the
6 evidence is going to show or not show.

7 Following that, the State will present evidence.
8 Much of the evidence I suspect will be from witnesses who
9 will testify from the witness stand, be subject to cross-
10 examination. There may be other evidence introduced
11 during the trial of the case.

12 After all that's done, the attorneys will make their
13 closing arguments to you where they try to convince you to
14 see the case the way they see it. And then, I'll tell you
15 about the law that applies in this case. And then, you'll
16 retire to the jury room and begin deliberations.

17 Until all that happens, you can't discuss the case
18 with anybody and you can't let anybody discuss the case
19 with you. And believe it or not, even in the jury room,
20 even among yourselves, you are not to discuss the case not
21 until it is all over with.

22 You can talk about the weather. You can talk about
23 anything you want to talk about, but up until the final
24 day when I tell you to retire to your jury room and begin
25 deliberating, you can't talk about the case.

1 Having said all that, ladies and gentlemen, we are
2 going to begin with opening statements.

3 Solicitor.

4 MR. SHELDON: Thank you, Your Honor. May it please
5 the court, defense counsel.

6 OPENING STATEMENT ON BEHALF

7 OF THE STATE, BY MR. SHELDON:

8 First of all, good morning, ladies and gentlemen. It
9 is a beautiful day. We are all here safe in this
10 courtroom. For all of you citizens of Beaufort County,
11 South Carolina, the Honorable Judge is presiding over this
12 matter. We have professional bailiffs here. We have
13 professional law enforcement protecting the doors of this
14 courthouse. We are in a safe, secure place.

15 On October 25, 2010, Senora Jones should have been in
16 a safe and secure place looking after her four – two of
17 her children and her niece and nephew, ages four and four
18 and seven and ten, in the comfort of her own home behind
19 her doors. She went upstairs and watched the end of a DVD
20 while her kids were playing downstairs, the kids she was
21 looking after.

22 And this Defendant, Mr. Marion Powell, and two other
23 armed assailants went through their backyard, corralled
24 the kids inside the house. Mr. Powell, not wearing
25 anything, a mask, not wearing anything over his face,

1 marched the kids at gunpoint up the stairs, lined them
2 against the wall and told them to sit down and be quiet.
3 Shhhhh, stop crying.

4 Then he went upstairs, and he and one of his other
5 men that were with him who had a mask on burst into Senora
6 Jones' bedroom.

7 He told her, holding her at gunpoint, put the phone
8 down, get on the floor. She thought it was her kids
9 running up the stairs, and suddenly, he runs into her
10 room. Put the phone down. Get on the floor. She is
11 holding the remote. Where is the money? Where is the
12 dope? One of the defendants herds her into her closet.
13 She takes out the cash that she had in one of the jackets
14 in the closet and gives it to him. \$2,000.00.

15 Then Mr. Powell stays with her and the children, who
16 were lined up right outside her door, as a lookout, he
17 helps tear apart her bedroom looking for valuables while
18 the other two men destroy the rest of her house with those
19 two children four years old, the seven-year-old child and
20 the ten-year-old child all there.

21 One of the children was crying. Mr. Powell, face
22 uncovered, goes and gets a Kleenex and hands it to him.

23 At one point, Ms. Jones asked him, can I get up? He
24 says, no. Stay down. At another point, another co-
25 defendant and Mr. Powell comes into the room, and that is

1 the Defendant yelled at her:

2 Shut the 'F' up. You talk too much.

3 Where's the money?

4 And she looks at Mr. Powell, and she talks with him,
5 pleads with him, we don't have anymore. We don't have
6 any; staring at him, his face uncovered this whole time.

7 The other two co-defendants go upstairs, and one of
8 them goes into the attic. Goes through every bathroom.
9 Goes through every closet. Tears the house apart. All
10 the while Mr. Powell is in there with the victim, Ms.
11 Senora Jones, with his face uncovered and with the
12 children. Ms. Jones then tells him, my mother, my sister
13 are at the grocery store. They'll be coming home soon.

14 What does he do? He goes and gets a shoe string so
15 when they come home he can tie them up. Ms. Jones watches
16 him do this. And then, he goes up and down the staircase
17 right in front of the children, including ten-year-old Ms.
18 A.H., with a gun in his hand walking up and down,
19 shoe strings, looking out the window and they watch him.
20 No mask this whole time.

21 This is what the house looked like. He is charged
22 with all these offenses, and we'll look at that later.
23 This is the house.

24 One of the closets downstairs, downstairs closet.
25 This is the area where the children were. The door to Ms.

1 Jones' bedroom. Pictures of the bedroom. The closet, her
2 bathroom, the children's bed, the stairs to the attic,
3 another bedroom, another bedroom, children's closet.

4 The next morning, after law enforcement arrived,
5 after Ms. Senora Jones called them, and told 911, after
6 being convinced to do so by her mother, because the
7 subject Defendant told her that, if she called the police
8 they would find her and kill her, called 911 crying.
9 After they took purses and a saddle bag or a handbag full
10 of other stuff and told them what happened. Bluffton
11 Police Department met separately with Ms. Jones and that
12 ten-year old, Ms. A.H., that they gave them four lineups
13 to look at. Four different lineups. So the first one to
14 little Ms. A.H., ten years old. Any of the people been in
15 your house last night in this lineup? Nothing.

16 Showed the second lineup. Yes. Who is it? That
17 one. Marion Powell. No hesitation. She did not
18 hesitate.

19 Third lineup. One of the other assailants didn't
20 have a mask on either. His face was completely covered.
21 I don't see that person.

22 Fourth line up. I don't see that person.

23 But she had seen Mr. Powell in the second one. One
24 hundred percent sure.

25 The next lineup was done with Ms. Senora Jones, who

1 was outside of the room. Did not speak with Ms. [A.H.], her
2 daughter, didn't know what took place in that lineup
3 procedure.

4 She came in, same was told to her and she was shown
5 the lineup, the first lineup. They're not there.

6 The second lineup. Her face goes flush, blank.
7 That's him. That's him. And she points to Number 6, the
8 same one her daughter pointed out. That's the guy who
9 held us up. That's the guy who they're sure that's the
10 lookout. That's Marion Powell.

11 The third lineup. Nothing. Don't recognize him.

12 Fourth lineup. Nothing.

13 Subsequently, they are shown four more lineups. And
14 when they declined to identify anyone else that was a
15 third person, we still don't know who that person is,
16 remember. And the other person had their face completely
17 covered, but the person that was with him the whole time,
18 his face uncovered, that's him. Okay. The person whose
19 face is covered, we believe we know who he is. We're
20 working on it, and that's what we're going to get to next.

21 Not only do we know Marion Powell was the person
22 with his face uncovered that you would be firmly convinced
23 of by both Ms. [A.H.] and Ms. Jones identifying him; you
24 also know how they got there. That's what we get next.

25 Suspect Number 2. You will hear a lot about Suspect

1 Number 1 and Suspect Number 1 and Suspect Number 3.

2 Suspect Number 2 is Marion Powell. Powell eventually
3 confesses to a person in jail, who he tells in detail
4 about the armed robbery, and included in some of the
5 things that he said were about the kids weren't supposed
6 to be there. It was supposed to be a dude and his baby
7 mama.

8 Now, before we go more into that, we need to think.
9 We know who, what, where and when, and that's enough, if
10 you're firmly convinced by that alone.

11 It is also interesting to know how - how did these
12 folks pick these people out? How did these folks end up
13 in this house? And oddly enough, it comes to a woman
14 named Kenya Hagood, and that's what I'm about to explain
15 to you.

16 Now, Cleven Jones is Ms. Senora Jones' husband.
17 Okay. He was not home when this took place. Senora Jones
18 was the mother, the baby mama.

19 Cleven Jones was having an affair with a woman named
20 Paulette Moultrie, and Paulette Moultrie was best friends,
21 by her own words, and maybe a little bit more by other
22 people's words, with a woman named Kenya Hagood.

23 There is another man you will hear from named Keith
24 Chisholm. Keith Chisholm and Cleven Jones, remember the
25 husband, was not home in the home invasion. He knows Mr.

1 Jones; works with him. They are friends. Knows Paulette
2 Moultrie, the woman that Cleven was having the affair
3 with, and also knows Kenya Hagood, and he is going to
4 testify to the connection between all three of them.

5 Keith Chisholm would tell something, would talk to
6 Cleven Jones, and Cleven Jones would, next thing you know,
7 Kenya Moultrie would - he would receive a call from Kenya
8 Moultrie. Keith Chisholm would talk to Kenya Hagood and
9 the next thing you know, Cleven Jones would be talking to
10 Keith Chisholm.

11 The armed robbery occurred on October 25, 2010.
12 That's Cleven Jones' birthday. So let's get back to this
13 confession.

14 So we've got a man named Eric Riley who has a
15 horrible record. He is in prison right now, so let's talk
16 about what Marion Powell told him.

17 Marion Powell and Eric Riley had something in common.
18 They both had a beef with this woman, Kenya Hagood.
19 Follow me?

20 Riley's beef was that, when he went to try to rob
21 this other guy of pot, Kenya happened to be there on the
22 porch with this other guy. Kenya got the jump on Eric
23 Riley and shot him four times. Okay.

24 Marion Powell's beef with Kenya was that she sent him
25 on a lick, which is an armed robbery, a term for armed

1 robbery, where she didn't do her homework. The kids were
2 home. Only the dude and the baby mama were supposed to be
3 there. Not the kids. So Marion Powell didn't care for
4 her either, so they had something in common, so they
5 talked about Kenya Hagood together.

6 Defendant said to Mr. Riley is that not only did
7 Kenya set it up, but this guy named Byron, Lil Lil Young,
8 was one of the people that committed the armed robbery
9 with him. The Defendant and Byron Young were close
10 friends at the time of the armed robbery, had a
11 relationship and they were known to be together.

12 Not only that, not only did the Defendant confess to
13 him that Kenya set him up and that Byron Young went there,
14 that guy with the mask on his face and this over his head
15 and had it pulled back into dreads, he was about five-
16 foot-seven. Exactly Byron Young's description.

17 Why is this interesting? Because while Mr. Powell is
18 in jail, he makes over 60 phone calls to Byron Young.

19 At some point Mr. Young tells Mr. Powell, you know I
20 ain't going to snitch. I know you ain't going to snitch
21 on us. I ain't going to snitch on you.

22 At another point Mr. Young and Powell talked about
23 how Mr. Young has a girlfriend. You've not going to
24 believe this. Guess where? At Mill Creek. And then,
25 Powell says, *I don't know where that's at*, and he starts

1 laughing. Mill Creek is where the home invasion took
2 place.

3 Then Young and Powell talked about how there is
4 somebody that the State is trying to make a co-d, which is
5 a co-defendant, out of. Okay. Somebody is talking some
6 funny ass shit. Excuse me, those aren't my words; those
7 are his. About something body on the outside looking in.
8 And then, trying to tell Mr. Young who this person is, Mr.
9 Powell says, Shorty. Shorty is slang for female. Mr.
10 Young was like, I don't get it. What? He's like, old
11 girl. And then, Powell says, the Defendant says, come on
12 man. You're usually faster than this. Don't worry about
13 that.

14 He was on the outside looking in. Defendant also
15 says, Kenya sent us on a lick, a female.

16 Now, you paid close attention to my opening
17 statement. There are a lot of facts here. This will be
18 something you will have to pay attention to throughout the
19 trial.

20 It can be summed up this way. Marion Powell went
21 into a home with four children and a mother without a mask
22 on. Marched the kids up the stairs. Held them there at
23 gunpoint and had conversations with them. Went into the
24 female's room. Held her at gunpoint. At one point had
25 conversations with her. In the amount of time it took to

1 do all that to her house, while the other two assailants
2 did all that with no masks on.

3 The next day both of them identified him, firmly
4 convinced.

5 Proof beyond a reasonable doubt is proof that leaves
6 you firmly convinced of a Defendant's guilt. On top of
7 that, that woman was held at gunpoint. Her husband was
8 having an affair with a woman who also had a relationship
9 with someone else on the outside, Kenya Hagood, and the
10 Defendant by his own words says that Kenya sent us on this
11 lick.

12 Please pay close as close attention to Mr. Lee as you
13 paid to me. Thank you and I ask for your attention
14 throughout this trial.

15 THE COURT: Thank you, Mr. Sheldon. Mr. Lee.

16 MR. LEE: Thank you, Your Honor. May it please the
17 court. Mr. Sheldon.

18 OPENING STATEMENT ON BEHALF

19 OF DEFENDANT, BY MR. LEE:

20 MR. LEE: I have a note pad, hopefully, I won't have
21 to refer to, but I don't any demonstrations for you. I'll
22 tell you this. My one-year-old just got back from his
23 first trip. He had never been away by himself. He just
24 got back the other day.

25 I was getting ready for trial this weekend and Carter

1 was gone, and I was thinking about when I was going to go
2 visit my grandparents.

3 My sister and I are one year apart. And during the
4 summer we would go down to Southern Alabama and stay with
5 our grandparents, and we were one year apart, boy and
6 girl. We were hugely competitive. Every thing we did was
7 a contest between Scott and Lori. And when we were at our
8 grandparents, of course, they spoiled us and we got to do
9 all kinds of things but then always, inevitably, something
10 would come up, some kind of conflict. And my sister and I
11 both thought it was very important to be the first person
12 that ran to our grandfather and said, you won't believe
13 Lori did; you won't believe what Scotty did.

14 And my grandfather, who didn't have much of an
15 education, and served in the Army, you know, laid bricks,
16 was a baker his whole life, he used to always tell us,
17 guys, let's hear what - let's hear what the other person
18 says, because the Bible says that first to present his
19 story sounds right until someone else steps forward and
20 questions it. And I never knew where that came from. And
21 a while back I was, for whatever reason, reviewing it, as
22 we do now, and found it. It was *Proverbs 18, Verse 17*.
23 And it struck me as I was thinking about it this weekend,
24 you know, when you have a trial there are certain rules
25 you talk about, but one of the rules is the State always

1 gets to go first. So we have to sit there and listen and
2 make notes and everything, but they get to go first.

3 So, the first thing I'll ask you is don't in any way
4 be swayed by what you just heard. Don't be swayed by
5 raising the voice, the showing of pictures, the
6 heinousness, if that's the word, of the crime, because
7 that's not why we're here today.

8 What we're here today for is whether the State can
9 prove to you, beyond a reasonable doubt, that Marion
10 Powell was not misidentified and whether they can prove to
11 you, beyond a reasonable doubt, that he is responsible for
12 this crime, these horrible crimes. Horrible.

13 And he kind of told you how he was going to do it.
14 I've been on this case for almost three years. So, with a
15 ball in his hands, this is the first time you all have
16 seen this, but he kind of went through his theory a little
17 bit. I think you all did a good job of disguising your
18 confusion with it, but maybe it will be cleared up; maybe
19 it won't. But the thing I want to tell you about it is,
20 there's more to it than that. There's a lot more to it
21 and there's a lot more that he didn't tell you.

22 And also, when I was young, I used to love to read
23 Sherlock Holmes stories. And for those of you who do not
24 know, Sherlock Holmes was a detective, and he had a
25 sidekick named Watson, and Watson was his kind of Bowman-

1 type fellow who followed Holmes around. And they had
2 these stories that Holmes would always solve the mystery
3 at the end and figure it out, and neither the reader or
4 Watson could figure out how he got to it. So, the author
5 uses Watson to explain it to the reader what happened.
6 And at the end of all these mysteries, Sherlock Holmes
7 would explain to Watson how he figured it out.

8 Well, one of the stories involves a burglary of a
9 castle, and they couldn't figure out who did it. And
10 Sherlock Holmes' big question to the witnesses was did
11 anybody hear the dogs barking out front, and everybody
12 said no. What does that have to do with anything?

13 Well, what it had to do with it, the dogs didn't
14 bark, because, whoever did it, was known to the dogs, and
15 they didn't bark out. So, the lesson out of that Sherlock
16 Holmes told Watson was: Watson, most times in finding a
17 truth, what is most important is not what you see or hear,
18 but what you don't see and what you don't hear. What you
19 don't see and you don't hear, like, they didn't hear the
20 dogs.

21 So, let's talk about some things that you didn't hear
22 that you are going to, and quite frankly, in all fairness,
23 because you all have a very serious job ahead of you,
24 should have been, and you can ask yourself why they
25 weren't. That's up to you.

1 The State's theory that they went through. First of
2 all, what they didn't tell you, he said in passing that
3 Eric Riley had a horrible record, but there is a lot more
4 to it than that.

5 Eric Riley is being paid. His testimony is bought
6 and paid for with the ultimate in currency, not dollars,
7 not gold, not silver, freedom.

8 As you are going to hear about what Eric Riley is
9 getting to go up there and testify the way the Solicitor
10 wants him to, to put into his theory, and you don't see
11 and you don't hear. In fairness, would that have been
12 appropriate to tell you, while he is putting on this
13 presentation? Say, hey, there's a little bit more you
14 need to know.

15 How about the witnesses they are going to call. What
16 he didn't tell you and if he goes by the witness list and
17 everything we've talked about, there is going to be a
18 witness or two that he calls that he knows or he believes
19 isn't telling the truth. He is going to call the witness,
20 and then, say you're not telling the truth. His own
21 witness.

22 And then he is going to turn around and say, you're
23 not telling the truth, because we've got another witness,
24 who is also a convicted felon like all the players are
25 here, apparently, he is having other witnesses say,

1 witness number one is lying. That convicted felon is
2 lying about this. He did say that. What is that? Well,
3 that is very important, because that's where the
4 confession came from. The witness who absolutely denies
5 telling other witnesses that Marion Powell said that,
6 they're going to put him up on the stand and say I didn't
7 say that. Yes, you did and we're going to bring this thug
8 up here and say that you did say that.

9 Wouldn't you like to hear about that? You're going
10 to.

11 They're going to talk about - so they've got some
12 witnesses they don't want you to believe at all. They've
13 got some witnesses they want you to completely believe.
14 And some witnesses that they are going to share and pick
15 some testimony and want you to believe some of it. Why?
16 Because they have got to fit it into that little theory
17 and arrows and stuff that they come up with. And it
18 doesn't fit. The problem is they've got a theory that
19 they're fitting facts into. That's not how you do
20 anything. You take all the facts, and then you come up
21 with your theory.

22 Excuse me one second.

23 The other thing that he didn't tell you, he kind of
24 said in passing, but in order for this theory to apply,
25 they went and got jail records and jail phone calls

1 between Mr. Powell and a guy named Byron Young that you'll
2 hear about. And we'll get to that in a minute. And he
3 said, oh, he talked to him 60 times or more.

4 Yet, the only thing that they are going to have
5 before you are a couple conversations between the two.
6 They don't say exactly what they want them to say. Well,
7 how do they get around that? They're speaking in secret
8 code that only we can tell you what it means.

9 They're talking in secret code, okay, and those are
10 the things they can even squeeze into their theory. And
11 then, you're going to hear about Mr. Sheldon mentioned in
12 passing a guy named Byron Young, because, for this theory
13 to go, for this theory to work, you've got to believe that
14 Kenya Hagood set it all up and Byron Young was there three
15 years ago, October 25, 2010.

16 But guess who hasn't ever been arrested for this?
17 Kenya Hagood and Byron Young. Does that matter?
18 Apparently not. You didn't hear about that.

19 Now, Senora Jones and [REDACTED] A.H. You probably said
20 to yourself, hey come on. He sounds good. My wife loves
21 to watch reality T.V., which is a misnomer. There is
22 nothing real about that, but she loves all those shows and
23 when I keep hearing these versions, that's what kind of
24 comes to me. And this is so far out there, their theory,
25 that it doesn't even make sense, much less prove anything

1 beyond a reasonable doubt, which is the standard for
2 criminal court, yet, they're going forward. But you're
3 saying, hold on a minute. This sounds all good and there
4 is a lesbian love triangle and there is a this and there
5 are secrets and there are codes and stuff like that. That
6 sounds real good Mr. Lawyer, but he said that this ten-
7 year old girl and her mom identified your client in a
8 photo lineup, and they did. They absolutely did. There
9 is no -- we don't dispute that. We don't dispute what
10 happened at the house. We don't dispute the pictures he
11 put there of the house in disarray. He said, we're going
12 to need a photo lineup. They were not trying to set up
13 Marion Powell. They weren't trying to frame him. What
14 happened was they made a mistake. An honest, sincere
15 mistake.

16 Oh, come on, he was there and I'm sure that I'll tell
17 them. You're going to hear the rest of the story about
18 that, too, about that photo lineup. And you are going to
19 hear that people do make honest, sincere mistakes, and a
20 lot of it has to do with the way that the photo lineup is
21 created, the way that it's presented and the whole
22 process, and there have been all kinds of studies on it.
23 And we're actually going to bring a psychologist. I wrote
24 her name on the voir dire. Dr. Lori Vanwallendael is
25 going to talk to you about photo identification and it's

1 pretty interesting, but again, we're trying to show you
2 what else is out there, the things that you don't see and
3 you don't hear from their version. So, Dr. Vanwallendael
4 will be here to testify about that.

5 And again, we don't contest that this place was
6 broken into by three people. That is was horribly
7 traumatic. That there were guns pointed at kids and mom
8 and everybody else. There is no dispute these people have
9 gone through a terrible thing, and we absolutely
10 sympathize and are sorry that they went through that.

11 The trick for you or the rather difficult thing to
12 do, but I'm sure you all can do it, is don't let your
13 sympathy for the victims blind your common sense. And
14 it's tough, but it's easier said, but a tough thing to do,
15 because everybody is going to feel sorry for that person
16 for going through that. Everybody does. And I assume
17 they want to find the right people or person responsible
18 for this, as well, and they tried to help. But they made
19 a simple honest mistake, a sincere honest mistake.

20 And I will suggest to you that the State knows that,
21 because of the other stuff that is in the case, they felt
22 so great about this identification, they weren't aware of
23 the study that talked about how - with this not being
24 reliable and that why would they go to so much trouble to
25 power to try to make some kind of connection between

1 somebody who is from Big Estate area that's up near
2 Yemassee and these people in Bluffton.

3 They knew early on there was a problem. Even after
4 having two photo lineups, they knew there was a problem.
5 And the time line we're going to talk about at the end of
6 the case is very important to show you how we got to this
7 point. Because just the mention of the theory they have
8 is evidence that they're concerned about the photo lineup,
9 too, and we will have the Doctor here to explain that.

10 Now, a couple more things and I'll sit down. Because
11 I don't get to go first, and I don't know how long it's
12 going to take before I can say anything. I've never been
13 a juror, but I've been practicing law for 20 years. I've
14 always been on this side of the fence. You see, I'm not a
15 captive audience like you all are. I don't come into
16 court and all of a sudden be told all these rules I've got
17 to live by that I've never had before.

18 You have people tell you all the time when to go to
19 the restroom, when to take a break, what time you've got
20 to be in court, what time you're leaving, that you have to
21 go outside for a little bit while the lawyers talk and
22 it's a weird thing. And then, not only do they do that,
23 they also say, look, we want you to answer some certain
24 questions about whether or not, you know, you can be fair
25 and impartial, and all of you all answered those questions

1 and assured us that you could, even though you may have
2 had prior life experiences that may make you feel one way,
3 even though you know how many charges there are against
4 Marion Powell, even though you were told how serious the
5 charges are against Marion Powell, your oath as jurors
6 said, look, I'm going to be fair. I can set all that
7 stuff aside. It has nothing to do with whether or not he
8 is guilty. I can set all that aside. And we're
9 absolutely convinced all of you all are going to be a
10 hundred percent fair, and that is all we can ask. But it
11 is a weird process and we ask you to do certain things
12 you've never had to do before, so bear with us. It's the
13 way that it has to go.

14 Then the Judge is going to read to you later on what
15 is called the charge, what the law of the case is. He is
16 going to read it very quickly. I don't know if any of you
17 have any legal experience but you have, you know, to
18 absorb it the best you can. And the lawyers will try to
19 help explain that to you, so I realize you have a
20 formidable task before you just listening and that sort of
21 thing.

22 But to close, I want to tell you one of the most
23 important, if not the most important thing, to understand
24 when you are in criminal court is that the standard of
25 proof, what the State has to do in order to convict

1 anybody is to prove a case beyond a reasonable doubt. It
2 sounds good when you see it on T.V. It sounds good.
3 Well, what does that mean? Well, what it means is a
4 reasonable doubt is a type of doubt that would cause a
5 reasonable person to hesitate to act. A reasonable person
6 to hesitate to act, so unless and until the State proves
7 to you, beyond a reasonable doubt, so that you have no
8 hesitation to act, until and unless they do that, they
9 haven't done what they are supposed to do. They haven't
10 proven anything. And sometimes that is a hard concept to
11 grasp, but it is very, very important, and it's the
12 bedrock of the criminal process to prove beyond a
13 reasonable doubt, but you're going to have plenty of
14 reasons to hesitate.

15 I will talk about that at the very closing later on.
16 And a lot of it is things that you haven't seen already
17 that they didn't tell you about, and things that you are
18 going to see, and lots of things you aren't going to see.

19 So, we're convinced, at the end of the case, that you
20 will have plenty of reasons to hesitate to act, and since
21 you do, that your oath as a juror means that the one
22 verdict that is appropriate under your oath to come back
23 with is not guilty.

24 Thank you.

25 THE COURT: Thank you, Mr. Lee.

1 MR. LEE: Thank you, Your Honor.

2 THE COURT: Call your first witness.

3 MR. SHELDON: Thank you, Your Honor. We need to move
4 this out of the courtroom very briefly to get it to the
5 next courtroom if that's all right.

6 THE COURT: Okay.

7 MR. SHELDON: The State calls Melanie Smith with the
8 Beaufort County Sheriff's office. Melanie Smith.

9 BAILIFF: Come up and be sworn, please, ma'am.

10 MELANIE SMITH

11 being first duly sworn, testified as follows:

12 MADAM CLERK: If you will state your full name and
13 spell your last name for the record, please.

14 MS. MELANIE SMITH: My name is Melanie Smith, M-E-L-
15 A-N-I-E S-M-I-T-H.

16 MELANIE SMITH

17 DIRECT EXAMINATION BY MR. SHELDON:

18 Q. Thank you, Ms. Smith. I just said of the Beaufort
19 County Sheriff's office. Is that where you work?

20 A. Correct.

21 Q. And what is your role there?

22 A. I'm the NCIC tech and the records custodian for the
23 communications center.

24 Q. What are some of your duties as the records custodian
25 of the communications center?

1 A. I respond to requests for information and recordings
2 from agencies we work for or attorneys.

3 Q. Where are those recordings stored?

4 A. They're on a hard disk, disk drive, in our recording
5 system.

6 Q. Do those recordings include 911 calls?

7 A. Correct.

8 Q. Do you have a method or manner of storing those 911
9 calls?

10 A. Yes.

11 Q. How is that?

12 A. It's stored usually about two years on the disk
13 itself.

14 Q. And are you able to search for a 911 call and find
15 it?

16 A. Correct.

17 Q. Did you do that in this case?

18 A. Yes.

19 Q. Did you make a disk of that?

20 A. Yes.

21 Q. Did you provide that disk to the Bluffton Police
22 Department?

23 A. Yes.

24 MR. SHELDON: May I approach, Your Honor?

25 THE COURT: Certainly.

1 MR. LEE: I have no objection to the foundation or
2 the admissibility of the 911 call.

3 MR. SHELDON: Thank you, Your Honor. I'm approaching
4 Sergeant Smith with Exhibit Number 45.

5 Q. And just for the purpose of the record, would you
6 identify that.

7 A. Yes. That's a disk I made on the 28th of October
8 2010, of the 911 call of the armed robbery that occurred
9 at [REDACTED].

10 Q. And where's that?

11 A. On the 25th.

12 Q. Is that in Beaufort County?

13 A. Yes, in Bluffton.

14 MR. SHELDON: I ask the Court to publish it.

15 THE COURT: Okay.

16 AUDIO OF 911 CALL MARKED STATE'S

17 EXHIBIT NUMBER 45, ADMITTED AS EVIDENCE.

18 MR. SHELDON: No further questions, Your Honor.

19 MR. LEE: I have no questions for the witness.

20 THE COURT: Thank you, ma'am. You may step down.

21 MR. SHELDON: Tricia Brubaker.

22 BAILIFF: Come up and be sworn, please.

23 SERGEANT TRICIA NICOLE BRUBAKER

24 being first duly sworn, testified as follows:

25 MADAM CLERK: If you will state your full name and

1 spell your last name for the record, please.

2 SERGEANT TRICIA NICOLE BRUBAKER: All right.

3 Sergeant Tricia Nicole Brubaker. Brubaker is going to be
4 B-R-U-B-A-K-E-R.

5 MR. SHELDON: Thank you, Your Honor. May it please
6 the court.

7 THE COURT: Certainly.

8 SERGEANT TRICIA NICOLE BRUBAKER

9 DIRECT EXAMINATION BY MR. SHELDON:

10 Q. Sergeant Brubaker, where do you work?

11 A. I work for the Bluffton Police Department.

12 Q. You're a Sergeant there?

13 A. Yes, sir.

14 Q. What is your role as a sergeant?

15 A. I'm a road patrol sergeant.

16 Q. Where were you working on October 25, 2010?

17 A. I was with the Bluffton Police Department.

18 Q. And do you remember working that day?

19 A. Yes, I do.

20 Q. Do you remember responding to any place in
21 particular?

22 A. Yes, I do.

23 Q. Where?

24 A. I responded to [REDACTED] located in the Mill
25 Creek.

- 1 Q. In Mill Creek. Describe what that is.
- 2 A. It's a multi-home subdivision located in the town
- 3 jurisdiction of Bluffton.
- 4 Q. Is that in Beaufort County?
- 5 A. Yes, sir.
- 6 Q. Why did you respond there?
- 7 A. Dispatcher reported out a home invasion, armed
- 8 robbery, kidnaping.
- 9 Q. When you arrived, was there any other officer there?
- 10 A. No, sir.
- 11 Q. You were first on the scene?
- 12 A. Yes, sir.
- 13 Q. Please describe to the jury what you saw.
- 14 A. Upon immediate arrival, I did a quick protective
- 15 sweep of the area of the home, because dispatch had
- 16 advised that two or three black males had just went
- 17 into the home brandishing weapons. So, my first role
- 18 was for preservation of life, making sure everybody
- 19 was all right. Making sure the scene was safe.
- 20 Making sure the victims were safe. After I made the
- 21 protective sweep, I was observing that the victims
- 22 who were in the house, an adult and several small
- 23 children, were visibly upset, shaking, crying, very
- 24 high emotions at that point in time.
- 25 Q. What did you do next?

1 A. At that point in time, I was attempting to calm them
2 down, console them, let them know that they were safe
3 now. We were here. Get as much information as I
4 could in regard to the suspects out to responding
5 officers. That way, responding officers, if they
6 were to see anything, they wouldn't be caught off
7 guard or they could see the suspects.

8 Q. Did any other responding officers arrive?

9 A. Yes, sir.

10 Q. Who is the next person you remember arriving there?

11 A. Sergeant Chandler.

12 Q. And did they give you descriptions of the suspects?

13 A. They did.

14 Q. What were those descriptions?

15 A. From my recollection, it was two or three black
16 males. I'd have to refer back to the 911 tape at
17 that point in time, but brandishing weapons.

18 Q. Did you stay there until the scene was clear?

19 A. Yes. Until I was relieved by the other officers.

20 Excuse me.

21 Q. Are you the main case officer on this case?

22 A. I am not.

23 Q. You're the person who responded?

24 A. Yes, I am.

25 MR. SHELDON: Thank you. Those are all the questions

1 I have.

2 SERGEANT TRICIA NICOLE BRUBAKER

3 CROSS-EXAMINATION BY MR. LEE:

4 Q. Sergeant Brubaker, can you please tell us again what
5 your recollection was as far as the descriptions
6 given.

7 A. I'd have to refer back to the 911 tape, sir.

8 Q. Okay. But did you say two to three black males
9 brandishing weapons?

10 A. Yes.

11 Q. That was your recollection?

12 A. That was the call that came out, sir.

13 Q. So, did you obtain descriptions of the suspects from
14 the people at the house?

15 A. The victims?

16 Q. Yes.

17 A. Yes, sir.

18 Q. Okay. And do you remember what those descriptions
19 were?

20 A. I'd have to refer back to the tape, sir.

21 Q. To the 911 tape?

22 A. Yes, sir.

23 Q. Well, that wouldn't be on the 911 tape. Would it?

24 A. It would be whatever I put over the radio to
25 responding officers, sir.

1 Q. But you don't have any notes or anything indicating
2 what -

3 A. No, sir.

4 Q. Okay. Did you write a report in this case?

5 A. I did a supplement report, sir.

6 Q. Okay. Can I hand you - is that the report you are
7 referring to?

8 A. Yes, sir.

9 Q. Okay. And it's what, one paragraph?

10 A. Yes.

11 Q. Less than a page? And that's all you filled out for
12 this?

13 A. Yes, sir.

14 Q. Okay. And did you relay the description that you got
15 to Sergeant Chandler?

16 A. Yes, sir.

17 Q. As indicated by - okay. But you don't remember
18 exactly what that description was here today?

19 A. Not at this time, sir.

20 Q. Okay.

21 MR. LEE: That's all I have, Your Honor.

22 THE COURT: Anything else?

23 MR. SHELDON: No, Your Honor.

24 THE COURT: Thank you, ma'am. You may step down.

25 WITNESS: Thank you, sir.

1 MR. SHELDON: I ask that this witness may be relieved
2 from the trial of this case.

3 MR. LEE: No objection.

4 THE COURT: You're excused from your subpoena.

5 WITNESS: Thank you, sir.

6 THE COURT: Call your next witness.

7 MR. SHELDON: Scott Chandler.

8 BAILIFF: Chandler?

9 MR. SHELDON: Correct.

10 BAILIFF: Come forward and be sworn, please.

11 SERGEANT DONALD SCOTT CHANDLER

12 being first duly sworn, testified as follows:

13 MADAM CLERK: Thank you. Have a seat, please. If
14 you will, state your full name and spell your last name
15 for the record, please.

16 SERGEANT DONALD SCOTT CHANDLER: Donald Scott
17 Chandler. C-H-A-N-D-L-E-R.

18 SERGEANT DONALD SCOTT CHANDLER

19 DIRECT EXAMINATION BY MR. SHELDON:

20 Q. Sergeant Chandler?

21 A. Yes, sir.

22 Q. Where do you work?

23 A. Bluffton Police Department.

24 Q. And were you working there on October 25, 2010?

25 A. Yes, I was.

1 Q. What was your role then?

2 A. I was the road patrol supervisor.

3 Q. And did you respond -- do you recall responding to any
4 specific location on that day?

5 A. Yes, I do.

6 Q. Where?

7 A. [REDACTED].

8 Q. And where is that?

9 A. It's located in the Mill Creek subdivision, which is
10 in the town of Bluffton.

11 Q. And what was the reference of that call?

12 A. I believe it was a robbery call.

13 Q. Do you remember when you responded on the scene who
14 was there?

15 A. Yes, I did.

16 Q. Who?

17 A. Officer Brubaker was there, and then the complainant,
18 the victim.

19 Q. Please describe what you see.

20 A. When I walk up, the victim is standing inside the
21 front doorway. I approach her and we step inside the
22 front entryway. I begin speaking to her, and I
23 notice that an interior first floor closet door is
24 open, and I notice a lot of objects that I believe
25 were in the closet were now on the floor.

1 Q. And who else do you see there?

2 A. Further on in the house in the living room I did see
3 four small children. I believe it was three - three
4 girls and one boy.

5 Q. What do you do?

6 A. I begin to ask the victim what happened, why we were
7 there.

8 Q. And does she relay to you anything at all about
9 identification of the suspects?

10 A. Not initially, but later on, when I was speaking with
11 her upstairs.

12 Q. What did you do then?

13 A. Based on my first initial conversation with her, we
14 went upstairs to look at the upstairs hallway and
15 bedrooms.

16 Q. What do you see?

17 A. Basically the same thing I saw downstairs in the
18 closet. It looked as if every single bedroom,
19 bathroom, attic, everything had been gone through.
20 Mattresses were turned over. Drawers were pulled
21 out. Clothing and items were thrown on the floor.

22 Q. What do you do next?

23 A. At that point in time I finished my conversation with
24 the victim. I made my notifications to my command
25 staff, and requested that investigations respond to

1 the scene.

2 Q. Is that the time she gave you identification
3 characteristics of the suspects?

4 A. Yes, sir.

5 Q. Do you recall what those are?

6 A. Not specifically. I would have to look at my report.

7 Q. Would that help refresh your recollection?

8 A. Yes, sir. I would.

9 MR. SHELDON: May I approach, Your Honor?

10 THE COURT: Certainly.

11 Q. I'm handing you what is on your report. Do you
12 recognize what that is?

13 A. Yes, sir. I do.

14 Q. Is that your report for the evening?

15 A. Yes, sir. It is.

16 Q. And that report relates to this incident?

17 A. Yes, sir. It does.

18 Q. Did you document in that report the description of
19 the suspects?

20 A. Yes, I did.

21 Q. Will you please tell the jury what the description
22 is?

23 A. I was told that the first suspect was a black male,
24 approximately five-foot, seven inches tall, wearing a
25 white t-shirt and blue jeans. He may have had

1 dreads. He had something over his head, a white
2 cloth, and he also had a ponytail. He is
3 approximately in his mid-20's. Medium-to-light
4 complexion. The victim could only see his eyes.
5 The second suspect was described as a black male;
6 approximately six-foot, one inches tall; 180 pounds;
7 black pants; black t-shirt. No facial hair. He did
8 have a short Afro with flared nostrils. This
9 individual did carry a silver handgun in his right
10 hand. The third suspect was described as a black
11 male, skinny dreads down to his ears. Light-to-
12 medium complexion. Red, glossy eyes, maybe drug
13 related. A white polo with colored stripes. Jeans
14 with bleach - I'm sorry, three bleach spots under the
15 back pocket. And there was something over his face.

16 Q. Did you do anything to document the scene?

17 A. I completed my incident report and I also took
18 photographs of the scene.

19 Q. You took photographs of the scene that night?

20 A. Yes, sir. I did.

21 MR. SHELDON: Beg the Court's indulgence.

22 THE COURT: Certainly.

23 Q. You said you were the supervising officer?

24 A. Yes, sir.

25 Q. Now, were you in charge of supervising any type of

1 neighborhood canvas to see if anyone saw anything?

2 A. Yes, I was.

3 Q. And did that result in anything at all?

4 A. We did contact one neighbor who said that he did see
5 a vehicle pulling in a driveway on Oaksdale Drive a
6 little bit earlier that night.

7 Q. Anything specific?

8 A. I believe he said it was a grey van, tinted windows,
9 that had pulled into her driveway, and then pulled
10 out. He said that it looked like there was a black,
11 male driver and possibly a passenger.

12 Q. Did anyone else have any other information?

13 A. No, sir.

14 Q. Did you document, initially, anything that was
15 reported stolen by the victims?

16 A. Yes, sir. I did.

17 Q. What are some of those things - items?

18 A. I'd have to look at my report again.

19 Q. Would it refresh your recollection?

20 A. Yes, sir.

21 Q. Please do.

22 A. Initially, the victim told me that there were three
23 or four handbags taken, a necklace, a Rolex watch,
24 miscellaneous U.S. currency, a suitcase, a camcorder
25 and a computer. And that is what she had told me at

1 the time.

2 Q. And did you get an estimated amount for that?

3 A. I believe the numbers have changed, but I think at
4 the time, I did put in the correct amount of what she
5 had reported. Later on, other things were reported,
6 and that number is documented here.

7 Q. Okay. What was the initial amount reported?

8 A. I believe it was 20 thousand, possibly.

9 Q. And then what was the additional - with the
10 additional items that were documented in the report?

11 A. I believe the total ended up being \$51,540.00.

12 MR. SHELDON: Those are all the questions I have for
13 you. Please answer any questions defense counsel has.

14 A. Thank you, sir.

15 THE COURT: Mr. Lee.

16 SERGEANT DONALD SCOTT CHANDLER

17 CROSS-EXAMINATION BY MR. LEE:

18 Q. Sergeant Chandler, Mr. Sheldon was asking you about
19 descriptions that you took. That was from Senora
20 Jones, the mother?

21 A. Yes, sir.

22 Q. Okay. So those descriptions that you gave are from
23 Ms. Jones?

24 A. Yes, sir.

25 Q. Okay. And when you were speaking with her, were you

1 taking any notes down?

2 A. Yes, sir.

3 Q. Okay. And does this report reflect what your notes
4 indicate?

5 A. Yes, sir.

6 Q. Okay. And you put in this report anything that you
7 considered important or relevant? Is that right?

8 A. The descriptions?

9 Q. Yes, as far as the descriptions.

10 A. Yes, sir.

11 Q. Okay. And I notice that, in some instances, there
12 was - seemed to be some certainty and there was some
13 not so certain. Would you agree with that?

14 A. Yes, sir.

15 Q. And again, according to your report, Ms. Jones
16 indicated that Suspect Number 2 had a silver handgun
17 in his right hand. Is that right?

18 A. Yes, sir.

19 Q. Okay. And this neighborhood canvas, which, Mr.
20 Sheldon talked about the vehicle, that was done that
21 night?

22 A. Yes, sir.

23 Q. Okay. So the information about the grey van came
24 that night?

25 A. Yes, sir.

1 Q. Okay.

2 MR. LEE: That's all I have for Sergeant Chandler.
3 No objection to him being excused.

4 MR. SHELDON: Just hold on a second.

5 SERGEANT DONALD SCOTT CHANDLER

6 RE-DIRECT EXAMINATION BY MR. SHELDON:

7 Q. You didn't have - find - you didn't have any license
8 plate or any other description of this grey van.
9 Correct?

10 A. No, sir. We did not.

11 Q. Thank you.

12 MR. SHELDON: That's all the questions I have.

13 THE COURT: Thank you. You may step down and you are
14 excused from your subpoena.

15 WITNESS: Thank you, sir.

16 MR. SHELDON: State calls [REDACTED] A.H. [REDACTED] A.H.

17 BAILIFF: Just come up here by the table and be sworn
18 in.

19 [REDACTED] A.H.

20 being first duly sworn, testified as follows:

21 MADAM CLERK: Okay. You can have a seat, please.

22 We're going to have you state your name for the record and
23 spell your name for us.

24 WITNESS: [REDACTED] A.H. [REDACTED] A.H.

25 [REDACTED] A.H.

1 DIRECT EXAMINATION BY MR. SHELDON:

2 Q. Hey, Ms. A.H. How are you doing?

3 A. Good. How are you?

4 Q. How old are you?

5 A. Thirteen.

6 Q. How old were you on October 25, 2010?

7 A. Ten.

8 Q. What year are you in school?

9 A. What year?

10 Q. Huh-uh.

11 A. Fourth grade. Third or fourth grade.

12 Q. What year are you now?

13 A. Seventh - eighth grade.

14 Q. Ms. A.H., if I told you that I was wearing an orange
15 tie, would that be true?

16 A. No, sir.

17 Q. What would it be?

18 A. A lie.

19 Q. If I told you I was wearing a pink suit, would that
20 be true?

21 A. No, sir.

22 Q. What would it be?

23 A. A lie.

24 Q. If I told you that I had a wristwatch on, would that
25 be true?

1 A. Yes, sir.

2 Q. If I told you that this courtroom has windows that go
3 outside, would that be true or a lie?

4 A. It would be a lie.

5 Q. You understand that it is important to tell the truth
6 in court?

7 A. Yes, sir.

8 Q. Why?

9 A. Because you can mess someone's life up if you don't.

10 Q. Thank you. Do you remember -- did you used to live in
11 Bluffton?

12 A. Yes, sir.

13 Q. Do you remember where?

14 A. In Mills Creek.

15 Q. Do you remember something that happened at Mills
16 Creek while you were living there?

17 A. Yes.

18 Q. What happened?

19 A. Someone walked into my house and they robbed us. It
20 was three men.

21 Q. Since that incident, have you seen that man?

22 A. No, sir.

23 Q. Do you see him anywhere in the courtroom today?

24 A. Right there.

25 Q. Right where?

1 A. There.

2 Q. Are you certain that's him?

3 A. Yes, sir.

4 Q. Have you been in this courtroom since before coming
5 in to testify?

6 A. No.

7 Q. Are you absolutely certain?

8 A. Yes.

9 Q. Tell us what you remember about that day.

10 A. I remember being outside and then walking in the
11 house to get a jacket. And then, on my way back down
12 the stairs, three men coming up and telling us to sit
13 against the wall. And we just sat there, and we
14 cried, and he told us to be quiet. And I remember
15 him going into my mom's room.

16 Q. Who told you to be quiet?

17 A. At some point, they all told us to be quiet, but it
18 was more than once, because we were crying and they
19 asked us to be quiet and stop crying.

20 Q. What was happening in the other room?

21 A. They were yelling at my mom.

22 Q. What were they saying?

23 A. That, if - like, if she said something that she was
24 going to die it was not worth it and to show us where
25 everything is and for her to be quiet and to lay

1 there flat on her stomach.

2 Q. Did they do anything to you or your brother or your
3 cousins?

4 A. No.

5 Q. Who did you have the most contact with out of the
6 three people that came into your house?

7 A. Him.

8 Q. What did he look like that day? What was he wearing?

9 A. He had on a black shirt and pants and his hair was
10 longer.

11 Q. When you say *him*, you're talking about the person
12 with the white shirt and black tie on?

13 A. Yes, sir.

14 MR. SHELDON: Let the record reflect that she has
15 identified the Defendant in the identification.

16 THE COURT: So noted.

17 MR. LEE: Your Honor, I would, again, place on the
18 record my previous objection to the in-court
19 identification of Mr. Powell based upon previous
20 arguments.

21 THE COURT: Noted.

22 MR. LEE: Thank you.

23 Q. And tell us everything you remember him doing, *him*
24 being the Defendant that you see there.

25 A. Walking back and forth from where we were to where my

1 mom was and in her room. And I remember him giving
2 my cousin tissue, because she was crying and like,
3 um, just - he stood there with us. And then, he
4 would walk back and he went up the steps. He pointed
5 to tell us where to sit.

6 Q. Where was that?

7 A. Like in the house?

8 Q. Uh-huh.

9 A. Near the staircase against the wall.

10 Q. Was that upstairs or downstairs?

11 A. Upstairs.

12 Q. What is near that area there?

13 A. A window and like a chandelier-type thing, like a
14 lamp. And it's right like you could see the stairs.
15 And then, there is my mom's room right, a couple
16 steps to the right.

17 Q. You say he was going back and forth between your
18 mom's room and you all?

19 A. Yes, sir.

20 Q. Did any of the other suspects have anything on their
21 face?

22 A. One had a um - I don't know what it was, but it was
23 covering his nose down. You could see his eyes,
24 though.

25 Q. What did he look like?

1 A. He had dreads and his eyes were - like they red and
2 they were kind of thin.

3 Q. What about any of the other people?

4 A. One was short and he was the loudest one, and his
5 eyes were like really red, too, and they were thin.

6 Q. You said they were really red?

7 A. Yes.

8 Q. And they were thin? Did he have anything over his
9 face?

10 A. No.

11 COURT REPORTER: I'm sorry. When he said they were
12 thin, you didn't give a verbal answer.

13 A. They were thin.

14 Q. Did he have anything over his face?

15 A. No.

16 Q. What else do you remember, if anything, the Defendant
17 doing?

18 A. Just he told us to be quiet and stay there when he
19 walked down the stairs. And I think - I believe
20 that's when they left, because they didn't come back
21 up.

22 Q. When they left, do you remember them holding
23 anything?

24 A. They had a lot of bags.

25 Q. Describe those bags.

1 A. They were like luggage that we use when we're going
2 on trips and they were filled - like they had our
3 stuff in them. I seen my computer and some clothes
4 and shoes.

5 Q. Shoes?

6 A. Yes. Purses.

7 Q. Purses?

8 A. (Nodded head)

9 Q. What types of shoes?

10 A. Like heels. Like my mom's stuff.

11 Q. Your mom's stuff?

12 A. Yes.

13 Q. Who was the last of them to leave?

14 A. The guy that had something over his face.

15 Q. Was the very last to leave?

16 A. They all left together, but he was the last one down
17 the stairs.

18 Q. Who was the last - were you held at gunpoint the
19 whole time?

20 A. Not when they went back to my mom's room. We were
21 left there alone.

22 Q. When the Defendant was walking up and down the
23 stairs, was he holding you at gunpoint the whole
24 time?

25 A. Yes.

1 Q. And how many times do you think that he walked up and
2 down the stairs?

3 A. About three. Three or four times.

4 Q. When he was walking up and down the stairs, what was
5 he doing?

6 A. My mom told him - I could hear my mom telling him
7 that my grandma was on her way back from the grocery
8 store. So I think he was looking for them or waiting
9 for them to get back. But he was just walking up and
10 down. And then, he would tell us to be quiet and
11 just sit there. And then, he would go to my mom's
12 room and come back.

13 Q. Did he carry anything besides the gun?

14 A. No.

15 MR. SHELDON: Beg the court's indulgence.

16 THE COURT: Sure.

17 MR. SHELDON: Sorry about that.

18 Q. Do you remember meeting with the officer?

19 A. Yes.

20 Q. Was this before or after the incident?

21 A. After.

22 Q. Do you remember when that was?

23 A. What do you - what do you mean?

24 Q. Do you remember - first of all, did officers arrived
25 at your house?

1 A. Yes.

2 Q. And then did you go to the Bluffton Police
3 Department?

4 A. No. Not that same day.

5 Q. When did you go to the Bluffton Police Department?

6 A. A couple of days after the incident.

7 Q. It was a couple of days after. Are you sure about
8 that?

9 A. Yes.

10 Q. Now, I'm going to hand -- did you, at the time, when
11 you went to the police department, did they show you
12 any what you know as lineups?

13 A. Yes.

14 Q. And do you recall how many they showed you?

15 A. No.

16 Q. Was it more than one?

17 A. Yes.

18 Q. Do you remember the first one they showed you?

19 A. No.

20 Q. Do you remember the second one they showed you?

21 A. No.

22 Q. Do you remember the third one they showed you?

23 A. No.

24 Q. Do you remember specifically the fourth one they
25 showed you?

1 A. No.

2 Q. Do you remember, though, whether you identified
3 anyone out of those four lineups?

4 A. Yes.

5 Q. Who did you identify?

6 A. Him over there.

7 Q. The Defendant?

8 A. Yes, sir.

9 MR. SHELTON: Please let the record --

10 A. Okay.

11 MR. SHELTON: May I approach?

12 THE COURT: Certainly.

13 Q. Now, Ms. A.H., first of all, I'm going to hand you
14 what has been previously marked State's for
15 identification purposes only. It's not in evidence,
16 okay, so please don't show it to the jury. Okay?
17 Exhibit Number 46. Now, I'd like for you to look at
18 this and see if you recognize, first of all, on the
19 back of it, anything. Okay?

20 A. No.

21 Q. So the back of it, is that your signature?

22 A. Yes.

23 Q. So you do recognize your signature?

24 A. Yes.

25 Q. Okay. And what date is that?

1 A. The 26th in 2010.

2 Q. October 26, 2010?

3 A. Yes.

4 Q. And that is your signature?

5 A. Yes.

6 Q. Now, I ask that you read the back of that to yourself
7 silently if you will. Do you remember ever having
8 that read to you?

9 A. Yes, when I went to the police station.

10 Q. Is that the same thing that was read to you?

11 A. Yes.

12 Q. And you have to speak up. I know it's - you're in
13 court. You have to speak up so everyone can hear
14 you. Okay?

15 A. Okay.

16 Q. Now, have you seen that since that day?

17 A. No. No, sir.

18 MR. SHELDON: May I approach, Your Honor?

19 THE COURT: Sure.

20 Q. Now, Ms. **A.H.**, I'm going to turn the other side over
21 and have you look at it. Okay? And tell me if you
22 recognize what this is.

23 A. It's what I looked at when we went to the police
24 station.

25 Q. Can you repeat that a little bit louder.

1 A. It's what I looked at when we went to the police
2 station.

3 Q. You say what you looked at. Be more specific if you
4 can.

5 A. The lineup that they showed me and asked me to
6 identify someone.

7 Q. And did you identify anyone out of that lineup?

8 A. Yes, sir.

9 Q. What number is he?

10 A. Six.

11 Q. And do you see him in the courtroom?

12 A. Yes.

13 Q. And who -- where is he?

14 A. Over there.

15 Q. You can point to him.

16 MR. SHELDON: Please let the record reflect she has
17 identified the Defendant..

18 THE COURT: So noted.

19 Q. You said that you were shown other lineups that day?

20 A. Yes, sir.

21 Q. And you did not see anyone in those other lineups?

22 A. No, sir.

23 Q. Do you recognize anything that you marked or anything
24 on the front of that lineup that you see in front of
25 you?

1 A. The circle and my initials next to it.

2 Q. And why did you do that?

3 A. Because I recognized him.

4 Q. Are you sure?

5 A. Yes, sir.

6 Q. Are you positive?

7 A. Positive.

8 Q. Who is that man? What did he do?

9 A. He came into my house that day and robbed us.

10 Q. Is he the same man who you said did the acts already
11 to the jury -

12 A. Yes, sir.

13 Q. - you've already testified to?

14 A. Yes, sir.

15 MR. SHELTON: State moves State's Exhibit Number 46
16 into evidence.

17 MR. LEE: No objection.

18 PHOTO LINEUP MARKED STATE'S EXHIBIT

19 NUMBER 46, ADMITTED AS EVIDENCE.

20 MR. SHELTON: Ask that it be published to the jury.

21 THE COURT: Certainly.

22 MR. SHELTON: May I read the back of the card for the
23 jury, Your Honor?

24 THE COURT: You may.

25 Q. Ms. Jones - excuse me. Ms. A.H., you say that they

1 read the back of this to you before they flipped the
2 lineup over, correct?

3 A. Yes.

4 Q. And you never saw the front before they read this to
5 you, correct?

6 A. No, sir.

7 Q. The back of the lineup reads:

8 *You'll be asked to look at a group of*
9 *photographs. The fact that the photographs*
10 *are shown to you should not influence your*
11 *judgment. You should not conclude or guess*
12 *that the photographs contain the picture of*
13 *the person who committed the crime. You are*
14 *not obligated to identify anyone. It is*
15 *just as important to free innocent persons*
16 *from suspicion as to identify guilty parties.*

17 *Please do not discuss the case with*
18 *other witnesses nor indicate in any way that*
19 *you have identified someone.*

20 You said that that was read to you?

21 A. Yes, sir.

22 Q. And you understood it?

23 A. Yes.

24 Q. Did you understand what it meant?

25 A. Yes.

1 Q. What did it mean?

2 A. That I don't have to identify someone if I don't see
3 them, but if I recognize them, to point them out so
4 they know.

5 Q. And you recognized him?

6 A. Yes, sir.

7 Q. You're positive?

8 A. Positive.

9 Q. Ms. A.H., do you remember giving a statement to law
10 enforcement?

11 A. Yes.

12 Q. And that was the same day you did the lineup?

13 A. Yes.

14 Q. Do you remember whether you wrote it or someone wrote
15 it for you?

16 A. I don't remember.

17 Q. But do you remember whether the statement was your
18 statement?

19 A. Yes. It was mine.

20 Q. And everything that was said in it was true?

21 A. Yes.

22 Q. When you said that statement, was it closer in your
23 mind than it was now?

24 A. Yes.

25 Q. Do you remember during giving that statement stating

1 that -

2 MR. LEE: Your Honor, I'm going to object. I think
3 he is trying to bolster the witness's testimony prior to
4 an inconsistent statement. I don't think it's
5 appropriate. I mean, if he is introducing prior
6 statements by Ms. -

7 MR. SHELDON: I was using it to refresh her
8 recollection, and I can do a different procedure to do
9 that, if necessary.

10 THE COURT: I sustain the objection as it stands.

11 MR. SHELDON: Thank you.

12 Q. Ms. A.H., were more details in that statement than
13 what you testified to?

14 A. Yes.

15 Q. Would it help refresh your recollection to look at
16 that statement?

17 A. Yes.

18 MR. SHELDON: May I approach?

19 THE COURT: Certainly.

20 Q. Do you recognize this statement?

21 A. Yes.

22 Q. What is it?

23 A. It's what I told - what I told the officer.

24 Q. Please take the time to read that statement to
25 yourself. Have you seen that statement, first of

1 all, since that statement was given?

2 A. No, sir.

3 Q. No, and have we met before?

4 A. Yes.

5 Q. Did I show it to you then?

6 A. No, sir.

7 Q. Did I show you the lineups then?

8 A. No, sir.

9 Q. And you've never seen that statement since then.
10 Have you?

11 A. No, sir.

12 Q. So please take your time to look at it.

13 MR. LEE: Your Honor, may I approach.

14 OFF-THE-RECORD DISCUSSION, THE COURT

15 AND BAILIFF.

16 THE COURT: It may be a good time for us to take a
17 ten-minute recess. Ladies and gentlemen, I ask you to
18 step in the jury room and remind you it is too early to
19 begin discussing the case.

20 BAILIFF: Thank you, Your Honor. Be careful of the
21 steps, please.

22 JURORS LEAVE COURTROOM..

23 BAILIFF: The jury is clear, Your Honor.

24 THE COURT: We will be in recess for ten minutes.

25 ON-THE-RECORD BENCH CONFERENCE, OUT

1 OF PRESENCE OF JURORS:

2 MR. LEE: Your Honor, can we address the issue that
3 just came up before -- either before we start when we get
4 back or right now what he is attempting to do.

5 THE COURT: Sure.

6 MR. LEE: Okay. All right. Judge, I'm not exactly
7 sure what Mr. Sheldon is trying to do, but I mean,
8 typically, if you refresh somebody's recollection, you say
9 do you know what color the car was? No. Well, I'm
10 handing you a statement. Does this refresh your
11 recollection. But the fact that she left something out, I
12 guess he thinks, to then allow her to read the entire
13 statement and say, oh yeah. This was in my previous
14 statement is not the appropriate way to do that.

15 THE COURT: Okay.

16 MR. LEE: And I would object. He is not refreshing
17 her recollection. He is trying to fill in things that he
18 can't otherwise get in.

19 MR. SHELDON: I believe I asked her whether she could
20 -- if there was more details she gave in her statement than
21 what she was saying now on the stand.

22 THE COURT: Right.

23 MR. SHELDON: And if that -- if the statement
24 contained more, was it fresh in your mind. Was it true at
25 the time. And then, she said yes. So, I'm using that to

1 refresh her recollection to that detail.

2 MR. LEE: But what he's doing is bolstering her
3 testimony about making it match up. Once you give to them
4 now, she is leaving something out, I guess, and he is
5 bolstering it to say, hey, she made it then. She made the
6 exact same statement now. That's not appropriate.

7 THE COURT: I think the proper way to do it, if you
8 are going to do it at all, is to ask the witness a
9 question. Do you recall saying anything about the color
10 of or whatever, the time of day or - and she says no.

11 MR. SHELTON: And that's what I was attempting to do
12 before the first objection. I wasn't doing it very
13 artfully, candidly, but that's what I was attempting to do
14 before the first objection was. I was going to ask her
15 making that statement it was objected upon. So then, I
16 went a different course of trying to enter it in. It
17 wasn't necessarily a prior inconsistent statement. It was
18 something else she was - included in her statement that
19 she said in the law enforcement interviewed statement.
20 So, we know it was true and know it refreshes her mind
21 when she said it. That's the procedure I was attempting
22 to use in order to get - have her review the statement in
23 the first place.

24 THE COURT: I think you have to ask her a question.
25 If she can't answer it or can't recall -

1 MR. SHELDON: Correct.

2 THE COURT: - then you use this to refresh.

3 MR. SHELDON: And that's all I was asking.

4 Specifically, what I was going to ask her was does she
5 remember anything - was the Defendant the last person to
6 leave and does she remember him saying anything to her
7 before he left. That is what I was about to ask.

8 THE COURT: Okay. I think if you do it that way.

9 MR. LEE: Well, it'll be a prior inconsistent
10 statement, but if he wants to get it out for me, that's
11 fine.

12 THE COURT: All right. Take five.

13 END BENCH CONFERENCE.

14 OFF THE RECORD 11:34 A.M.

15 BACK ON THE RECORD.

16 MR. SHELDON: Thank you, Your Honor.

17 THE COURT: All right. Please be seated, ladies and
18 gentlemen. I didn't think about it, but we've had our
19 witness sitting on the witness stand the whole time while
20 everybody else took a break.

21 Anyhow, ready for the jury?

22 MR. SHELDON: Yes, Your Honor, the State is.

23 MR. LEE: Yes, Your Honor.

24 Do you have a preference whether we all stand when
25 the jury comes in or all sit down? I'm kind of just

1 following Mr. Sheldon's lead.

2 THE COURT: Well, you kind of have to. You have to
3 follow his lead. If he stands up and you don't, you know.
4 What are you going to do?

5 MR. SHELTON: I traditionally stand up for the judge,
6 as well. I stand up for the judges of the facts.

7 THE COURT: In some places, everybody stand up, right?
8 There are some places nobody stands up.

9 MR. LEE: I know, there's no rules. I just wanted to
10 make sure we're on the same page.

11 MR. SHELTON: I came from Berkeley before this, after
12 having to sit here in the back. And Judge Harrington
13 makes everyone stand. We tried most of our cases in front
14 of Judge Harrington. So for whatever reasons, it's gotten
15 into my psyche since then for good, bad, or indifferent.

16 BAILIFF: The jury is entering, Your Honor.

17 JURORS ENTER COURTROOM 11:46 A.M.

18 BAILIFF: Your Honor.

19 THE COURT: Welcome back, ladies and gentlemen. I
20 believe we are ready to resume examination of the witness.

21 MR. SHELTON: Thank you, Your Honor. May I approach?

22 THE COURT: Sure.

23 A.H.

24 CONTINUE DIRECT EXAMINATION BY MR. SHELTON:

25 Q. Do you remember telling law enforcement when you made

1 this statement that the guy you identified was still
2 there when the other ones left and before he went
3 down the stairs he asked you:

4 *Did you see anything?*

5 We said, No. He said:

6 *We were never here.*

7 A. I don't remember telling him that. I don't remember
8 - I remember I gave -

9 Q. Do you remember that you gave a statement?

10 A. Yes.

11 Q. And everything you said in your statement was true?

12 A. Yes.

13 Q. And this is the statement that you gave?

14 A. Yes.

15 Q. Would it help refresh your recollection?

16 A. Yes.

17 Q. Please take your time to read the statement.

18 Did that help refresh your recollection?

19 A. Yes.

20 Q. Do you remember that?

21 A. Yes.

22 Q. Do you remember it now?

23 A. Yes.

24 Q. Please tell the jury what you remember.

25 A. I remember when they left that they walked down the

1 stairs together, but one of them was lagging behind
2 and he told us to - he asked us like did we see
3 anything or were they there and we said, no, and he
4 told us to be quiet and sit there, then they left.

5 Q. Who was that person?

6 A. I don't remember.

7 Q. You don't remember. Is your statement true?

8 A. Yes.

9 Q. And when you wrote - when you gave your statement, it
10 was true?

11 A. Yes.

12 Q. And does your statement help refresh your
13 recollection as to that?

14 A. Yes.

15 Q. Who was it?

16 A. The guy I identified.

17 Q. And who was that?

18 A. Him.

19 Q. Him, being the Defendant seated next to the counsel?

20 A. Yes, sir.

21 Q. Is everything you're testifying today true?

22 A. Yes, sir.

23 Q. What would happen if you did not testify truthfully?

24 A. I could possibly get him in trouble that he doesn't
25 need to be in. I could mess up his life.

1 Q. Is he the person -- is he one of the people who
2 invaded your home that day?

3 A. Yes, sir.

4 MR. SHELDON: May I approach the witness, Your Honor?

5 THE COURT: Sure.

6 MR. SHELDON: No further questions. Thank you.

7 Please answer any questions Mr. Lee has.

8 THE COURT: Mr. Lee.

9 MR. LEE: Please the Court.

10 A.H.

11 CROSS-EXAMINATION BY MR. LEE:

12 Q. Hey, A.H. .

13 A. Hello.

14 Q. It's probably pretty scary for you to be here in
15 court today; isn't it?

16 A. Yes.

17 Q. And it was probably pretty scary back when all this
18 stuff happened, wasn't it?

19 A. Yes.

20 Q. And you said earlier that you would never
21 intentionally mess up someone's life, right?

22 A. Yes.

23 Q. All right. And you want to see that whoever did this
24 is properly punished, correct?

25 A. Yes.

1 Q. And you don't want to see anybody who didn't do this
2 be punished, right?

3 A. Yes.

4 Q. Okay. Now, when you were testifying earlier, you
5 said the guy with something on his face was the last
6 to leave, right?

7 A. Yes.

8 Q. And the guy with something on his face was one of the
9 short guys, correct?

10 A. Yes.

11 Q. Okay. Not Mr. Powell?

12 A. Yes.

13 Q. Are you - are you sure that the guy with something on
14 his face was the last to leave?

15 A. No.

16 Q. You're not?

17 A. Not positive.

18 Q. Not positive. Are you kind of positive or pretty
19 positive or -

20 A. From what I remember now.

21 Q. From what you remember now, it was the short guy with
22 something on his face that left?

23 A. Yes.

24 Q. Okay. But what you said back then was that it was
25 the person that you had identified in the lineup,

1 right?

2 A. Yes.

3 Q. And that's Mr. Powell?

4 A. Yes.

5 Q. So are you positive here today that it was Mr. Powell
6 that left last?

7 A. Yes.

8 Q. You're positive?

9 A. Yes.

10 Q. Okay. Certain?

11 A. Certain.

12 Q. Absolutely certain?

13 A. Yes.

14 Q. All right. So you're absolutely certain that Mr.
15 Powell was the guy that left last?

16 A. Yes.

17 Q. But you're not quite positive that the guy with
18 something on his face was the one that left last?

19 A. Yes.

20 Q. Okay. And you would agree only one person can leave
21 last, right?

22 A. Yes.

23 Q. Okay. And you said something earlier, [A.H.], that
24 what they - when you went to the Bluffton Police
25 Department, they asked you to identify someone in

1 this photo lineup?

2 A. Yes.

3 Q. Okay. So that's what you got from it to identify
4 somebody?

5 A. Yes.

6 Q. All right. Now, was it -- was it really scary to have
7 that gun all around?

8 A. Yes.

9 Q. Okay. And can you tell us about the gun? Was it
10 silver?

11 A. Yes.

12 Q. It was silver. And are you sure about that?

13 A. Yes.

14 Q. Positive?

15 A. Yes.

16 Q. Certain?

17 A. Certain.

18 Q. Absolutely certain?

19 A. Yes.

20 Q. It was a silver gun?

21 A. Yes.

22 Q. That you claim that Suspect Number 2 had?

23 A. Yes.

24 Q. Not red, green, black, blue, yellow? Silver?

25 A. Silver.

1 Q. And are you as sure about that as you are your
2 identification of Mr. Powell?

3 A. Yes.

4 Q. Okay. Are you as certain about that as you are that
5 Suspect Number 2 was the one who left last?

6 A. Yes.

7 Q. Okay. And you're more certain than you are that the
8 short guy left last? You're more certain about the
9 color of the gun?

10 A. Yes.

11 Q. Okay. A.H., do you ever make mistakes like
12 everybody else?

13 A. Yes.

14 Q. When you make a mistake, you don't always -- you don't
15 usually do it on purpose, do you? That's why it's a
16 mistake, right?

17 A. It's not on purpose.

18 Q. So even if you're trying to do something right, you
19 may not on purpose do something wrong, right?

20 A. Yes.

21 Q. And that's a little bit different than doing
22 something on purpose, correct?

23 A. Yes.

24 Q. Okay.

25 MR. LEE: That's all I have, Your Honor.

1 Thank you, [A.H.].

2 THE COURT: Any re-direct, Mr. Sheldon?

3 MR. SHELDON: Briefly, Your Honor.

4 [A.H.]

5 RE-DIRECT EXAMINATION BY MR. SHELDON:

6 Q. You are frightened here today, correct?

7 A. Yes.

8 Q. You were frightened that day, correct?

9 A. Yes.

10 Q. Now, let's clarify. Who was the last person to
11 leave?

12 A. Mr. Powell.

13 Q. And it's important to be honest. Are you sure about
14 that?

15 A. Yes.

16 Q. When you earlier just said that the other guy was the
17 last person to leave, how could both of those things
18 be true?

19 A. I was uncertain. I wasn't completely sure.

20 Q. When?

21 A. When I said the one had something covering his face
22 was the last one to leave.

23 Q. So when you first testified that the person with
24 something on his face was the last one to leave,
25 that's when you were certain?

1 A. Yes - no, I was uncertain.

2 Q. You were uncertain. After reading your statement
3 that you gave the day after the incident, did that
4 refresh your recollection?

5 A. Yes.

6 Q. Now, what are you certain of?

7 A. That Mr. Powell was the last one to leave.

8 Q. Are you saying that because you wrote it, or are you
9 saying it because you remember it?

10 A. Because I remember it.

11 Q. You said it's very important that you don't say
12 anything that's not true, because it can get someone
13 in trouble that doesn't deserve it, correct?

14 A. Yes.

15 Q. So sometimes the way questions can be asked can be
16 hard to know which way to answer, correct?

17 A. Yes.

18 Q. Do you have any doubt in your mind that Mr. Powell
19 was the person inside your house that day?

20 A. No.

21 Q. If you had any doubt whatsoever, would you tell the
22 jury?

23 A. Yes.

24 Q. You would tell the jury if you had any doubt
25 whatsoever?

1 A. Yes, I would tell them that I had a doubt.

2 Q. Why?

3 A. Because, if they don't deserve to be punished, then I
4 don't want them to be punished.

5 Q. Mr. Lee asked you - you said that when you got into
6 the - interpreted one of those statements you said
7 earlier that when you went to the police station you
8 were asked to identify someone, correct?

9 A. Yes.

10 Q. You testified earlier that this was read to you
11 before you identified anyone, correct?

12 A. Yes.

13 Q. And before you identified anyone, before you looked
14 at these lineups, what did you know - what did you
15 know you had to do?

16 A. Identify someone that was there.

17 Q. Did you have to identify someone that was there?

18 A. If I seen them, yes. But if I didn't see them, then
19 don't point out anyone.

20 Q. Wasn't it just as important for you not to point out
21 someone if they weren't there?

22 A. Yes.

23 Q. And that instruction they read, you listened to that?

24 A. Yes.

25 Q. You told the officers you understood it before you

1 looked at any lineups, correct?

2 A. Yes.

3 Q. And in fact, how many people there did not have their
4 face covered?

5 A. Two.

6 Q. And you were shown multiple lineups, correct?

7 A. Yes.

8 Q. Did you identify that second person?

9 A. No.

10 Q. Why not?

11 A. Because I was uncertain.

12 Q. You said that you can make mistakes.

13 A. Yes.

14 Q. Have you made mistakes before?

15 A. Yes.

16 Q. Please tell the jury about a mistake you made.

17 A. Marking the wrong answer on a test; saying that the
18 one with his face covered was the last one to leave.

19 Q. Is that how you remembered it at the time before you
20 read your statement?

21 A. Yes.

22 Q. And after you read your statement, you remembered the
23 truth, correct?

24 A. Yes.

25 Q. And now, after reading your statement, do you

1 remember how the statement was written down and how
2 it was given?

3 A. They asked me what happened.

4 Q. Okay.

5 A. And I just told them. And he wrote it as I told him.

6 Q. And did you have a chance to look at it before you
7 signed it?

8 A. Yes.

9 Q. And was it what you told him?

10 A. Yes.

11 Q. Did you make a mistake in identifying the Defendant
12 as being one of the people that came into your house
13 with a gun that day?

14 A. No.

15 Q. Are you certain of that?

16 A. Certain.

17 MR. SHELDON: Thank you.

18 MR. LEE: Brief follow-up.

19 A.H.

20 RE-CROSS-EXAMINATION BY MR. LEE:

21 Q. Did you just tell Mr. Sheldon that two of the three
22 people did not have their face covered?

23 A. Yes.

24 Q. So only one had his face covered?

25 A. Yes.

1 Q. Not two. Are you sure about that, that two did not
2 have their face covered?

3 A. Yes.

4 Q. Okay. And you're certain about that?

5 A. Yes.

6 Q. And you're as certain about that as the rest of your
7 testimony?

8 A. Yes.

9 MR. LEE: That's all I have, Your Honor.

10 THE COURT: Thank you. You may step down.

11 MR. SHELDON: I ask that she may be excused for the
12 remainder of the trial. I don't know if Mr. Lee plans on
13 recalling her, but they have plans to leave.

14 MR. LEE: No objection.

15 THE COURT: She's excused from her subpoena then.

16 MR. SHELDON: I ask that she may remain in the
17 courtroom if her family wishes her to.

18 MR. SHELDON: May we approach, Your Honor?

19 OFF THE RECORD BENCH CONFERENCE.

20 MR. SHELDON: The State calls Senora Jones.

21 BAILIFF: Come forward to be sworn, please.

22 SENORA JONES

23 being first duly sworn, testifies as follows:

24 MADAM CLERK: If you'll state your name and spell it
25 for the record, please.

1 MS. SENORA JONES: Senora Jones, S-e-n-o-r-a J-o-n-e-
2 s.

3 SENORA JONES

4 DIRECT EXAMINATION BY MR. SHELDON:

5 Q. Ms. Jones, how are you today?

6 A. Good.

7 Q. Relatively speaking, what happened on October 25,
8 2010?

9 A. I was getting ready for my husband's birthday dinner.
10 It was his birthday. And my mom, my sister, and my
11 nieces were over to our house for the dinner. And
12 her and my sister ran to the store. I was - I had
13 went upstairs. I was like watching a movie. The
14 kids were outside playing in the backyard. We have
15 an enclosed fence. And the next thing you know,
16 while I was in my bedroom, three black males came in.
17 And I could like hear the kids in the hall next to
18 our room.

19 Q. What did the black males do?

20 A. One had his face covered with like a shirt, And then,
21 one, you know, instructed me to get right to the
22 floor and - you know, to tell him where our money was
23 and was pointing the gun, telling me, you know not to
24 move, while the other two like tore our house apart.

25 Q. Do you see that person in the courtroom today?

1 A. Yes.

2 Q. Would you please identify him for the jury.

3 A. Right there in the white shirt and black tie.

4 Q. Are you certain?

5 A. Positive.

6 Q. Do you have any doubt?

7 A. No.

8 Q. What did that person over there with defense counsel
9 with the white shirt and black tie do?

10 A. He - he was the main one that like was with us the
11 whole time, trying to make sure, you know, like -
12 because the first thing I remember them doing was
13 emptying my purse and taking my cell phone. And so,
14 he stayed with us the whole time. He instructed me,
15 you know, to like I said, you know, just stay to the
16 ground. He kept, you know - every now and then he
17 would peek out the door and make sure the kids was
18 still lined up out there and not, you know, moving.
19 And he was just telling me, f you just tell us where
20 your money is, you know, we'll - you know, we'll
21 leave.

22 And I just kept pleading with him and telling him
23 that I didn't know, you know, what he was talking about.
24 I just kept saying, you know:

25 *We don't have any money.*

1 I said - you know, I begged him. I told him that I
2 was a registered nurse. I even told him - I said:

3 *You emptied my purse. Look at my work*

4 *I.D.*

5 You know, my work I.D. was right there. And I kept
6 just pleading with him, you know, that I did not know what
7 he was talking about, you know, just not to hurt us. And
8 he just kept pointing the gun. And the other guy that was
9 with him was, you know, just out of control. So I just
10 felt like anything could happen, because they were all -
11 you know, just - it was just scary.

12 Q. Did you tell him anything else?

13 A. Other than me telling him that, you know, pleading
14 with him not to hurt us and that we didn't know, you
15 know, where the money is. I ended up telling him
16 where I had some money. I had money saved that I was
17 using to like buy me a designer bag. I ended up
18 telling him where that money was, you know, hoping
19 that they would just take that and leave, and they
20 didn't.

21 Q. What did they do?

22 A. While he was holding - you know, making sure that I
23 didn't do anything, the other - like one went into my
24 closet and, you know, tore that apart. And another
25 one went into like my kids' bedroom, my mom's

1 bedroom. And I could hear like, you know, stuff
2 getting dumped. And at one point, I thought I heard
3 like the attic pull come down, you know, like come
4 down. So I guess the other two were just looking
5 through our house.

6 Q. And this whole time, what was the Defendant, Mr.
7 Powell, the same one sitting over there, that's the
8 one you're talking about that was with you?

9 A. Yeah. He's the one that kept the gun down, you know,
10 telling us not to move, not to get up, and to tell us
11 where the money was while the other two ransacked the
12 house.

13 Q. What was he wearing?

14 A. I think he had like on a black shirt, like a t-shirt
15 or tank, you know, some kind of plain tank, and like,
16 some maybe faded light, black pants. He didn't have
17 anything covering his face, like, surprisingly, he
18 didn't have a mask on. And that's why it was like so
19 - like clear to see him. Because at one point I just
20 pleaded him - I said:

21 *Look in my eyes,*

22 so that he would know that I was telling the truth
23 and that I was not trying to hide money or hide anything,
24 that they could have everything in the house if they
25 wanted. So I just at one point said:

1 *Look in my eyes.*

2 And I looked directly at him and I was saying, you
3 know:

4 *I don't know what you're talking about,*
5 *please.*

6 And he, you know, looked at me. And when he saw that
7 I - you know, we were looking at each other, he said:

8 *Face down,*
9 you know, with the gun again.

10 *I told you,*
11 you know,
12 *keep your head down.*

13 And so, I could see clearly. He didn't have any -
14 like a hat on, like nothing that could distort or cover
15 his face in any kind of way.

16 Q. Describe the other two men.

17 A. The other guy was kind of - not short, I guess, in
18 comparison to him. I'm thinking short, but maybe
19 anywhere from 5-8, probably about 5-7. I mean, he
20 didn't seem to be like close to six feet. More of a
21 stocky frame. Not heavy, but like, you know, just a
22 little stocky. And he had his face covered with what
23 appeared to be like a black t-shirt or something,
24 like the bottom part of his face, and he had a hat
25 on. And then, the other guy was - he seemed younger,

1 you know, maybe in his early 20's. He was lighter
2 complexed, and he had dread locks that came like to
3 about his ear. And he appeared to be like high or
4 something on drugs, because his eyes just looked
5 glassy and just - just evil. You know, he was the
6 one that I was afraid of the most, because he kept
7 saying:

8 *I'll blow your head off,*
9 you know.

10 *If you - if you lift your head up*
11 *again,*
12 you know,

13 *I'll kill you.*

14 And he was making like very aggressive threats. And
15 he had like on a white t-shirt and like some jeans and
16 some white gym shoes. And like, I wouldn't know him if I
17 saw him, you know. But -

18 Q. Why do you say that?

19 A. Because, you know, he was - like they all were just
20 so - I mean, the experience in itself was just
21 tormenting. But he, like I said, appeared like he
22 was high, you know. And I just felt like if he was
23 high and he's not thinking - you know, he's going to
24 want to kill us all.

25 Q. You said you would be able to identify him. Why do

1 you say that?

2 A. Because he just - I see - I replay it over and over
3 in my head, like, you know, it was just the
4 situation, because - making me think about the whole
5 thing, because my life and my kids' life flashed
6 before my eyes at this point. And it's something
7 you'll never be able to forget.

8 Q. Do you remember it in great detail?

9 A. It's been some time, so I can't say in great detail.
10 But, I mean, the things that stood out the most to
11 me, I definitely remember in detail.

12 Q. Is one of those things the Defendant?

13 A. Absolutely.

14 Q. Did anyone come home while you were there?

15 A. Well, no - while I was there or while they were
16 there?

17 Q. While they were there.

18 A. No, because I told them that my mother-in-law and
19 sister had went to the store, because what I was
20 afraid of that I knew - like I said, we were planning
21 my husband's birthday dinner. And I knew they would
22 come back, and I didn't want them to be startled.
23 Because I was afraid that them being startled would,
24 you know, escalate to something more. So, I told
25 him, in particular, you know, I said, my mother-in-

1 law and my - I mean, my mother and my sister will be
2 back, you know, soon. They went to the store. And
3 he asked me what store did they go to. What car were
4 they driving. Do you know how long they'd been - you
5 know, were gone. And you know, that kind of made
6 them hurry. You know, like they knew they were
7 trying to leave before they got back. And actually,
8 when - like, maybe within minutes after them leaving,
9 my mom and my sister did come back from Publix.

10 Q. Did the Defendant do anything after you told him
11 about your parents - your mother coming home?

12 A. Yeah. He went out of the room for a quick second. I
13 don't know what he did, maybe looking - because we
14 have a big window there. I don't know if maybe he
15 looked out the window or - I can't really say,
16 because he instructed us not to get up. And even
17 after they left, you know, they instructed us not to
18 get up at all. So all I remember is like a couple
19 minutes after they left, and I didn't hear anything
20 anymore, I did get up off the ground. And I remember
21 my daughter crying and pleading to get back down, you
22 know, because she was like:

23 *Mom, they told us not to get up.*

24 You know, I said:

25 *I think they're gone. I really have to*

1 call the cops.

2 And a couple of minutes went by with her pleading
3 with me not to call.

4 Q. You said that one of the suspects brought you into
5 your closet?

6 A. Yeah. After I told him about where I had my money.

7 Q. Did you show them anything else in the closet?

8 A. My safe.

9 Q. What was in the safe?

10 A. I have a safe that has all my like important
11 documents, because it's a burn-proof safe. So I had
12 like our kids' birth certificates. I had lost a
13 child recently. He died nine days old. I had some
14 pictures of him in there, and I had just like little
15 keepsakes from the hospital when my baby died, and
16 that was it. And I just took them and showed them
17 that that was all that was kept in the safe.

18 Q. What all did the suspects take from your home?

19 A. They took the money that I had saved. They took like
20 maybe three or four of my designer handbags. They
21 took a watch that I had, like my watch. And they
22 took a necklace that I had. They took a camcorder,
23 like a family camcorder that had like our kids'
24 birthday parties and stuff like that. They took my
25 daughter's mini-laptop, and that's all I can

1 remember. It was more like - and our camera, that
2 kind of thing like - they took more like my things.
3 Like there was nothing really - you know, and I think
4 they took like a couple pairs of my husband's shoes,
5 like his designer shoes.

6 Q. Did any of the suspects communicate with anyone else
7 while they were inside the house?

8 A. Yeah. I - when I was on the floor of my bedroom, one
9 of the - the Defendant in particular that had his
10 face covered, he went into our bath - like our master
11 bathroom that's attached to the - like they're all in
12 one room. And I heard him make a phone call, and he
13 said, you know:

14 *There's nothing. We didn't find*
15 *anything.*

16 Or,

17 *There's nothing here. What do you*
18 *want us to do?*

19 Or,

20 *What do you want me to do?*

21 Or something like that. You know, I couldn't - of
22 course, I couldn't hear the voice on the phone, but they
23 said something, and he said okay, and they hung up. And
24 shortly after that, they - you know, they left a couple
25 minutes after that. And that's when, like I said, he, the

1 guy over there made us still stay down while the other two
2 left, and then he left last.

3 Q. You said *the guy over there*. Who was that?

4 A. The Defendant.

5 Q. The Defendant sitting with the white shirt and the
6 black tie that you identified earlier?

7 A. Yes.

8 Q. Was he wearing any gloves?

9 A. I can't remember if he wore gloves, but I do remember
10 like a rag or something. Either they took one of the
11 shirts that they used and, you know, he held or wiped
12 something down or wiped - I can't remember if he had
13 gloves or not. In particular I cannot remember. I
14 think - I think he had something on his hand or he
15 used something after.

16 Q. Before we go into that, let's talk about what
17 happened after the episode. What all did they tell
18 you before they left? What did the Defendant
19 specifically tell you before they left?

20 A. The Defendant specifically told me not to call the
21 cops. And if I called the police, they would come
22 back and kill us.

23 Q. Did you ever ask for permission to get up?

24 A. No. I just was trying to comply with what they were
25 telling me to do.

1 Q. How did you know the defendants had left?

2 A. Because after -- after he held us in place, I guess
3 while they left, then he left, and he told me not to
4 like get up at all. And then, like maybe a couple,
5 five minutes went by, I didn't hear anything. And
6 that's when I got up and looked over the rail. And
7 like I said, my daughter was pleading with me to not
8 get up and not to call anybody, because she was still
9 kind of like traumatized.

10 Q. Do you remember telling -- do you remember giving a
11 statement to law enforcement? Do you remember
12 telling law enforcement that Suspect Number 2 wiped
13 things down with a camouflage glove?

14 MR. LEE: Your Honor, again, I object to the manner
15 in which he's doing this. I mean, I'm not trying to be
16 picky, but it's not the proper way to use the previous
17 statement that she gave.

18 THE COURT: I'll sustain the objection.

19 MR. SHELDON: May we approach, Your Honor?

20 OFF-THE-RECORD BENCH CONFERENCE.

21 Q. Ms. Jones, did you eventually call police that night?

22 A. Yes.

23 Q. When you called, who did you call?

24 A. I just dialed 911. But I didn't call them first,
25 because, like I told you, I was scared. You know,

1 they told us if we called that they would come back
2 and kill us. And my daughter was pleading with me
3 not to call. So, maybe just like five minutes went
4 by, and I called. I think I called my husband,
5 either my husband or my mom first. He didn't answer,
6 and then I called my mom, and she did answer. And I
7 told her what happened, and she was just like
8 distraught. And she pulled up like immediately.
9 Because she came like shortly after they left, so
10 maybe five, ten minutes went by. And I was telling
11 her, and she was trying to console me. And then, she
12 told me - she said:

13 *Senora, I know you're scared. I know*
14 *you're afraid. I know, you know, that.*

15 She said:

16 *I know they told you not to call,*
17 she said:

18 *But you know, you need to call.*

19 And then, I called 911, and the officer responded
20 shortly after.

21 Q. When the officers were there, do you remember them
22 taking pictures?

23 A. Yeah. They - I think they like took pictures, and
24 they got statements. Later that night, they - they
25 were there for awhile like dusting for fingerprints

1 and all that kind of stuff.

2 Q. Ms. Jones, do you remember meeting with officers the
3 next day?

4 A. Yes.

5 Q. When you met with officers the next day, what did you
6 do? What was the purpose of that meeting?

7 A. They took like video statements, they made me write
8 out like a statement.

9 Q. Were you shown any lineups?

10 A. Yeah, I believe so. Or I don't know if that was - I
11 think I was shown lineups that first meeting.

12 Q. That would have been the day after the armed robbery?

13 A. Yeah.

14 Q. So I am going to approach. State's Exhibit Number
15 48. What I want to show you, it's not published, so
16 please don't show it to the jury. I ask that you
17 just recognize anything on the back of this document?

18 A. Yes.

19 Q. What is it?

20 A. It's the thing.

21 Q. And do you recognize what that actually is?

22 A. Yeah. That's, I guess, when they showed me the
23 lineup, I circled it and initialed it once I spotted
24 the person.

25 Q. Do you recognize anything that's on the right side,

1 the opposite side of that document?

2 A. You said the right side?

3 Q. Look at the opposite side that you're looking at now.
4 What do you recognize?

5 A. My signature and the date and time that I signed it.

6 Q. What date is it?

7 A. October 26th at 2:09 p.m.

8 Q. At 2:09 p.m. Now, did they read the statement on the
9 back of this lineup to you beforehand?

10 A. Yes.

11 Q. I'm going to ask you to take the time to read that
12 statement, not out loud but read it to yourself.

13 MR. LEE: Your Honor, we would be willing to
14 stipulate that the warnings were read to Ms. Jones and
15 that that was read before she viewed the photo lineup, if
16 that will assist.

17 MR. SHELDON: I have a different purpose for having
18 her read it. Thank you, though, Mr. Lee.

19 Q. Did you understand that when they read it to you?

20 A. Yes.

21 Q. What does it mean?

22 A. It's just saying basically - you mean like in my own
23 words?

24 Q. Uh-huh.

25 A. It's just saying that, you know, they're not, I

1 guess, trying to get me to pick anyone, because it's
2 just as important to rule out people not being
3 involved. And it's just as important as it is to
4 identify. Also, you know, it's saying not to discuss
5 the - discuss it with the case or anything about the
6 lineup with anybody else. And also, it's saying, you
7 know, to make a knowledgeable decision, not to guess,
8 not to, you know, imply or, you know. Just make sure
9 that you're knowingly picking the person that you
10 think the one is.

11 Q. Did you pick the person?

12 A. Immediately.

13 Q. What happened when you first saw his face?

14 A. Just like today, it made me real anxious and it made
15 me just kind of real upset, because right when I saw
16 it, I just knew it was him, and I kind of a sense of
17 relief came over me, because I felt like, you know, I
18 knew that this was the person and I thought, you
19 know, like that justice would be served. And it just
20 made me feel all these different emotions at once,
21 because, you know, it was a very - just scary. Just
22 the process. This while thing to me is just a lot.

23 Q. Did anything about that lineup influence your
24 decision to pick him?

25 A. No, not at all.

1 Q. Why did you pick him?

2 A. Because he was there. He was the one that I pleaded
3 with. And I just, like I said, pleaded with him not
4 to hurt us, that whatever they were looking for
5 wasn't there. And you know, he was the one that was
6 there with me the whole time, during the robbery.

7 MR. SHELDON: The State enters Exhibit Number 46, I
8 believe it is, into evidence.

9 THE COURT: Without objection.

10 MR. SHELDON: 48, excuse me, 48 into evidence.

11 PHOTO LINEUP MARKED STATE'S EXHIBIT

12 NUMBER 48, ADMITTED AS EVIDENCE.

13 MR. SHELDON: May I publish to the jury?

14 THE COURT: Sure.

15 Q. Now, when you made that identification, had you
16 spoken to your daughter at all about whether she had
17 made an identification or not?

18 A. No. Because they had us in different rooms, like,
19 you know, different rooms and different times.

20 Q. I'm going to approach with State's Exhibit Number 47,
21 49, and State's Exhibit Number 50. These are for
22 identification purposes only. First of all, I just
23 want to ask you to look at these and see if you
24 recognize anyone in any of the pictures.

25 A. All of these or just 47 only, Exhibit 47 only, or am

1 I looking at the other ones?

2 Q. Read every one if you don't mind. When you're
3 looking at them, please tell the Court which one
4 you're looking at.

5 A. Right now, I'm looking at Exhibit 47.

6 Q. Do you see anyone that you recognize? Were any of
7 those people in your house?

8 A. I don't see anybody necessarily in 47.

9 Q. What about 40 - what about the next one?

10 A. On Exhibit 49 -

11 Q. You're not sure about it?

12 A. I'm not sure.

13 Q. Okay.

14 A. But I think -

15 Q. You think, but you're not sure?

16 A. I think.

17 MR. LEE: Mr. Sheldon, would you identify which one
18 is 49 and which particular -

19 MR. SHELDON: May I approach, Your Honor?

20 MR. LEE: I just want to look at it. I just want to
21 make sure I'm on the same sheet of music. I apologize,
22 Ms. Jones.

23 Q. You said you think, but you're not sure.

24 A. Right.

25 Q. Which one would that be?

1 A. Number 4, like just the eyes, but -

2 Q. Just the eyes, but you're not sure?

3 A. I'm not sure.

4 Q. So you didn't identify that person then. You're not
5 identifying him today; are you?

6 A. No.

7 MR. SHELDON: May I approach, Your Honor?

8 THE COURT: You may.

9 Q. Hand me back the ones you've already looked at,
10 please, and let me see this one one second. Thank
11 you. So State's Exhibit Number 47, you don't
12 recognize anyone, that would be this one?

13 A. No.

14 Q. And State's Exhibit Number 49, you said it's number
15 4, but you're not sure?

16 A. Right. He - his eyes look like the eyes of the other
17 guy that had his face covered.

18 Q. His eyes look like the eyes of the guy that had his
19 face covered, but you're not certain?

20 A. I'm not certain.

21 Q. But he looks like him?

22 A. Right. His - you know, his eyes, this part of his
23 face looks like the guy that had his face covered.

24 Q. And now, State's Exhibit Number 50.

25 A. Nobody looks -

1 Q. Nobody?

2 A. No.

3 Q. In State's Exhibit Number 50, will you describe what
4 those people look like, as far as like what are their
5 attributes. Does they have dread locks? Do they
6 have regular hair or short, cropped hair?

7 A. They all have like short, natural, you know, just cut
8 hair. They all are African-American.

9 Q. Thank you. Ms. Jones, I'm going to hand you a series
10 of photographs. I'm going to ask you to look through
11 them in general first of all, okay, and then tell the
12 jury what they are, okay? You don't have to say
13 photograph by photograph. At this time, I just ask
14 that you look through. There's a lot of photographs
15 here, so, if you just look through all of them.

16 MR. SHELDON: It's State's Exhibit Number 1 through
17 State's Exhibit Number 44, Madam Court Reporter.

18 Q. Do you recognize all those picture?

19 A. Yes.

20 Q. What are they?

21 A. They're pictures of our house and the different rooms
22 of the house, particularly the rooms are like after
23 the incident occurred.

24 Q. Is that a fair and accurate depiction in each of
25 those pictures of how the rooms looked after the

1 incident occurred?

2 A. Yes.

3 MR. SHELDON: I just want to move State's Exhibit
4 Number 1 through 44 into evidence.

5 MR. LEE: No objection.

6 THE COURT: Entered without objection.

7 PHOTOGRAPHS MARKED STATE'S EXHIBIT

8 NUMBERS 1 THROUGH 44, ADMITTED AS EVIDENCE.

9 MR. SHELDON: Now, briefly, Your Honor, may I
10 approach?

11 THE COURT: Sure.

12 MR. SHELDON: Thank you, Your Honor.

13 Q. The first two pictures - first pictures, rather,
14 Exhibits Number 1, 2 and 3, I'm going to have you
15 tell the jury in general what they are.

16 A. Tell the jury?

17 Q. Yes, please.

18 A. Exhibit 1 is a picture of the outside of our house.
19 So is Exhibit 2. That's just a different angle of
20 the front outside. And Exhibit 3 is the - our
21 mailbox with our street number, house number.

22 Q. I'm going to show you now State's Exhibit Number 4
23 and State's Exhibit Number 12 and ask you to identify
24 these for the jury.

25 MR. SHELDON: May I publish, Your Honor?

1 THE COURT: You may.

2 A. Exhibit 4 is the inside of my room with the drawers
3 pulled out and empty. And then, the one next to it
4 is also my room, just the other side of the bed next
5 to the bathroom. And the next one also is my room
6 with the mattress partly up and the drawers empty and
7 all over the floor. And the next one is a picture of
8 our bed, partially, with clothes all over the floor
9 and a clipboard. And the next one also is of our
10 room with the drawers, some all the way out, some
11 partially out, and clothes pulled all out. And the
12 next one is a picture of our master closet, like my
13 bedroom closet, and it has a picture of the safe.
14 And the next one is a picture also of our bedroom
15 with some drawers - one drawer pulled out and
16 clothes, and our coin jar.

17 MR. SHELDON: May I publish, Your Honor?

18 THE COURT: You may.

19 Q. State's Number 14 and - 13 and 14, rather, are the
20 next two I'm going to show you. And if you could
21 identify what these are, specifically.

22 A. This one here, Exhibit 13, is the hallway next to the
23 steps, and coming up to our second floor.

24 Q. Is that where the children were?

25 A. Yeah. They were lined up against that wall right

1 there.

2 Q. And Exhibit Number 14?

3 A. Exhibit 14, that's a picture of the entrance of my
4 bedroom. I think the outside of it. I think the
5 doorway, you know, from the hall going into my room.

6 MR. SHELTON: May I approach, Your Honor?

7 THE COURT: You may.

8 MR. SHELTON: May I publish these to the jury?

9 THE COURT: Sure.

10 Q. Out of the sake of speeding things up, will you just
11 tell the jury - just look through those and tell the
12 jury in general what they contain.

13 A. Just like before, they contain pictures of my
14 bedroom, my master bath, the - my son's room.

15 Q. Which one is your son's room?

16 A. My son's room is the picture - I don't know it's been
17 - Exhibit 26 and Exhibit 25 are pictures of my son's
18 room and Exhibit 24.

19 Q. And what about the other bedrooms? Can you just give
20 one example of one of the exhibit numbers of where
21 the other bedrooms are located - contain the other
22 bedrooms, rather.

23 A. The other bedroom - oh, this is my son's too, Exhibit
24 27, it has two, and 28. The other one is my mom's
25 bedroom, that's Exhibit 29. And 30, 31 and 32, 33,

1 34, 35 through 37, those are all pictures of my mom's
2 bedroom.

3 Q. Are there any remaining pictures?

4 A. And Exhibit 42, 43 and 44 are pictures of my
5 daughter's bedroom. And there's a picture of like
6 where our attic pulls out. That's Exhibit 21 and 22
7 and 23.

8 Q. Did you have your attic door pulled down before the
9 assailants came to your house?

10 A. No.

11 MR. SHELTON: May I approach, Your Honor?

12 THE COURT: You may.

13 MR. SHELTON: May I publish these further exhibits to
14 the jury?

15 THE COURT: Sure.

16 MR. SHELTON: Thank you, Your Honor.

17 Q. Finally, I'm going to show you State's Exhibit Number
18 8 and Number 9.

19 MR. SHELTON: Earlier, Court Reporter, I referred to
20 Exhibits 1 through 11. That would be to the exclusion of
21 8 and 9, I apologize, as well as 38 through 41.

22 Q. What do you see in 8 and 9?

23 A. Exhibit 8 and 9 are pictures of our downstairs, like
24 hall entry closet and kind of like the entry of our front
25 door. Exhibit 9, you can partially see like the living

1 room area, and it's just like our family photos and stuff.

2 MR. SHELDON: May I approach, Your Honor?

3 THE COURT: You may.

4 MR. SHELDON: May I publish?

5 THE COURT: Sure.

6 A. And Exhibits 38 through 41 is photos of our backyard,
7 the things that we had on our outside in the backyard
8 of our house.

9 Q. Is it any way different from those pictures than it
10 was before the incident?

11 A. Exhibit 40 and 41, like a piece of that fence is on
12 the ground. It wasn't prior to the incident.

13 MR. SHELDON: May I approach and publish, Your Honor?

14 THE COURT: Sure.

15 MR. SHELDON: Thank you, Your Honor.

16 Q. Ms. Jones, State's Exhibit Number 48, which is a
17 lineup in which you identified the Defendant
18 initially on October 26, 2010, correct?

19 A. Yes.

20 Q. Have you seen that lineup before today, since that
21 date?

22 A. No.

23 MR. LEE: For the record purposes, I may have messed
24 it up, quite frankly, but I would renew my objection, if I
25 need to, as to the identification.

1 THE COURT: Noted.

2 MR. LEE: Thank you. Sorry, Mr. Sheldon.

3 MR. SHELDON: Thank you, Mr. Lee.

4 Q. And have you seen the Defendant himself since the day
5 of the armed robbery?

6 A. No.

7 Q. And have you been in this courtroom before testifying
8 at all this week with the Defendant here?

9 A. Yesterday, I was in for just like a quick minute,
10 because the victim advocate didn't see me come by,
11 but she immediately came and got me and took me back
12 out.

13 Q. Did you see the Defendant?

14 A. Just a - it was just like the back of someone's head.

15 Q. You didn't see his face?

16 A. No, I didn't see the front of his face. I just was
17 looking, because I was sitting like back there, in
18 the back of the courtroom.

19 Q. Is there any doubt whatsoever that Mr. Powell was the
20 person who served as lookout and held you at gunpoint
21 during this home invasion?

22 A. No doubt.

23 MR. SHELDON: I beg the Court's indulgence.

24 THE COURT: All right.

25 Q. In addition to the four lineups they showed you the

1 day after the incident, do you remember whether you
2 viewed any other lineups?

3 A. They called me - like I met with them several times.
4 They called me maybe a few weeks after I initially
5 identified him and showed me more lineups to try to
6 see if I could identify anybody, like the other two
7 that were involved. I don't remember the exact date
8 of that, but it was maybe a couple weeks or so after.
9 I don't remember exactly, but it was - it was a
10 little time after they showed - after I identified
11 the first.

12 Q. And did you identify any of the other individuals in
13 any of those lineups?

14 A. Well, one of the ones that I saw today looked - like
15 his eyes looked, you know, like the eyes of the guy
16 that had his face wrapped. I saw him, but I didn't
17 identify him, because I couldn't say for sure that it
18 was him, because of how - you know, the bottom of his
19 face was covered. But if I could have said based on
20 his eyes, then I would have probably said him, too.
21 But you know, I just know that you can't, you know,
22 identify somebody a hundred percent by eyes, so I
23 didn't.

24 Q. You couldn't identify him a hundred percent, but you
25 think it's him?

1 A. Um - you know, I'm sure it's him, because his - he
2 was the one that came in like simultaneously with
3 him, like when they first came. , because my bedroom
4 was - like the door was kind of partially closed or
5 cracked, because, like I said, I had my two nieces
6 over to the house and my daughter and my son, and
7 they were playing. So I was finishing the last part
8 of that movie I was watching, so I had kind of
9 cracked the door closed so that I wouldn't hear all
10 the noise from them playing around. And him and the
11 other guy came in - either one came in right behind,
12 but I could see both of them almost like at the same
13 time. He - you know, he was asking me to, you know,
14 tell him where the money was. And he's also the one
15 that went into the bathroom and made a phone call to
16 someone, you know, saying that they didn't find
17 anything.

18 Q. You say you're sure that it was him. Are you as
19 certain of him as you are as certain that Mr. Powell
20 is the other person?

21 A. If I could say based on this part, yes.

22 Q. But for Mr. Powell, his whole face?

23 A. With him, like there - he had nothing covered.

24 Q. And because of that slight change, you failed to
25 identify this person?

1 A. Correct.

2 Q. Because of the warnings?

3 A. Right. Because they read that to me first, and so I
4 knew that, you know, like I couldn't just go based
5 off just that one part. Like I said, you know, those
6 eyes were a dead giveaway, you know, this portion of
7 his face. But because, you know, his whole face was
8 covered, based on what I had read before they showed
9 me any lineups, I didn't want to identify him.

10 Q. Because you wanted to be absolutely sure?

11 A. Yes.

12 Q. I want to approach with State's Exhibit Number 49
13 again. You already have identified in State's
14 Exhibit 49, which that person is. Will you still do
15 that for the jury again?

16 A. Photo 4.

17 Q. Photo 4. Thank you.

18 MR. SHELDON: May I approach, Your Honor?

19 THE COURT: Sure.

20 Q. Did the defendants ever yell at you, asking for
21 anything other than money?

22 A. Um, yeah, one of them. I can't remember
23 specifically. When I was telling them I didn't know
24 where any money was, they said:

25 *Where's the dope?*

1 And I said:

2 *What are you talking about?*

3 Like, I don't know where money is, where dope is.

4 And it's like I said, when I was pleading with him, you
5 know:

6 *I'm a registered nurse, please. You*

7 *emptied my purse. Look at my work I.D.,*

8 you know. And I was just pleading with - with them,

9 you know, not to hurt us. I was telling the truth,

10 because I didn't want to give them - I didn't want them to

11 feel like that I was trying to hide something or that I

12 knew something and wasn't trying to tell them, because I

13 didn't want to risk me and my babies' lives.

14 Q. Did they say anything to you about how they selected
15 the house?

16 A. No. I don't recall.

17 Q. You don't recall? Would anything help refresh your
18 recollection?

19 A. Well, I think I did - they didn't say a person, but
20 they kept saying, you know, like - it was clear like
21 somebody told them to come, you know. Like, because,
22 like I said when he went and called - you know, the
23 other guy that - with the eyes, he went and made a
24 call to someone. But they didn't specifically say,
25 I'm here because this person sent me here or any of

1 that. They just were, you know, obviously, you know,
2 someone sent them.

3 Q. And you said things stolen were handbags and your
4 shoes?

5 A. Yeah, it was mainly all my stuff. It was like two
6 pairs of my husband's shoes and three or four of my
7 handbags and my jewelry. Like, my husband had a
8 watch that was left behind, and I don't know if it
9 was just because they were moving so fast while they
10 were ransacking everything that they overlooked it or
11 I don't know. But all of my stuff was gone.

12 Q. I know it's difficult to talk about. Did you know
13 anything about your husband having an affair before
14 this?

15 A. Yes.

16 Q. Who was he having - and I'm sorry to ask you about
17 it, but who was he having it with?

18 A. Some - a girl named Paulette Moultrie.

19 Q. Do you know if Paulette Moultrie had any friends?

20 A. Well, up until her calling me to tell me about the
21 affair, I didn't know her personally. But when she
22 did call me and she told me - because I found out
23 about the affair from her, like there wasn't any
24 signs. But when she called, she was - she talked to
25 me about how her friends are upset with her because I

1 guess she let it - the affair get out of control.

2 Because when she initially called me to tell me about
3 the affair, my mom was sitting on the couch next to
4 me. And I got this private call, and she was
5 screaming. You know, like she was screaming and -

6 Q. Was she angry?

7 A. She was angry, and she was just telling me, you know,
8 he messed over me for the last time. He messed over
9 the wrong one. And you know, she was screaming. I
10 don't want to scream in the courtroom, but she ended
11 up hanging up. I don't know if it was because she
12 was out of control, but she hung up. And my mom was
13 sitting there, and I didn't want to like tell my mom
14 anything about the call until I kind of figured out
15 what was going on. So I told her it was a
16 disgruntled customer, because my husband is - you
17 know, he sells cars. And so, I was telling her that
18 it was, you know, one of her customers upset. And
19 so, she - my mom told me, she said:

20 *Senora, I already know what she was*
21 *saying. You going to tell me the truth?*

22 And that's when I told her about everything that
23 Paulette was saying. But she did - Paulette did
24 specifically say that she fell out with - what I mean by
25 fall out, like her friends stopped being her friends

1 because of, I guess, how head over heels she got over him
2 or how upset she was about the whole thing. But she
3 particularly talked about one friend that was upset but
4 forgave her, and she said her name was Kenya.

5 MR. LEE: I object to that. It's clearly hearsay. I
6 ask it be stricken from the record. It hasn't ever been
7 produced before, and clearly, it's hearsay.

8 THE COURT: I sustain the objection. Order it
9 stricken from the record.

10 MR. SHELDON: Thank you, Your Honor.

11 Q. Now, without saying what was said by other people or
12 anything like that of that nature, when did you find out
13 about the affair?

14 A. It was in December, like - I think it was around
15 December 16th. It was a couple of weeks before Christmas,
16 and my husband was working. And like I said, she called
17 and she told me -

18 Q. Okay. Please, excuse me.

19 A. Okay.

20 Q. Please do not say anything about what she said to you
21 or anything like that.

22 A. Okay.

23 Q. I apologize. I don't mean to interrupt you, but just
24 say how.

25 A. She called.

1 Q. She called?

2 A. Yeah.

3 Q. And that was before Christmas of what year?

4 A. Of 2000 -

5 Q. Was it before or after the incident?

6 A. It was before the incident. I think it was like
7 2009.

8 Q. Did you receive any other harassing phone calls after
9 that?

10 A. I won't say harassing, but Paulette did call several
11 other times.

12 Q. To you?

13 A. Yeah, to my phone. And one time, - well, a couple
14 times she left like comments on my Facebook page.

15 Q. In addition to you at the house when the Defendant
16 and the other two committed the armed robbery and the
17 burglary, who else was home?

18 A. Prior to or when during?

19 Q. During the armed robbery.

20 A. It was myself, my daughter, [A.H.], my son, CJ, and
21 my niece [A.V.], and my other niece, [M.V.].

22 Q. And do you recall how old they were?

23 A. At the time of the incident, my daughter was ten, my
24 son was like 4, my niece was - my oldest niece, [M.V.],
25 she was maybe I think 7, and my youngest niece, [A.V.],

1 was 5, I believe.

2 Q. There were five people total inside the house?

3 A. Four.

4 Q. Four, plus you?

5 A. Oh, yeah, five, yeah.

6 MR. SHELDON: That's all the questions I have. Thank
7 you.

8 THE COURT: All right. Ladies and gentlemen, this is
9 probably a good time for us to take a lunch break since
10 it's 1:00 o'clock. Let's try to be back at, say, 2:15.
11 Mind you, it's too early to begin discussing the case.
12 Don't let anybody discuss the case with you. See you back
13 at 2:15 ladies and gentlemen.

14 JURORS LEAVE COURTROOM 1:03 P.M.

15 BAILIFF: The jury is clear, Your Honor.

16 THE COURT: All right. Is there anything we need to
17 take up?

18 MR. SHELDON: Not from the State, Your Honor. I
19 apologize for underestimating how long this was going to
20 take, however.

21 THE COURT: It does happen.

22 MR. LEE: It's not the first time it's happened,
23 right?

24 THE COURT: It does happen. All right. Court is
25 recessed until 2:15.

1 MR. LEE: Thank you, Your Honor.

2 MR. SHELDON: Thank you, Your Honor.

3 MR. LEE: Your Honor, I would just ask - I think you
4 told her, but just remind her that she's under oath, and I
5 would ask that she not be allowed to speak to anybody
6 during the break since she's still under oath, including
7 her family, about the case.

8 THE COURT: Okay.

9 MR. SHELDON: Don't talk about the case. You're
10 under oath.

11 THE COURT: Okay.

12 OFF THE RECORD.

13 BACK ON THE RECORD.

14 BY THE COURT:

15 MR. SHELDON: Your Honor, Madam Court Reporter very
16 kindly reminded me that I have not actually, because Mr.
17 Lee was kind in stipulating to a lot coming in, I didn't
18 actually move for the evidence, even though it was
19 published, so the State formally moves at this time for
20 all - I'm moving for all the evidence, that is currently
21 all the Exhibits 1 through -

22 COURT REPORTER: It would be 48.

23 MR. SHELDON: 48 would be introduced into evidence at
24 this time.

25 THE COURT: That's without objection?

1 MR. LEE: Without objection.

2 STATE'S EXHIBIT NUMBERS 1 THROUGH

3 48, ADMITTED AS EVIDENCE.

4 MR. SHELDON: Thank you. Thank you, Madam Court
5 Reporter.

6 COURT REPORTER: You're welcome.

7 BAILIFF: Just come forward, ma'am.

8 THE COURT: Let's bring the jury in.

9 BAILIFF: Your Honor, the jury is entering.

10 JURORS ENTER COURTROOM 2:21 P.M.

11 THE COURT: Please be seated, ladies and gentlemen.

12 BAILIFF: All right, Your Honor.

13 THE COURT: Welcome back. I believe the State had
14 concluded the examination of the witness?

15 MR. SHELDON: Yes, Your Honor.

16 THE COURT: Cross-examination.

17 MR. LEE: Thank you, Your Honor. May it please the
18 Court.

19 SENORA JONES

20 CROSS-EXAMINATION BY MR. LEE:

21 Q. Good afternoon, Ms. Jones. Do you remember telling
22 Detective Investigator Duke that Suspect Number 2 had
23 a black gun?

24 A. Um.

25 Q. I'm sorry?

- 1 A. I'm thinking. It's been some time. Possibly.
- 2 Q. Let me ask you, did Suspect Number 2 have a black
- 3 gun?
- 4 A. Didn't I have a statement that I wrote the day after?
- 5 Like, it's been three years. It's hard for me to
- 6 tell you every detail.
- 7 Q. Yeah. Just a second. I'll find that while I ask you
- 8 other questions. I'm sorry. I thought I had it
- 9 right in front of me. And your testimony is that two
- 10 of the three people had their faces covered, correct?
- 11 That's the description you gave initially to the
- 12 first responding officer. Right?
- 13 A. No. I said one of the two had their face covered.
- 14 Q. One of the two.
- 15 A. One of the two.
- 16 Q. Well how about one of the three, then?
- 17 A. Well, one of the three, rather.
- 18 Q. One of three.
- 19 A. One of the three. It was only one out of the three
- 20 that had their face covered.
- 21 Q. Didn't you tell them that when Chandler testified
- 22 earlier that you could only see Suspect Number 1's
- 23 eyes?
- 24 A. Who is Suspect Number 1? Like, I'm not -- I didn't
- 25 get a chance to read my statement this morning, so I

1 don't know exactly who you are referring to when you
2 say suspect 1, 2 or 3.

3 Q. Well, did one of them only have his eyes showing?

4 A. Right.

5 Q. Did one of them have his face completely covered?

6 A. No.

7 Q. Did one of them have a shirt over his head?

8 A. That was the same one.

9 Q. Same one.

10 A. The same suspect that had his eyes exposed and the
11 bottom of his face covered.

12 Q. Well, the guy with the red, glossy eyes. Do you
13 remember which one I'm talking about then?

14 A. Yeah. That's the one that I described as being
15 lighter complected that had dread locks that came to
16 the ear. He didn't - his face was not covered.

17 Q. And you did not tell Investigator Chandler that he
18 had - this Suspect Number 3, the guy with the red,
19 glossy eyes had something over his face?

20 A. No.

21 Q. You didn't tell him that?

22 A. No.

23 Q. Okay. After it happened, isn't it true that you
24 spent about five minutes talking with your kids about
25 what happened before you called 911?

1 A. No. There was no talking. There was all crying and
2 just - just - just like crying and there was no -
3 there was no discussion. I mean, we were all
4 distraught and scared still. I mean, we didn't even
5 know if they were still outside watching to see if
6 anyone came to the house. I mean, we didn't know.

7 Q. Did you spend about five minutes asking the kids to
8 tell me anything - tell you anything related to the
9 incident?

10 A. No, we didn't talk about anything. My daughter just
11 pleaded for me not to call.

12 Q. I'm handing you a document, which I've not marked for
13 identification yet. Can you identify that document?

14 A. This is my statement that I wrote the day after.

15 Q. The day after?

16 A. Uh-huh.

17 Q. Okay. And actually, there looks like there are two,
18 one is one page and one is six pages. Is that right?

19 A. Correct.

20 Q. Okay. Can you turn to Page 6 of the second
21 statement.

22 A. The one that you had turned to for me already?

23 Q. Yes.

24 A. Okay.

25 Q. Yeah, I think so. The last page.

1 A. Okay.

2 Q. Can you read the second sentence starting with, *I*
3 *spent*. Can you read that one sentence for us.

4 A. *I spent about five minutes asking the kids*
5 *to tell me anything related to the incident.*

6 Does that refresh your recollection that you did have
7 conversation with your kids before you called 911?

8 A. Apparently, yes.

9 Q. And do you remember what you talked about?

10 A. My daughter was crucial in helping identify so she
11 just told me because they were outside of the room.
12 The whole incident, I stayed face down in my bedroom.
13 So, she -- I told her to tell me anything she knew
14 about the suspects, because they were walked in from
15 the backyard while they were playing by the suspects
16 and that was what I asked her so that we could call
17 911 and I could give them the information that she
18 knew that I had no knowledge of.

19 Q. Okay. Because you said that you were face down
20 pretty much the whole time?

21 A. Yeah. When they first came, like I stated earlier, I
22 was in my bedroom. You know, my kids were outside
23 playing in the backyard.

24 Q. Okay. And you were face down on the bed or on the
25 floor?

- 1 A. Initially? You mean during the incident or?
- 2 Q. Yes, ma'am. During the incident.
- 3 A. During the incident I was face down on my belly.
- 4 Q. On the floor or on your bed?
- 5 A. On the floor. They made me get directly off the bed,
6 because I was on the bed initially.
- 7 Q. And then you said at one point the one with the crazy
8 eyes, or red eyes, told you to put your head back
9 down?
- 10 A. Right.
- 11 Q. So the information you got is from your daughter that
12 you relayed as far as the descriptions?
- 13 A. No. I - my description that I wrote is what I saw.
- 14 Q. Okay.
- 15 A. I asked her to give me anything related that I could
16 tell the cops, because I let them know when I called
17 - I don't know if you - if that's - you know, but I
18 let them know that they told us not to call. That
19 they told us if we called 911 they would kill us.
- 20 Q. Okay.
- 21 A. They would come back and kill us.
- 22 Q. But again, you're - most of the time when this was
23 going on, you were face down on the floor being told
24 to stay down on the floor?
- 25 A. Correct, and the kids were outside the door.

1 Q. Okay. Does anybody in your neighborhood drive a grey
2 leisure van?

3 A. My sister. She doesn't live in our neighborhood. My
4 sister has a grey van, which she was in the day when
5 she went to Publix.

6 Q. Would there be any reason that two black males would
7 be driving that car on that day?

8 A. No.

9 Q. In your neighborhood?

10 A. No.

11 Q. But other than that, you don't know of anybody else
12 that drives a grey leisure van that lives in the
13 neighborhood?

14 A. I don't know. That's kind of general, I mean.

15 Q. The question is, do you know -- when you lived there,
16 do you know anybody who drove a grey leisure van that
17 lived in that area?

18 A. No. Like I said, the only car that I can
19 specifically speak of under oath is the car that my
20 sister drove. Other than that, I can't -- I mean,
21 there may have been someone in the neighborhood that
22 drove a grey van but I can't say that they, because
23 that's something that I don't know.

24 Q. Okay. Did any of the police officers ever ask you if
25 you knew anything about a grey leisure van and why it

1 might be in the neighborhood?

2 A. No. I don't recall anything about a grey van.

3 Q. Okay. When Mr. Sheldon talked to you before, he
4 showed you - well, first of all your testimony was
5 you were sure that, if you saw Suspect Number 3
6 again, the guy with the eyes, that you would
7 recognize him. Right?

8 A. Based on what I remember him to look like, yes.

9 Q. Okay. But you said you were sure you could recognize
10 him again. Right?

11 A. Correct.

12 Q. And then he proceeded to show you what has been
13 marked State's Number 49 for identification. Do you
14 remember you looked at that?

15 A. Correct.

16 Q. Okay. And you picked out Number 4, right?

17 A. Correct.

18 Q. And you said -

19 MR. SHELDON: Objection. This is misleading the
20 witness.

21 A. Well, I think -

22 MR. SHELDON: Misleading the witness. I did not ask
23 her to pick out Suspect Number 3. I asked her to pick out
24 any witness and she described that one and says the one
25 that had his face covered, misleading the witness as to me

1 asking her as to Suspect Number 3.

2 MR. LEE: I wasn't trying to misquote anybody.

3 Q. He handed you that; did he not?

4 A. Correct, but we're thinking of two different people.
5 That's why I'm confused. Honestly, I'm confused,
6 because the guy that had his face covered is not the
7 same eyes that I'm describing. The eyes that you are
8 describing as red, that's the guy that I said did not
9 have his face covered.

10 Q. Okay.

11 A. That was very -- it almost appeared as if he was high
12 off drugs of some sort. These are two different
13 people.

14 Q. Okay.

15 A. So when you are asking me about eyes, I'm confused as
16 to what suspect you are talking about.

17 Q. Okay. Well, I'm just trying to find out which
18 suspect you say you're sure that's him in picture
19 number 4 there.

20 A. Right, but that's different from the eyes that I
21 described as being drugged and evil.

22 Q. Okay.

23 A. That that's two different people.

24 Q. You picked out number 4 after he showed it to you.

25 A. Uh-huh.

1 Q. And after you said I'm sure I know him. You said,
2 I'm sure that's him.

3 A. Correct.

4 MR. LEE: Can I mark that for identification, please.

5 LINEUP PHOTO MARKED DEFENDANT'S

6 EXHIBIT NUMBER 1, FOR IDENTIFICATION.

7 Q. This has been marked Defendant's Exhibit Number 1.
8 Same question Mr. Sheldon asked, do you recognize
9 anybody in that photograph?

10 A. Correct. Number 4.

11 Q. Number 4?

12 A. Uh-huh.

13 Q. Okay. And -

14 A. Yes. Number 4.

15 Q. Okay.

16 A. Number 4 is the suspect that I believe to be the one
17 that had his face covered with the black shirt, the
18 bottom part of his face, and he had either a hoddie
19 or hat or something covering his - but I could see
20 that he had dreads so this portion of his eyes was
21 exposed.

22 Q. Have you ever seen this document before?

23 A. Yes. They showed me that in the lineup. Yeah, they
24 showed me that in the lineup.

25 Q. Who is they?

1 A. The investigators initially that took my initial
2 statement.

3 Q. Okay, so they have shown you this before?

4 A. Uh-huh. Probably a couple times. More than once.

5 Q. Okay. And they had shown you a couple times, more
6 than once and they had shown you 49 as well, too.
7 Correct? Sorry. That's the one I handed up to you
8 earlier.

9 A. Correct.

10 Q. Okay. And in both of these, you identified number 4.

11 A. Not to them.

12 Q. Well, today you did?

13 A. Correct.

14 Q. Okay. Today. When they showed it to you a day after
15 and what, a week or two after, you did not identify
16 either one of these. Did you?

17 A. Correct.

18 Q. Okay. All right.

19 MR. SHELDON: I ask that she may explain her answer.

20 A. Right, and like I said earlier, that's only because
21 before they showed me the lineup at all, they - I
22 read the front part of that description. It said,
23 you know, you have to pick these people without
24 doubt. You have to - it's just important to make
25 sure you're not accusing someone versus being

1 certain, so, because there are only eyes to go by, I
2 can't say that's him. I wanted to, but I knew
3 reading the statement that was not the right thing to
4 do, in my opinion. I was trying to abide by what -
5 the statement that I read.

6 Q. So they read you that stuff that you read and unless
7 you were sure, you took it as not picking anybody
8 out. Right?

9 A. Correct.

10 Q. Okay. Yet you just testified that you were sure that
11 Number 4 was the guy. Right?

12 A. Okay. These are two different situations.

13 Q. Okay. Have you had an opportunity between the last
14 time you looked at both of those lineups and didn't
15 pick anybody out and today to see whoever number 4 is
16 on there?

17 A. No, and actually, I don't know if they wrote in their
18 statement, but I even mentioned that to the
19 investigator when I saw the lineup. I said this one
20 looks like the guy that had his face covered but I
21 can't positively identify him.

22 Q. This investigator right here?

23 A. There were several. There was him and another
24 stocky, like muscular guy.

25 Q. Okay.

- 1 A. That were in my neighborhood.
- 2 Q. And you said that you told him that you told them
- 3 that?
- 4 A. Correct.
- 5 Q. Okay. Do you still have your statement up there?
- 6 A. Yes.
- 7 Q. The one I handed you earlier?
- 8 A. Yes.
- 9 Q. Okay. Can you flip to Page 2 of 6, so it should be
- 10 the third page. And let me ask you the question
- 11 again. What color gun did Suspect Number 2 who you
- 12 say is my client, what color gun did he have? I'm
- 13 asking if you know right now.
- 14 A. I don't remember. That's why I was just reading.
- 15 Q. I'm sorry. If you don't remember, can you refresh
- 16 your recollection by reading your statement?
- 17 A. Right. Based off my statement, it says black pistol.
- 18 Q. Okay. So can you go to where it says that and where
- 19 it starts *Suspect 2 had*. Can you just read that
- 20 sentence for the jury.
- 21 A. *Suspect 2 had a black pistol aiming at me*
- 22 *while he stood by the entrance of the door*
- 23 *watching me. Meanwhile, Suspect Number 1*
- 24 *walked me into my bedroom closet.*
- 25 Q. Okay. Like a - okay. And that was told to the

1 police pretty quickly after it happened. Correct?

2 A. Yes.

3 Q. So is it your recollection now that Suspect Number 2
4 had a black gun?

5 A. Yes.

6 Q. Not a silver gun. Not a green gun. Not a red gun.
7 A black gun?

8 A. As I remember, yes.

9 Q. Okay. Are you sure about that?

10 A. That's what I recall. Yes.

11 Q. Okay. And you wrote it down the next day?

12 A. Correct.

13 Q. And again, when you're talking about Suspect 2,
14 you're talking about my client that you picked out of
15 a lineup. Correct?

16 A. Let me double check. I'm just making sure. Correct.

17 Q. Are you as sure about the black gun as you are the
18 identity of Suspect Number 2?

19 A. I'm definitely sure about the identity. The gun, you
20 know, I went by what I could remember, but like I
21 stated several times, the whole time I was face down.
22 There was three different individuals in and out
23 while I had four kids in the home.

24 Q. Right.

25 A. So that, I mean, -

1 Q. And I'm sure it was stressful and scary -

2 A. It still is. It still is and it's still stressful
3 but there's nothing as far as identifying him that I
4 have any doubt about. As far as the detail of if the
5 gun was black or silver, I recall it being black but
6 what I remember is the face. That's what I remember.

7 Q. But there's a lot of other things that you aren't so
8 clear on or may not remember because of the stress of
9 the situation?

10 A. If you can insinuate that, then that could be the
11 case but ultimately I was trying to think of survival
12 mode. What do I need to do. What do I need to say
13 to keep myself and those kids alive and that's that.

14 Q. Okay.

15 MR. LEE: Beg the Court's indulgence.

16 THE COURT: All right.

17 Q. You said the phone call from Paulette Moultrie was, I
18 think, December 16th of 2009, to your best
19 recollection?

20 A. To my best recollection and her last name was
21 Moultrie.

22 Q. Moultrie. I'm sorry. Yeah. Okay. And based on the
23 conversation, the impression you got was that the
24 affair was over and that he had done something to
25 upset her or something of that phase. Is that right?

1 Is that fair to say that?

2 A. Well, I can tell you exactly what she told me if that
3 is what you want to know. I mean, I found out about
4 the situation from the phone call that she made
5 approximately December 16.

6 Q. Okay.

7 A. Up until that point there was no knowledge of her or
8 the affair.

9 Q. Okay. But was the affair over when she called you?
10 Do you know?

11 A. She said it was.

12 Q. Okay. Okay. All right.

13 MR. LEE: That's all I have, Your Honor.

14 THE COURT: Re-direct?

15 MR. SHELDON: Thank you, Your Honor.

16 SENORA JONES

17 RE-DIRECT EXAMINATION BY MR. SHELDON:

18 Q. When you were on the ground and you were looking up
19 and pleading with the Defendant, who is that person?

20 A. The Defendant in the white and black. White shirt
21 and black tie.

22 Q. And what were you looking at?

23 A. I was trying to looking into his eyes and to his
24 soul, to his heart, so that - it was already
25 unbelievable that they didn't stumble onto my kids,

1 you know. They walked them in the house from the
2 backyard playing. I just wanted to touch him one
3 person to another. I was paying attention to that.
4 That was my focus.

5 Q. Were you looking at his gun?

6 A. No. I glanced at it but I wasn't looking at it. I
7 was looking at him, trying - like I said, just trying
8 to connect with him in some kind of humane way so
9 that my life wouldn't be harmed.

10 Q. He asked you about what - conversation between you
11 and Paulette just now. Right?

12 A. Correct.

13 Q. Why don't you tell the jury what that conversation
14 was.

15 A. She called. She -

16 MR. LEE: The only thing I asked was her saying that
17 the affair was over. I'm not sure where this is going,
18 but I'm worrying about, obviously, some hearsay. I think
19 - isn't Ms. Moultrie going to testify?

20 MR. SHELDON: Yes, but that's not -

21 THE COURT: Is this a hearsay objection?

22 MR. LEE: Yes, sir.

23 THE COURT: Why shouldn't I sustain it?

24 MR. SHELDON: I think he opened the door to it. He
25 asked her - if I recall his question to her as for a

1 hearsay answer to see what the conversation was about and
2 by that, I have a right to rebut it under *State v. Dunlap*
3 in order for her to explain what the conversation was
4 about. It opens the door.

5 MR. LEE: I'm just concerned because I have no idea
6 what she is going to say and in an abundance of caution.
7 I mean, it's hearsay. It's classic hearsay. If he wants
8 to ask Paulette what she said, he can certainly do that.

9 THE COURT: I overrule the objection. Go ahead.

10 A. I remember she called on like December 16th, and I'm
11 just saying that. I don't know even if that was the
12 exact day but that's what I remember it as because it
13 was a turning point in my life. She - like I said,
14 she was screaming. She called private. She was
15 irrate and just was - she didn't say much at the
16 first call. She just was saying he messed over the
17 wrong one now, and you know:

18 *He think he just gonna do me any kind*
19 *of way. He F'd over the wrong person now.*

20 And then, I was just like, excuse me? And she hung
21 up. I had no number to call her back so I just was like -
22 you know And then, that's when my mom was asking me about
23 it. And then, she called back calmer and she was telling
24 me about the affair and she was saying, you know, I know
25 you don't know who I am but I'm calling, because, you

1 know, I wanted to tell you about your husband. You think
2 he is this and that, but he has been having an affair with
3 me for four years and you know, I didn't believe her at
4 first. I thought it was a prank call and I was laughing
5 until she started giving me details about my - a tattoo
6 that I have and about my kids and so I knew that it was
7 real at that point and so I stayed calm. I never argued
8 with her on the phone.

9 MR. LEE: I'm going to object again. I think that
10 they have sufficiently been able to explain, if I'd opened
11 the door at all, -

12 THE COURT: I sustain the objection.

13 MR. SHELTON: Thank you, Your Honor.

14 Q. Let's move on. You were questioned about the
15 identity of Suspect 1, Suspect 2 and Suspect 3,
16 correct?

17 A. Correct, yes.

18 Q. Let's take away those numbers and just explain to the
19 jury who it is, since you were cross-examined about
20 it.

21 A. Okay. There were three guys that came in all
22 together. There was the Defendant and another guy
23 that came in my room almost like at the same time.

24 Q. What did that guy that came into your room with the
25 Defendant look like? Which one was he?

1 A. He is the one that had his face covered from the
2 bottom part. Not like just -- from like here, and he
3 had on either some kind of like hat -- like hat or
4 maybe a hood. I think it was maybe a black hat, but
5 all of this was exposed and --

6 Q. I apologize. And he is the one that you have
7 selected that you believe just based on looking at
8 his eyes?

9 A. Correct.

10 Q. That you believe today is Suspect Number 4 in State's
11 Exhibit Number 49?

12 A. Correct.

13 Q. And Suspect Number 4 in defense Exhibit Number 1?

14 A. Correct.

15 Q. Which are two different lineups. Correct?

16 A. Correct.

17 Q. Now, I'm sorry. Who was the third person?

18 A. The third person came in like after they did. I
19 believe he may have been somewhere in another part of
20 the house like already looking. I'm not sure,
21 because he came in a couple minutes after the first
22 two and he was the one that I described as being rage
23 filled, because he had these particular eyes that
24 looked like he was high off some kind of drugs or
25 something. They were red. They looked like evil.

1 That was number -- that was the third person.

2 Q. So that is not the person you identified here that
3 had his face covered?

4 A. No.

5 Q. You testified that the reason you didn't identify him
6 earlier is a different situation.

7 A. Correct.

8 Q. What do you mean by that?

9 A. Well, like I stated. When I had the lineup, they
10 showed me the first part and they read that to me and
11 they made -- well, actually, I think they made me read
12 it, if I can be -- if I can think. They made me read
13 it and they told me, you know, basically not to guess
14 and, you know, just -- and then I looked, turned it
15 over and the Defendant I was able to point out
16 immediately. I remember like I said earlier, getting
17 anxious and real upset, distraught, when I saw him
18 immediately. There was no -- no second guess about
19 it, because him -- his distinctive thing was his like
20 nose to me and that's, you know, like everything
21 about him was clear but I mean, there was nothing --
22 no -- like as soon as I saw it, I knew it was him.

23 Q. So you believed number 4 was the person, but you
24 didn't want to -- you were being cautious?

25 A. Right. I didn't want to -- like, because his bottom

1 of the face was covered. I didn't see the shape of
2 his lips. I didn't see -- you know, I didn't want to
3 make an accusation that based on his eyes that that
4 was him, so I didn't. I didn't want to do that.

5 Q. And that's the reason you didn't identify him then?

6 A. Correct.

7 Q. And why have you identified him now?

8 A. Because it's not -- you -- or not someone giving me a
9 statement saying you're swearing that you're not, you
10 know, making this assumption of someone. It's a
11 different -- like you're asking me my opinion and I'm
12 telling you which is --

13 Q. Your opinion for number -- that is your opinion,
14 number 4 in both lineups?

15 A. Yes, and I felt that then and I feel it now but like
16 I said, it's just the different circumstances were I
17 read that and I had to sign and solemnly swear that,
18 you know, that I didn't want to make that accusation.
19 If that statement wasn't there, say that that
20 statement wasn't read to me or I didn't read it and
21 have to sign to that, then I would have said that was
22 him.

23 Q. Now, have you ever had any hesitation or any doubt
24 whatsoever or any caution about being -- anything that
25 made you think, well, maybe not about the Defendant?

1 A. Not at all. Not one point. Not one - you know, they
2 showed me a couple lineups before and I'm like, no
3 he's not here and then they showed me that one. I
4 felt like something was happening and I was getting
5 ready to - I don't know, I just - I got really out of
6 - you know, I knew it was him like immediately and I
7 said that that is him just like that and they said,
8 are you sure? I said, that is the guy. And they
9 told me to circle if I was exactly sure that that was
10 him and that's what I did.

11 Q. Thank you.

12 MR. SHELDON: No more questions, Your Honor.

13 THE COURT: Any re-cross?

14 MR. LEE: No more questions, Your Honor.

15 THE COURT: Thank you, ma'am. You may step down.

16 You may call your next witness.

17 MR. SHELDON: Thank you, Your Honor. State calls
18 Cleven Jones.

19 CLEVEN JONES

20 being first duly sworn, testified as follows:

21 CLEVEN JONES

22 DIRECT EXAMINATION BY MR. SHELDON:

23 Q. Mr. Jones, do you know Senora Jones?

24 A. Yes.

25 Q. Who is she?

1 A. That's my wife.

2 Q. Do you know [REDACTED] A.H. [REDACTED] ?

3 A. Yes.

4 Q. Who is she?

5 A. My daughter.

6 Q. And do you know [REDACTED] C.J. [REDACTED] - [REDACTED] C.J. [REDACTED]

7 [REDACTED] ?

8 A. Yes.

9 Q. Who is that?

10 A. My son.

11 Q. Were you home when the home invasion that is the
12 subject of this trial occurred?

13 A. No.

14 Q. Now, I'm going to ask you some questions. I
15 apologize for asking them, but I need to ask them for
16 purposes of the trial. First of all, do you know
17 Paulette Moultrie?

18 A. Yes.

19 Q. How do you know her?

20 A. She was a girl I messed with off and on for four
21 years.

22 Q. Where were you working at the time?

23 A. Sir?

24 Q. Where were you working at the time?

25 A. I'd just left Stokes Honda at the time of the home

1 invasion.

2 Q. Sorry. When you said you were messing with Paulette
3 Moultrie.

4 A. Oh, was I working? Stokes Honda, yeah.

5 Q. Okay. Do you know a guy named Keith Chisholm?

6 A. Yes.

7 Q. Where did he work?

8 A. He worked with me.

9 Q. What's his nickname?

10 A. What I heard was Sal, but I never called the name.

11 Q. What did you call him?

12 A. Keith.

13 Q. Okay. Working with Keith, did you all talk on a
14 regular occasion?

15 A. Yes.

16 Q. Did you ever sell a car to Paulette Moultrie?

17 A. Yes.

18 Q. Now, do you know of a woman named Kenya Hagood?

19 A. Know of? Yes.

20 Q. Do you know her personally?

21 A. No.

22 Q. What do you know of her?

23 A. That she is friends of her's.

24 Q. Friends of her's being who?

25 A. Paulette's.

1 Q. Mr. Jones, I ask you this because it is going to be
2 asked. Do you have a prior record? In the last ten
3 years that you have been released from any jail or
4 prison?

5 A. Yeah. 2005 the last time.

6 Q. Where were you released from?

7 A. Released from Morgantown, West Virginia.

8 Q. What for?

9 A. A drug charge.

10 Q. Do you remember what it was?

11 A. Yeah. It was maybe 60 grams of drugs at the time.

12 Q. And where were you living then?

13 A. I was living in Detroit, Michigan.

14 Q. When you got out of prison, where did you go?

15 A. I moved. I mean, not right after but maybe a year or
16 two. My dad knew somebody that I could get a job
17 with, so I took the job and that was here.

18 Q. And who was that with?

19 A. Stokes Honda.

20 Q. Where were you living when you first moved down here?

21 A. Port Royal.

22 Q. When you first moved here?

23 A. Yeah. Oh, no, no, no. Yemassee.

24 Q. Where in Yemassee?

25 A. At the Days Inn for about two weeks until I saved up

1 enough to get me an apartment after I got my first
2 check or whatever.

3 Q. And then where did you move to?

4 A. Port Royal.

5 Q. Okay. Are you affiliated with any church or anything
6 again?

7 A. Family Worship.

8 Q. Family Worship?

9 A. Yeah. That's where I was going.

10 Q. Where is that?

11 A. On Highway 5.

12 Q. Did your father have any affiliation with Family
13 Worship?

14 A. Yeah. He was friends with the pastor.

15 Q. Is that one of the friends that -

16 A. He got me the job.

17 Q. He got you the job?

18 A. Yes.

19 Q. Now, under oath, when did your affair with Paulette
20 Moultrie end?

21 A. About a 120 - about four months before she called me.
22 Maybe that July, end of July.

23 Q. What do you mean before she called you?

24 A. Before she called my wife.

25 Q. Okay. Was that in 2009?

1 A. Yes, sir.

2 Q. Was she happy about the breakup?

3 A. Honestly, I don't really - she was never happy. We
4 was friends but she wanted something else and you
5 know, that's how it went most of the time.

6 Q. What do you mean she wanted something else?

7 A. Well, like maybe wanted a deeper relationship or
8 something.

9 Q. That didn't happen?

10 A. No. I was married and so that's why I wouldn't.

11 MR. SHELTON: Those are all the questions I have.

12 Thank you. Please answer any questions Mr. Lee has for
13 you.

14 CLEVEN JONES

15 CROSS-EXAMINATION BY MR. LEE:

16 Q. Mr. Jones, are you still in the drug trade?

17 A. No.

18 Q. No? When did that stop?

19 A. Probably when I got out.

20 Q. When you got out?

21 A. I mean, before I went in.

22 Q. When did you go in?

23 A. In 2003.

24 Q. 2003?

25 A. When I was 24 years old.

1 Q. So anyone suggesting now that you were somehow
2 involved in the drug trade would not be telling the
3 truth. Would they?

4 A. No.

5 Q. No connection whatsoever?

6 A. No.

7 Q. And how long were you and Paulette just friends?

8 A. Like three years maybe. Three or four. Maybe four.

9 Q. Did you --

10 A. When you say just friends, do you mean just friends
11 like --

12 Q. Well, I was using the word you used.

13 A. Oh, okay. You know, it went a little more than
14 friendship when you say crossing the line because it
15 crossed the line at certain times.

16 Q. Okay.

17 A. I wanted to be clear on that.

18 Q. And when you say with the girl I messed with for a
19 while, is that what you are talking about?

20 A. That means really crossing the line.

21 Q. Had you openly told people about the affair?

22 A. No.

23 Q. Did people know?

24 A. No.

25 Q. Nobody knew?

1 A. Not that I told.

2 Q. It wasn't common knowledge?

3 A. No.

4 Q. So, you would be surprised if someone came in and
5 said, oh, we knew all about that affair?

6 A. I would be shocked.

7 Q. Shocked. Did Paulette advertise it, knowing that you
8 were married?

9 A. No. I don't know. She didn't tell nobody I knew so
10 - I didn't tell nobody myself so.

11 Q. But nobody came up to you and said, hey, are you -

12 A. No. Never.

13 Q. - messing about with Paulette Moultrie?

14 A. Never.

15 Q. Never?

16 A. Never.

17 MR. LEE: That's all I have, Your Honor.

18 THE COURT: All right.

19 MR. SHELDON: Briefly.

20 CLEVEN JONES

21 RE-DIRECT EXAMINATION BY MR. SHELDON:

22 Q. You didn't tell anyone about it, but to your
23 knowledge, anyone else figure it out?

24 A. To my knowledge, no, but obviously, somebody did, but
25 not to my knowledge.

1 MR. SHELDON: Thank you. That's all the questions I
2 have.

3 THE COURT: Thank you. You may step down. Call your
4 next witness.

5 MR. SHELDON: State calls Paulette Moultrie.

6 BAILIFF: Step forward to be sworn, please.

7 PAULETTE CHRISTINA MOULTRIE
8 being first duly sworn, testified as follows:

9 MADAM CLERK: Thank you. Have a seat, please.

10 If you'll state your full name and spell it for the
11 record, please.

12 MS. PAULETTE CHRISTINA MOULTRIE: Paulette Christina
13 Moultrie, P-A-U-L-E-T-T-E, C-H-R-I-S-T-I-N-A, M-O-U-L-T-R-
14 I-E.

15 PAULETTE CHRISTINA MOULTRIE

16 DIRECT EXAMINATION BY MR. SHELDON:

17 Q. Good afternoon, Ms. Moultrie. How are you doing?

18 A. Fine. How are you?

19 Q. Very well. Thank you. Ms. Moultrie, where do you
20 live now?

21 A. Charlotte, North Carolina.

22 Q. And where are you from?

23 A. Beaufort, South Carolina.

24 Q. Where about?

25 A. The Grays Hill area.

1 Q. Grays Hill area?

2 A. Yes.

3 Q. Do you have a lot of friends and family in that area?

4 A. Yes.

5 Q. What about in the Big Estate area?

6 A. No.

7 Q. What about the other side of the street from Big
8 Estate, what about your cousin, Marion Moultrie?

9 A. Marion Moultrie, he's not considered a cousin to me.

10 Q. I apologize.

11 A. Just the same last name, but not -

12 Q. Just the same last name?

13 A. Yes.

14 Q. I apologize. Do you know Cleven Jones?

15 A. Yes.

16 Q. How do you know him?

17 A. We were friends. Also had an affair for about five
18 or six years.

19 Q. Do you know Kenya Hagood?

20 A. Yes.

21 Q. How do you know her?

22 A. My best friend. We've been going to school together
23 since the '90's.

24 Q. So you've known each other since the '90's?

25 A. Yes.

1 Q. Best friend. Best friend in the world best friend?

2 A. Not best friend in the world. I mean, I went off to
3 Atlanta probably when I was 18. And then, we became
4 close again probably in 2008.

5 Q. Very close friends?

6 A. Yeah.

7 Q. Have you - I apologize for asking you this. I'm only
8 asking you this because it is a rumor. Have you had
9 - ever had anything more than a friendship with Kenya
10 Hagood?

11 A. No.

12 Q. Would that be untrue?

13 A. Untrue, rumors.

14 Q. Rumors.

15 A. Hearsay.

16 Q. Why would someone say that?

17 A. We were close. Because I was having an affair with
18 Cleve, they never see me with guys. She was dating
19 somebody. I guess they didn't see her with guys
20 either. And we were together all the time.

21 Q. So you were together all the time while you were
22 having an affair with Cleve?

23 A. Yeah. When I'm not with him. I was living
24 Charlotte, North Carolina. He was staying in
25 Beaufort. And she also resided in Charlotte, North

1 Carolina also.

2 Q. Now, did she also travel back and forth to Beaufort?

3 A. Yes.

4 Q. Do you know a guy named Byron Young?

5 A. Yes.

6 Q. What's his nickname?

7 A. Sean, Lil.

8 Q. Lil?

9 A. Yeah.

10 Q. Do you know whether he knows Kenya?

11 A. I'm sorry?

12 Q. Do you know whether he knows Kenya?

13 A. Yes. We all went to high school together. It's a
14 small town. And being in the same ethnic group or
15 culture group, everybody knows everybody in Beaufort.

16 MR. SHELDON: That's all the questions I have. Thank
17 you.

18 THE COURT: Cross, Mr. Lee.

19 PAULETTE CHRISTINA MOULTRIE

20 CROSS-EXAMINATION BY MR. LEE:

21 Q. When did you break it off with Cleven Jones?

22 A. We probably was on the rocks beginning of 2010 or the
23 end of 2009.

24 Q. On the rocks. And you just had enough?

25 A. Yeah. The relationship ran its course.

1 Q. Were you upset he wouldn't leave his wife for you?

2 A. No. I mean, I was heartbroken that, you know, we
3 could not longer be friends or even maintain a
4 relationship. But like any other relationship, I was
5 hurt. Been in a relationship 13 years before that
6 so, you know, it's just one of those things. You
7 just move on.

8 Q. You probably just ended it; right?

9 A. Yes.

10 Q. So he didn't - nothing happened that caused you to -
11 he didn't come to you and say, Get out of here. I
12 don't like you anymore. Leave.

13 A. No.

14 Q. All right. So he didn't really do anything to you
15 like that, correct?

16 A. No.

17 Q. So Kenya wouldn't have any reason to be upset at
18 Cleve, would she?

19 A. No.

20 Q. And that would be crazy; wouldn't it? Why would
21 Kenya -

22 A. Exactly.

23 Q. And she particularly wouldn't have any reason to be
24 mad at him in October of 2010, would she, almost a
25 year after you ended it with him?

1 A. Yeah. We haven't even spoken since then, so I don't
2 - there's no reason for her to even be mad at him.
3 For what? I mean, yes, I'm her friend. But you
4 know, she dated guys, and we get heartbroken. That's
5 just one of them things. There's no reason for her
6 to feel some type of way against him. No.

7 Q. If she was upset with you, being your best friend,
8 you would have reason to know it; would you not?

9 A. Exactly.

10 Q. And you didn't ask her to do anything to get back at
11 Cleve, did you?

12 A. No, no.

13 Q. Do you still keep in touch with Kenya?

14 A. Yes.

15 Q. So you don't know of anything Kenya may have wanted
16 to do to Cleven Jones?

17 A. Not at all.

18 Q. You can't think of anything?

19 A. I can't think of anything.

20 MR. LEE: That's all I have, Your Honor.

21 THE COURT: Any re-direct, Mr. Sheldon?

22 MR. SHELTON: No, Your Honor.

23 THE COURT: Thank you, ma'am. You may step down.

24 A. Thank you so much.

25 THE COURT: Call your next witness.

1 MR. SHELDON: The State calls Keith Chisholm, Mr.
2 Chisholm.

3 I ask that Ms. Moultrie may be excused, Your Honor,
4 released from her subpoena.

5 MR. LEE: No objection.

6 BAILIFF: Move forward and be sworn, please, sir.

7 KEITH CHISHOLM

8 being first duly sworn, testified as follows:

9 MADAM CLERK: Can you state and spell your name for
10 the record, please.

11 KEITH CHISHOLM: Keith Chisholm, K-E-I-T-H
12 C-H-I-S-H-O-L-M.

13 KEITH CHISHOLM

14 DIRECT EXAMINATION BY MR. SHELDON:

15 Q. Thank you, Mr. Chisholm. Would you speak up? If I
16 can hear you and you can hear me, then we know the
17 jury can hear you, okay?

18 A. Okay.

19 Q. Thanks for being here. Do you want to be here?

20 A. No, sir.

21 Q. Are you under subpoena to be here?

22 A. Yes, sir.

23 Q. Mr. Chisholm, do you know Cleven Jones?

24 A. Yes, sir.

25 Q. How do you know him?

- 1 A. I started working with him in October of 2005.
- 2 Q. Where?
- 3 A. Stokes Honda.
- 4 Q. How long did you all work together?
- 5 A. For at least four years. Three to four years.
- 6 Q. Do you know Paulette Moultrie?
- 7 A. Yes, sir.
- 8 Q. How do you know her?
- 9 A. Just from living in the area.
- 10 Q. How long have you known her?
- 11 A. Now probably about 15 years.
- 12 Q. You say just from living in your area. Have you ever
- 13 spent time with her?
- 14 A. No, sir.
- 15 Q. You never hung out with her?
- 16 A. Yes. Probably seen her in different places. Yes,
- 17 sir.
- 18 Q. How about Kenya Hagood, do you know her?
- 19 A. Yes, sir.
- 20 Q. How do you know her?
- 21 A. She was a friend of mine.
- 22 Q. When? When did it start?
- 23 A. Probably 1996, '97.
- 24 Q. Are you all close friends?
- 25 A. Yes, sir.

1 Q. How close?

2 A. Close enough.

3 Q. Did you all have a sexual relationship?

4 A. Yes, sir.

5 Q. When?

6 A. When I first met her in 1996, '97, 2005.

7 Q. In 2005. Where were you previously between 1997 and
8 1998 until 2005?

9 A. Incarcerated.

10 Q. For what?

11 A. On drug charges.

12 Q. What type of drug charges?

13 A. Crack cocaine.

14 Q. Possession, manufacturing, distribution, trafficking?

15 A. Conspiracy.

16 Q. Conspiracy. Is that a state-level offense or a
17 federal-level offense?

18 A. Federal.

19 Q. Now, do you keep in - back in the time you were
20 working with Cleve, did you keep in touch with Kenya?

21 A. Off and on.

22 Q. Did you ever see Paulette?

23 A. I have in different areas. Yes, sir.

24 Q. So tell me like one example of when you would see
25 Paulette.

1 A. I've seen her at Stokes Honda getting service done to
2 her car.

3 Q. And do you know how she got that car? Do you know
4 how she got that car?

5 A. From Stokes Honda.

6 Q. Who sold it to her?

7 A. To my knowledge, Mr. Jones.

8 Q. Mr. Jones being Cleven Jones?

9 A. Yes, sir.

10 Q. Now, did she have - what about Kenya Hagood, what - I
11 apologize Madam Court Reporter. Mr. Chisholm, would
12 you see Ms. Moultrie any other time?

13 A. Yes, sir.

14 Q. Where?

15 A. I've see her at baseball games and low country
16 baseball games.

17 Q. When you saw her, did you have a conversation with
18 her, or did you just see her?

19 A. I just see her. Never no conversation.

20 Q. Now, did you ever talk to Cleven about Paulette?

21 A. I have.

22 Q. What did you say to Cleven about Paulette?

23 A. First, I questioned him about when I found out he
24 sold her the car. And I also told her that the one
25 thing that - just, you know, stuff about her.

1 Q. I'm sorry, I can't hear you.

2 A. I would say little stuff about her.

3 Q. Like what?

4 A. Me trying to be with her.

5 Q. You liked her?

6 A. Yes, sir.

7 Q. What were Cleve's - without saying what he said, what
8 would his general response be?

9 A. Nothing too much.

10 Q. Now, would you ever - after speaking, say, if you saw
11 - that other instance where you were with Paulette,
12 you saw her at a baseball game?

13 A. Yes, sir.

14 Q. Correct? And then, did you tell Cleven about seeing
15 her at the baseball game?

16 A. Yes, sir.

17 Q. Did you receive a call from anyone after you told
18 Cleven about that?

19 A. Yes.

20 Q. Who did you receive the call from?

21 A. Kenya Hagood.

22 Q. Without saying what the substance of the call was
23 about, what was the tone of the conversation?

24 MR. LEE: I'm going to object to any hearsay about
25 how he wants to back door to this stuff. Ms. Hagood can

1 only testify to that.

2 MR. SHELDON: Apologize, Your Honor.

3 THE COURT: I'll sustain the objection.

4 Q. But after you would share with Mr. Jones that you saw
5 Kenya at the ball game, correct? Excuse me, you saw
6 Paulette at the ball game?

7 A. Yes, sir.

8 Q. You received a call from Kenya?

9 A. Yes, sir.

10 Q. And did you ever go to Savannah with Mr. Jones and
11 his wife?

12 A. Yes, sir.

13 Q. What did you do?

14 A. Went to a concert.

15 Q. Did you tell anybody about that concert that you went
16 to?

17 A. Yes, sir.

18 Q. Who was the concert?

19 A. Ara Petty Concert (phonetic spell).

20 Q. Who did you tell?

21 A. Kenya Hagood.

22 Q. Why did you share that with her?

23 A. Just talking, general talking. She happened to call
24 me that morning, and I was just telling her I was
25 tired. And she was like, why? And I just told her

1 what I did the night before.

2 Q. Be careful about talking about what anybody said to
3 you. I know it's difficult. Now, did someone after
4 that say anything, not saying what it was, have a
5 conversation with you about telling Kenya that?

6 A. No.

7 Q. Now, did you ever figure out that Cleven and Paulette
8 were having an affair?

9 A. Probably eventually.

10 Q. Eventually?

11 A. It came out, yes.

12 Q. And can you tell us about a specific instance of when
13 you gave Paulette some money to buy some lunch and
14 say how that raised your suspicion, your suspicions.
15 Without saying what anybody said to you, just say
16 what happened.

17 A. I just gave her some money to get me some lunch, and
18 she never came back. And she went to the - well,
19 someone went to the store next door and gave -
20 dropped the money off. And the Mitsubishi store
21 called me and told me I had money there that a young
22 lady dropped off, because she couldn't get my lunch,
23 gave me my money.

24 MR. SHELDON: Those are all the questions I have.

25 Thank you.

1 MR. LEE: No questions, Your Honor.

2 THE COURT: Thank you, sir. You may step down. Call
3 your next witness.

4 MR. SHELDON: May I approach, Your Honor?

5 THE COURT: Ladies and gentlemen, we're going to take
6 a short ten-minute break. I'll ask you to step in the
7 jury room and remind you it's too early to begin
8 discussing the case.

9 MR. SHELDON: Thank you, Your Honor.

10 BAILIFF: The jury is cleared. The door is closed,
11 Your Honor.

12 THE COURT: All right.

13 MR. SHELDON: Thank you, Your Honor.

14 MR. LEE: Thank you, Judge.

15 OFF THE RECORD.

16 BACK ON THE RECORD.

17 BY THE COURT:

18 THE COURT: Let's bring the jury in. We just have
19 that one witness?

20 MR. SHELDON: Yes, Your Honor. He's the lead
21 investigator, so it should take a while. And Your Honor,
22 we are stipulating to the law of evidence of forensics
23 that were set out came back and didn't really have any
24 results, so Scott has been kind enough to not have us go
25 through the hoops of bringing an expert down to say that

1 we don't have anything here.

2 BAILIFF: Your Honor, the jury is entering.

3 JURORS ENTER COURTROOM AT 3:46 P.M.

4 BAILIFF: Your Honor.

5 THE COURT: Welcome back, ladies and gentlemen. I
6 believe the Solicitor is prepared to call another witness.
7 Mr. Sheldon.

8 MR. SHELTON: Thank you, Your Honor. Please the
9 Court. The State calls James Duke of the Bluffton Police
10 Department.

11 OFFICER JAMES DUKE
12 being first duly sworn, testified as follows:

13 MADAM CLERK: If you'll state and spell your name for
14 the record, please.

15 OFFICER JAMES DUKE: James Duke, J-A-M-E-S D-U-K-E.

16 OFFICER JAMES DUKE

17 DIRECT EXAMINATION BY MR. SHELTON:

18 Q. Officer Duke, who do you work for now?

19 A. Bluffton Police Department.

20 Q. And who did you work for in October of 2010?

21 A. Bluffton Police Department.

22 Q. Now, in October of 2010, were you involved in an
23 investigation of an armed robbery that's the subject
24 - the home invasion that's the subject of this trial?

25 A. Yes, sir.

1 Q. What was your role?

2 A. I was in Investigations at the time, and I was called
3 out to the scene to conduct the investigation.

4 Q. Were you the lead investigator in the case?

5 A. Yes, sir.

6 Q. What's your role now in the police department?

7 A. Primarily the accreditation process, but I also
8 assist investigations from time to time.

9 Q. Why don't we talk about, first of all, how you
10 arrived at the scene and what did you see?

11 A. I received a phone call to respond. I went to the
12 scene. Sergeant Chandler was on the scene. The
13 family was at the house. The house was in total
14 disarray like it had been ransacked.

15 Q. Who do you remember being in the house?

16 A. Senora Jones, four young children. I believe Mr.
17 Jones was also there. And I believe it was Senora's
18 mother or someone's mother, an older female.

19 Q. Did you look through the whole house?

20 A. I did.

21 Q. What did you do in effort to gather evidence, if
22 anything?

23 A. The - I was briefed by Sergeant Chandler. I
24 interviewed Senora Jones briefly. I took pictures of
25 the residence. I video recorded the residence and

1 then dusted some areas for latent prints, DNA swabs,
2 things like that.

3 Q. Have you reviewed the videotape recently?

4 A. Yes.

5 Q. And does it substantially show the pictures that are
6 already in evidence?

7 A. Yes.

8 Q. Or it does show all the pictures that are already in
9 evidence?

10 A. Right, same thing.

11 Q. Now, you say you dusted for fingerprints?

12 A. Yes.

13 Q. Did you send those fingerprints off? They were sent
14 off?

15 A. Yes.

16 Q. Where did you send them to?

17 A. SLED.

18 Q. Did they come back?

19 A. Yes.

20 Q. Did you have a chance to review reports of those
21 fingerprints?

22 A. I did.

23 Q. Before talking about it, what areas did you dust for
24 fingerprints?

25 A. A jewelry box, a dresser, a vacuum cleaner, items

1 that were identified by the victims that the suspects
2 had touched during the incident.

3 Q. Did any of those prints come back to anyone?

4 A. Yes.

5 Q. Who?

6 A. Senora Jones.

7 Q. The owner?

8 A. Yes.

9 Q. The homeowner?

10 A. Correct.

11 Q. Were any others of any value of identification?

12 A. No, sir.

13 Q. So there weren't any other unknown prints out there,
14 correct?

15 A. Correct.

16 Q. All the ones that came back that were not Senora
17 Jones' were of no value of identification, correct?

18 A. Correct.

19 Q. You said you took DNA swabs?

20 A. Yes, sir.

21 Q. Where did you take DNA swabs from?

22 A. I believe I swabbed the - possibly the dresser,
23 jewelry box area where there would have been smudges,
24 and also swabbed the back fence area. It was
25 reported that the - it's a white picket fence, and

1 some of the little post tops were knocked over. So
2 that area was swabbed.

3 Q. You say you believe. Are you certain about that?
4 Would anything help you with your recollection as to
5 what you swabbed exactly?

6 A. My supplemental report.

7 Q. Where is that?

8 A. It's in that white binder.

9 MR. SHELDON: May I approach the witness, Your Honor?

10 THE COURT: Sure.

11 Q. First of all, just tell the jury what this is, if you
12 don't mind.

13 A. This is a notebook of my supplemental reports and
14 some other notes that I used in preparation for
15 today.

16 Q. Just take your time to look through it down below and
17 see if you can answer as accurately as possible the
18 question I just asked you, where the DNA swabs from.

19 A. The jewelry box, the dresser and the fence were
20 swabbed for DNA.

21 Q. And in the process of being the lead investigator of
22 the case, do you know when you take DNA - in general,
23 first of all, what do you do in order to eliminate
24 others from the samples? Explain the process.

25 A. We collect samples from the - in this case the

1 residents of the house, people who would have legal
2 access to be there, whose DNA would most likely be
3 found there, so that, that can be used to rule out
4 any profiles that are developed when they look for
5 the suspect, any suspect profiles. Basically, rule
6 out people that should be there.

7 Q. So, if you come back with a DNA profile and the test
8 result, without talking about specifics of the test
9 result, then you - you would have someone who's the
10 victim - you know would be the victim's DNA and not
11 someone else's?

12 A. Correct.

13 Q. Did any unknown DNA, besides the victim's DNA, come
14 back from any of those test results?

15 A. Not that I'm aware of.

16 Q. Did you have a chance to review the report?

17 A. That would be in the evidence, Custodian's
18 Supplemental, or the SLED report, which I don't have
19 with me.

20 MR. SHELDON: May I approach, Your Honor?

21 THE COURT: Sure.

22 Q. Do you recognize what that is?

23 A. Yes, sir.

24 Q. What is it?

25 A. It's a Forensic Examination Report from the Beaufort

1 County Sheriff's office.

2 Q. Beaufort County Sheriff's office?

3 A. Their forensic services laboratory.

4 Q. Can you answer my question now more accurately about
5 whether any unknown DNA, besides the victims DNA, was
6 found?

7 A. There was no DNA recovered from the swabs that I
8 collected.

9 Q. So there was no DNA recovered from the swabs you
10 collected?

11 A. Correct.

12 MR. SHELDON: Thank you. May I approach?

13 THE COURT: Yes, sir.

14 Q. During the process of your investigation, were you
15 able to collect a description of the suspects that
16 broke into the victims' home?

17 A. Yes.

18 Q. Can you give that description to the jury?

19 A. Can I -

20 Q. If it will help refresh your recollection, please go
21 ahead.

22 A. There were three suspects in the residence. The
23 first one was identified as - or not identified, but
24 described as a black male; mid-20s; 5-8; 160 pounds; with
25 dreads pulled back; a covered face; the eye's were still

1 visible; wearing a white t-shirt; blue jeans; and white
2 shoes.

3 The second suspect was described as a black male,
4 early 20s, 6-2, and skinny, dark skin, flared-out nose,
5 face uncovered, wearing a black shirt, faded black pants
6 and black shoes.

7 There was a third suspect who was described as early
8 20s, 5-8, 150 pounds, lighter skin, ear-length dreads,
9 wearing light-blue jeans with bleach stains and white with
10 blue, red, orange striped shirt.

11 Q. Did you prepare photo lineups on the 26th of October
12 2010 to show to the victims?

13 A. Prepare one or --

14 Q. Did you have photo lineups for the victims to show
15 the victims?

16 A. Yes.

17 Q. How many did you show them on that day?

18 A. Four.

19 Q. Now, I say the victims. Who did you show the photo
20 lineups to?

21 A. Senora Jones and A.H.

22 Q. Why didn't you show them to the 7-year-olds and the
23 two 4-year-olds?

24 A. While at the scene, most of the information was
25 collected from Senora and A.H. They were the ones

1 who were able to give the most descriptive
2 information.

3 Q. First, I'd like to approach with what has already
4 been entered into evidence, State's 46 and 48.

5 MR. SHELDON: May I approach, Your Honor?

6 Q. Who does that lineup contain?

7 A. Marion Powell.

8 Q. And what position is he in?

9 A. Number 6.

10 Q. And who are the victims identified to you as a
11 defendant in that lineup?

12 A. Yes. He was identified as the Suspect 2 in the
13 description that I gave.

14 Q. Which one was he?

15 A. Suspect 2, black male, early 20s, 6-2, skinny, dark
16 skin, flared-out nose, face uncovered, wearing black
17 shirt, faded black pants, black shoes, described as
18 the one who talked.

19 Q. Let's describe how you showed these to them. Is that
20 the first one you showed them?

21 A. No, sir.

22 Q. And when you showed them the lineups, did you show it
23 to them together? Were they both in the same room?

24 A. No, sir.

25 Q. Where were they?

1 A. Senora Jones was with a SLED sketch artist doing a
2 composite sketch of the suspect.

3 Q. And where was Ms. A.H. at that point?

4 A. Ms. A.H. - they arrived at the police department, we
5 escorted Senora to one room to meet with the SLED
6 artist behind a closed door. I then took A.H. from
7 the lobby into an interview room, where I started to
8 show the lineups.

9 Q. And you kept them separated while the lineups were
10 being shown?

11 A. Correct.

12 Q. So this first lineup was already composed and put
13 together before the sketch artist even did anything,
14 correct?

15 A. Correct.

16 Q. Now, I'm going to show you State's Exhibit Number 47.
17 MR. LEE: Your Honor, may we approach the bench very
18 briefly?

19 OFF-THE-RECORD BENCH CONFERENCE.

20 MR. SHELDON: May I approach the witness, Your Honor?

21 THE COURT: Yes, sir.

22 Q. With State's Exhibit Number 47 - this has not been
23 entered into evidence yet. I want you to first of
24 all look at it and see - tell me what that is.

25 A. It's a photo lineup.

1 Q. Do you know who that photo lineup was presented to?

2 A. It was presented to [REDACTED] A.H. .

3 Q. Now, what order was that photo lineup presented to

4 [REDACTED] A.H. ? The first, the second, third and fourth
5 on the 25th.

6 A. This was the first one.

7 Q. Now, before you presented her with that lineup, what
8 did you do?

9 A. Before showing the lineup, I read the back of the
10 folder to her, which is a photo lineup advisory,
11 basically giving her direction on how to proceed with
12 it.

13 Q. What do you mean by that?

14 A. Telling her what we're going to do and basically how
15 to do it.

16 Q. What does that warning contain?

17 A. Do you want me to read it or just -

18 Q. You can describe it or you can read it. It's already
19 been read into evidence for the jury, but just -

20 A. It explains that she's going to look at the array of
21 photographs. We explain that you shouldn't conclude
22 or guess anything with it. Basically, do you see the
23 person in the lineup or is the person - do you not
24 recognize anyone.

25 Q. And when you read it to them, do you say that, or do

1 you read exactly what's on the lineup.

2 A. I read the lineup, back of the folder, word for word.

3 Q. Now, when you presented Ms. [REDACTED] A.H. [REDACTED] with that
4 first lineup, Number 47, State's Exhibit Number 47,
5 that is the lineup itself?

6 A. Yes.

7 MR. SHELDON: States moves State Exhibit Number 47
8 into evidence.

9 MR. LEE: No objection, other than my previous
10 objection, which I don't think I need to keep interrupting
11 with.

12 THE COURT: I agree.

13 PHOTO LINEUP MARKED STATE'S EXHIBIT

14 NUMBER 47, ADMITTED AS EVIDENCE.

15 Q. Did she identify anyone in that lineup?

16 A. No, sir.

17 Q. Did it take her long to determine whether no one was
18 in that lineup?

19 A. No, sir.

20 Q. How about State's Exhibit Number 48, which you have
21 up there with you? You said she identified the
22 defendant in that lineup, correct?

23 A. Correct.

24 Q. How long did it take her to identify the defendant?

25 A. A matter of seconds.

1 Q. Was she certain?

2 A. She was.

3 MR. SHELDON: Approach with State's Exhibit Number
4 49.

5 Q. Did you present that lineup to [A.H.]?

6 A. I did.

7 Q. And in that lineup, will you tell us who was in the
8 Number 4 position?

9 A. Byron Young.

10 Q. Was that - do you know what order you presented that
11 lineup to [A.H.]?

12 A. It was either Number 3 or Number 4.

13 Q. To [A.H.]?

14 A. Correct.

15 Q. Did she identify anyone in that lineup?

16 A. No.

17 MR. SHELDON: State's Exhibit Number 50. May I
18 approach, Your Honor?

19 THE COURT: You may.

20 Q. Do you recognize that?

21 A. Photo lineup.

22 Q. And who did you present that photo lineup to?

23 A. It was presented to both of -

24 Q. That particular one?

25 A. I think we're on [A.H.]'s - is that your client?

1 Q. It is.

2 A. Okay, [REDACTED] A.H. [REDACTED].

3 Q. Now, did she identify anyone in that photo lineup?

4 A. No, sir.

5 Q. How long did it take her to figure out no one was
6 identified?

7 A. She looked at it and didn't identify.

8 MR. SHELDON: Move States Exhibit Number 50 and 49
9 into evidence, Your Honor.

10 MR. LEE: No objection. No objection.

11 PHOTO LINEUPS MARKED STATE'S EXHIBIT

12 NUMBERS 49 AND 50, ADMITTED AS EVIDENCE.

13 Q. Now, I'm going to hand you a bag with State's Exhibit
14 pre-marked for identification Number 51, 52, as well
15 as 53. These have been open and shut, correct?

16 A. Yes.

17 Q. There are identical lineups in each one?

18 A. Correct.

19 Q. So, whether either lineup was shown to [REDACTED] A.H. [REDACTED] or
20 Senora Jones, they're identical lineups in both ones?

21 A. Correct.

22 Q. The ones that aren't marked by either one, [REDACTED] A.H. [REDACTED]
23 [REDACTED] or Senora Jones, correct?

24 A. Correct.

25 Q. Now, did you show 50 - I apologize -

1 A. I believe 48, 51, 52 and 53 were shown to Senora
2 Jones.

3 Q. 51, 52 and 53 to Senora Jones, and those are
4 identical lineups, as in the previous lineups that I
5 showed you that you showed to [REDACTED] A.H., correct?

6 A. Correct.

7 Q. First of all, the first lineup you showed Senora
8 Jones, which one was it?

9 A. Exhibit Number 52.

10 Q. 52, the lineup that is in Exhibit Number 52, correct?

11 A. Correct.

12 Q. Now, did she identify anybody in that lineup?

13 A. No.

14 Q. How long did it take her to figure out no one was in
15 that lineup?

16 A. She looked at it and shook her head no, and there was
17 no identification.

18 Q. State's Exhibit Number 52.

19 A. That's the first one.

20 Q. 53. I apologize. State's Exhibit Number 53, did you
21 show her that lineup?

22 A. Yes.

23 Q. Did you show her the actual - and this is the exact
24 same lineup that you showed to - one of the exact
25 same lineups you showed to [REDACTED] A.H., correct?

- 1 A. Correct.
- 2 Q. Did she identify anyone in that lineup?
- 3 A. No.
- 4 Q. How long did it take her to determine that no one was
- 5 identified in that lineup?
- 6 A. She looked at it, and there was no identification.
- 7 Q. Now, I'm approaching with State's Exhibit Number 51.
- 8 Did you present that lineup to Ms. Jones?
- 9 A. Yes.
- 10 Q. And is that an identical lineup that you had
- 11 presented to [REDACTED] A.H. [REDACTED] ?
- 12 A. Yes.
- 13 Q. What order did you present that lineup to Ms. Jones?
- 14 A. Number 3.
- 15 Q. Number 3. How do you know that?
- 16 A. I reviewed the video.
- 17 Q. Now, when Ms. Jones looked at that lineup, did she
- 18 identify anyone?
- 19 A. No.
- 20 Q. How long did it take her to not - to look at the
- 21 lineup before she did not identify anyone?
- 22 A. She looked at it, there was hesitation, and then
- 23 looked at it and then said no.
- 24 Q. Was that longer than the other two lineups?
- 25 A. Yes.

1 Q. Who was in Number 4 in that lineup?

2 A. Byron Young.

3 Q. And that is State's Exhibit Number 50?

4 A. 51.

5 Q. And the other State's - other photo lineup containing
6 Byron Young that's already in evidence, what exhibit
7 is that?

8 A. I don't have that one up here. It's not on the card.
9 It's just a piece of paper.

10 MR. SHELDON: State's Exhibit Number 49.

11 A. Okay.

12 Q. Is that an identical lineup to the other lineup
13 containing Byron Young you just testified to?

14 A. Yes.

15 Q. And what number is Byron Young in that lineup?

16 A. Number 4.

17 MR. SHELDON: Approach. The State moves Exhibits
18 Number 51, 52 and 53 into evidence, Your Honor.

19 MR. LEE: No objection.

20 THE COURT: Motion granted.

21 PHOTO LINEUPS MARKED STATE'S EXHIBIT

22 NUMBERS 51, 52, AND 53, ADMITTED AS EVIDENCE.

23 Q. So these are all the lineups that were shown to

24 [REDACTED] A.H. and Senora Jones on October the 26th,

25 2010?

1 A. Yes.

2 Q. And out of these lineups, they identified Marion
3 Powell in identical lineups, correct?

4 A. Correct.

5 Q. Separately?

6 A. Correct.

7 Q. And when you met with Senora Jones to give her the
8 lineup procedure, did you do the same thing with her
9 that you did with [REDACTED] A.H. ?

10 A. I did.

11 Q. What is that?

12 A. The Photo Lineup Advisory.

13 Q. Did you do that before or after you showed her the
14 lineup?

15 A. I read the advisory to her and then present the
16 lineup to her.

17 MR. SHELDON: May I publish to the jury, Your Honor?

18 THE COURT: You may.

19 MR. SHELDON: Thank you, Your Honor.

20 Q. So no one out of those lineups was identified besides
21 Marion Powell?

22 A. Correct.

23 Q. Please describe how quickly Ms. Senora Jones
24 identified Marion Powell.

25 A. I - that was the second lineup I showed her. I

1 advised her that the same advisory was in effect for
2 all the lineups. I presented it to her, she looked
3 at it and:

4 *That's him. That's him.*

5 And positive that it was him.

6 Q. What was her physical appearance when that occurred?

7 A. It's almost like she either lost her breath or
8 blacked out. You could just tell. There was an
9 emotional reaction after she realized that the lineup
10 contained Marion Powell.

11 Q. Did Ms. Senora Jones pause while looking at any other
12 of the lineups besides Mr. Powell or the one -
13 apologize. In the first lineup up you showed her,
14 you stated that she did - it did not take her long at
15 all to determine no one was in the lineup?

16 A. She reviewed the pictures and didn't indicate that
17 she - there was really no reaction, no
18 identification.

19 Q. The second lineup you showed her, she immediately
20 identified Marino Powell?

21 A. As I said, her eyes saw him and immediately pointed:

22 *That's him. That's him.*

23 Q. And which one was he?

24 A. Second lineup.

25 Q. And which one was he as far as the assailants?

1 A. Suspect Number 2.

2 Q. And then when you showed the third lineup containing
3 Byron Young, she took longer?

4 A. She reviewed it, then took longer than the first one.

5 Q. And what about the fourth lineup?

6 A. I'd describe the same as the first one. She reviewed
7 the pictures, and there was no reaction and no
8 identification.

9 MR. SHELDON: Beg the Court's indulgence. May I
10 approach the witness, Your Honor?

11 Q. Investigator Duke, I'm going to hand you Exhibit
12 Numbers 54, 55 and 56, State's exhibits that have
13 been marked for identification only, okay?

14 A. Okay.

15 Q. I ask if you recognize these and what they are?

16 A. These were additional lineups shown to Senora Jones
17 over the - about a ten-day period from roughly
18 October 28th through November 5, 2010.

19 Q. And why did you keep showing her the lineups,
20 different lineups?

21 A. We received additional lineups to show.

22 Q. Because you still had other suspects out there?

23 A. Correct. Only one of the three had been identified.

24 Q. Thank you. Did she identify anyone out of those
25 three to you as any of the suspects?

1 A. No.

2 MR. SHELDON: State moves Exhibits Number 54, 55, and
3 56 into evidence.

4 MR. LEE: No objection.

5 THE COURT: Motion granted.

6 PHOTO LINEUPS MARKED STATE'S EXHIBIT

7 NUMBERS 54, 55, AND 56, ADMITTED AS EVIDENCE.

8 MR. SHELDON: May I approach, Your Honor?

9 Q. I'm going to hand you and have you keep State's
10 Exhibit Number 56. Counsel for defense recently
11 identified that and showed it to Senora Jones. Do
12 you see - is Byron Young contained in that lineup?

13 A. He is.

14 Q. And what position is he in?

15 A. Number 4.

16 MR. SHELDON: May I publish to the jury, Your Honor?

17 THE COURT: yes, sir.

18 Q. Was there a fourth lineup - an eighth lineup, as
19 well?

20 A. There was.

21 Q. And do you know where that is?

22 A. There's a copy in the case file, but it's got notes
23 written on it.

24 Q. There's a case file?

25 A. No. It was in my case notes. I do have a copy, but

1 it's got notes on it.

2 Q. May I see it?

3 MR. SHELDON: May I approach?

4 THE COURT: You may.

5 MR. SHELDON: Thank you, Your Honor.

6 MR. LEE: If you would like to introduce that just by
7 consent, just scratch through whatever notes Duke put on
8 it, I have no issue with doing that.

9 MR. SHELDON: Thank you, Mr. Lee. May it please the
10 Court. May I approach the witness, Your Honor?

11 Q. So that is the eighth lineup?

12 A. Yes.

13 Q. And did you present that to Ms. Jones and Ms. **A.H.**,
14 as well?

15 A. Yes.

16 Q. Now when you present it - does it have anything
17 different on it now than it did then?

18 A. Yes.

19 Q. What?

20 A. From my personal notes, I wrote the name of the
21 suspect that we - the name on there just so I would
22 know for my notes who was who.

23 Q. Was that name on there when you presented that lineup
24 to Ms. **A.H.** and Mrs. Jones?

25 A. No.

1 Q. Did they identify anyone off that lineup?

2 A. No.

3 MR. SHELTON: May I approach the witness, Your Honor?

4 THE COURT: You may.

5 Q. Is this a fair and accurate copy of that lineup,
6 besides the name that's written on it?

7 A. Yes, sir.

8 Q. And that would be Number 6, Position Number 6?

9 A. Correct.

10 Q. And that name would be Prentice Scott?

11 A. Correct.

12 MR. SHELTON: The State moves State's Exhibit Number
13 57 into evidence.

14 MR. LEE: No objection, Your Honor.

15 THE COURT: The motion is granted.

16 PHOTO LINEUP MARKED STATE'S EXHIBIT

17 NUMBER 57, ADMITTED AS EVIDENCE.

18 Q. When did this crime occur?

19 A. October 25, 2010.

20 Q. And when did you have a confirmed I.D. from the
21 victims of the Defendant in this case?

22 A. October 26, 2010.

23 Q. And who was that?

24 A. Marion Powell.

25 Q. Did you get a warrant?

1 A. I did.

2 Q. Did you do anything to try to locate Mr. Powell?

3 A. Yes.

4 Q. What did you do?

5 A. We distributed a wanted poster to the - a news
6 release was put out to the media outlets. A wanted
7 poster was created and distributed to surrounding law
8 enforcement agencies.

9 Q. Were you able to find Mr. Powell immediately?

10 A. Not immediately.

11 Q. So it's fair to say you blanketed the area with news
12 releases?

13 A. Yes. We put it out there, multiple new releases as
14 the investigation progressed. I know of at least two
15 releases that went out.

16 Q. Did you employ anyone to help try to locate Mr.
17 Powell?

18 A. The police department contacted U.S. Marshals to ask
19 for their assistance.

20 Q. Do you know if Mr. Powell was eventually apprehended?

21 A. He was.

22 Q. Do you know when that was?

23 A. March 27, 2011.

24 Q. Was your agency and other agencies actively seeking
25 him during that time?

1 A. He was a wanted person. So, yes, we were - wanted
2 him captured. Our goal was to locate him and put him
3 in jail.

4 Q. In fact, your agency had contact with U.S. Marshals
5 on regular occasions to try to find him, correct?

6 A. Yes.

7 Q. And the US Marshals couldn't find him?

8 A. No.

9 MR. SHELDON: Beg the Court's indulgence.

10 Q. Did you subsequently meet with the victims to
11 determine the value of items that was taken from
12 their home?

13 A. There was regular contact, I believe, through late
14 2010, as they were identifying more property that was
15 missing from the house. And we were updating the
16 property records to get the correct values on there.

17 Q. What was the total value at the end of the day?

18 A. \$51,540.00.

19 Q. And do you have that itemized?

20 A. It is itemized. I do not have that attached to my
21 report up here.

22 MR. SHELDON: May I approach the witness, Your Honor?

23 THE COURT: You may.

24 Q. I'm handing you a supplement written on January 4,
25 2011. I believe this has itemized amounts. Will you

1 give the jury those itemized amounts?

2 A. Description and dollar or just different dollar
3 amounts?

4 Q. Description and dollar amounts, please.

5 A. U.S. currency \$2,230.00; Louis Vuitton handbag
6 \$2,200.00; Michael Kors handbag \$300.00; Mark Jacobs
7 handbag \$600.00; Gucci handbag \$1,800.00. I'm not
8 sure of the pronunciation, Tumi luggage \$1,200.00;
9 Louis Vuitton handbag \$2,000.00; Louis Vuitton
10 handbag \$695.00; Louis Vuitton duffle bag \$3,800.00;
11 a silver necklace with a heart pendant \$8,000.00, a
12 Rolex watch with diamond bezel \$12,000.00; her
13 wedding ring and band \$5,000.00; his wedding band
14 \$600.00; a Motorola Droid \$299.00; an Apple iPhone
15 \$300.00; and a Blackberry 400; an Nintendo DS
16 \$130.00; Gucci sunglasses \$350.00; Buffalo Tusk
17 transitional lens glasses 1,800; Chanel sunglasses
18 \$600.00; another pair of sunglasses brown wood with
19 Platinum \$1,200.00; an Apple iPod Touch 16 gigabyte
20 \$199.00; an Apple iPod Touch 32 gigabyte \$299.00;
21 Acer Netbook computer \$370.00; HP notebook computer
22 \$400.00; two pair of Louis Vuitton gym sneakers at
23 \$650.00 each; other shoes at \$1,700.00.

24 Q. Can you describe those shoes?

25 A. The total value of the shoes looks to be \$3,000.00.

1 That was two pair of Louis Vuitton gym sneakers, two
2 pair of Louis Vuitton red, high-top with white trim,
3 black, low-top with silver trim, three pair of Prada
4 sneakers, black patent leather, a pair of white with
5 mesh holes, and then a pair of blue high-top, and
6 then another pair of Christian - I don't know how to
7 pronounce it. Lots of shoes totaling \$3,000.00.

8 Q. Anything else?

9 A. An Olympus digital camera \$289.00; a Sony HandyCam at
10 \$600.00; Nikon Coolpix camera \$400.00; FinePix camera
11 \$98.09; and another digital camera \$380.00.

12 Q. When the defendant was finally arrested on March 27,
13 2011, did anyone from your office try to make contact
14 with the Joneses?

15 A. Yes.

16 Q. And how did they do that?

17 A. I believe they went to his house and - or to their
18 house in Mill Creek. I don't recall if they tried
19 telephone contact or not.

20 Q. Was anyone home?

21 A. No.

22 Q. What had happened?

23 A. They moved.

24 Q. They moved out?

25 A. Correct.

- 1 Q. You said that in the report an iPod was stolen,
2 correct? Excuse me, an iPhone was stolen, correct?
- 3 A. I believe so, yes.
- 4 Q. Did you ever obtain a search warrant for the records
5 of that iPhone?
- 6 A. I did.
- 7 Q. And the subscriber information?
- 8 A. Yes.
- 9 Q. Who is the subscriber?
- 10 A. Senora Jones.
- 11 Q. Was that phone used at all between the time it was
12 stolen and the time that you reactivated the phone?
- 13 A. It was not.
- 14 Q. And when I say reactivated the phone, I mean
15 reactivated the account, correct?
- 16 A. She left the phone active. So, if - whoever had the
17 phone, if they used it, it would show up on her call
18 detail. She - about a week or so later, she actually
19 got a new phone. And within that period of time,
20 there was no phone calls.
- 21 Q. So you took DNA swabs?
- 22 A. Correct.
- 23 Q. And it came back to no one, correct?
- 24 A. Correct.
- 25 Q. Not anyone, nothing?

1 A. No DNA.

2 Q. Fingerprints came back with nothing?

3 A. Correct.

4 Q. The phone was stolen and wasn't used?

5 A. No.

6 MR. SHELDON: I beg the Court's indulgence.

7 THE COURT: All right, sir.

8 MR. SHELDON: Those are all the questions I have.

9 Thank you. Please answer any questions Mr. Lee has.

10 THE COURT: Mr. Lee.

11 MR. LEE: Thank you, Your Honor.

12 OFFICER JAMES DUKE

13 CROSS-EXAMINATION BY MR. LEE:

14 Q. Investigator Duke, you were the lead investigator?

15 A. I was.

16 Q. So is it safe to say there were several officers -
17 several officers involved in various aspects of the
18 investigation?

19 A. Correct.

20 Q. And one of them was I think Brubaker, a woman, she
21 was first on the scene, right?

22 A. She was the first responding officer.

23 Q. And then Chandler showed up?

24 A. Correct.

25 Q. And then you showed up?

- 1 A. Correct.
- 2 Q. Had you reviewed - and there were other officers
3 involved as well, right?
- 4 A. There was neighborhood canvases and other aspects in
5 the investigation from other officers.
- 6 Q. And as lead investigator, was everything kind of
7 filtered into you as lead investigator, reports and
8 that sort of thing?
- 9 A. As I - when I close an investigation, I try to review
10 all the supplements and make sure everything is
11 straight with everything before it's closed.
- 12 Q. And how - I don't know if you testified to or not,
13 how long have you been an investigator?
- 14 A. Total currently or at the time of this -
- 15 Q. At the time. Tell us when you started. I think we
16 can figure it out.
- 17 A. I went into Investigations in December of 2008. I
18 left in May of 2009.
- 19 Q. Okay.
- 20 A. Went back in May of 2010. So just shy of a year
21 investigative experience.
- 22 Q. Okay. During that time - let's talk about from June
23 25th - from October 25, 2010 backwards. During that
24 time as an investigator, had you received any special
25 training in the administration of photo lineups?

1 A. Specialized training, no.

2 Q. Had you been to any classes or anything about photo
3 lineups?

4 A. No.

5 Q. Okay. Had you gone to any schools or seminars or
6 anything where they talked about establishing - have
7 you had you had any training about the photo lineup
8 process?

9 A. The only thing I went by is the policy on how to
10 present the lineups. No specialized training.

11 Q. The policy being, put it on one of those folders and
12 read the back?

13 A. Standard operating procedure, read the advisory prior
14 to showing the lineup. Once they identify, have them
15 give a statement, audio record or video record if
16 that capability is available.

17 Q. Now, you are not the one who actually picked the
18 pictures to put in these lineups; were you?

19 A. No.

20 Q. Okay. And in fact, those pictures came to you from
21 the Beaufort County Sheriff's Office, right?

22 A. Correct.

23 Q. Okay. And they came from an outfit that they call -
24 the sheriff's office, the Intelligence Unit. Have
25 you heard that before?

- 1 A. Yes.
- 2 Q. Okay. So the Beaufort County Sheriff's Office
- 3 Intelligence Unit forwarded those lineups to you for
- 4 you to administer to them?
- 5 A. Correct.
- 6 Q. Now, are you aware that the Intelligence Unit at the
- 7 sheriff's office consists of a woman named Ms. Brown
- 8 in the sheriff's office?
- 9 A. Yes.
- 10 Q. Okay. And are you also - would you also agree that
- 11 Ms. Brown has - is not law enforcement? She is more
- 12 of a - I think they call it analyst. But she's more
- 13 of a secretarial -
- 14 A. She's not sworn. She's a civilian, I'm pretty sure.
- 15 Q. So she's never been to the Police Academy. She's
- 16 never carried a gun -
- 17 A. Not to my knowledge.
- 18 Q. Okay. So she's a civilian who is in the office?
- 19 A. Correct.
- 20 Q. Okay. And really her training is just how to pull
- 21 pictures to - I mean -
- 22 A. I don't know where she gets the pictures.
- 23 Q. Okay. So the Intelligence Unit is, in fact, a Ms.
- 24 Brown, who pulls the pictures off a computer, and
- 25 then sends it to you?

1 A. Correct.

2 Q. Did you look at the pictures that were sent?

3 A. Our prime analyst requested lineups from the
4 Intelligence Unit. She gave them to me. I looked at
5 them, saw who the people - looked at them and then -

6 Q. I think the question is, did you look to see the
7 relationship within each lineup of the six people?

8 A. Yeah, I looked at them and saw that, you know, there
9 was six people in the lineup.

10 Q. Okay. And made sure there weren't like three
11 Hispanic people, two Americans and no -

12 A. No. Combined male and female.

13 Q. So you looked at - you looked at the pictures, and
14 nothing jumped out at you?

15 A. Right. I mean, these lineups were six black males.

16 Q. Okay. Now, part of - when you do the investigation,
17 don't you have some tools at your disposal as far as
18 when a crime involves a vehicle?

19 A. Such as?

20 Q. I'm not trying to fool you, but I'm trying to - let
21 me do it more direct. Are you often able to, as part
22 of your investigation, investigate certain vehicles
23 that may have been involved in a crime?

24 A. We have access to DMV and get vehicle information.

25 Q. So the easiest thing is, if somebody, of course, gets

1 a tag number, that's pretty easy for you to run,
2 correct?

3 A. Correct.

4 Q. Can you run a vehicle description to try to get some
5 information on it?

6 A. Not that I'm aware of.

7 Q. So you don't think law enforcement can run a
8 description of the vehicle to find out whether there
9 was any registered owners within a certain place?

10 A. I don't know what DMV's total capabilities are. I
11 don't know if the database separates down by, you
12 know, such-and-such make and model. I don't know how

13 -

14 Q. Is there any law enforcement database on the
15 vehicles?

16 A. The DMV has the - obviously, the whole database, all
17 the cars registered. There's a Skyex database, but I
18 can't recall what the search primers are on that.

19 Q. Would you agree that the - well, let me back up. On
20 the day or night this happened, didn't Sergeant
21 Chandler receive a tip from the neighbor saying that
22 a grey leisure van was seen pulling into a driveway
23 on the same road, and it was a black male driving it
24 and a black male riding in the passenger's seat?

25 A. I recall his incident report having -

1 Q. And as lead investigator, that would be something
2 that you would be advised of and know it was in the
3 report, correct?

4 A. Right.

5 Q. Okay. And that was - he wrote the report, I guess,
6 the next day right when it happened, correct?

7 A. He would have written it.

8 Q. What kind of followup was done, if any, on the grey
9 leisure van tip that the neighbor gave?

10 A. I didn't do much followup personal - personally with
11 it.

12 Q. You didn't do much or you didn't do any?

13 A. I didn't do any.

14 Q. Okay. And would you agree that the grey leisure van
15 is a little - that's a little unusual car than like a
16 Gold Toyota Camry. Would you agree with that?

17 A. I couldn't tell you what a leisure van looks like.

18 Q. Okay. Isn't it one of those kind of old-school
19 things before minivans that people drove that - you
20 don't know?

21 A. I don't know.

22 Q. Okay. So you didn't take steps to find out?

23 A. No.

24 Q. But a grey leisure van must not be very common if
25 you've never heard of one, right?

1 A. Right.

2 Q. Okay. Because obviously, whoever did this, as we
3 heard from the list of property, had to have
4 somewhere to put all this stuff that was taken from
5 the residence, right?

6 A. Yes.

7 Q. Let me ask you a little bit about the descriptions
8 that were given at - well, let's do that next.
9 Fingerprints. There were three areas that you
10 attempted to take fingerprints from; is that right?

11 A. Correct.

12 Q. The jewelry box, the dresser and vacuum cleaner?

13 A. Correct.

14 Q. Did you attempt to take fingerprints from anywhere
15 else?

16 A. No.

17 Q. And you attempted to find DNA in three areas as well?

18 A. Correct.

19 Q. The back fence?

20 A. Correct.

21 Q. The jewelry box?

22 A. Correct.

23 Q. And the dresser?

24 A. Correct.

25 Q. Nowhere else?

1 A. No.

2 Q. Now, the - was there anybody that came there, or did
3 you look for any, what they call, trace evidence like
4 hairs or fibers or anything like that?

5 A. No.

6 Q. Okay. And at this point of the investigation is when
7 you would be looking for that, the story was that it
8 was three people that came in, right?

9 A. Correct.

10 Q. And that they were there for a while?

11 A. Correct.

12 Q. And I think it's stating the obvious, but isn't it
13 more likely that you would find trace evidence - the
14 more people, the more trace evidence you were likely
15 to find?

16 A. You're going to leave trace evidence if you walk into
17 a room, so -

18 Q. But three people leave more than one person?

19 A. Yeah, correct?

20 Q. And you can also say the longer somebody is there,
21 the more that's going to be there?

22 A. Yes.

23 Q. Now, let's talk - you're familiar - based on your
24 role as the lead investigator, you're familiar with
25 the descriptions that were given in this case?

1 A. I know that there was descriptions given initially,
2 and I have my descriptions from when I had spoke with
3 the victims.

4 Q. And that's what I'm talking - you knew where I was
5 going. Brubaker, I guess, said that she relayed a
6 description, and Chandler apparently got a
7 description, right?

8 A. Correct.

9 Q. And do you have - do you remember what - who Chandler
10 got the description from?

11 A. I can look back in his report and see if it's
12 indicated.

13 Q. I have one too. If you have it, go ahead.

14 A. Okay. There are descriptions in his report, but it
15 doesn't indicate which victim provided the
16 information.

17 Q. Mine says interviewed the suspect at the top, doesn't
18 it? That should be the victim.

19 A. That's a report format.

20 Q. Okay. Well, is it your understanding that the
21 interview was with Senora Jones rather than one of
22 the children?

23 A. The way the line - the way the report format is set
24 up, had there been a suspect interview, it would go
25 right there. And it appears that he put the

1 description under that formatted suspect area.

2 Q. I didn't get you.

3 A. The report format - it's a report format. You have,
4 you know, a synopsis, observation of scene, interview
5 with victim, you know, 1, 2, 3, 4, 5. And then
6 interview with suspect, however many you have. So
7 had there been an identified suspect at the time, he
8 would have done an interview. There was no suspect
9 interview, because the suspects had fled the scene,
10 but he left that heading in the report.

11 Q. Right.

12 A. And that's where he stuck the description that came
13 from - I don't know where he got it from.

14 Q. Okay. Well, the last person who is mentioned as
15 victim number 6 is [REDACTED] A.V., a black female,
16 date of birth [REDACTED], four years old. I assume it
17 didn't come from her.

18 A. I don't think so.

19 Q. So you don't know where that description came from?

20 A. I don't know where he got it from?

21 MR. SHELDON: Objection, Your Honor. I've let this
22 go on a while. He's testifying - I want to be open with
23 him, but he's testifying to another officer's report that
24 he really doesn't have personal knowledge of. At this
25 point, he's speculating.

1 MR. LEE: He's the lead investigator and said that
2 everything would run through him and, you know, everybody
3 reports to him. I'm just asking him about previous
4 descriptions inconsistent with the description he
5 ultimately took.

6 THE COURT: Overruled. Go ahead.

7 MR. SHELDON: Thank you.

8 Q. Are you familiar with Chandler's report?

9 A. Correct.

10 Q. You just don't know where that information came from?

11 A. At the time that I got my descriptions, his report
12 had not been completed. I don't know when his report
13 was actually approved and forwarded into the records
14 division.

15 Q. Well, this is dated 10/26/2010, correct?

16 A. It is.

17 Q. Yours says it was entered or changed 1/4/2011, which
18 is a couple of months later.

19 A. Correct.

20 Q. Okay.

21 A. The information that I got. I received my
22 information day of incident when I was on the scene.
23 Even though the supplement is dated, that's when I
24 entered the supplement.

25 Q. But Chandler was there before you left?

1 A. Correct.

2 Q. So, is it safe to assume the description he got was
3 prior to the description you got through the
4 interview of Ms. Jones?

5 A. Correct.

6 Q. All right. So do you have that report?

7 A. I do.

8 Q. It looks like it begins on Page 3; is that right?

9 A. I see the page with Interview of Suspect, 1, 2 -

10 Q. Number 1.

11 A. Correct.

12 Q. Okay. And Suspect Number 1, according to this, dated
13 the next day, black male, 5-7, white t-shirt, blue
14 jeans, may have had dreads, had something over his
15 head - it says white cloth - ponytail, mid-20s,
16 medium-to-light complexion. The victim could only
17 see his eyes, correct?

18 A. Correct.

19 Q. So that - from that ponytail - I guess we'll get back
20 to that in a minute. But that's what the description
21 was for Number 1, right?

22 A. Correct.

23 Q. Okay. And Number 2 - everybody is saying that
24 Suspect Number 2 is Mr. Powell, so let's go down to
25 Number 3, because there seems to be a little bit of

1 discrepancy between 1 and 3 as to who's who; okay?

2 A. Okay.

3 Q. Suspect Number 3, description 10/26/2010: Skinny,
4 dreads down to his ears, light to medium complexion,
5 red, glossy eyes, may be drug related, and then it
6 talks about white-colored stripes, something over his
7 face, right?

8 A. Correct.

9 Q. Okay. So as far as trying to clear up who's who, did
10 you hear Ms. Jones testify when she corrected me and
11 said:

12 *Look, I'm not talking about the guy with*
13 *the red, crazy eyes that I'm now identifying*
14 *in the photo lineup.*

15 Right? Who was Byron Young.

16 A. I understood the red, crazy-eyed guy was Number 3.

17 Q. Was Number 3?

18 A. Correct.

19 Q. But was not Byron Young who was picked out today in a
20 photo lineup by her, right? Didn't she correct me
21 and say that the guy she picked out and was sure
22 about was not the guy with red, glassy eyes?

23 MR. SHELDON: Witness pitting, Your Honor.

24 Objection.

25 MR. LEE: I'm trying to figure out who's -

- 1 THE COURT: Overruled. Go ahead.
- 2 Q. Do you know, Investigator?
- 3 A. My understanding is that the suspect who had his eyes
4 visible with his bottom face covered, is the one who
5 we're referring to as Suspect 1.
- 6 Q. Okay. And Suspect 1 is the guy that - I think we're
7 saying the same thing. Suspect 1 is the guy that
8 today when shown the photo lineup initially by Mr.
9 Sheldon, she picked out Number 4, which is a guy
10 named Byron Young.
- 11 A. Correct.
- 12 Q. Is that - that's State's Number 49 that she picked
13 out Number 4 right there?
- 14 A. Correct.
- 15 Q. And again, the description on here is ponytail for
16 Number 1?
- 17 A. Yes.
- 18 Q. And you're saying Byron Young is Number 1?
- 19 A. Correct.
- 20 Q. Number 3, the one with the guy with red eyes, skinny
21 dreads down to his ears, right?
- 22 A. Correct.
- 23 Q. Now, can we go to your report regarding the
24 description of the suspects.
- 25 A. Okay.

1 Q. All right. Suspect 1, mid-20s, 5-8, 160 - well, back
2 up. Is this one Senora Jones?

3 A. Yes.

4 Q. Okay. Mid-20s, dreads pulled back, for Suspect 1.
5 Consistent with the ponytail, right?

6 A. Correct.

7 Q. Okay. Obviously, I'm no hair or dreads expert, but -
8 and neither is Mr. Sheldon, but when you're talking
9 about these long dreads that can be pulled back into
10 a ponytail, are we talking more like State's Exhibit
11 52? Is that the impression that you get, pulling
12 them into a ponytail?

13 A. Those can be pulled into a ponytail.

14 Q. Okay. So those are the long ones. And when you're
15 talking - and that's the description for Suspect 1,
16 the one that didn't have glassy eyes that now Ms.
17 Jones is saying is Byron Young?

18 A. Correct.

19 Q. Okay. Now, let's go to Suspect 3, on the second
20 description, the one that is in your report. Black
21 male, early 20s, 5-8, 150, light skin, ear-length
22 dreads, wearing light-blue jeans. Described as the
23 one who screamed with red and glassy eyes, appeared
24 to be high and insane. That's Number 3, right?

25 A. Correct.

1 Q. And it said ear-length dreads. Is that more
2 consistent with that?

3 A. I would say so.

4 Q. Okay. And I'm pointing to Byron Young's picture,
5 Number 4.

6 COURT REPORTER: Was that yes or no?

7 A. Yes.

8 Q. Okay. Yet, that description of Number 3 is not the
9 one she says is Byron Young, right?

10 A. The hair styles in the pictures that were used do not
11 exactly match up to the descriptions that we got.

12 Q. Well, neither do the eyes, right? Because she said
13 nothing about red, crazy eyes for Byron Young; did
14 she? She said that was the other guy.

15 A. Correct, she referred to Suspect 3.

16 Q. Okay. Now, let's talk about Suspect 2. Chandler's
17 report the next day. You got it? What does it say
18 about the gun on Chandler's report the next day for
19 Number 2, which the State says is Mr. Powell?

20 A. Had Silver handgun held in his right hand.

21 Q. That says Marion Powell had a silver handgun held in
22 his right hand, right?

23 A. Correct.

24 Q. Okay. Then let's go to your report, Suspect 2. Does
25 it say anything about a gun?

- 1 A. Under which interview?
- 2 Q. Suspect 2.
- 3 A. Which victim interview?
- 4 Q. Senora Jones.
- 5 A. During Senora Jones' interview, she described the
- 6 three suspects as follows and stated that Suspect 2
- 7 had a black pistol, while either Suspect 1 or Suspect
- 8 3 had a dull, silver pistol.
- 9 Q. So it changed. Suspect 2 now has a - from a silver
- 10 handgun to a black handgun from Chandler's report to
- 11 your report, right?
- 12 A. Correct.
- 13 Q. And it also says - and I think you left it out by
- 14 accident when you were reading it. It says:
- 15 *Face uncovered,*
- 16 *which is what you read. But what you didn't read, I*
- 17 *believe, was where it says:*
- 18 *Face uncovered, but covered when leaving.*
- 19 That's what the second suspect - second report says,
- 20 correct?
- 21 A. My supplement shows, under Suspect 2:
- 22 *Face uncovered, but covered when leaving.*
- 23 Q. Okay. And that's what Senora Jones said?
- 24 A. Correct.
- 25 Q. I guess the point I'm trying to make, Investigator,

1 based on your experience, is it common for people who
2 have been involved in something like this to, I don't
3 think, change their story, but remember differently
4 and make mistakes and have some inconsistency like
5 that?

6 A. During traumatic experiences, sometimes guns can be
7 mis-described.

8 Q. Okay. As can hairstyles and heights and weights and
9 everything else, right?

10 A. I suppose so.

11 Q. Well, do you agree that the physical description for
12 Suspect Number 1 with long dreads and everything else
13 does not match Byron Young?

14 A. Based on the comparison of the other dreads, the
15 other one has long dreads.

16 Q. Okay. So her description is a lot different than her
17 identification at this point?

18 A. The pictures used.

19 COURT REPORTER: Sorry?

20 A. The pictures used have different hair.

21 Q. Okay. Is there any indication to indicate that that
22 picture is improper or doesn't represent the photo
23 correctly?

24 A. The - looking at all the pictures, they don't match
25 up to the hairstyles described.

1 Q. I think we're saying the same thing. Have you ever
2 dealt with Kenya Hagood?

3 A. I have not.

4 Q. Do you know anything about her?

5 A. I've heard the name.

6 Q. Would you know what her height and weight is?

7 A. I don't.

8 Q. Okay. I noted, depending on what side of the fence
9 you are, we used different language on things. Let
10 me ask you - Mr. Sheldon asked you towards the end:

11 *Was Mr. Powell eventually apprehended?*

12 Right? Do you remember that?

13 A. Correct, yes.

14 Q. And you said that he was.

15 A. Well, he -

16 Q. In fact, are you familiar with how he was
17 apprehended?

18 A. I know he was arrested in Hardeeville.

19 Q. Right. Okay. And do you know an Officer Meyers?

20 A. I do.

21 Q. Okay. Part of this investigation?

22 A. She was the one who went to Hardeeville.

23 Q. Okay. To pick him up?

24 A. Correct.

25 Q. Okay. And are you aware that Mr. Powell had actually

1 contacted police wanting to turn himself in?

2 A. I believe that's in her supplement.

3 Q. Okay. Well, can I hand you Officer Mayers'

4 Supplemental Report and see if you can refresh your
5 recollection?

6 A. Bluffton P.D. was notified by Hardeeville that they
7 were in contact with Mr. Powell, who wanted to turn
8 himself in.

9 Q. And he, in fact, did turn himself in?

10 A. Yes.

11 Q. He contacted them?

12 A. Right.

13 MR. LEE: That's all I have for Investigator Duke.

14 Thank you.

15 OFFICER JAMES DUKE

16 RE-DIRECT EXAMINATION BY MR. SHELDON:

17 Q. Investigator Duke, was this photograph of Byron Young
18 taken on October 25, 2010? Do you have any idea
19 whether it was or not?

20 A. I don't know when that photograph was taken. I know
21 it's a jail mug shot, but I don't - it would be any
22 one of his prior arrests in the database.

23 Q. So it could have been from years prior?

24 A. Yes.

25 Q. You don't know? Does hair grow, except for mine?

1 A. Yes.

2 MR. SHELDON: I take judicial notice that the
3 Defendant is writing with his right hand, Your Honor.

4 THE COURT: All right.

5 MR. SHELDON: Thank you.

6 Q. Do you have in any of your case files the actual
7 height and weight of the Defendant?

8 A. I don't have it with me. I take that back. I do
9 have the original incident report.

10 Q. You don't have the booking report?

11 A. I don't have the booking report. I have the incident
12 report. He's listed on the front page of it with his
13 descriptors.

14 Q. And what's his height?

15 A. Six foot.

16 Q. What's his weight?

17 A. 160 pounds.

18 Q. Six foot, 160 pounds. What's the description that
19 they gave of him, being the victims? I mean, we said
20 it a hundred times. I think the jury knows.

21 A. 6-2 and skinny.

22 Q. And what was the other description?

23 A. Suspect -

24 Q. No. Suspect Number 2 first, because you testified to
25 both your report and Sergeant Chandler's report.

1 A. Okay. My report 6-2 and skinny. Sergeant Chandler's
2 report, 6-1, 180 pounds.

3 Q. Are you aware of whether they had the assailant,
4 while he was holding them at gunpoint, stand on the
5 scale and weigh him?

6 A. No.

7 Q. Are you aware of whether they put them against the
8 wall - or they put the kids against the wall maybe
9 and measured his height?

10 A. No.

11 Q. So those are estimations, correct?

12 A. Correct.

13 Q. Pretty close.

14 A. Yes.

15 MR. SHELDON: No further questions. Thank you.

16 THE COURT: Any cross, Mr. Lee?

17 OFFICER JAMES DUKE

18 RE-CROSS-EXAMINATION BY MR. LEE:

19 Q. Do you have any evidence that Byron Young, at the
20 time this happened, had long hair, long dreads he
21 could put into ponytail?

22 A. Do I have any -

23 Q. Yeah. Any suggestion of that?

24 A. I don't have any.

25 Q. So that's just speculation by -

1 A. I could check in a database of dated jail mug shots.

2 Q. You didn't do that?

3 A. I didn't, no.

4 Q. Well, how about the other pictures on there, do you
5 know - isn't it important to have pictures that are
6 recent to the time of the alleged crime?

7 A. I would think it would be.

8 Q. Okay. We all look different than we did several
9 years ago.

10 A. I didn't complete the lineup, so I -

11 MR. LEE: That's all I have, Your Honor.

12 MR. SHELDON: Thank you, Your Honor.

13 THE COURT: You may step down. Let me see counsel at
14 sidebar.

15 OFF-THE-RECORD BENCH CONFERENCE.

16 BY THE COURT:

17 THE COURT: Ladies and gentlemen, we're going to
18 conclude today with the last evidence you've seen. We
19 have a problem with scheduling.

20 One of the attorneys involved in the case has been
21 obligated to appear somewhere else tomorrow. The State
22 believes that they have about - less than a full day's
23 worth, but almost a full day's worth of evidence to
24 present.

25 And I've had discussions with both sides of this case

1 since Monday. The State is pretty confident that they can
2 finish everything in one day. Instead of doing part of it
3 tomorrow and part of it Thursday, we decided to do
4 everything on Thursday, which means we won't need you
5 tomorrow. But, of course, we are going to need you
6 Friday.

7 There is one witness who cannot appear until Friday,
8 so we're going to have an hour-or-so witness Friday
9 morning. And we think that's it, and you'll have the case
10 in your hands sometime mid-morning Friday, we think.

11 I'm trying to keep you advised of what is going on.
12 So, I'm getting ready to let you go and will see you back
13 Thursday morning at 9:30.

14 I remind you not to talk to anybody about the case.
15 Don't let anybody talk to you about the case. Don't do
16 any research, don't get on the Internet and start
17 exploring the case or cases like this or things such as
18 this. That would be a violation of your oath. I wish we
19 didn't have to do it this way, but there's just no other
20 way to do it.

21 Does anybody have a problem with being back Thursday
22 morning?

23 Ladies and gentlemen, you're excused until Thursday
24 morning at 9:30. Thank you so much.

25 BAILIFF: The jury is clear and the door is closed,

1 Your Honor.

2 THE COURT: Is there anything we can do, anything we
3 need to do?

4 MR. SHELDON: The only thing I can think of is that
5 we do have some motion in limine with other witnesses that
6 we would need to do for. One is Eric Riley, which would
7 probably be the longest, and I can't have him here until
8 Thursday morning. I could try to get him here tomorrow,
9 but probably not. The other ones are witnesses that will
10 be coming that we could possibly - I'm just - we can
11 either meet earlier on Thursday to make sure we do it
12 before the testimony goes forward. Even if we don't do
13 that, I don't see a problem with anything on Thursday with
14 my case. But I'm just offering that as something if we
15 needed to do something tomorrow afternoon, to make certain
16 that everything can move forward the way we need it to.
17 That may save some time.

18 THE COURT: Well, what about just trying to - let's
19 try to regroup at 3:00 o'clock tomorrow afternoon. From
20 your perspective, that's not a problem?

21 MR. SHELDON: No, no.

22 THE COURT: You figure you'll be through -

23 MR. LEE: I certainly hope so, yes.

24 THE COURT: - 3:00 o'clock?

25 MR. LEE: Yeah. I have - I can get Mr. Sheldon's

1 phone number, cell phone number and if it's looking like
2 it's going to be delayed, I can certainly call.

3 MR. SHELTON: Well, we have each others.

4 THE COURT: Other people in your office have
5 indicated they're going to have work for us here tomorrow?

6 MR. SHELTON: Yes, they will have work. So we'll be
7 working one way or the other. And the only thing - I said
8 that kind of off the cuff. I just want make sure that we
9 don't keep the jury waiting any more on Thursday,
10 obviously. And I can if I need to have the other two
11 witnesses that are out of custody, Derrick Adams and
12 Kawani Bradshaw, here tomorrow to do the brief motion in
13 limine that we needed. That would at least save maybe 15,
14 20, 30 minutes on Thursday.

15 THE COURT: I'd like to say that, if we could.

16 MR. SHELTON: Okay.

17 THE COURT: Have we got anything special - specific
18 scheduled tomorrow afternoon?

19 MADAM CLERK: Not tomorrow afternoon, Your Honor. We
20 have a full morning for you that will probably lead into
21 some of the afternoon, but 3:00 o'clock is fine as far as
22 going back with Marion Powell.

23 THE COURT: I started to say 2:00, but we just don't
24 ever know what's going to happen.

25 MR. LEE: And I apologize for that, Your Honor. Can

1 we address one other issue while we're here so, hopefully,
2 I can relieve somebody.

3 THE COURT: Everybody can sit down if you want to.

4 MR. LEE: I currently have Pam Brown of the
5 Intelligence Unit under subpoena. She is very worried
6 about testifying. We're trying to do everything we can to
7 avoid doing that. I got into some of that today with
8 Investigator Duke. I think it's sufficient enough to make
9 a point.

10 My expert has been given an email that Mr. Sheldon
11 sent me, summarizing his visit with Ms. Brown, and I
12 expect that to be incorporated into her testimony and
13 review. Obviously, they can review hearsay testimony.

14 Mr. Sheldon has indicated that he has no problem. He
15 isn't going to object to that. So, based on that, as long
16 as he still agrees on that, I would like to tell Michelle
17 in the back to release Pam Brown from her subpoena. As
18 long as I can be assured that I'm not going to catch it -

19 MR. SHELTON: I am not going to object to experts
20 relying on - obviously, it's a lesson to be very careful
21 what you write in emails, of course.

22 MR. LEE: *Munday versus Maryland*, right?

23 MR. SHELTON: That's right. And I try to be careful,
24 especially in situations like this where you know this
25 might come up.

1 I don't have an objection to the expert relying on
2 that email that you've already reviewed, Your Honor, to
3 look at the procedure that Pam Brown uses in her training
4 and background. I'm not planning on calling Pam Brown in
5 my case, because I don't think it's relevant for my case.
6 I think that is more of a pretrial issue. I think that
7 Mr. Lee may have some relevance with arguing to the jury
8 as far as what's composed within the lineup itself.

9 I will reserve a relevance argument, but not the
10 argument admitting the actual - if that makes sense - the
11 actual having her rely on the email, I don't want to not
12 reserve a relevance argument without thinking about it a
13 little bit more, because I kind of thought we were over
14 this issue and it's just a misunderstanding that I had
15 with Mr. Lee. I thought this was more of a pretrial
16 issue.

17 However, if she needs to rely on it and if it's
18 relevant, obviously, I don't mind it becoming her relying
19 on that email I sent for what Ms. Pam Brown does, what her
20 job is and what her training is and how she puts together
21 the lineup and anything that she had - any type of
22 reaction she had to this particular lineup.

23 MR. LEE: And I wouldn't go any farther than that. I
24 think it's going to be not a big issue. But we both would
25 really like to try to get Ms. Brown to not have to come to

1 court.

2 THE COURT: Does that - are you all both satisfied
3 with what both of you all have said?

4 MR. SHELDON: If it comes in, I'm not going to
5 require him to have her come up and testify is basically
6 what I'm saying.

7 THE COURT: I realize it's still early in the trial,
8 but let's assume for the sake of argument this case goes
9 to the jury -

10 MR. LEE: Yes.

11 THE COURT: Let's assume for the sake or argument
12 that all the charges go to the jury. I have not thought
13 this through, but is there - do either one of you envision
14 a lesser-included request on any of the charges? And I'm
15 going to tell you why I'm asking you now is, because, if
16 not, my thoughts would be we won't prepare any verdict
17 forms for the jury. We'll just use the indictment for
18 them to write on guilty or not guilty. If there is a
19 lesser included, we would have to prepare it.

20 MR. LEE: Right.

21 MR. SHELDON: Right.

22 MR. LEE: As long as I can review the indictments
23 first, I think that's - can we get a copy of that?

24 THE COURT: Which means if we have a lesser included,
25 we're going to need some assistance from somebody's office -

1 in preparing the jury verdict form -

2 MR. SHELDON: Absolutely, Your Honor.

3 THE COURT: - instead of relying on me to do it.

4 MR. SHELDON: Absolutely, Your Honor.

5 THE COURT: That's what I was talking about. You all
6 think about it. Anything else? 3:00 o'clock tomorrow on
7 this case?

8 MR. SHELDON: Yes, sir, Your Honor.

9 THE COURT: Adjourn this case until 3:00 o'clock
10 tomorrow.

11 MR. LEE: If they let me out of prison, I'll be here
12 as soon as I can.

13 THE COURT: Well, I mean, if you all can come earlier
14 than 3:00, we may be ready to go at 2:00 for all I know.

15 MR. LEE: I'll just have to give them - you just want
16 to meet with the lawyers or my client, too?

17 THE COURT: I'm sorry. Say it again.

18 MR. LEE: Is it just lawyers you want to meet with,
19 or do I need to arrange for them to bring him over?

20 MR. SHELDON: We'll have the motion in limine with
21 Kawani Bradshaw.

22 THE COURT: Yeah, the motion in limine. I think he
23 needs to be here.

24 MR. SHELDON: Okay. Absolutely. We'll arrange to
25 have him brought over at the proper time, Your Honor, the

1 Solicitor's office will.

2 THE COURT: Okay. This case is adjourned until 3:00
3 o'clock tomorrow, or sooner tomorrow. Court is adjourned
4 until 9:30 tomorrow morning.

5 MR. SHELDON: Thank you, Judge.

6 BEGIN DAY THREE, WEDNESDAY, NOVEMBER 20,
7 2013, 2:17 P.M.

8 MOTIONS IN LIMINE:

9 MR. SHELDON: May it please the Court, Your Honor?

10 THE COURT: Certainly.

11 MR. SHELDON: I'm going back on the record in the
12 State versus Marion Powell trial with some motions in
13 limine that we have deferred to on this part of the
14 proceeding.

15 First of all, Your Honor, the State has spoken with
16 both witnesses it planned to call this afternoon in
17 regards to the inconsistent statement motion we were going
18 to have. And the individual who first told us that the
19 statement that the first individual told him, Derrick
20 Adams told Kawani Bradshaw, is not what he's saying now,
21 okay. So, the State is withdrawing that motion to move
22 that into evidence. And if we need any type of testimony
23 on it, they're here. I can bring them forward, but the
24 State would prefer to just withdraw its motion. We're not
25 going to put it into evidence, and I've already told

1 defense that.

2 THE COURT: I don't hear any objection.

3 MR. LEE: I think I know to remain quiet sometimes.

4 No objection.

5 MR. SHELDON: And specifically what it is, is that
6 Mr. Bradshaw is not denying necessarily what Mr. Adams
7 told him. However, he says that he believes it was more
8 of his opinion on the matter and not necessarily what Mr.
9 Powell said to him.

10 THE COURT: Okay.

11 MR. SHELDON: Okay. So we do not think it would be
12 proper to try to move into evidence, and we withdraw the
13 motion as it stands now. I did note that Mr. Powell did
14 nod to Mr. Adams as he came into the courtroom just now,
15 though. So I thought that was interesting. But in any
16 event, they're also cousins, so.

17 Now we're going on to, I believe that Mr. Lee would
18 like to re-visit the statement of a co-conspirator motion.
19 Is that correct, Mr. Lee?

20 MR. LEE: That's correct.

21 MR. SHELDON: And specifically, I believe he would
22 like to re-visit, if you look at my memoranda -
23 memorandum, I have it here. I can hand it up to Your
24 Honor if you do not have it available.

25 THE COURT: I had it, but I'm not sure how available.

1 Give me a second.

2 MR. SHELDON: And I think his - what he wants to
3 raise again is the statement being in furtherance of the
4 conspiracy and my reliance on *State v. Gilchrist*, and the
5 citation in *Gilchrist* where I cited the Footnote Number 2
6 as further explanation of our interpretation of what in
7 furtherance of the conspiracy is. I have a copy of *State*
8 *v. Gilchrist* here, Your Honor, if you would like a copy of
9 the case.

10 THE COURT: Please, sir.

11 MR. SHELDON: And I have it tabbed to go to the
12 second page where that language is located. It's the top
13 right of the second page. Do you have a copy still?

14 MR. LEE: Uh-huh.

15 THE COURT: Give me a second to try to see what we're
16 arguing about here.

17 MR. SHELDON: Thank you, Your Honor.

18 THE COURT: Okay. I've read.

19 MR. SHELDON: Thank you, Your Honor. The State would
20 ask the Court to not reverse its previous ruling or see it
21 in a different light, particularly in the - first of all,
22 let's talk about the conspiracy prong, if we want to go
23 back to that prong first.

24 We now have evidence in the record that Ms. Jones
25 identified an individual who is Byron Young as one of the

1 folks that came into the house that was previously not in
2 evidence and not known to defense counsel or the State.
3 As a surprise to the State, however, she said that she was
4 being abundantly cautious when going through the lineup
5 procedure, but in her opinion, that's him. Those are his
6 eyes, that's him. So I think that would further shore up
7 the conspiracy prong, the State's argument for continuing.
8 And I've said that in my brief there was over 100 phone
9 calls, and then I said on the record that was a mistake.
10 There's actually a little more than 60. The problem is
11 that I was looking at different packets I received under
12 subpoena and not all of them together. It is actually
13 over 190 phone calls that they have made back and forth to
14 each other since he's been in jail.

15 The State's argument as for the conspiracy prong is
16 that conspiracy is not complete, but they are continuing
17 to work with each other, and this statement is evidence of
18 that, until Mr. Powell is found not guilty and all the
19 charges are gone.

20 As far as the law on the case, the State believes
21 that it's cited correctly under the explanation given in
22 this court in *Gilchrist*.

23 Further, looking at the top of Page 2, which is South
24 Carolina 342 S.C. 369, and that would be at - I'm looking
25 at this and not my brief - 372, I believe.

1 Further, a statement by a co-conspirator
2 must advance the conspiracy in order to be
3 admissible. Admission to crime does not
4 qualify as a statement in furtherance of
5 a conspiracy.

6 And at that point is when they put the Footnote
7 Number 2. And it says:

8 As explained in U.S. versus Arias-
9 Villanueva, while mere conversation or
10 narrative declarations are not admissible
11 under this rule, statements made to induce
12 enlistment, further participation, prompt
13 further action, allay fears, or keep
14 co-conspirators abreast of an ongoing
15 conspiracy activities are admissible.

16 And we did rely on that language in order to argue
17 for the Court to rule in our favor in admission of the
18 evidence.

19 We do not think the Court, because it's within the
20 holding of this - of this case would not include that, if
21 it did not mean for it to provide direction to trial
22 courts when interpreting what in furtherance of the
23 conspiracy is. And that's the reason that we cited it.

24 Even if that language is not binding upon the Court,
25 I believe it's instructive. And just looking at the facts

1 and looking at what that statement is intended to produce:

2 *I know you're not going to snitch on*
3 *us. We know you're not going to snitch on*
4 *us. I'm not going to snitch on you.*

5 I think that even without that language controlling,
6 it would still be deemed in furtherance of the conspiracy
7 to further the criminal action.

8 MR. LEE: Your Honor, may it please the Court. I
9 disagree with Mr. Sheldon's definition of the conspiracy.
10 And it's our position - I apologize for coming back here,
11 Judge. I got his memorandum 9:00 o'clock Sunday night,
12 and I was working all weekend. And I just didn't
13 *Gilchrist*, didn't have a chance to look at it before we
14 came here Monday, so I apologize. But upon further
15 review, I guess as they say, I don't think that the
16 State's definition of the conspiracy is appropriate, the
17 one he just made.

18 It is, I believe, self-evident that a conspiracy - it
19 says:

20 *A conspiracy is the planning or the*
21 *agreement to do a criminal act, that a*
22 *conspiracy ends as to a particular act,*
23 *if it's agreed to do that act, as soon*
24 *as the act is complete.*

25 And the conspiracy, if there was one, to break into

1 the Jones' house, here again, if there is one, ended as
2 soon as that act was done, which is October 25, 2010. It
3 ended at that time.

4 Now, if they're trying to say that there's an
5 additional new conspiracy between Mr. Powell and Mr.
6 Young, I haven't heard it. And it's my position that, if
7 you read *Gilchrist* and the quote that it has under *Arras*
8 *v. Awava*, if you read that very carefully, the first part
9 is very instructive. And it says:

10 *While mere conversation or narrative*
11 *declarations are not admissible under this*
12 *rule.*

13 And quite frankly, I think that all this is, is a
14 conversation. But it goes on to say that certain things
15 are. And the one I think you're relying on is to allay
16 fears.

17 Now, if you keep reading after that:

18 *To allay fears or keep co-conspirators*
19 *abreast of an ongoing conspiracy activities*
20 *are admissible.*

21 So you have to read *allay fears of an ongoing*
22 *conspiracy*. So the conspiracy's activities must be
23 ongoing, first of all, to even get to that question.
24 Clearly, they aren't, under the conspiracy to rob the
25 house, because it had already been completed.

1 This case also says that spilling the beans, I think
2 as they referred to and is stated in also Anders,
3 admission to a crime does not qualify as a statement in
4 furtherance of conspiracy. Even if they wanted to try to
5 create a new conspiracy, the only thing I could think of
6 would be that Marion Powell and Byron Young are conspiring
7 to, according to the State's version, not snitch on each
8 other.

9 Well, the problem with that, even if it was - even if
10 it was true is not snitching on yourself or somebody else
11 is not a crime. And a conspiracy must be to do an illegal
12 act. And not snitching, as the case in that one, is not -
13 it is not a crime. It cannot be the object of a
14 conspiracy. I haven't even heard him suggest that. The
15 only thing that - for example, even if they - even if an
16 agreement was, we're going to rob this house, and then if
17 anybody gets arrested, nobody is going to talk. Even if
18 that was the agreement early on, which there's no evidence
19 whatsoever in this case, if that's the case. But even if
20 that was the agreement early on, the conspiracy would only
21 relate to the illegal act part of that, which would be the
22 robbing of the house.

23 Similarly, if they said we're going to rob this
24 house, and then we're going to eat at McDonald's, they're
25 conspiring to rob the house and eat at McDonald's. But

1 eating at McDonald's is not a criminal act, so it's not a
2 conspiracy to go eat at McDonald's.

3 We plan things all the time. And so, there is no
4 illegal act that - and certainly, this whole thing is not
5 ongoing just by the very language of conspiracy, which
6 happens before something. You can't plan something that's
7 already happened. So that is the only possible exception.
8 The only one he's raised, the only one that I can even
9 come close to I believe has any relevance to this case.
10 I'm not aware of any other exceptions that would - that
11 would let this in.

12 Of course, he is saying it's not hearsay, so it
13 doesn't have to fit an exception. But even if it was
14 hearsay, I don't think it would fit any exceptions. So
15 that's the issue with this, is while anything said by a
16 defendant may be deemed to be a statement against interest
17 or a party opponent or something like that, what the other
18 guy is saying is the problem. And that they're attempting
19 to say - to bootstrap that into getting the entire
20 statement in, and that's the - that's one of the problems.
21 And I think that's the one that respectfully should be
22 decided first, because, if there is no ongoing conspiracy,
23 all of these statements made by Byron Young are hearsay,
24 and there's no hearsay exceptions that they can fit it
25 into and it is, therefore, inadmissible hearsay.

1 If they have another avenue for getting it in, I
2 haven't - I haven't heard of it. But I believe that
3 everything that Mr. Young said is hearsay is admissible -
4 it is hearsay, because it does not qualify under the co-
5 conspirator definition of things that are not hearsay.
6 And the fact that - the fact that it was reported really
7 doesn't matter. If it was not reported, the situation
8 that we would be in would be they'd have to call Mr. Young
9 to say this is what Mr. Powell said - told him. If they
10 tried to do it some other way, it would clearly be
11 hearsay, because Mr. Young is not here. They haven't
12 talked to him, and he's not unavailable.

13 So we believe, clearly, it's hearsay that the
14 exception that - or I should quit saying exception.
15 They're claiming it's not hearsay, and the reason is
16 because there's a co-conspirator exception. There is no
17 evidence whatsoever that there was an ongoing conspiracy
18 on the date of these phone calls between Marion Powell and
19 Byron Young. There is no illegal act that is being
20 contemplated.

21 Any previous illegal act, which the State claims was
22 the robbery and burglary of this house, has been completed
23 some two-and-a-half years prior, and Mr. Powell has been
24 in jail all that time. These are conversations that -
25 that they had that are no way in furtherance - they're

1 classic hearsay, and hearsay doesn't come in unless they
2 meet one of the exceptions or they call the person, and
3 there will be an exception through doing that.

4 So, clearly, - I think the whole issue is resolved if
5 you find there's not a conspiracy and this is, indeed,
6 hearsay, and they cannot offer an exception to the hearsay
7 rule. I would respectfully suggest that that would be the
8 first question of law for Your Honor to decide.

9 I do have some additional arguments to be made if we
10 need to go that far, but I think that's probably the
11 preliminary matter that should be decided, respectfully.

12 THE COURT: Thank you. Mr. Sheldon?

13 MR. SHELTON: Your Honor, if it pleases the Court, if
14 you're not inclined to already make a decision, a
15 conspiracy in my brief, I cite *State v. Sims*, and I'll
16 just go back to the classic definition that's been cited
17 by our courts.

18 It's a combination agreement or agreement between two
19 or more persons for the purposes - purpose of
20 accomplishing a criminal or unlawful object or of
21 achieving by a criminal or unlawful means an object that
22 is neither criminal nor unlawful.

23 A criminal act is - one way to look at it is the
24 armed robbery. The armed robbery is not completed. Mr.
25 Young is out there and has never been charged at this time

1 when he made the statement. And Mr. Powell, his co-
2 conspirator of armed robbery, is in jail and is pending
3 trial.

4 The agreement is, I'm not going to snitch on you.
5 You're not going to snitch on me. If we look at it as
6 continuing conspiracy for the armed robbery, the armed
7 robbery is not complete until both of them are free. Both
8 of them are not free at this point. Both of them have -
9 are still enjoying the fruits of what the armed robbery,
10 the conspiracy would be.

11 Furthermore, I don't want to - didn't argue this
12 before, however, I think the State - the Court can
13 consider it. A misprision of a felony is a crime. I
14 mean, conspiracy to commit misprision of a felony are two
15 incongruent charges. However, they can exist. It can be
16 interpreted that way, as well.

17 I'm not going to snitch on you. You're not going to
18 snitch on me. Obstruction of justice is a crime. I'm not
19 going to snitch on you. You don't snitch on me.

20 Even if you don't look at it under the co-conspirator
21 not-hearsay rule, the statement made just before this by
22 Mr. Powell, just before Mr. Young makes this statement:

23 *I know you're not going to snitch We*
24 *know you're not going to snitch on us.*

25 Putting even more people into the picture, which is

1 what the evidence in this case is so far.

2 *I'm not going to snitch on you.*

3 Mr. Powell says that - let me get it. Let me turn to
4 my page here.

5 *They don't like the simple fact that*
6 *I sit in this B-word here that if I'm going*
7 *to get fried, I'll get fired before I fold.*
8 *You feel me? They don't like that.*

9 The State submits that's an admission. Before I get
10 fried, before I fold, that's not a statement of innocence.
11 It can be deemed as a statement. It can be interpreted
12 either way. And as an admission, then it would be under
13 classic rules of evidence. If he is saying that, then
14 it's fair to put the whole context of the conversation in
15 around it, which is an admission, which the next - which
16 would be the response to that by Mr. Young.

17 So alternatively, I would argue to put it in as an
18 admission. And not only as an admission, Mr. - and also,
19 admission from Mr. Young's - from him letting Mr. Young
20 say that, and then saying that - well,

21 *What do you mean 'snitch'?*

22 MR. LEE: Let me respond briefly, Your Honor.

23 THE COURT: Yes, sir.

24 MR. LEE: Misprision of a felony and obstruction of
25 justice, there is absolutely no evidence that they're

1 engaged in a conspiracy to commit misprision of a felony
2 or obstruction of justice. There needs to be *prima facie*
3 evidence other than the statement of a conspiracy before
4 you can try to use this under the hearsay rule.

5 They're trying to prove the exception through what
6 the exception is. And in addition, even if so, if you are
7 accused or suspected of a crime, as both of them were
8 early on, which we know, because they gave the names, you
9 know, the next day - the sheriff's office. It is not the
10 - you do not obstruct justice by not admitting a crime or
11 by not admitting your involvement as a co-conspirator in a
12 crime. I mean, clearly, that is not a crime. The *Fifth*
13 *Amendment* clearly - that is not a crime.

14 So misprision of a felony or obstruction of justice
15 just simply don't apply for someone who is under the gun
16 and under the watchful eye of law enforcement, one of
17 whom's been charged; the other who has been accused of it,
18 shown in a photo lineup and everything else.

19 So, I mean, it's not against the law not to go admit
20 that you, in the best scenario, did something. And so,
21 there is no illegal act that's being committed for a new
22 conspiracy. And therefore, there cannot, as a matter of
23 law, be a conspiracy.

24 The problem, I think, with the whole case is it talks
25 about putting things in context. Everything is being spun

1 around so much. Mr. Sheldon's interpretation of not - you
2 know, *Before I get fried, I'm not going to fold.* Well,
3 his interpretation of that and the one he would want to
4 make, whether it was Byron Young or not, is that that
5 means be a snitch. He said it can mean a couple of
6 different things. I'll tell you something else it could
7 mean. If it said *get fried or fold.* Get fried sounds to
8 me like you go to court and get a whole lot of time and
9 you're found guilty. Fold sounds an awful lot like
10 pleading guilty to me, fold. He didn't say snitching.
11 Young is the one who uses the word *snitch*.

12 If they want to - if they want to get this stuff in,
13 go get Byron Young and let's bring him in here. There's
14 no evidence he's unavailable. There's no evidence that he
15 has taken any type of - asserting some kind of privilege.
16 They can't show he's not unavailable, because they haven't
17 subpoenaed him and he's ignoring the process. So they
18 can't get around it that way, as well. So again, it's
19 classic hearsay.

20 And I'm not aware of a hearsay exception that says
21 that hearsay is admissible if it needs to put something in
22 context. That simply is not a recognized reason for
23 allowing otherwise inadmissible hearsay. It may be - I
24 think Rule 106 talks about putting in related writings or
25 recordings if somebody said, well, this is part of what

1 you said, or this is part of what a book said. You can
2 say, well, you've got to read the sentence before and the
3 sentence after. But that - that has nothing to do with
4 hearsay.

5 So, I mean, I think it's a unique approach. You say,
6 number 1, you can't have a conspiracy for the two charges
7 he's named. And even if you could, there is zero, zero
8 evidence, much less *prima facie* evidence that a conspiracy
9 to commit misprision of a felony or obstruction of justice
10 existed between these two guys to have this fall into the
11 - to make it not hearsay.

12 THE COURT: Thank you. All right. I find that the
13 conversation between the two of them could not have been
14 part of conspiracy, that the crime which has been brought
15 here has already been committed and there's no evidence of
16 a new conspiracy; that there's insufficient evidence to
17 rely on the misprision of a felony or obstruction of
18 justice.

19 Further, I find that the statement that, *if I get*
20 *fried before I fold*, is not an admission of against
21 interest. And therefore, I'm trying to figure out whose
22 motion I'm granting here or denying.

23 Mr. Lee's motion, I guess, is to suppress statements
24 -

25 MR. LEE: Yes, sir.

1 THE COURT: -- about each saying they were going to
2 snitch on the other or not snitch. And was it -- was there
3 another part to it, too?

4 MR. LEE: That was for the snitch, and then there's a
5 conversation about a legal visit.

6 THE COURT: About what?

7 MR. LEE: About - I just have legal visit. It's
8 about where Mr. Young is there. But again, my argument
9 would be the same, that, if he's not a co-conspirator, the
10 same - the conversations, all three, were with Byron
11 Young, and that they're merely conversations which are not
12 part of conspiracy. Isn't that right, Mr. Sheldon? There
13 are three you are trying to get it?

14 MR. SHELDON: Well, Your Honor, all three were
15 previously ruled in pretrial, obviously. And you've got -
16 obviously, we can strike any of them that suits the Court.
17 The State has relied upon those being entered into
18 evidence when it made its opening statement. And this was
19 not known to me. I mean, Mr. Lee did have my brief the
20 night before trial. I didn't have his brief until the day
21 of trial. And the State, obviously, respects the Court's
22 decision and abides by the Court's decision.

23 The State is asking - I do not have the case law in
24 front of me and do not want to cite anything I'm not
25 certain of. If I found a case that would further my

1 argument that the conspiracy could be ongoing while the
2 pending charges are present, would the Court take that
3 into consideration before making a final ruling?

4 THE COURT: I would. I'd flip flop again.

5 MR. SHELDON: Okay, thank you. Thank you, Your
6 Honor.

7 THE COURT: So let's make sure we know what
8 conversations we're talking about or what statements we're
9 talking about.

10 MR. LEE: There's three of them.

11 MR. SHELDON: There's three of them that have been
12 now - ruled conditionally now into evidence. Now, the
13 first one is the, *I'm not going to snitch on you; you*
14 *don't snitch on me.*

15 THE COURT: Snitch.

16 MR. SHELDON: The next one is whether the legal visit
17 or what-have-you when Mr. Powell tells Mr. Young that:

18 *There's some funny stuff going on.*

19 *They trying to make - get a co-defendant.*

20 And then, he's telling Mr. Young, and without saying
21 who it is, trying to get him to know who it is and says
22 Shorty. And then, he says old girl. And he says:

23 *Come on, man. You're usually faster*
24 *than this.*

25 THE COURT: Right.

1 MR. SHELDON: And then, the third one is the one that
2 talks about:

3 *I've got a girl in Mill creek.*

4 And then, Mr. Powell says:

5 *I don't know where that area is,*
6 *or something of that context. And then, he laughs.*

7 THE COURT: All right. So where are we?

8 MR. LEE: My understanding is that, if it's not a co-
9 conspirator statement of Mr. Young, that they can't get
10 anything in on Mr. Young. And all three of those are
11 conversations with Mr. Young. Unfortunately -

12 THE COURT: What I mean is where are we? Other than
13 those, is that all we have to deal with?

14 MR. SHELDON: Yes, Your Honor. And the State - and
15 finally, the State would like to raise one - one point,
16 Your Honor, that - and I want to put it on the record,
17 making sure that Mr. Lee knows that we try to do this.

18 All the 404(b) evidence was obviously kept out at the
19 beginning of the trial. And also, what was kept out is
20 the method in which law enforcement came upon finding the
21 original defendants and put them into the lineups, which
22 was that the facts behind that are that Beaufort County
23 Sheriff's Office investigators, one particularly, Andrew
24 Rice, knew that Mr. Cleven Jones, the victim's house was -
25 actually had his house under surveillance in the month

1 before the armed robbery, and had saw Mr. Jones' car in a
2 known drug area in Greys Hill, which is not far from Big
3 Estate. It's across from Whale Branch and Dale, that
4 area.

5 When he saw news of the robbery that took place, he
6 contacted Bluffton and told them that other people - these
7 folks on the northern side of the county, in the Big
8 Estate area, had been committing crimes like this, robbing
9 drug dealers like this.

10 So it's not as if these ID's fell completely out of
11 the blue to Bluffton. It's not like they went through the
12 database and just said, well, this guy, this guy, this guy
13 and this guy.

14 I believe that the expert is going to - for Mr. Lee
15 is going to testify - and I don't know. I don't want to
16 put words into his or her mouth. I believe one of the
17 purposes is, is to show as if this photo was taken out of
18 the blue, was - there's no intelligence whatsoever behind
19 this photo. That these people were just completely
20 randomly selected out of booking photographs, and then
21 that would make the danger of misidentification even
22 greater.

23 If that theory is put forward in defense by the
24 Defense, the State would seek as a reply testimony to call
25 Investigator Rice to explain how those pictures became

1 evidence in the first place.

2 MR. LEE: Actually, it would be less suggestive if it
3 was pulled randomly and someone selected someone. So my
4 expert is not going to testify as to that. I'm not about
5 to open the door, but I understand where he's -

6 MR. SHELDON: I didn't know - this isn't something I
7 normally talk about out of court. However, since we're
8 all here together and we have time, I figured I would
9 bring it up.

10 THE COURT: I would think if such testimony came
11 forward, that would be a good argument to respond to it,
12 so.

13 MR. LEE: Judge, the other thing is Investigator
14 Rice, I guess, is going to be called tomorrow to - correct
15 me if I'm wrong, Ben - to testify that - about a
16 connection between seeing - oh, seeing Cleven Jones'
17 house, the place that was burglarized, was under drug task
18 force surveillance during the time that this robbery - not
19 the exact time, unfortunately, because we wouldn't be
20 here. But it was under surveillance, what, a month prior
21 starting?

22 MR. SHELDON: Yes, I believe.

23 MR. LEE: And so, the State - I can't remember when
24 he told me about that, but anyway it's been a couple of
25 days. But the State is attempting to have Drug Task Force

1 say, yeah, Cleven Jones' house was under drug task force
2 surveillance. And the things tying it together was it was
3 a - again, and there was this; bear with me. But there
4 was a car in the garage of Cleven Jones' house at some
5 point, I guess, within the past month or so of this that
6 had a Florida tag on it. They ran the tag. It came back
7 to an individual whose fingerprint was later found on a
8 compression bag with \$1.2 million in it in a horse trailer
9 in Kansas. And the horse trailer was registered in
10 Beaufort. Is that the right sequence?

11 MR. SHELDON: Yeah. I don't know if I'm seeking to
12 introduce that, though, at all, so I might save you some
13 time here.

14 What I would - what I would proffer from here if Mr.
15 Rice - Investigator Rice was here, is that Cleven Jones'
16 car, very nice, expensive vehicle was seen while they were
17 doing surveillance on a known drug house in Grays Hill,
18 firsthand knowledge of that. Then his house was under
19 surveillance briefly before this occurred.

20 As far as - the only difference between what - as far
21 as the car being inside of the garage, I really told Mr.
22 Lee that for Brady material more than anything that I
23 would - was actually going to ask Mr. Rice about. But,
24 however, that money that was seized was seized before they
25 saw the license plate, not after the license plate, I

1 believe. So, I believe that was already in existence, and
2 somehow, they got a hit on that.

3 MR. LEE: Obviously, I'll use relevance 403. To
4 testify - they call a witness - Cleven Jones -

5 THE COURT: I understand the relevance, but how is
6 that prejudicial to your client? I'm just not sure I
7 understand it. Maybe some more stuff is going to come on
8 the back end of it.

9 MR. LEE: I'm not sure. But, Judge, you know 403
10 also deals with prohibitive versus prejudicial effect.
11 But it also deals with misleading the jury, confusion of
12 the issues. And so, 403 is kind of a broad brush. But I
13 don't even think you get to relevance to even get to 403,
14 because what - in essence, what is happening is they're
15 calling Mr. Cleven Jones to establish a - I guess that he
16 was having an affair with someone. They put on there that
17 he has a prior drug record. If they present no other
18 evidence as to him that's he's involved in the drug trade
19 - I asked him if he was. Obviously, he answered no. And
20 so, the only thing that that's going to do, I guess, is, I
21 mean, is it for the purpose of impeaching Cleven Jones? I
22 don't know.

23 I think what they're trying to use it for is to
24 somehow bolster their statement they have from Eric Riley,
25 who's the informant or the jailhouse snitch, to somehow

1 bolster his statement that there was some statement made
2 about robbing drug dealers or something like that. And I
3 don't think that's an appropriate use for it. I don't
4 think they can show the relevance.

5 MR. SHELDON: If I may, in his opening statement, one
6 of the things Mr. Lee said is that, these folks are all
7 the way up here in Big Estate, and how are they these
8 folks are all the way up here in Big Estate, and how are
9 these folks over here in Mill Creek even associated with
10 them? How is there even a connection?

11 Well, Mr. Jones was seen near Big Estate by law
12 enforcement not long before whatsoever this robbery took
13 place. Grays Hill and Big Estate are close to each other.
14 As well, Paulette Moultrie testified that that's where
15 she's from. And she also testified that, if you grew up
16 there, everybody knows each other. Everybody knows
17 everybody. So, if Mr. Jones is up there spending time up
18 there and has been known to, then it's relevant to show
19 to, first of all, rebut what he said in his opening
20 statement, because anything he says in the opening
21 statement the State has right to rebut, first of all.

22 And then, secondly, to show a connection also with
23 Paulette Moultrie and Kenya Hagood, and then Kenya Hagood
24 being the plotter, one of the plotters of the armed
25 robbery.

1 So not only is it relevant to show that Mr. Jones was
2 first moved to Yemassee when he first moved here, but also
3 spent time in that area, at least in Grays Hill, which is
4 close to Big Estate. And folks in that area know
5 everybody. Everybody knows each other if they're of a
6 certain age and went to school together. And if he is
7 spending time there, there's a really good chance that
8 there is a connection somehow, that these guys would know
9 someone from Yemassee may have heard of him.

10 MR. LEE: Judge, that isn't why he wants to use it.
11 I'll respect --

12 MR. SHELDON: That's exactly - excuse me. That is
13 exactly why I want to get it in, and that's what I'm going
14 to argue to the jury. That's exactly why I want to get it
15 in.

16 MR. LEE: Judge, a simple way to get that in would be
17 if asked as a witness, Mr. Jones, do you know him? Do you
18 know these people? Do you know, particularly, Mr. Powell,
19 rather than do the roundabout where some people know some
20 people know so and so, so he maybe - maybe, maybe he knows
21 Mr. Jones. If that's the only - if that's what it's for,
22 what it's going to do is inflict in the jury's mind all
23 this stuff about he was in a known drug area. He has a
24 prior conviction for drugs. And it's probably going to be
25 buttressed by \$50,000.00 worth of stuff in this guy's

1 house. They're going to simply argue this guy's a drug
2 dealer. So, if they're using it - they've already missed
3 their chance to say that Cleven Jones and Marion Powell
4 knew each other. The simple way to do that is ask him on
5 the stand and make me cross-examine. That causes
6 speculation about all kinds of things that shouldn't come
7 in and that's - I can't read your mind, Ben, but that's
8 speculation. There's too much there.

9 THE COURT: I'm going to permit what he's just been
10 following. I hope, I guess, that Mr. Sheldon is going to
11 be able to - I assume Mr. Sheldon is going to be able to
12 convince the jury that it means something.

13 MR. SHELTON: I believe it's relevant, especially
14 with the opening statement by Mr. Lee, saying that they
15 have no - he has no connection to that area.

16 THE COURT: Well, I'm going to allow it.

17 MR. LEE: I think Mr. Sheldon and I both have learned
18 a valuable lesson about opening statements that I've
19 learned many times. I made some statements about what I
20 thought was coming in is not, and he did the same thing.
21 I certainly wasn't trying to suggest he would try to do
22 something untoward. I'm just worried about the - what the
23 jury may get -

24 THE COURT: All right. So what's next?

25 MR. SHELTON: Thank you Your Honor. I believe that's

1 all. That's all from the State.

2 MR. LEE: And Riley is coming tomorrow?

3 MR. SHELDON: Riley is coming tomorrow morning. I
4 asked - SCDC should have him here at 8:30 and that should
5 be the only other in-camera hearing we need to have. His
6 attorney is Tabor Vaux. He's asked to be here.

7 THE COURT: So, we're going to try to do him around
8 9:00?

9 MR. SHELDON: Yes, Your Honor.

10 MR. LEE: I think we're just going to do kind of a
11 run-through, just to make sure that there is no - he may
12 cause a mistrial, so we're going to see if we could agree
13 on -

14 MR. SHELDON: Yeah. And I would like to meet with
15 him shortly, and Mr. Lee can be at that meeting,
16 obviously, to instruct him how to - what - how to testify
17 pursuant to the Court by the Court's ruling so that we
18 don't waste time inside the courtroom.

19 MR. LEE: Or have a mistrial.

20 MR. SHELDON: Correct.

21 COURT REPORTER: What did you say?

22 MR. LEE: Or have a mistrial.

23 THE COURT: I don't think there's anything else.

24 Court is adjourned until 9:00 o'clock tomorrow morning.

25 MR. SHELDON: Your Honor, the other two State jail

1 tapes that have come in, are those still coming in?

2 THE COURT: Say that one more time.

3 MR. SHELDON: The other two conversations from the
4 jail, are those still coming in?

5 MR. LEE: My understanding is that none of the jail
6 tapes are coming in.

7 THE COURT: Do what?

8 MR. LEE: None of the jail tapes are coming in.

9 THE COURT: Specifically, which ones are you talking
10 about?

11 MR. SHELDON: My understanding is the only one that's
12 been ruled out, because the only one that we proffered as
13 a co-conspirator statement in furtherance of the
14 conspiracy, is the one where Byron Young is saying:

15 *I know you ain't going to snitch. We*
16 *ain't going to snitch on you.*

17 The others are statements by Mr. Powell. The rule
18 that I'm referring to is when you have, for example, a
19 confession between two people or another admission between
20 two people and it's recorded. The statement comes into
21 evidence even if the other person doesn't testify, because
22 you have to understand what the context of the confession
23 or the statement or the admission is.

24 THE COURT: Bring me back. Which statements are you
25 talking about and what - which events?

1 MR. SHELDON: The first one would be, now, knocking
2 out the snitch statement, would be the one where Mr.
3 Powell is leading the conversation and stating that
4 they're going to get a co-defendant:

5 Get me a co-defendant.

6 And then, Young says:

7 Who?

8 And then, Powell says:

9 Shorty.

10 And then, Young says - he doesn't follow, and he
11 says:

12 Old girl.

13 And he said:

14 Somebody on the outside looking in.

15 All the substantive statements in that are made by
16 Mr. Powell. All the rest are in reply by Mr. Young.

17 MR. LEE: It's still hearsay. Anything that Mr.
18 Young said - and I think what Powell is saying is hearsay,
19 too, but let's talk about the first.

20 What Powell is saying is what his lawyer told him,
21 which clearly would be - would be hearsay. He's saying, I
22 had a legal visit. This is what my lawyer said.

23 THE COURT: Let me look for it. Let me look for it to
24 make sure I know what we're talking about.

25 MR. LEE: I believe that's the March 9th tape.

1 MR. SHELDON: It is. It is the March 9th tape, on
2 Page 7 in my brief, Your Honor. The State would submit
3 that, first of all, he's saying the words. Obviously,
4 he's saying the words. If he says something that his
5 lawyer tells him and it doesn't - it's not good for him,
6 if he repeats it, that's not hearsay. It's his words.

7 THE COURT: All right. So I've got that. I know
8 what you're talking about.

9 MR. SHELDON: Okay. And the statement says, in light
10 of the rest of the evidence that's already been presented,
11 the evidence is going to be presented that it's very
12 relevant, because we have Young now, who has been
13 identified by one of the victims as another assailant in
14 the crime. They're talking about the crime. They're
15 talking about:

16 *Try to get me a co-defendant.*

17 *Who?*

18 *Shorty. Old girl. Some funny ass 'S'*
19 *word. Somebody on the outside looking in.*

20 *Do you feel me?*

21 THE COURT: Okay.

22 MR. SHELDON: And then, he says:

23 *Oh, you're usually faster than this.*

24 So, obviously, they're talking about something that
25 Powell is admitting, that he is saying something to Young

1 that Young should know that Young is not picking up on as
2 related to his charge as related to this case.

3 THE COURT: All right. Let's look at that
4 conversation of March 9th.

5 MR. SHELTON: Yes.

6 MR. LEE: You don't even get relevance. It's
7 hearsay. He's telling - he's telling him - Powell is
8 telling Young what his lawyer said to him. It is hearsay.
9 It's classic hearsay. It's not an admission. He's
10 telling him what his lawyer told him. So without -

11 THE COURT: I don't see that. I don't see him
12 saying, My lawyer said so and so.

13 MR. LEE: Well, it starts out - and you may have to
14 back up a little more. Do you have the -

15 MR. SHELTON: I don't have it with me, but I can
16 proffer what it is. He says that he had a legal visit
17 today.

18 MR. LEE: Right.

19 MR. SHELTON: He says:

20 *How's it looking?*

21 And then, he says something about, good, but some
22 funny ass 'S' word.

23 MR. LEE: And then, it goes on to say:

24 *I said it was a good visit, but he*
25 *had had told me somebody in there trying*

1 to do some funny shit. Yeah, yeah, like
2 what?

3 He said:

4 *It doesn't hurt me; it only helps me.*

5 They're trying to get me a co-d,

6 basically. And he goes on to say something. So, I
7 mean, everything that he's - I mean, everything he's
8 saying, Judge, he has no independent knowledge of. That's
9 what - that's what his lawyer told him in the jail. He is
10 repeating it, and obviously, the issue that we have is
11 it's a horrible confrontation clause issue - problem,
12 because I'm his lawyer. If Mr. Sheldon wants me to get
13 him to testify, I mean, I can do that, but I don't think
14 he's going to agree to that.

15 THE COURT: Let's break it down. It's clear to me
16 that much of what he's saying is not, in fact, quoting his
17 lawyer. Let's just see what he said. He said:

18 *It doesn't hurt me; it only helps me.*

19 That he may be quoting his lawyer.

20 MR. LEE: Can you back up a little bit, because
21 there's something before that?

22 THE COURT: Like what?

23 MR. LEE: Four lines up.

24 *I said it was a good visit. He told me*
25 *that somebody in there trying to do some*

1 *funny s-h-i-t.*

2 So,, that, clearly, is what I - it says:

3 *He told me.*

4 And then, he goes on and said:

5 *He said it doesn't hurt me; it only*
6 *helps me.*

7 THE COURT: Right.

8 MR. LEE: *They tried to get me a co-defendant.*

9 THE COURT: They aren't trying to offer this as the
10 truth of the matter for certain whether he did it or not.
11 This is to explain the rest of his statement; isn't it?

12 MR. SHELDON: Correct, Your Honor.

13 THE COURT: Why he says the rest of the things that
14 he says.

15 MR. SHELDON: Correct, Your Honor. And the same
16 thing for Byron Young's response. And then, once he says,
17 you feel me, then, that's where the whole statement comes
18 into context, and it becomes very relevant.

19 THE COURT: Once you get to what? I'm sorry.

20 MR. SHELDON: You feel me? You heard me.

21 THE COURT: Oh, yeah. I'm sorry.

22 MR. SHELDON: And then, he says about Shorty.
23 They're talking about someone specific. And then, when he
24 says, you feel me, that's a gesture towards him - a
25 statement towards him. This isn't reading into it. It's

1 just reading the plain language out of it. That he knows
2 something already, that being Young. You feel me?

3 MR. LEE: That's a generic way that somebody asks, do
4 you understand what I'm saying?

5 MR. SHELDON: But that's -

6 MR. LEE: Judge, the problem is, he's parroting back
7 what I talked to him about at a meeting. All of his
8 information that is in here is from his lawyer and - which
9 included what the State's theory at that point had just
10 become.

11 So he's parroting back everything that I told him. I
12 had a conversation with the solicitor. They say that they
13 think they can make a connection between Cleven Jones,
14 Paulette Moultrie and Kenya Hagood. That's everything
15 that was told to him. I can't get up there and explain
16 this, and so they're going to put their spin on it -
17 pardon the word, Mr. Sheldon. But they're going to argue
18 that there's no way he could have known this if he wasn't
19 actually involved, which could not be farther from - from
20 the truth, but I have no way to contradict and to put it
21 into the proper context, because all of it's coming from
22 me, and I can't testify. I can't call myself as a witness
23 to - and that's why it is hearsay.

24 Sure they're offering it for the truth of the matter
25 asserted. If they don't think that that's true, then they

1 should be prohibited from arguing that that is true as
2 part of their case, and that's what their case is.
3 They've already presented that, that there is somebody on
4 the outside, in their mind Kenya Hagood, who is trying to
5 do some crazy stuff and suggest that Byron Young and
6 Marion Powell were involved in something. Obviously, it's
7 talking about this.

8 And we have no way to put this thing in proper
9 context and to explain it. So, I mean, it's just - it's
10 so prejudicial. It has no probative value whatsoever, and
11 it's just patently unfair to - I have to sit there and be
12 quiet, even though I know that what's being presented, the
13 way it was presented, there's no way for us to challenge
14 that. And they can call Byron Young if they want to.
15 He's not unavailable.

16 MR. SHELDON: These are all Marion Powell's words
17 said freely over the phone that he knows is being
18 recorded. Even if it's something his lawyer said to him,
19 he's relating it to someone who is now identified by the
20 victim as a co-defendant about these charges. When - now,
21 him relaying what his lawyer told him, if it applies to
22 the actual facts at hand, if he's saying it to his co-
23 defendant and they're talking about what actually
24 happened, that's not hearsay. That's - and when we get
25 to:

1 No, there ain't nothing to it. Basically,
2 somebody's trying to run their mouth about some
3 'S' word on the outside looking in.

4 And then, Young said, yeah. And then, Powell says,
5 you feel me> That's what I'm speaking about when I say
6 that's, do you understand.

7 If they're with each other, wink, wink, nod, nod. Do
8 you understand?

9 THE COURT: I'm going to admit Powell's statement
10 dated March 9th.

11 MR. LEE: Okay. I will then make a motion to call Mr.
12 Sheldon as a witness to explain what he said to me. And I
13 may have to call myself as a witness to explain what I
14 said to Mr. Powell. And that's the only possible way that
15 I can put those statements into context. And it's such
16 prejudicial effect. You heard what they're going to try
17 to do with it. And as an officer of the Court, I told him
18 these things, and that's how he knew them. I told him
19 they're trying to - they're trying to make a connection
20 between Cleven Jones to Paulette to Kenya to Byron to you.
21 How do I explain that to a jury, that I told him that?

22 THE COURT: I'm not sure I follow you.

23 MR. LEE: That's what was said from me to my client -

24 THE COURT: Right.

25 MR. LEE: - and I'm waiving the privilege; he is

1 waiving the privilege right now for that. That's not what
2 this says.

3 Well, I mean, in his words it's what it says. But
4 the problem is, it cannot be put into the proper context,
5 because we have no ability to do that without shifting the
6 burden, either call me as a witness or Mr. Powell as a
7 witness to put it into the proper context.

8 The context that they want to put it into is that he
9 somehow knows that this - and there's - I mean, they're
10 saying Shorty is Kenya Hagood. I don't think there's any
11 evidence of that. But they're saying he knows about,
12 Byron Young knows about, so they must have done this.
13 That's evidence that they committed these crimes together,
14 because they know these things and they're talking about
15 this thing and that they have this information when it
16 came from me.

17 THE COURT: I thought he said that it came from you

18 MR. LEE: It does, and that's what makes it hearsay.
19 They're offering it for the truth of the matter.

20 THE COURT: But I don't understand what it is you
21 would - let's just suppose everybody on the planet says,
22 it's a great idea if you want to take the witness stand.

23 MR. LEE: Okay.

24 THE COURT: And you would tell them, from what I just
25 heard you say, the same thing that the Solicitor says he's

1 saying. That's what is confused me.

2 MR. LEE: Well, they're trying to read into this, in
3 my opinion, that this is an admission by Mr. Powell,
4 because he has knowledge he could - he couldn't have
5 unless he was involved in this about the identity of Kenya
6 Hagood.

7 They're suggesting the lawyer talked about a few
8 things and that he knew it was Kenya Hagood, because he
9 knew she was involved, she set the whole thing up, and he
10 and Byron Young were involved, when all of that was told
11 to him by me that that was their theory. So what good - I
12 mean, what - so, what's the purpose of letting in a
13 conversation that he's having that is simply repeating
14 what his lawyer said? What is the probative value of that
15 statement, other than I had a meeting with my lawyer
16 today. This is an update on my case. This is what the
17 State is going to present. There's no probative value
18 whatsoever. It would be like if he said, Hey, I met my
19 lawyer today and he said we're going to trial in two
20 weeks. I met with my lawyer today and he said, you know,
21 he got the discovery. There is no probative value in that
22 statement whatsoever, even if you find that it's not
23 hearsay.

24 MR. SHELDON: Well, if there's no probative value in
25 it, you wouldn't be fighting it so hard, first point.

1 Second point is, is that we're not offering to say
2 that this is what my lawyer told him and then this is what
3 I'm relaying to him. If he was going to relay what his
4 lawyer told him, he could say like this, instead of trying
5 to come up with this crazy stuff, Kenya Hagood, you know
6 that woman; they're saying that she set it up; that's
7 nuts.

8 What he's saying in the statement is, under the
9 context that the State's proffering for it and what it
10 actually is, is that they know. They know. They know
11 about Shorty. They know about Old Girl. Feel me? And
12 that's up for interpretation.

13 MR. LEE: That's the problem, Judge.

14 THE COURT: I guess you are going to be able to tie
15 that in -

16 MR. SHELDON: Right.

17 MR. LEE: That's the problem, though. And he's
18 saying why they're trying to use it and what their
19 argument is going to be. And that is - I mean, that just
20 couldn't be farther from what actually happened. And
21 we're prevented from refuting that just because of who
22 said it to him, which is me.

23 THE COURT: I don't understand. I disagree. I'm
24 going to admit it as I said earlier.

25 MR. SHELDON: Thank you Your Honor.

1 THE COURT: Do you still have something to argue
2 about?

3 MR. SHELTON: That brings us to the conversation
4 about Mill Creek, that would be the April 25th
5 conversation.

6 THE COURT: Haven't I already ruled on that?

7 MR. SHELTON: Yes, you've ruled on that, as well.
8 We've ruled on all these things.

9 THE COURT: I thought I already ruled on this one.

10 MR. SHELTON: Yeah, we've ruled on all this on the
11 Monday, so this is all - Mr. Lee is raising - all this was
12 admitted on Monday, and Mr. Lee is raising objections to
13 it now again.

14 THE COURT: One more bite at the apple, Mr. Lee.

15 MR. LEE: It's hearsay, anything Byron Young says.

16 THE COURT: Okay. Now -

17 MR. LEE: I mean, it classically is. And he is not
18 unavailable. And you know, they're saying, well,
19 technically we're not trying to just prove that he was
20 dating some girl in Mill Creek. They're trying to use it
21 in such a way that is improper. Again, without the
22 opportunity for us to cross-examine, I mean, all of it's
23 confrontation clause problems, Your Honor. Without giving
24 us the opportunity to cross-examine Byron Young to say,
25 this is what you said, and this is what he said. So we

1 can't confront them if you say, well, you can call Byron
2 Young, but that's obviously burden shifting. Say you call
3 the defendant. Obviously, that's burden shifting. They
4 cannot show that Byron Young is unavailable and is not -
5 you know, that they have him under subpoena or anything
6 like that.

7 MR. SHELDON: Your Honor, we're not offering any of
8 this statement for the truth of the matter asserted. None
9 of this is for the truth of the matter, sir. We're not
10 offering it for the truth that Byron Young has a
11 girlfriend in Mill Creek.

12 We're not offering it for the fact that - we're
13 offering it for - and we're definitely not offering it for
14 the fact that Powell then says:

15 *I don't know where the hell that's at.*

16 We're offering it for how it displays the knowledge
17 with Powell. First of all, Powell laughing after he
18 brings up first, and his response:

19 *I don't know where the hell that's at,*

20 and then laughs in response to him saying he has a
21 girl in Mill Creek, that's Powell's admission. Nothing in
22 Byron Young's statement in here that we have we're
23 offering for the truth of the matter asserted, period.

24 THE COURT: Let me make sure I know what we're
25 talking about. Are we talking about two conversations

1 here now?

2 MR. SHELDON: We're talking about April 25, 2013

3 where Young says:

4 I've got a 'B' word.

5 And Powell says:

6 Huh?

7 And Young says:

8 You know. I got a 'B' word, right?

9 She stay in Mill Creek.

10 And then, Powell says:

11 I don't know where the 'blank' that's at.

12 And then, Young says:

13 I know.

14 And then, Young says:

15 I know you don't know where that's

16 at. That's why that's so funny, right,

17 because I said when she say where she say

18 at, I was like what? I was like 'S' word.

19 I said, I know about that little area. I

20 scared of that little area. People lie

21 up on you there, boy.

22 None of that is for the truth of the matter asserted.

23 MR. LEE: It certainly is that - he says:

24 I know about that little area. I scared

25 of that little area.

1 They certainly are using that. They're going to try
2 to use the truth of that against him that he knows about
3 the area and he's scared of it. I mean, there's no other
4 use that they would try to bring that in.

5 MR. SHELDON: And if we were using it for the truth
6 of the matter asserted at that point, Powell laughs after
7 Young says that. And we would argue that that would be an
8 admission by him, adopting the statement by laughing about
9 it. But we really - it's - they're talking about Mill
10 Creek - sorry.

11 THE COURT: Well, Young is talking about Mill Creek.

12 MR. SHELDON: Correct, right? And then, - and then
13 Powell says:

14 *I don't know where the hell that's at,*
15 and he laughs. And you would have to hear it.

16 THE COURT: Well, now, let's think about it. What
17 Mr. Lee is saying is that you're saying you don't care
18 whether she lives in Mill Creek or not.

19 MR. LEE: Judge, clearly, that is offered for the
20 truth of the matter asserted. And it also says:

21 *I was scared to death, man. I don't want*
22 *to be down there.*

23 That's offered for the truth of the matter asserted,
24 and they're going to say, he told you he was scared, and
25 the reason he is scared is because it fits in our theory.

1 Mr. Young, because he was involved, which we have - which
2 we're going to try to prove Mr. Powell's involvement.

3 So, clearly, those - or at least that portion is
4 offered for the truth of the matter asserted with no
5 exceptions to hearsay that we've spoken about earlier. So
6 I would ask the whole thing be kept out, but at a minimum
7 at least redact the part that starts:

8 *S-h-i-t, I said I know about that little*
9 *area; scared of that little area.*

10 And then, redact the part later down - it was like:

11 *I was like 'S' word. I was scared to*
12 *death, man. I didn't want to be down there.*

13 I think at a minimum, that part should be redacted,
14 because, clearly, that's being offered for the truth of
15 the matter asserted. Clearly, it's hearsay and doesn't
16 fit with any of the exceptions.

17 THE COURT: I think it is.

18 MR. SHELDON: I understand, Your Honor. I can say
19 that I'm not trying to stretch this. I really am not.

20 First of all, I do think that Powell laughing at the
21 response to it is an admission, and the whole thing can be
22 seen as the context of an admission. But you would have
23 to listen to it. Like, when I argued it the first time on
24 Monday, I explained it's like when if Mr. Lee told me the
25 next day that, after we had too much fun, man, you know,

1 you didn't drink anything last night. You know, you had a
2 good time last night. And I say, I don't know what you're
3 talking about. That's the context of what - how it's an
4 admission. And then, I would laugh about it. An
5 admission. Or you shouldn't have driven home last night.
6 I don't know what you're talking about, man. You know,
7 not saying that I would ever do that. I'm saying that
8 would be the context of it. That's how it can be
9 considered an admission.

10 Even if you wanted to strike what's below it as
11 hearsay. But we really are not offering - the fact that
12 he says that she stays in Mill Creek, I'm not offering
13 that as the truth of the matter asserted. I have no idea
14 whether he has a girlfriend in Mill Creek or not. And -

15 THE COURT: Let me ask you this. Why are you
16 offering it, then? Let's just say we stop there.

17 MR. SHELDON: Well, the words *Mill Creek* are
18 obviously said. So I'm not saying that he didn't say Mill
19 Creek. Mill Creek was said. And then, Powell says, I
20 *don't know where that's at.*

21 THE COURT: Okay.

22 MR. SHELDON: And then, he laughs. That's why I'm
23 offering it. I gave you a case where -

24 THE COURT: Mr. Young says, *I'm not going to snitch*
25 *on you.*

1 MR. SHELDON: And the case that I cited in reference
2 to this, it's a unique case. There's not a lot of case
3 law on this, obviously. There's case law in other
4 jurisdictions, but I'm trying to focus on what's here in
5 the Fourth Circuit in the State of South Carolina. And
6 that case was a case where a guy dragged a guy under his
7 car, and he got out and he was laughing. And I said I put
8 see in front of it, because it's not exactly on point.
9 But the laughing was allowed in to show his state of mind,
10 his intent.

11 When the word - when the evidence is in the case - in
12 this case that has already been established that this
13 defendant robbed, barged into a home with four children
14 and a mother and held them at gunpoint, while two other
15 people tore the whole house apart, and when the word *Mill*
16 *Creek* - and he's charged with it, and he knows that the
17 word *Mill Creek* has been said, and he even says, *I don't*
18 *know where the hell that's at*, and then laughs, obviously,
19 I'm not, first of all, offering that for the truth of the
20 matter asserted. I'm offering it as an admission by Mr.
21 Powell, that part.

22 That shows intent. That shows guilty conscious,
23 state of mind. It shows complete - it shows criminal
24 intent. He obviously knows where *Mill Creek* is at. He's
25 got charges with people - he's - I'm sure that he's

1 studied a lot about Mill Creek.

2 MR. LEE: Well, you may be sure there's no evidence
3 of that, Judge. I just think the whole thing is just a
4 poison pill. And you know, if they want to say that he's
5 got somebody, dated somebody in Mill Creek and he's, you
6 know, Powell says, *I don't know where the hell that's at*,
7 I mean, arguably, I think you have to stop right there,
8 because, if you start saying - Young saying, *I know*, and
9 then laughing, I mean, I don't think it should go past
10 that, if it's coming in.

11 At most, I think it should stop after Powell and they
12 put *laughing*. Because all this other stuff is, I know you
13 don't know where that's at. I mean, then you get into all
14 the other co-conspirator issues, that sort of thing, you
15 know. And you can see that the State is trying to use
16 what's not being said as an admission of something that is
17 being said. And you know, I don't know if you can - I
18 mean, they're relying on their theory and their
19 supposition to try to get the evidence in, rather than
20 conforming their theory to the evidence.

21 And just because they think that's what happened
22 doesn't serve as a ground to admit. And I think the whole
23 thing is inadmissible. But you know, if you want to
24 strike the end of it or something, and you want to stop at
25 *laughing*, I still think Mr. Young saying, *I know*, again,

1 just opens up a can of worms.

2 THE COURT: Here's the - the statements by Young are
3 hearsay after the first laugh.

4 MR. SHELDON: Okay.

5 COURT REPORTER: After the first laugh?

6 THE COURT: The first - laughing, l/a/u/g/h/i/n/g.
7 The first laughing. And therefore, the majority of this
8 conversation is not going to be admitted. Go ahead.

9 MR. SHELDON: I believe that's all I've got.

10 THE COURT: 9:00 o'clock in the morning.

11 MR. SHELDON: Thank you, Your Honor.

12 THE COURT: Court adjourned.

13 OFF THE RECORD 3:30 P.M.

14 BEGIN DAY FOUR, THURSDAY,

15 NOVEMBER 21, 2013, 9:15 A.M.

16 MOTION IN LIMINE:

17 MR. SHELDON: SCDC arrived with inmates, and I've
18 spoken with Mr. Riley and told him about testifying
19 consistent with your previous ruling, and we're ready to
20 bring Mr. Riley up for the motion in limine.

21 THE COURT: Bring him up.

22 MR. SHELDON: Okay. I think they're doing that right
23 now. Make sure they're bringing up Mr. Riley first.

24 Your Honor, for this motion in limine, the State's
25 intention is only to ask him if he knows what he can and

1 cannot talk about and nothing else. Not about the
2 substance of everything, just what he can and cannot speak
3 to.

4 THE COURT: All right. Okay.

5 MR. LEE: Now, obviously, it would be very helpful
6 for me to know if he answers yes to that question and I
7 don't know what he was told he can and can't - cannot
8 testify to.

9 THE COURT: No.

10 MR. SHELDON: I'm going to bring up the substance of
11 what he can and cannot testify to, specifically that. I'm
12 not going to go through the entire -

13 MR. LEE: Okay.

14 MR. SHELDON: - testimony.

15 THE COURT: Good.

16 MR. LEE: I'm sorry. Thank you for clarifying for
17 me.

18 THE COURT: You ready, Mr. Sheldon?

19 MR. SHELDON: Yes, thank you. May it please the
20 Court.

21 THE COURT: All right, Mr. Sheldon.

22 MR. SHELDON: Thank you, Your Honor.

23 THE COURT: I'm sorry, we got to get the court
24 reporter situated. I think we're ready.

25 MR. SHELDON: Thank you, Your Honor.

1 ERIC LEONARD RILEY, JR., PROFFER

2 DIRECT EXAMINATION BY MR. SHELDON:

3 Q. Mr. Riley, will you please state your full name for
4 the record.

5 A. Eric Leonard Riley, Jr.

6 Q. Did we just have a conversation downstairs?

7 A. Yes, sir.

8 Q. And what did I tell you that you cannot talk about?

9 A. You told me I cannot talk about prior things, what I
10 heard, or prior robberies. Just to tell the truth,
11 basically.

12 Q. What did I tell you not to say about talk -
13 conversation between Marion Powell and Byron Young
14 that you had with them at - through the glass at the
15 phone?

16 A. I couldn't speak on it.

17 Q. What did I say you could speak on?

18 A. About what - what Powell told me, about the - about
19 the conversation that me and him had.

20 Q. About what?

21 A. About a home invasion and robbery.

22 Q. And which one is that?

23 A. I don't know the address. I just know about some
24 kids was involved, and I think the dude wasn't home
25 or something. That's - I don't even what address and

1 all this happened.

2 Q. So that incident is the one you know that I'm saying
3 that's the one you can talk about?

4 A. Yes, sir.

5 Q. Did Mr. Powell tell you, first of all, that Mr. Young
6 was his partner in all the armed robberies?

7 A. Yes, sir.

8 Q. So can you testify truthfully that Mr. Young was also
9 involved with the Mill Creek -- excuse me -- the one
10 with the kids?

11 A. Yes, sir.

12 Q. And I will ask you do you know whether Lil Lil -- you
13 know him as Lil Lil, correct?

14 A. Yes, sir.

15 Q. Was involved with the robbery with the kids?

16 A. Yes, sir.

17 Q. And you can testify truthfully to that?

18 A. Yes, sir.

19 Q. Now, talking about when you talked through the phone
20 or through the glass, I instructed you that you could
21 testify that Byron Young was there and Marion Powell
22 was there, Lil Lil was there and Scooter was there,
23 correct?

24 A. Yes, sir.

25 Q. But you can't talk about - and they were talking to

1 each other, correct?

2 A. Yes, sir.

3 Q. And you spoke with Lil Lil, correct?

4 A. Yes, sir.

5 Q. But you can't talk about what was said, correct?

6 A. Yes, sir.

7 Q. And you understand that?

8 A. Yes, sir, I understand.

9 THE COURT: Do you understand that being the order of
10 the court and a violation of this would potentially result
11 in a contempt charge against you?

12 A. Yes, sir.

13 THE COURT: Okay.

14 MR. SHELDON: A couple of more things, Your Honor.

15 Q. One thing that I didn't have time to talk to you
16 about that I need to instruct you now and make sure
17 you understand is that you know -- you said that I
18 know that Lil Lil supposedly threatened somebody on
19 one of Scooter's case and that person isn't
20 testifying in the trial. This person I think moved
21 somewhere in Georgia after the threat, okay? I'm
22 telling you now you cannot testify about that.

23 A. Yes, sir.

24 Q. Do you understand that?

25 A. Yes, sir.

- 1 Q. Unless otherwise instructed by the Court, you cannot
2 testify about that.
- 3 A. Yes, sir.
- 4 Q. And by the court, I mean the Judge, not by me.
- 5 A. Yes, sir.
- 6 Q. You can testify that you know Kenya sent them on this
7 armed robbery, the one we're here for, the one with
8 the kids, okay?
- 9 A. Yes, sir.
- 10 Q. You cannot testify about other armed robberies she
11 sent them on. Do you understand that?
- 12 A. Yes, sir.
- 13 Q. And finally, you cannot testify about another dude
14 named Trevenye Miller and he had sent Kenya a letter
15 asking her why she was snitching on you and not
16 keeping it in the street. She sent him two letters
17 back explaining why, in those letters, she mentioned
18 a couple of other names that's part of their circle,
19 okay?
- 20 A. Yes, sir.
- 21 Q. So you understand you can't testify about that?
- 22 A. Yes, sir.
- 23 Q. So the gist of it is you can testify about the
24 robbery with the kids, the one you're talking about
25 with the baby mama, the same one, correct?

- 1 A. Yes, sir.
- 2 Q. Where the dude was supposed to be there and he wasn't
- 3 there?
- 4 A. Yes, sir.
- 5 Q. That's our same understanding. That's the same one,
- 6 correct?
- 7 A. Yes, sir.
- 8 Q. You can talk about your beef with Kenya.
- 9 A. Yes, sir.
- 10 Q. And what it came from, okay?
- 11 A. Yes, sir.
- 12 Q. You can talk about Scooter's beef with Kenya and what
- 13 it came from?
- 14 A. Yes, sir.
- 15 Q. And you can talk about details that you remember him
- 16 telling you about that incident. You understand?
- 17 A. Yes, sir.
- 18 Q. Does that make sense?
- 19 A. Yes, sir.
- 20 Q. You can't talk about other incidents and you can't
- 21 talk about telling Lil Lil to lookout for Kenya?
- 22 A. Yes, sir.
- 23 Q. Okay. Does that make sense?
- 24 A. Yes, sir.
- 25 Q. You can talk about seeing them talking to each other

1 through the glass but not what you talked about?

2 A. Yes, sir.

3 Q. Okay.

4 MR. SHELDON: I think that's everything, Your Honor.

5 THE COURT: All right. Mr. Powell - excuse me - Mr.
6 Riley, the same thing applies in those last statements
7 that were made to you by Mr. Sheldon as the ones I
8 mentioned to you earlier.

9 A. Yes, sir.

10 MR. SHELDON: Thank you, Your Honor. May it please
11 the court. I apologize.

12 Q. The comment about Kenya mentioning one of those
13 Georgia boys trying to snitch on him and he got off
14 the phone that day, that's something you - also you
15 can't talk about. Just talk about what he told you
16 about this incident.

17 A. Yes, sir.

18 Q. Talk about the beef he had with Kenya and why.

19 A. Yes, sir.

20 Q. You understand that?

21 A. Yes, sir.

22 Q. Talk about the beef you have with Kenya and why and
23 talk about all the details he told you about this
24 incident, the one with the kids and the baby mama.

25 A. Yes, sir.

1 Q. Do you have any questions?

2 A. No, sir.

3 THE COURT: And now, do you have any questions, Mr.
4 Lee, about anything?

5 MR. LEE: No, no, sir. I think he did a very good
6 job of covering it. I guess the only issue we may want to
7 do before the jury comes in as far as the prior
8 convictions for impeachment.

9 MR. SHELDON: Okay. Yes, Your Honor. We have - Mr.
10 Riley has a substantial criminal history, and I provided
11 Mr. Lee with his rap sheet, and also, a summary from the
12 Georgia Department of Corrections, the database that's up
13 here.

14 Well, this actually shows when he was housed in
15 different places. I also have his certified convictions
16 from Chatham County, Georgia, which I believe all of his
17 crimes arose from and arose in that county, which,
18 obviously, is where Savannah is.

19 One question Mr. Lee has is in - there's a
20 discrepancy between the Georgia Department of Corrections
21 convictions I provided him that shows two armed - two
22 robberies - no armed robberies - two robberies on his rap
23 sheet, I believe, as well as the certified copies I have.
24 So I'd like to ask him.

25 Q. Have you been convicted notwithstanding, not talking

1 about Kenya's armed robbery, okay?

2 A. Yes, sir.

3 Q. I'm talking about out of Georgia. Have you been
4 convicted of one or two robberies in Georgia?

5 A. I've been convicted of one robbery.

6 Q. Were you charged with two?

7 A. No, sir.

8 Q. Okay. And that robbery occurred on July 3rd, 2001?

9 A. Yes, sir.

10 Q. And the victim was Michael Collins?

11 A. Yes, sir.

12 Q. Have you been convicted of any crimes outside of
13 Chatham County?

14 A. No, sir.

15 Q. And in that conviction, you pled guilty to robbery?

16 A. Yes, sir.

17 Q. Not armed robbery?

18 A. Just robbery.

19 Q. It's an open-ended plea and you got fifteen years,
20 and then three years, and then probation, correct?

21 A. Yes, sir.

22 Q. Do you have any idea why there would be a second
23 armed robbery on the Georgia Department of
24 Corrections database?

25 A. No, I don't understand.

1 MR. SHELDON: And Your Honor, his record only shows -
2 his SLED LEMS record only shows one armed robbery - one
3 robbery conviction, but he does have an attempted armed
4 robbery conviction with Kenya Hagood as the victim here
5 that he's serving time for now, so he has a total of two.
6 One attempted armed robbery conviction. He has a robbery
7 conviction, which he was released or got off probation for
8 within the past ten years. He obviously has - I already
9 said the attempted armed robbery conviction. He also has
10 multiple drug convictions from 2002 onward.

11 He has one from as early as July 2013, which - I'm
12 sorry, that's actually - that's a parole matter, Your
13 Honor. But I'm just going to ask him - I had planned on
14 asking about his robberies and he has multiple drug
15 convictions. That's how I'm going to couch it and if Mr.
16 Lee wants to break it down more than that, then he can,
17 but I think we're in agreement as far as what the rest of
18 his record is. Is that correct, Mr. Lee?

19 MR. LEE: It looks to me like his - our position of
20 his record is attempted armed robbery in Beaufort; robbery
21 in Chatham County; possession of cocaine 2002; again,
22 robbery in 2002, as well; 2005 possession of cocaine;
23 possession with intent to distribute cocaine, which he got
24 a ten-year sentence; and then, in 2010, PWID marijuana,
25 possession of burglary tools and false statements to

1 writings, instilling facts to a government agency. That's
2 what my records show. You agree with that?

3 MR. SHELDON: Let me see the false statements to
4 writings.

5 ON-THE-RECORD BENCH CONFERENCE.

6 MR. SHELDON: Beg the Court's indulgence, Your Honor.

7 MR. SHELDON: May it please the court.

8 THE COURT: Yes, sir.

9 Q. Mr. Riley, have - do you have a conviction of a false
10 statement to a government agent?

11 A. Yes, sir.

12 Q. And that was in terms of a February the 4th, 2010
13 when you knowingly and willfully made a false
14 statement, as more appropriately described, you
15 stated that you just left a guy named Bishop's house
16 and said matter being within the jurisdiction of the
17 Sergeant Gundrich over the Savannah Metro Police
18 Department, the Department of Government of the City
19 of Savannah and Chatham County. And that wasn't a
20 true statement?

21 A. Yes, sir.

22 Q. What was the true - truth behind that?

23 A. I really don't know exactly, but I was basically
24 lying about what I was - where I came from where he
25 stopped - where he pulled us over at.

1 Q. And why did you do that?

2 A. I ain't want to get charged.

3 Q. Thank you.

4 THE COURT: What was his response, now?

5 A. I didn't want to get charged.

6 MR. LEE: I still?

7 COURT REPORTER: *I didn't want to get charged?*

8 MR. LEE: I assume that, in front of the jury, we're
9 not going to have the explanation of the charge? I mean,
10 I know you were doing that for clarification, but
11 obviously, I don't think he can go into the details of
12 each charge.

13 MR. SHELDON: He can't? Can he just say yes or no?

14 MR. LEE: No, he can't --

15 THE COURT: Wait a minute. I - you just going to ask
16 him if he got charged - if he is convicted of false -
17 giving false statements to a government agent February the
18 4th of 2010?

19 MR. SHELDON: Correct.

20 MR. LEE: Yeah. Okay. I just want to make sure he
21 wasn't going into the details on each charge right now.

22 MR. SHELDON: No, I just want to make sure that's
23 accurate, because I didn't see that before.

24 MR. LEE: I got you. Okay. And then, burglary
25 tools, as well?

1 MR. SHELDON: And burglar tools, as well.

2 MR. LEE: Okay.

3 MR. SHELDON: That's all within the past ten years.

4 It's all fair game.

5 MR. LEE: Okay.

6 THE COURT: All right. We're ready for the jury.

7 MR. SHELDON: Thank you, Your Honor.

8 THE COURT: And what are we doing with Mr. Riley.

9 MR. SHELDON: Mr. Riley - I would like to have Mr.
10 Riley taken out and Thomas General brought in first, and
11 then Mr. Riley will be the second witness.

12 THE COURT: You can step down.

13 MR. RILEY LEAVES COURTROOM 9:32 A.M.

14 BY THE COURT:

15 THE COURT: How many witnesses today?

16 MR. SHELDON: Today, Your Honor - let me look at my
17 notebook here. One, two, three, four, five. I plan on
18 five with possible one as far as a rebuttal witness, if
19 necessary, and I thank Your Honor for being - and court
20 reporter being so patient with me this week. I am not as
21 prepared as I normally am running around like a chicken
22 with my head cut off and thank you very much.

23 THE COURT: All right. Let's bring the jury in.

24 BAILIFF: Yes, Your Honor. Your Honor, the jury is
25 entering.

1 JURORS ENTER COURTROOM 9:34 A.M.

2 THE COURT: Good morning and welcome back, ladies and
3 gentlemen.

4 In just a moment, we're going to resume with the
5 State's presentation of evidence, but one thing I may not
6 have said to you, I can't recall, and you may have
7 noticed.

8 From time-to-time, a witness may move away from the
9 microphone, a witness may drop their voice, a witness may
10 or something may happen in the courtroom that interferes
11 with your ability to hear testimony like that door banging
12 back there, but if you do have a problem hearing testimony
13 or hearing what the question is from an attorney or
14 hearing me, I ask you if you would, please, let us know.
15 Either get the Bailiff's attention or get my attention,
16 and we'll try to do something about it.

17 You may have noticed from time-to-time the court
18 reporter's had to step in to try to ask a witness to say
19 something more distinctly so she could hear it, but we
20 shouldn't have to rely on her to do it. You all will need
21 to let me know if you can't hear. Now, back to Mr.
22 Sheldon. Solicitor?

23 MR. SHELTON: Thank you, Your Honor, may it please
24 the court. Mr. Lee?

25 MR. LEE: The State calls Thomas General.

1 THOMAS GENERAL

2 being first duly sworn, testified as follows:

3 MADAM CLERK: Thank you. If you'll have a seat,
4 please.

5 COURT REPORTER: I'm sorry, I did not hear your
6 answer.

7 MR. THOMAS GENERAL: Yes.

8 MADAM CLERK: If you'll state your name and spell it
9 for the record, please.

10 MR. THOMAS GENERAL: Thomas General.

11 MADAM CLERK: Would you like for me to spell it,
12 G-E-N-E-R-A-L?

13 MR. THOMAS GENERAL: Yes.

14 THOMAS GENERAL

15 DIRECT EXAMINATION BY MR. SHELDON:

16 Q. Thank you. Mr. General, what's your nickname?

17 A. Bucket.

18 Q. Where are you from?

19 A. Vickstate (phonetic spell).

20 Q. Where is Vickstate?

21 A. Located like you going towards Gunner's Corner, a
22 little past Gunner's Corner about two miles.

23 Q. How do you get there from here?

24 A. You get on 17 and, like I said, it's like two miles
25 away from Gunner's Corner.

- 1 Q. Is that going towards Charleston or -
- 2 A. Going towards Charleston.
- 3 Q. And when you're going towards Charleston and that 17,
- 4 Highway 17, the one that just had all of the
- 5 construction, correct?
- 6 A. Yes.
- 7 Q. You take a left or you take a right?
- 8 A. A left.
- 9 Q. Going towards Charleston?
- 10 A. Right.
- 11 Q. Where is Grays Hill?
- 12 A. Coming towards Beaufort on Highway 21 right before
- 13 you - where the old KFC used to be at. Oh, what's
- 14 the name of the store there? Right before you get to
- 15 the Air Station.
- 16 Q. Right before you get to the Air Station?
- 17 A. Yeah.
- 18 Q. You're going towards Beaufort?
- 19 A. Yes.
- 20 Q. And growing up, did you know people from Grays Hill?
- 21 A. Yes.
- 22 Q. Where are you living right now?
- 23 A. I'm incarcerated.
- 24 Q. What for?
- 25 A. Gun possession and illegal possession of drugs.

- 1 Q. And you have a prior record before that, correct?
- 2 A. Yes.
- 3 Q. You were convicted of distribution of drugs in 1997,
- 4 correct?
- 5 A. Yes.
- 6 Q. You went to prison?
- 7 A. Yes.
- 8 Q. And you've been convicted of various things since
- 9 then, correct?
- 10 A. Yes.
- 11 Q. Including a fraud check in 2008?
- 12 A. Yes.
- 13 Q. And you also had probation, federal probation,
- 14 correct?
- 15 A. Correct.
- 16 Q. And what was that regarding?
- 17 A. Originally from the charge in '97.
- 18 Q. Drug conspiracy?
- 19 A. Yes.
- 20 Q. Do you know Sal Chisholm?
- 21 A. Yes.
- 22 Q. Keith Chisholm?
- 23 A. Yes.
- 24 Q. Was he related with that conspiracy as well?
- 25 A. Yes.

1 Q. Now, have I promised you anything to testify today?

2 A. No.

3 Q. Do you know Marion Powell?

4 A. Yes.

5 Q. How do you know him?

6 A. I am related to him.

7 Q. How so?

8 A. My cousin.

9 Q. How so?

10 A. How so?

11 Q. Yes.

12 A. On my grandmother's side.

13 Q. Do you see him in the courtroom today?

14 A. Yes.

15 Q. Will you please point him out for the jury.

16 A. He's sitting over there.

17 Q. What is he wearing?

18 A. A white shirt with a black tie.

19 MR. SHELDON: Please let the record reflect he's
20 identified the defendant.

21 THE COURT: So noted.

22 Q. Does Mr. Powell have a nickname?

23 A. They call him Scooter.

24 Q. Scooter?

25 A. Uh-huh.

- 1 Q. S-C-O-O-T-E-R?
- 2 A. Yes.
- 3 Q. Do you know a guy named Byron Young?
- 4 A. Yes.
- 5 Q. How do you know him?
- 6 A. From high school.
- 7 Q. Have you known him this whole time?
- 8 A. Yes.
- 9 Q. Did you ever see Byron Young in the summer or fall of
- 10 2010?
- 11 A. Yes.
- 12 Q. Did you ever see him with Mr. Powell?
- 13 A. Not together, but they were at the same place at the
- 14 same time.
- 15 Q. The same place at the same time?
- 16 A. Yes.
- 17 Q. You know whether they had a relationship in 2010?
- 18 A. Not at the time.
- 19 Q. Had a friendship in 2010?
- 20 A. Yes.
- 21 Q. Friendship. Specify what you mean when I asked you
- 22 relationship, what's the difference between a
- 23 relationship and a friendship?
- 24 A. I didn't know that they was hanging together, you
- 25 know what I mean, like that.

- 1 Q. But you know that they had a friendship?
- 2 A. Yeah.
- 3 Q. Describe Mr. Young's -- first of all, does Mr. Young
- 4 have a nickname?
- 5 A. Well, they call him Lil Lil.
- 6 Q. And you said you saw him independently in 2010?
- 7 A. Yes.
- 8 Q. Where did you see him?
- 9 A. At the baseball field one day at Dale and I also seen
- 10 him also at the track in Dorchester.
- 11 Q. Do you remember what his hairstyle was?
- 12 A. He had dreads.
- 13 Q. How long were they?
- 14 A. About shoulder-length.
- 15 Q. Where they thick dreads or little dreads, skinny
- 16 dreads?
- 17 A. Skinny dreads.
- 18 Q. Do you know a woman named Kenya Hagood?
- 19 A. Yes.
- 20 Q. Do you know a woman name Paulette Moultrie?
- 21 A. Yes.
- 22 Q. Do you know what their relationship is like?
- 23 A. Not personally. Never seen them together, but I
- 24 heard that they had something going on.
- 25 Q. Something going on?

1 A. Yeah.

2 Q. And how long have you known them?

3 A. Practically all my life.

4 MR. SHELDON: That's all the questions I have. Thank
5 you.

6 THOMAS GENERAL

7 CROSS-EXAMINATION BY MR. LEE:

8 Q. Good morning, Mr. General.

9 A. Good morning.

10 Q. Your testimony, was that in 2010, in the fall of
11 2010, that Byron Young and Marion Powell were not
12 hanging together? Were those your words?

13 A. Yes.

14 Q. That sounds correct?

15 A. Yes.

16 Q. You said they may be at the same place at the same
17 time but they weren't hanging together, I think, is
18 that right?

19 A. Yes.

20 Q. And then as far as Kenya Hagood and Paulette
21 Moultrie, you just heard they had something going on?

22 A. Yes.

23 MR. LEE: That's all I have. Thank you for coming.
24 Mr. General.

25 THOMAS GENERAL

RE-DIRECT EXAMINATION BY MR. SHELDON:

Q. You said they were known to be together, correct?

A. Yes.

Q. So please explain that discrepancy when you didn't hear they were hanging together, what do you mean by hanging together?

A. You talking about him?

Q. Yeah, Lil Lil and Marion Powell. You said they weren't hanging together?

A. Well, not when they was out - when they was out there, they wasn't together, but they was out there together.

Q. They were --

A. Like they didn't came up together, that's what I'm saying.

Q. Okay. Do you know whether they spent any time together?

A. I mean, I have heard that they hang together here and there, you know what I mean.

Q. Okay. And at that time?

A. Yes.

Q. Do you know whether they had a relation - any type of connection at that time?

A. From what it was - from what I was hearing on the street.

1 MR. LEE: I would object to anything - I mean, he
2 said sometime, but hearing on the street, obviously, is
3 hearsay.

4 THE COURT: I sustain the objection and - or the
5 answer stricken from the record, and the jury is to
6 disregard that last response, please.

7 MR. SHELDON: Thank you, Your Honor, I apologize.

8 THE COURT: All right.

9 MR. SHELDON: Thank you. Those are the questions I
10 have.

11 THE COURT: Thank you. You may step down.

12 A. All right.

13 THE COURT: Call your next witness.

14 MR. SHELDON: The State calls Eric Riley.

15 ERIC LEONARD RILEY, JR.

16 being first duly sworn, testified as follows:

17 MADAM CLERK: If you'll state your full name and
18 spell it for the record, please.

19 MR. RILEY: Eric Leonard Riley, E-R-I-C L-E-O-N-A-R-D
20 R-I-L-E-Y.

21 ERIC LEONARD RILEY, JR.

22 DIRECT EXAMINATION BY MR. SHELDON:

23 Q. Mr. Riley, it's fair to call you a career criminal;
24 isn't it?

25 A. Yes, sir.

- 1 Q. You've got convictions going back over ten years for
2 robbery, drug distribution, correct?
- 3 A. Yes, sir.
- 4 Q. You have convictions for making a false statement to
5 a government agent; don't you?
- 6 A. Yes, sir.
- 7 Q. You have a lot of convictions?
- 8 A. Yes, sir.
- 9 Q. And you actually are serving a ten-year sentence
10 right now; aren't you?
- 11 A. Yes, sir.
- 12 Q. And what is that about?
- 13 A. For an attempted armed robbery.
- 14 Q. Have we met before?
- 15 A. Yes, sir.
- 16 Q. When was that?
- 17 A. I think like last Tuesday you came and spoke with me.
- 18 Q. Did you have any idea what we were going to speak
19 about before we met?
- 20 A. No, sir.
- 21 Q. Who was with me?
- 22 A. That one you just told to scoot over. I don't know
23 his name, sir.
- 24 Q. That man?
- 25 A. Yes, sir.

1 Q. Mr. Bazzel with our office?

2 A. Yes, sir.

3 Q. The Solicitor's Office investigator?

4 A. Yes, sir.

5 Q. And was your attorney there?

6 A. And my attorney, yes, sir.

7 Q. Now, what was I interested in finding out when I met
8 with you?

9 A. The first question you asked me was did somebody send
10 me to rob Kenya Hagood or why did I choose to try and
11 rob Kenya Hagood.

12 Q. That's what I asked you?

13 A. It might be not the - it might not be in those exact
14 words, but yes, sir.

15 Q. And so let's talk about that. You robbed Kenya
16 Hagood, or tried to?

17 A. Yes, sir.

18 Q. And did anybody send you to rob Kenya Hagood?

19 A. No, sir.

20 Q. Who was responsible for that?

21 A. I was.

22 Q. And who were you actually going to try to rob at the
23 time?

24 A. A dude name Little J, Jamal.

25 Q. And how do you know Little J, Jamal?

1 A. Me and him did time in Georgia together.

2 Q. And why were you setting him to rob - why are you
3 setting up to rob him or what were you going to rob
4 him of?

5 A. Some marijuana.

6 Q. How much?

7 A. Eight pounds.

8 Q. Eight pounds. How did it go?

9 A. It went bad. I got shot and ten years.

10 Q. So tell us about the details, you got shot and ten
11 years. How did that happen?

12 A. How did the crime happen? How -

13 Q. Well, when you got up there, what happened?

14 A. I got - I went to the wrong Wal-Mart in Hilton Head.
15 I called Little J, and he told me - he gave me
16 directions to another Wal-Mart by - it's by a Sonic.
17 It's closer to here. It's in Beaufort somewhere. He
18 met right there. I got in the car with him, and we
19 drove to some trailers by Robert Smalls Middle
20 School. Went on the porch. We were discussing the
21 price or whatever, and my little cousin that was with
22 me, he pulled out the gun.

23 Q. Who was there when you got to the porch?

24 A. Kenya Hagood.

25 Q. And where were the drugs?

1 A. I think they was - they wasn't on the porch at first
2 but after we was talking, she went in the house and
3 got them from somewhere. I never went inside the
4 trailer.

5 Q. Now, talk about what happened with your cousin.

6 A. He pulled out the gun and pointed it at her and said
7 give it up or whatever. And then he - she pulled out
8 her gun out of her purse out from behind her back or
9 somewhere, and she shot me five times, and my little
10 cousin ran off the porch.

11 Q. Now, where were you between the time that you were
12 shot and you tried to rob them of those drugs and the
13 time that you went to Department of Corrections?

14 A. Memorial Hospital in Savannah in Georgia, the Chatham
15 County jail and Beaufort County Jail.

16 Q. Now, let's go back to when I met with you. I asked
17 you if anyone set you up with armed robbery, you told
18 me just that, correct?

19 A. Yes, sir.

20 Q. Then did I ask you anything about Mr. Marion Powell?

21 A. No, sir.

22 MR. LEE: Your Honor, I'm going to object. I think
23 that he can testify as to what he's going to testify to,
24 but he's essentially almost making himself a witness as to
25 what he said and everything else. I mean, he's trying to,

1 I believe, go back to - I don't think it is proper to do
2 it, because he's in danger putting himself as a witness if
3 he's saying and I told you this and I told you that. And
4 I mean, he can testify as to what he's going to testify
5 to, whatever that might be, but I don't think it's the
6 proper way to do it.

7 THE COURT: I sustain your objection.

8 Q. Who brought up Marion Powell?

9 A. I did.

10 Q. Did you - why?

11 A. I guess it's like I had - like I had a hunch. I just
12 had a hunch, because me and my lawyer had talked
13 about it a while ago before I got - before I got
14 sentenced, but I never dwelled on it, but his lawyer,
15 Mr. Scott Lee, I think, he told Scooter that somebody
16 was trying to -

17 MR. LEE: Your Honor, I object to anything that I
18 allegedly said to my client that he's going to testify to.

19 Q. Please don't say anything -

20 THE COURT: I sustain the objection.

21 Q. Please do not say anything that anyone else said
22 besides what Scooter told you directly about what he
23 did, okay?

24 A. Yes, sir.

25 Q. Did you have anything in common with Scooter?

1 A. Yes, sir.

2 Q. What was that?

3 A. Kenya Hagood.

4 Q. Explain that.

5 A. From what Scooter told me was she sent him to the -
6 to a robbery, and the actual - the dude, the man
7 wasn't at the house. The kids was in there and the
8 mother of the kids, I think, or the girlfriend, she
9 was there, and he was upset with her, because -

10 Q. Upset with who?

11 A. He was upset with Kenya Hagood because she didn't, I
12 guess, like give him the details of like who was
13 going to be - the dude being home and the kids not
14 being there. She didn't give him the correct details
15 about the robbery, and he was upset with her,
16 because, while she - while he was incarcerated down
17 here in Beaufort County, it was - I guess she wasn't
18 doing what she was supposed to do as far as, you
19 know, just making sure that he was okay or whatever.

20 Q. Do you know anyone else that he committed that armed
21 robbery with with the kids?

22 A. He just - he - I assume - he told me Lil Lil.

23 Q. He told you Lil Lil?

24 A. Uh-huh.

25 COURT REPORTER: Is that yes?

1 A. Yes, sir. Yes, sir.

2 Q. Did you like Kenya?

3 A. No, sir.

4 Q. Why not?

5 A. She shot me.

6 Q. Why else?

7 A. Because she didn't - she didn't keep it in the
8 street, I guess. She told the police that I tried to
9 rob her.

10 Q. What do you mean by *keep it in the street*?

11 A. That after she shot me and I rode to Savannah and
12 went to the hospital and I gave a false - I gave
13 another false statement about where I got shot at,
14 and the happenings of that robbery and the day I'm
15 getting out the hospital, Beaufort County detectives
16 come with a warrant for attempted murder - attempted
17 armed robbery.

18 Q. So when you mean keep it on the street, you mean
19 settle it your own way?

20 A. Basically, yes, sir.

21 Q. Don't get the police involved?

22 A. Yes, sir.

23 Q. So Mr. Powell was upset that the kids were there?

24 A. No, he was upset that Kenya didn't give him the
25 details of, I guess, like the right time, and when he

1 was going to be home and like, I guess, when he was
2 going to be home alone, I guess.

3 Q. So he was supposed to make the hit when only the dude
4 was supposed to be there?

5 A. Yes, sir.

6 Q. And not -

7 A. The kids.

8 Q. And who did he say was home?

9 A. He never told me no names, but I just know it was the
10 girlfriend and some kids, and I never hear no names,
11 though.

12 Q. And the girlfriend, did he use any other words?

13 A. He said - did he use any other words?

14 Q. Besides girlfriend?

15 A. No, sir.

16 Q. Do you know whether that person was the mother of any
17 of his kids, of the dude's kids?

18 A. I don't know for sure.

19 Q. Okay. But he said the girlfriend and the kids were
20 supposed to be - were not supposed to be there?

21 A. Yes, sir.

22 Q. While you're at the jail - excuse me. When did you
23 have these conversations with Mr. Powell?

24 A. In the jail - in the Beaufort County jail.

25 Q. Did you all became close - become close at one point?

1 A. Yes, sir.

2 Q. Did you tell him about your charges?

3 A. Yes, sir.

4 Q. And where were you housed at the time?

5 A. Dorm A-1.

6 Q. Is that where he was, too?

7 A. Yes, sir.

8 Q. Can you see him in the courtroom today?

9 A. Yes, sir.

10 Q. Please identify him for the jury?

11 A. The guy with the white shirt on at the first table.

12 MR. SHELTON: Please let the record reflect he's
13 identifying the defendant.

14 THE COURT: So noted.

15 Q. A white shirt with a black tie?

16 A. Yes, sir.

17 Q. Now, you're not doing this out of the goodness of
18 your heart; are you?

19 A. No, sir.

20 Q. In fact, I have told you - well, you're doing this
21 because you're hoping to get a reduced sentence;
22 aren't you?

23 A. That's not - yes, sir. That's not really it, though,
24 the whole thing, but yes, sir.

25 Q. Well, tell the whole thing.

- 1 A. The whole thing is like how we first started talking.
2 Like I say, we had Kenya Hagood in common, and I
3 explained to him my situation first before he even
4 opened up to me, and I asked him for his help,
5 because they was supposed to be so cool and so close
6 and I was like, *man, just tell her I ain't got no*
7 *beef with her; I was in the wrong and she won.* You
8 know, just back up with the police situation. And
9 then, basically, he laughed at me.
- 10 Q. He laughed at you?
- 11 A. (Nodded head)
- 12 Q. So he wouldn't help you out?
- 13 COURT REPORTER: Is that a yes?
- 14 A. Yes, sir, he laughed at me.
- 15 Q. So you don't like him?
- 16 A. No, sir.
- 17 Q. You don't like Kenya Hagood?
- 18 A. No, sir.
- 19 Q. But you're hoping for what's something called
20 downward departure, correct?
- 21 A. Yes, sir.
- 22 Q. Which you may or may not get a reduced sentence,
23 correct?
- 24 A. Yes, sir.
- 25 Q. You have no guarantee of getting a reduced sentence,

1 do you?

2 A. No, sir.

3 Q. Did I promise you a reduced sentence?

4 A. No, sir.

5 Q. I promised to recommend that they consider you for a
6 reduced sentence. Isn't that right?

7 A. Yes, sir.

8 Q. And that's not up to me; is it?

9 A. No, sir.

10 Q. And what's the condition that I promised you to do
11 that?

12 A. If I came to the courtroom and told you the truth of
13 whatever me and Scooter conversations.

14 Q. The truth?

15 A. The truth, yes, sir.

16 Q. Have I ever told you to say anything other than the
17 truth?

18 A. No, sir.

19 Q. You're telling the truth today?

20 A. Yes, sir.

21 MR. SHELDON: I beg the Court's indulgence.

22 Q. One other thing. You asked me for something in
23 addition to making a recommendation that you be
24 considered for a reduced sentence, didn't you?

25 A. Yes, sir.

- 1 Q. What's that?
- 2 A. Like special housing.
- 3 Q. Explain that.
- 4 A. Basically, protective custody.
- 5 Q. Why?
- 6 A. Because I don't have no family and no friends over
- 7 here in South Carolina, and I don't know nobody and I
- 8 know word going to get out that I snitched, told.
- 9 Q. Told the truth?
- 10 A. Yes, sir.
- 11 Q. You didn't keep it on the streets?
- 12 A. No, sir.
- 13 MR. SHELDON: Thank you.
- 14 THE COURT: Mr. Lee.
- 15 MR. LEE: Thank you, Your Honor.
- 16 ERIC LEONARD RILEY, JR.
- 17 CROSS-EXAMINATION BY MR. LEE:
- 18 Q. All right. Mr. Riley, you said you don't have any
- 19 friends or family in South Carolina?
- 20 A. No, sir.
- 21 Q. All of them are back in Georgia?
- 22 A. Yes, sir.
- 23 Q. Okay. Mom, dad, kids?
- 24 A. Yes, sir. Everybody - everybody's in Georgia.
- 25 Q. Everybody is in Georgia?

1 A. Yes, sir.

2 Q. So you are ready to get back to Georgia?

3 A. Yes, sir.

4 Q. And you ready to get back to Georgia as soon as you
5 can?

6 A. Yes, sir.

7 Q. I want to ask you a little bit about the prior
8 convictions we heard about. As we go in order, you
9 got a 15-year sentence for robbery in Georgia, right?

10 A. Yes, sir.

11 Q. And you got parole; did you not?

12 A. Yes, sir.

13 Q. How much time did you actually do?

14 A. I did three years.

15 Q. Three years on a 15-year sentence?

16 A. It was a split sentence, 15/serve 3.

17 Q. Okay. But fifteen was hanging over your head?

18 A. With twelve years probation.

19 Q. Okay. But the sentence read fifteen years
20 confinement, but you did three. Is that right?

21 A. No, sir.

22 Q. You did three? You did three years on a robbery?

23 A. Yes, sir.

24 Q. Okay. And then, once you did that, did you get
25 paroled?

1 A. I maxed out the three years.

2 Q. Okay. And then, you were arrested again not too long
3 after that, three years, and you pled guilty in
4 September of 2005, right?

5 A. Yes, sir.

6 Q. And you got a ten-year sentence that time?

7 A. Yes, sir.

8 Q. And you did three-and-a-half years on that one,
9 right?

10 A. Yes, sir.

11 Q. Okay. And then, in 2010, shortly after you got
12 released, you got a marijuana charge, a possession of
13 burglary tools, and a false statement to a government
14 agent conviction, right?

15 A. Yes, sir.

16 Q. Okay. And you got a three-year-sentence?

17 A. Yes, sir.

18 Q. Okay. And you did about 20 months on that?

19 A. Yes, sir.

20 Q. Okay. And that one you were released, it looks like
21 March 16, 2012. Does that sound right?

22 A. Yes, sir.

23 Q. Okay. So then you decided to come to South Carolina
24 and try your luck up here with our system?

25 A. That wasn't my purpose, no, sir.

1 Q. Okay. Well, what was your purpose from coming from
2 Georgia to Beaufort that night?

3 A. To rob somebody.

4 Q. But Little J as you say, he didn't know you were
5 there to rob them; did he?

6 A. No, sir.

7 Q. You actually lied to that guy about why you were
8 there, right?

9 A. Lied to Little J?

10 Q. Yeah.

11 A. Yes, sir.

12 Q. Okay. And then, once you got there, it didn't go too
13 good, did it?

14 A. No, sir.

15 Q. Kenya Hagood shot you?

16 A. Yes, sir.

17 Q. And then, after she shot you, instead of going to
18 jail, you went to the hospital, right?

19 A. Yes, sir.

20 Q. Okay. And at the hospital they asked you, Mr. Riley,
21 what happened?

22 A. Yes, sir.

23 Q. And you lied to them?

24 A. Yes, sir.

25 Q. Okay. So you lied to Little J to try to help

1 yourself to make the robbery possible, right?

2 A. Yes, sir.

3 Q. And then you lied at the hospital to try to help
4 yourself?

5 A. Yes, sir.

6 Q. Okay. And you had just gotten out of prison for
7 lying to a police officer, right?

8 A. I got out of prison for possession of marijuana, sir.

9 Q. Didn't you say that one thing you pled to was false
10 statement to a government agent?

11 A. Yes, sir.

12 Q. Okay. Because you lied to a police officer, right?

13 A. Yes, sir.

14 Q. Okay. South Carolina is a little bit different from
15 Georgia as far as the criminal system; isn't it?

16 A. Yes, sir.

17 Q. Okay. Particularly, when it comes to sentencing.
18 Are you aware of that?

19 A. Yes, sir.

20 Q. Okay. And when you pled to the robbery or the
21 attempted armed robbery. And again, the only reason
22 it was attempted is because you didn't get to finish
23 the deal because you got shot, right?

24 A. Yes, sir.

25 Q. Okay. When you pled to attempted armed robbery and

1 got ten years in South Carolina, when did you find
2 out that that's a no-parole offense in South
3 Carolina?

4 A. I found out that from the jump, sir, when I got over
5 there.

6 Q. On the jump?

7 A. When I was incarcerated in Carolina.

8 Q. Oh, talking about the county detention center?

9 A. Yes, sir.

10 Q. Okay. Because people over there talk about stuff,
11 and there's jailhouse lawyers and everything else,
12 right?

13 A. Yes, sir.

14 Q. Is it safe to say that, in jail and in prison,
15 everybody kind of knows each other's business?

16 A. Yes, sir.

17 Q. Not a whole lot of privacy?

18 A. No, it's not safe to say.

19 Q. You would say there is a lot of privacy in the jail?

20 A. I'm talking about somebody's business. You would
21 have to be talking to that individual for their
22 business.

23 Q. So you're saying people in jail don't talk about
24 stuff?

25 A. Not to me.

1 Q. Not to you. Okay. I mean, maybe the co-defendants
2 in the same pod or something you might talk, but
3 you're not going to talk about your case with
4 somebody in jail; are you?

5 A. I guess when you have some things in common, they
6 talk but.

7 Q. Okay. Stuff in common?

8 A. Yes, sir.

9 Q. It makes you talk. And that's your theory of why
10 you've created a special bond with Marion Powell,
11 right?

12 A. Sir?

13 Q. That's your theory of why Marion Powell allegedly
14 talked to you is because you all have a special bond,
15 right?

16 A. It's just Kenya, but it's not special.

17 Q. It's not special?

18 A. Huh-uh.

19 Q. But it still was -

20 COURT REPORTER: Was that no? I'm sorry.

21 A. No. No, sir.

22 Q. But it was so - it was such a bond -

23 MR. SHELDON: Objection. Your Honor, I ask that he
24 be able to repeat his answer to the court reporter.

25 MR. LEE: Sure.