THE STATE OF SOUTH CAROLINA

IN COURT OF APPEALS

Appeal From Greenwood County
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case Tracking No: 2018-001289

STATE OF SOUTH CAROLINA, APPELLANT,

v.

COREY BROWN, RESPONDENT.

RECORD ON APPEAL

VOLUME I of II

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S.C. Bar No. 15608

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ATTORNEY FOR RESPONDENT

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SC Court of Appeals

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
EXHIBIT A TO THE MOTION FOR A NEW TRIAL (DISC)

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

ARMED ROBBERY
16-11-0330(A)

At a Court of General Sessions, convened on the 9th day of December, 2013, the Grand Jurors of Greenwood County present upon their oath:

That Corey Jermaine Brown in Greenwood County, did on or about July 26, 2013, wilfully and unlawfully while armed with a deadly weapon, feloniously take from the person or presence of Latavius Spearman by means of force or intimidation: goods, monies, and/or personal possessions with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State and contrary to the statute in such cases made and provided

Assistant Solicitor

ATTEST A TRUE COPY
Chastity Copeland
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

WITNESSES

Bryan Louis

Greenwood County Sheriff

WARRANT NUMBER

2013A2410201005

Foreman of the Grand Jury

Date: 12/9/13

VERDICT

True Bill

Guilty 8/14/14

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

December Term, 2013

Indictment # 13GS24- 1872

THE STATE

vs.

Corey Jermaine Brown

INDICTMENT FOR

ARMED ROBBERY
16-11-0330(A)

CDR: 0139

ATTEST A TRUE COPY
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

KIDNAPPING
16-03-0910

At a Court of General Sessions, convened on the 9th day of December, 2013, the Grand Jurors of Greenwood County present upon their oath:

That Corey Jermaine Brown, in Greenwood County did on or about July 26, 2013, willfully and unlawfully with criminal intent, seize, confine, inveigle, decoy, kidnap, abduct or carry away Latavius Spearman without authority of law, in violation of Section 16-3-910 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

Assistant Solicitor

ATTEST A TRUE COPY
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

WITNESSES

Bryan Louis
Greenwood County Sheriff

WARRANT NUMBER

2013A2410201006

S F Sloan
Foreman of the Grand Jury

Date: 12/9/13

VERDICT

True Bill

Guilty 8/14/14
Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

December Term, 2013

Indictment # 13GS24- 1873

THE STATE

VS.

Corey Jermaine Brown

INDICTMENT FOR

KIDNAPPING
16-03-0910

CDR: 0095

ATTEST A TRUE COPY
Cindy Copeland
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

4

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

CONSPIRACY
16-17-0410

At a Court of General Sessions, convened on the 9th day of December, 2013, the Grand Jurors of Greenwood County present upon their oath.

That Corey Jermaine Brown, in Greenwood County did on or about July 26, 2013, along with other persons, willfully and unlawfully unite, combine, conspire, confederate, agree between and among themselves and have tacit understanding with each other or with other persons whose names are unknown to the Grand Jurors, for the purpose of committing the act of Armed Robbery, and Kidnapping, in violation of Section 16-17-410 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

Assistant Solicitor

ATTEST A TRUE COPY
Chastity Copeland
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

WITNESSES

Bryan Louis

Greenwood County Sheriff

WARRANT NUMBER

2013A2410201007

Foreman of the Grand Jury

Date: 12/9/13

VERDICT

True Bill

Not Guilty 8/14/14

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

December Term, 2013

Indictment # 13GS24- 1874

THE STATE

vs.

Corey Jermaine Brown

INDICTMENT FOR

CONSPIRACY
16-17-0410

CDR: 0049

ATTEST A TRUE COPY
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF A CRIME
16-23-0490

At a Court of General Sessions, convened on the 9th day of December, 2013, the Grand Jurors of Greenwood County present upon their oath:

That Corey Jermaine Brown, in Greenwood County, on or about July 26, 2013, did possess a firearm or visibly displayed what appeared to be a firearm during the commission of a violent offense, to wit: Armed Robbery, and/or Kidnapping, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State and contrary to the statute in such cases made and provided.

Assistant Solicitor

ATTEST A TRUE COPY
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

WITNESSES

Bryan Louis

Greenwood County Sheriff

WARRANT NUMBER

2013A2410201008

Foreman of the Grand Jury

Date: 12/9/13

VERDICT

True Bill

Foreman

8

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

December Term, 2013

Indictment # 13GS24- 1875

THE STATE

vs.

Corey Jermaine Brown

INDICTMENT FOR

POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF A CRIME
16-23-0490

CDR: 0549

16 He Pleaded guilty on 8/15/14.
Did not take to trial.

ATTEST A TRUE COPY
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

CONSPIRACY
§16-17-0410

At a Court of General Sessions, convened on the 8th day of August, 2014, the Grand Jurors of Greenwood County present upon their oath:

That Corey Jermaine Brown, on or about July 26, 2013, in Greenwood County, did along with another person or persons, willfully and unlawfully unite, combine, conspire, confederate, agree between and among themselves and have tacit understanding with each other or with other persons whose names are unknown to the Grand Jurors, for the purpose of committing the act of Grand Larceny, in violation of Section 16-17-410 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

Assistant Solicitor

ATTEST A TRUE COPY
Chastity Copeland
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

WITNESSES

Derrick Smith

Greenwood County Sheriff

WARRANT NUMBER

2014D2400100216

DIRECT INDICTMENT

True Bill

Wilford Dye

Foreman of the Grand Jury

Date: 8/8/14

VERDICT

Guilty 8/14/14

Foreman

10

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

August Term, 2014

Indictment # 14GS24- 1262

THE STATE

vs.

Corey Jermaine Brown

INDICTMENT FOR

CONSPIRACY

§16-17-0410

CDR: 0049

ATTEST A TRUE COPY
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

STATE OF SOUTH CAROLINA)
COUNTY OF Greenwood)
STATE VS.)
Corey Jermaine Brown)
AKA:)
Race: AFRICAN AME Sex: M Age: 35)
DOB: [redacted] SS#: [redacted])
Address:)
City,State,Zip:)
DL#: SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS 11

INDICTMENT/CASE#: 13624-1262
A/W#: 2014D2400100216
Date of Offense: 7/26/2013
S.C. Code § : 16-17-0410
CDR Code #: 0049

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Conspiracy to Commit Grand Larceny (up to 5 years)

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Taylor, Aaron | 78745 SC Bar# | Corey Brown Defendant | Daniel H. Merrill (Attorney for Defendant) | 74269 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ ~~County Detention Center~~,
for a determinate term of 5 ~~days/months~~ years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ ~~CONSECUTIVE~~ to sentence on: 13624-1872 & 1873
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Since Aug. 15 2014
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.50
TOTAL		$ 133.50

ATTEST A TRUE COPY
Chastity Copeland
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Lyn R. Wall
Court Reporter: Tara Scott
Presiding Judge: [signature]
Judge Code: 2154
Sentence Date: 8-15-14

SCCA/217 (03/2011)

12 STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenwood)
STATE VS.)
Corey Jermaine Brown)
AKA:)
Race: AFRICAN AMESex: M Age: 35)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: Hephzibah, GA)
DL#: SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

INDICTMENT/CASE#: 13GS24-1872
A/W#: 2013A2410201005
Date of Offense: 7/26/2013
S.C. Code § : 16-11-0330
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Armed Robbery (10-30 years)

in violation of § 16-11-0330 of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Taylor, Aaron | 78745 SC Bar# | Corey Brown Defendant | Jane H. Morrill Attorney for Defendant | 74269 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ ~~County Detention Center~~

for a determinate term of 25 ~~days/months~~/years or. ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____: plus costs and assessments as applicable*: the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ ~~CONSECUTIVE~~ to sentence on: 13 GS 24 1873 - 14 GS 24 - 1262
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Since Aug 15, 2014
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
_____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$ 100.00
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

ATTEST A TRUE COPY
Chastity Copeland
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Lynn R. Wells
Court Reporter: Tara Scogin
Presiding Judge JC Hill
Judge Code: 2154
Sentence Date: 8-15-14

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF Greenwood)
STATE VS.)
Corey Jermaine Brown)
AKA:)
Race: AFRICAN AMESex: M Age: 35)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: Hephzibah, GA)
DL#: SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS 13

INDICTMENT/CASE#: 13GS24-1873
A/W#: 2013A2410201006
Date of Offense: 7/26/2013
S.C. Code § : 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Kidnapping (up to 30 years)

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Taylor, Aaron | 73745 SC Bar# | Corey Brown Defendant | Jane N. Merrill Attorney for Defendant | 74269 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ ~~County Detention Center~~,
for a determinate term of 25 ~~days/months~~/years or, ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ ~~CONSECUTIVE~~ to sentence on: 13 GS 24 - 1872 14-GS-24-1262
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Since Aug. 15, 2013
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: No Sex Registry
No evid. of CSC.

ATTEST A TRUE COPY
Chastity Copeland
CHASTITY COPELAND
CLERK AND EX-OFFICIO
GREENWOOD COUNTY
S. C.

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Lyn R. Walls
Court Reporter: Tera Scott
Presiding Judge _____
Judge Code: 2154
Sentence Date: 8-15-14

SCCA/217 (03/2011)

State of South Carolina	)	
	)	Court of General Sessions
County of Greenwood	)	2013-GS-24-1872, 1873, 1874, 2014-GS-24-1262 Corey Brown 2014-GS-24-1293, 1294, 1295, 1296
State of South Carolina	)	
vs.	)	Transcript of Record
	)	
	)	
Corey Brown and	)	
Christopher Johnson	)	
Defendant	)	

August 12-15, 2014
Greenwood, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

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

Aaron Taylor, Assistant Solicitor
Elizabeth White, Assistant Solicitor
Attorneys for the State

Jane Merrill, Esq., - Attorney for Corey Brown
Billy Nicholson, Esq. - Attorney for Christopher Johnson
Attorneys for the Defendant

Joy E. Holston
Official Court Reporter

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THE COURT: Good morning, ladies and gentlemen. We are ready to proceed with the selection process for the second trial to be called. Mr. Taylor, are y'all ready to call your case?

MR. TAYLOR: We are, Your Honor.

THE COURT: All right. Put the indictment or indictments on the record, please.

MR. TAYLOR: Yes sir, Your Honor. Your Honor, the State calls Defendants to trial today. The first is Corey Jermaine Brown. Indictments 13-GS-24-1873 for kidnapping; 1872 for armed robbery; 1874 for conspiracy to commit armed robbery and kidnapping; and 14-1262, conspiracy to commit grand larceny.

Your Honor, the other Defendant's name is Christopher Brice Johnson. Those are indictments 14-GS-24-1294 for kidnapping; 14-GS-24-1293 for armed robbery; 1295 for conspiracy to commit armed robbery and kidnapping; and 14-1296 for conspiracy to commit grand larceny.

THE COURT: All right, ladies and gentlemen of the jury, the first trial involves eight indictments against two Defendants. I will try to explain this as best I can. We are going to employ a similar process as Judge Keesley did yesterday. I am going to provide some information regarding the nature of the charges, the names of the persons accused, potential witnesses, lawyers involved,

law enforcement used to investigate the case. As I do that I am going to do, let me put it this way, my goal is to end up with twelve jurors and perhaps an alternate, maybe two to hear this case who know very little about the case, who are going to be good listeners and keep an open mind and give both the State of South Carolina and Mr. Johnson and Brown a fair trial in this matter. So that is the ultimate goal. So what I need you to do, if it is appropriate for you to stand up and answer a question, if it is a large group of people I may employ the same process Judge Keesley did yesterday and have you come up and tell me with the Court Reporter, what is it that you know in particular about a friendship or some relationship with any of the involved parties. Perhaps we won't need to do that, don't know until I see the responses I won't know. But what I don't want is for someone to say, oh yeah, I know all about this case and I know this and that and the other, and something else and something else. And everybody else now knows everything that person heard on the street. That is not relevant to this trial. What you heard on the street is not relevant for this trial. What you need to decide this case, if you are a fair and impartial juror you will hear in this courtroom, sworn testimony with the lawyers presenting the cases and the law instructed by the Court. What you hear from the

internet, street corner, newspaper or otherwise, it is just that, that is something heard not under supervision, not under sworn testimony and not in the court of record and the court of law. So that is my goal. So with that explanation I will ask the attorneys, starting with the Defense, to please introduce themselves.

MS. MERRILL: Thank you, Your Honor. May it please the Court. I am Jane Merrill, I represent Corey Brown. And this is Jimmy Powers who is the Investigator on the case.

THE COURT: Mr. Nicholson.

MR. NICHOLSON: Yes, I am Billy Nicholson. I am an attorney here in town with the firm of Nicholson, Meredith and Anderson. I represent Christopher Johnson. Sitting beside me is my son, Will Nicholson.

THE COURT: All right. Folks, the first question, Mr. Taylor, please introduce the parties at your table also, please.

MR. TAYLOR: Thank you, Your Honor, may it please the Court. My name is Aaron Taylor, I work at the Solicitor's office. Also with me and helping me try the case is Elizabeth White. This is the victim in the case, Latavius Spearman. This is our Solicitor's office Investigator Courtney Smith. Also an Investigator on this case is Whit Brooks. And this is also Detective Nick Futch who also

helped investigate this case.

THE COURT: All right. Folks, I have not read off potential witnesses but you have seen some of the parties now have introduced themselves. So my first question, is there any member of the jury panel related by blood, marriage, close personal friends to any of the attorneys who have introduced themselves or been so introduced by the other attorneys. If so please stand.

Tell me your name, please.

JUROR: Terry Gilchrist.

THE COURT: You are juror number 52. Which attorney do you know or are you related to?

JUROR: Ms. Merrill, a family friend.

THE COURT: You are friends with her family?

JUROR: She and her family.

THE COURT: She and her family. And would that friendship create an issue for you being fair and impartial to both the State and the Defense or could you listen to the testimony presented and instructions of the Court and be a fair and impartial juror?

JUROR: Yes, I can.

THE COURT: Very well, thank you, sir. Tell me your name.

JUROR: Eric Taylor, 132. I am a personal acquaintance of Counselor Merrill. She and I have served

on local Boards together. It does not affect my--

THE COURT: Let me ask the questions, I don't want to get too much information. What you said is perfectly appropriate but let me ask the questions so I don't get too much information and I can make a clear record. So you and Ms. Merrill are social friends and have served on some local Public Service Boards in the Community. Do you believe that your affiliation and friendship with her would affect your ability to be fair and impartial to both the State and to the Defendants?

JUROR: I do not.

THE COURT: You can be fair and impartial?

JUROR: That's correct.

THE COURT: Tell me your name again.

JUROR: Eric Taylor.

THE COURT: Any member of the jury panel ever been represented at this time or in the past or a member of your immediate family represented in any fashion by any of the attorneys in this matter. If so please stand. The gentleman in the front in the blue, your name.

JUROR: Jeremy Allen, juror number 2.

THE COURT: Juror number 2, Mr. Allen. Which attorney has represented you?

JUROR: Billy Nicholson.

THE COURT: Mr. Nicholson. Is that matter now

concluded?

JUROR: Yes, sir.

THE COURT: How long ago was that matter concluded.

JUROR: Two separate incidents.

THE COURT: How long was it?

JUROR: One 17 years and one 5 years ago.

THE COURT: Now, the fact that he has assisted you in a legal matter in the past, would that create an issue for you?

JUROR: No, sir.

THE COURT: Can you be fair and impartial to both the State and the Defense?

JUROR: Yes, sir.

THE COURT: Thank you, sir. Ma'am, in the pink, tell me your name.

JUROR: Doretta Sprowl.

THE COURT: Ms. Sprowl.

JUROR: 128.

THE COURT: Which attorney has helped you or a member of your family in the past?

JUROR: Billy Nicholson helped my son.

THE COURT: Billy Nicholson helped your son. Has that matter now concluded?

JUROR: No.

THE COURT: Is it still ongoing?

JUROR: Yes.

THE COURT: With that being the case I am going to set you aside as serving as a juror in this matter. Tell me your name in the red shirt.

JUROR: Michael Stephens, 130.

THE COURT: Mr. Stephens, which attorney.

JUROR: Ms. Merrill did some legal work for me and my family.

THE COURT: Is that matter now concluded?

JUROR: Yes.

THE COURT: Would that affect your ability to be fair and impartial to both the State and to both Defendants?

JUROR: No.

THE COURT: Thank you, sir. Any member of the jury panel related by blood or marriage, close personal friends to any of the parties, not the attorneys, I asked about the attorneys first, this is the Investigators, the police officers, the victim and the Defendants. I am asking about the parties seated at the tables right now. So is there any member of the jury panel related by blood or marriage, close personal friends to those gentlemen, all gentlemen. Ma'am, tell me your name.

JUROR: Dorothy Cervenka, number 18. I know Mr. Brooks, he and my husband--

THE COURT: All right. I am going to let you stand

back up so I can see her. Mr. Brooks is an Investigator? Oh, I got it.

JUROR: He was at the Volunteer Department with my husband.

THE COURT: And is that relationship, they both still volunteering in that Department?

JUROR: No, sir.

THE COURT: Now, the fact that your husband has done some volunteer work with one of the Investigators, would that affect your ability to be fair and impartial to both the State and the two Defendants?

JUROR: No, sir.

THE COURT: And you are number 18, Dorothy Cervenka.

JUROR: I know Mr. Powell too.

THE COURT: Okay.

JUROR: I was a previous 911 dispatcher and I worked with him.

THE COURT: Now, you are not employed with Greenwood County's 911 dispatcher any more?

JUROR: No, sir.

THE COURT: How long has that employment been terminated?

JUROR: 18 years.

THE COURT: Have you worked in any capacity with the County since then?

JUROR: No, sir.

THE COURT: The fact that you work for Greenwood County and you worked with the Investigator, in particular Mr. Powell, would that affect your ability to be fair and impartial to both the State and the two Defendants?

JUROR: No, sir.

THE COURT: Very well. Thank you. Your name, please.

JUROR: Number 86, Deborah Mayo.

THE COURT: Ms. Mayo, tell me which party or witness that you are or a member of your family is related to.

JUROR: Mr. Powell.

THE COURT: Tell me the nature, is it you or a member of your family?

JUROR: He and I grew up together.

THE COURT: The fact that you grew up in the same community would that affect your ability to be fair to the State as well as to Mr. Brown and Mr. Johnson.

JUROR: No, sir.

THE COURT: You can do that?

JUROR: Yes, sir.

THE COURT: Thank you. Your name.

JUROR: Herbert Nicholson.

THE COURT: Mr. Nicholson, which party do you know or a member of your immediate family know?

JUROR: Well, the State, the one that they represent.

THE COURT: You mean the victim?

JUROR: Yes, the victim.

THE COURT: He is a party. So how do you know the victim?

JUROR: I went to school with and my wife is related to them.

THE COURT: How close is your wife related to them?

JUROR: Way down the line.

THE COURT: Are they close as first cousins or further away than that?

JUROR: Further away than that.

THE COURT: The fact that your wife is related to the victim's family, more distantly than first cousins, would that affect your ability to be fair and impartial to the State and to the two Defendants. Can you do that?

JUROR: Yes, sir.

THE COURT: Okay. Very well. This incident, and I tell you for the record that the indictments brought by the State which were handed to me by the Deputy Solicitor, these indictments placed on nice paper, they are typed up and presented to the Greenwood County Grand Jury. The Grand Jury considers whether or not to true bill them or no bill them which means they consider whether or not there is facts sufficient in which to present the case

over to a regular court of General Sessions, has nothing to do with any facts proven. The facts are assumed true, not anything other than that, has a crime been committed perhaps. The Grand Jury considered that and true billed these indictments, with that true bill stamp that binds over the Defendants formally and tells them of the accusations that the State is making against them on a formal document. An indictment is proof of nothing. It is mere notice of the State telling a Defendant this is what we are accusing you of doing, be prepared to come to court to defend these charges when we call the case. That is what an indictment is, proof of nothing, it is merely a formal accusation. Now, there are four indictments handed to the Court on both Mr. Brown and Mr. Johnson. And the indictments are consistent. There are two conspiracies each, one armed robbery each, and one kidnapping each. Is that right, Mr. Taylor?

MR. TAYLOR: It is, Your Honor.

THE COURT: So, four charges each, the same four charges. These incidents involve an occurrence on July 26th of 2013 involving an alleged incident in Greenwood County where Mr. Spearman was robbed of some goods of his here in Greenwood County. Those are the accusations contained in the indictments, plus the accusation is that the two Defendants worked with one another to accomplish

this. Is there any member of the jury panel read anything in the newspaper, internet, heard otherwise, talk among the street as to the allegations made by the State involving Mr. Brown and Mr. Johnson and Mr. Spearman. If so please stand. Your name.

JUROR: James Williams, 144.

THE COURT: You are Mr. James Williams, 144.

JUROR: Yes, sir.

THE COURT: You have heard about the facts or talk about the facts, read in the newspaper prior to coming into court today?

JUROR: Yes, sir.

THE COURT: Tell me where did you come across information, was it talk in the street, internet, newspaper?

JUROR: Talk on the street.

THE COURT: Have you formed an opinion as to anything which has happened in this case based upon what has been represented to you outside the courtroom?

JUROR: No, sir.

THE COURT: Can you set aside what you have heard, read or been told and consider the case based upon what has been presented in this courtroom from the witnesses by the State and the Defense and then make a decision of the facts of the case based upon what you hear in this

courtroom?

JUROR: Yes, sir.

THE COURT: And can you accept the law, as you understand it, the law and I am going to go over this several times, there is information out there available for people to read much of which is true, must of which is false. For purposes of a trial in the courtroom the Judge instructs the law currently as it is in South Carolina for purposes of cases called in South Carolina. What happens on TV or the internet may or may not be South Carolina law. So my question to you is, will you be able to accept your oath and accept the law as I instruct it to you?

JUROR: Yes, sir.

THE COURT: Can you be fair and impartial to both the State and to the two Defendants, Mr. Brown and Mr. Johnson?

JUROR: Yes, sir.

THE COURT: Okay. Potential witnesses which may be called, either by the State or the Defense. In addition to the parties which have already been introduced, I am not going to read them, if I read them again it will be inadvertent so we need not to go back over them. Anthony Nicholson, Shadarron Evans, Derrick Smith, Michael Dixon, Kenya Griffin, Jasmin Tell, Andrea Paz, Robert Pressley, James Clark, John Brown, Crystal LKU.

MS. MERRILL: Last name unknown.

THE COURT: Okay. Crystal, last name unknown, who works at the Hot Spot, perhaps you know her. Any member of the jury panel related by blood or marriage, close personal friends to any of those potential witnesses. If so please stand. You are Mr. Nicholson. Tell me which of the potential witnesses you are related to, blood or marriage, close personal friends.

JUROR: Anthony Nicholson.

THE COURT: How are you related to him?

JUROR: Second cousin.

THE COURT: Second cousin to Mr. Nicholson. Would that affect your ability to be fair and impartial to both the State and to the Defendants?

JUROR: No, sir.

THE COURT: Can you do that?

JUROR: Yes, sir.

THE COURT: Very well. Anybody else.

(No response.)

THE COURT: Any member of the jury panel a member of any type of organization such as temperance organization such as Mad Mothers, Sad Students, Citizens Against Violent Crimes, CAVE, those types of organizations. If so please stand.

(No response.)

THE COURT: No one is standing. Any member of the jury panel related by blood or marriage, I am sorry, member of your immediate household or related, and I mean by this, parent, sibling, a member of your household, anyone employed by any law enforcement agency in Greenwood County. If so please stand. Tell me your name, please, ma'am.

JUROR: Janie Bowen, juror number 9.

THE COURT: And is it a member of your household?

JUROR: No, I am a retiree, seven years ago.

THE COURT: Would that affect your ability to be fair and impartial to both the State and the Defendant?

JUROR: No, sir.

THE COURT: Very well. Thank you. Ma'am, tell me your name.

JUROR: Crystal Higgins, juror number 66.

THE COURT: You or a member of your family employed?

JUROR: My husband.

THE COURT: Would that affect your ability to be fair and impartial?

JUROR: No, sir.

THE COURT: Any further voir dire we need to talk at the bench?

MR. TAYLOR: Nothing from the State, Your Honor.

MS. MERRILL: No, Your Honor.

MR. NICHOLSON: If we can approach.

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

THE COURT: All right, folks, I think in my haste I misread a name. Potential witnesses for either party, the gentleman's name is Antonio Nicholson. Anyone related by blood or marriage or close personal friends of Antonio Nicholson please stand.

(No response.)

THE COURT: Does any member of the jury panel know any reason whatsoever that they can't be fair and impartial to both the State and to both Mr. Brown and Johnson please stand.

(No response.)

THE COURT: This is the way we will do it. The Clerk of Court generates a random list. Now, because it involves two Defendants there are more than the normal number of strikes available so we may go through a good number of you because the lawyers are allowed, independently, all three sets. Defendant, Defendant, State. They can excuse you for reasons unknown to me. We will call you up one at a time as we did yesterday. Whenever you are ready.

CLERK OF COURT: Juror number 140, Shantarh Watson.

What says the State.

MR. TAYLOR: Please present Ms. Watson.

CLERK OF COURT: What says the Defense?

MS. MERRILL: Please seat Ms. Watson.

CLERK OF COURT: Juror number 30, Jennifer Costantino. What says the State?

MR. TAYLOR: Please present Ms. Costantino.

CLERK OF COURT: What says the Defense?

MR. NICHOLSON: Please excuse Ms. Costantino from this case.

CLERK OF COURT: Juror number 44, Kenneth Fennell. What says the State?

MR. TAYLOR: Please present Mr. Fennell.

CLERK OF COURT: What says the Defense?

MS. MERRILL: Please excuse Mr. Fennell from the trial of this case.

CLERK OF COURT: Number 66, Crystal Higgins. What says the State?

MR. TAYLOR: Please present Ms. Higgins.

CLERK OF COURT: What says the Defense?

MR. NICHOLSON: Please excuse her from the trial of this case.

CLERK OF COURT: Juror number 65, Tory Henderson. What says the State?

MR. TAYLOR: Please present Mr. Henderson.

CLERK OF COURT: What says the Defense?

MS. MERRILL: Please excuse Mr. Henderson from the trial of the case.

CLERK OF COURT: Juror number 110, Kimberly Reid. What says the State?

MR. TAYLOR: Please present Ms. Reid.

CLERK OF COURT: What says the Defense?

MR. NICHOLSON: Please excuse Ms. Reid from this case.

CLERK OF COURT: Juror number 38, Brianna Dick. What says the State?

MR. TAYLOR: Please present Ms. Dick.

CLERK OF COURT: What says the Defense?

MS. MERRILL: Please seat Ms. Dick.

CLERK OF COURT: Juror number 14, Amy Burton. What says the State?

MR. TAYLOR: Please present Ms. Burton.

CLERK OF COURT: What says the Defense?

MS. MERRILL: Please excuse Ms. Burton.

CLERK OF COURT: Juror number 139, Daniel Warner. What says the State?

MR. TAYLOR: Please excuse Mr. Warner.

CLERK OF COURT: Juror number 49, Kelsey Gallman. What says the State?

MR. TAYLOR: Please present Ms. Gallman.

CLERK OF COURT: What says the Defense?

MR. NICHOLSON: Please excuse her from the trial of this case.

CLERK OF COURT: Juror number 9, Janie Bowen. What says the State?

MR. TAYLOR: Please excuse Ms. Bowen.

CLERK OF COURT: Juror number 137, Rosanna Walker. What says the State?

MR. TAYLOR: Please present Ms. Walker.

CLERK OF COURT: What says the Defense?

MR. NICHOLSON: Please excuse her from the trial of this case.

CLERK OF COURT: Juror number 112, Samantha Robertson. What says the State?

MR. TAYLOR: Please present Ms. Robertson.

CLERK OF COURT: What says the Defense?

MR. NICHOLSON: Please seat her for this trial.

CLERK OF COURT: Juror number 29, Mark Conyers. What says the State?

MR. TAYLOR: Please present Mr. Conyers.

CLERK OF COURT: What say the Defense?

MS. MERRILL: Please seat Mr. Conyers.

CLERK OF COURT: Juror number 105, Patrick Prince. What says the State?

MR. TAYLOR: Please present Mr. Prince.

CLERK OF COURT: What says the Defense?

MR. NICHOLSON: Please excuse Mr. Prince from this case.

CLERK OF COURT: Juror number 91, Carmen Messer. What says the State?

MR. TAYLOR: Please present Ms. Messer.

CLERK OF COURT: What says the Defense?

MS. MERRILL: Please excuse Ms. Messer from the trial of this case.

CLERK OF COURT: Juror number 115, Stephen Rudy. What say the State?

MR. TAYLOR: Please excuse Mr. Rudy.

CLERK OF COURT: Juror 61, Latisha Harvley. What say the State?

MR. TAYLOR: Please present Ms. Harvley.

CLERK OF COURT: What say the Defense?

MS. MERRILL: Please seat Ms. Harvley.

CLERK OF COURT: Juror number 41, Andrew Dywan. What says the State?

MR. TAYLOR: Please present Mr. Dywan.

CLERK OF COURT: What say the Defense?

MS. MERRILL: Please excuse Mr. Dywan.

CLERK OF COURT: Juror number 144, James Williams, Jr. What says the State?

MR. TAYLOR: Please excuse Mr. Williams.

CLERK OF COURT: Juror number 101, Belynda Powell. What says the State?

MR. TAYLOR: Please present Ms. Powell.

CLERK OF COURT: What says the Defense?

MR. NICHOLSON: Please excuse her from the trial of this case.

CLERK OF COURT: Juror number 149, Brandy Wright. What says the State?

MR. TAYLOR: Please present Ms. Wright.

CLERK OF COURT: What says the Defense?

MS. MERRILL: Please seat Ms. Wright.

CLERK OF COURT: Juror number 48, Thomas Franklin. What says the State?

MR. TAYLOR: Please present Mr. Franklin.

CLERK OF COURT: What says the Defense?

MS. MERRILL: Please excuse Mr. Franklin.

THE COURT: Juror number 6, Billie Barnette. What says the State?

MR. TAYLOR: Please excuse Mr. Barnette.

CLERK OF COURT: Juror number 130, Michael Stephens. What says the State?

MR. TAYLOR: Please present Mr. Stephens.

CLERK OF COURT: What says the Defense?

MS. MERRILL: Please present Mr. Stephens.

CLERK OF COURT: Juror number 2, Jeremy Allen. What

says the State?

MR. TAYLOR: Please excuse Mr. Allen.

CLERK OF COURT: Juror number 56, Ben Griffin. What says the State?

MR. TAYLOR: Please excuse Mr. Griffin.

CLERK OF COURT: Juror number 81, Candice Lee. What says the State?

MR. TAYLOR: Please present Ms. Lee.

CLERK OF COURT: What says the Defense?

MS. MERRILL: Please seat Ms. Lee.

CLERK OF COURT: Juror number 4, Nicholas Annese. What says the State?

MR. TAYLOR: Please present Mr. Annese.

CLERK OF COURT: What says the Defense?

MS. MERRILL: Please seat Mr. Annese.

CLERK OF COURT: Juror number 18, Dorothy Cervenka. What says the State?

MR. TAYLOR: Please present Ms. Cervenka.

CLERK OF COURT: What says the Defense?

MR. NICHOLSON: Please excuse her from this trial.

CLERK OF COURT: Juror number 21, Earl Childs. What says the State?

MR. TAYLOR: Please present Mr. Childs.

CLERK OF COURT: What says the Defense?

MS. MERRILL: Please seat Mr. Childs.

CLERK OF COURT: Juror number 132, Eric Taylor. What says the State?

MR. TAYLOR: Please present Mr. Taylor.

CLERK OF COURT: What says the Defense?

MR. NICHOLSON: Please excuse him from this trial.

CLERK OF COURT: Juror number 8, William Bonds. What says the State?

MR. TAYLOR: Please excuse Mr. Bonds.

CLERK OF COURT: Juror number 23, Herbert Nicholson.

MR. NICHOLSON (JUROR): I am number 96.

CLERK OF COURT: I apologize,--

THE COURT: She read the number on this list, not the juror number. He is right.

CLERK OF COURT: I am sorry, 96. What says the State?

MR. TAYLOR: Please present Mr. Nicholson.

CLERK OF COURT: What says the Defense?

MR. NICHOLSON: Can we approach, Your Honor?

THE COURT: You may.

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

THE COURT: This juror will be set aside.

CLERK OF COURT: Juror number 3, Kwanzaa Allen. What says the State?

MR. TAYLOR: Please excuse Mr. Allen.

CLERK OF COURT: Juror number 122, Melissa Schofield. What says the State?

MR. TAYLOR: Please present Ms. Schofield.

CLERK OF COURT: What says the Defense?

MS. MERRILL: Please excuse Ms. Schofield.

CLERK OF COURT: Juror number 78, Crystal Kirkland. What says the State?

MR. TAYLOR: Please present Ms. Kirkland.

CLERK OF COURT: What says the Defense?

MR. NICHOLSON: Please seat the juror.

CLERK OF COURT: Juror number 76, Leonard Jones. What says the State?

MR. TAYLOR: Please excuse Mr. Jones.

CLERK OF COURT: Juror number 52, Terry Gilchrist. Any excuse for cause?

MR. TAYLOR: Not from the State.

CLERK OF COURT: What says the Defense?

MR. NICHOLSON: Please excuse him from the trial of this case.

CLERK OF COURT: Juror number 114, Willie Roundtree. Any excuse for just cause?

MR. TAYLOR: Not from the State.

CLERK OF COURT: What say the Defense?

MR. TAYLOR: Actually, excuse me, yes we do, Your

Honor. Can we approach?

THE COURT: Yes.

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

CLERK OF COURT: What says the Defense?

MS. MERRILL: Please seat the juror.

THE COURT: We will have one alternate.

CLERK OF COURT: Number 68, John Hollingsworth. What says the State?

MR. TAYLOR: Please present Mr. Hollingsworth.

CLERK OF COURT: What says the Defense?

MR. NICHOLSON: Please seat Mr. Hollingsworth.

THE COURT: All right. We have got twelve jurors and one alternate. Anybody think we need an additional one? I think we are okay, y'all represented to me the trial will be a couple of days long. Is that fair? I am okay with one, what we have got.

MR. TAYLOR: The State is happy with one.

MR. NICHOLSON: Yes.

THE COURT: Are there any matters of law regarding the selection process employed by the Court or the composition of this jury from the State or either of the Defense lawyers?

MR. TAYLOR: Nothing from the State, Your Honor.

THE COURT: Ms. Merrill or you, Mr. Nicholson?

MR. NICHOLSON: Nothing from us, Your Honor.

MS. MERRILL: Nothing, Your Honor, thank you.

THE COURT: Very well. Folks, out of an abundance of caution I want y'all to call back tonight after 6:00. Most likely the recording you will hear is thank you for your service for the week. The two trials should take up the balance of the week. But I need you to call back anyway. Call in and listen carefully to the recording. Thank you.

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

THE COURT: While we get the case organized I am going to let y'all go to lunch and be back here at 2:00. We should be ready to go then. Now, this is really important to all of you. Everything you will need, y'all thirteen will need to decide this case is right here. This is the witness stand, the lawyers will come here, they will be close to you, it is a much more of a close fame than it is yelling across the courtroom. You are not allowed to discuss the case among one another until you have heard everything that gets presented by the State and the Defense, if they choose to present anything. And so, the story will unfold and lawyers make decisions on the fly. And, you know, it is, it will be highly unfair for

y'all to start discussing the case after the first witness testifies, to both sides. You don't know what each witness is going to present to you, nor do I. So I am going to be listening and taking notes as y'all are. So I don't want any discussion about the case as we go. It is not fair, it doesn't work fair. Now, another thing, y'all have got those juror buttons and I made comments yesterday about telling people you are on a jury. Please don't go on Facebook, MySpace, Twitter, Instagram, Insta anything on your cell phone, your home computer, OnStar. I don't want you publicizing the fact that you are on the jury because those types of communications invite people who you don't know, you may or may not know, to make comments back to you. Oh, you are on the jury of thus and so. Are you on that jury. The next thing you know you are in a conversation. I don't want anyone trying to influence your decisions other than these lawyers and their witnesses, not something outside of this courtroom and that is so important to not let that come in here. We are going to hear it all together. Don't read on the internet, newspaper, television or anything. Y'all go to lunch and report back at 2:00.

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

THE COURT: Let's take a short break.

(Whereupon, a short break was taken.)

THE COURT: We are going to go ahead and take a lunch break. We will be back here at 1:30.

(Whereupon, a lunch break was taken.)

THE COURT: We have got a pretrial matter. Ms. Merrill, for your client's protection?

MS. MERRILL: Yes, sir. There was a photo lineup shown to one of the Codefendants and so I'd like the Court to inquire about that and see if it complies with the requirement of Neil v. Biggers.

THE COURT: All right. Mr. Taylor, are you going to handle that or Ms. White?

MR. TAYLOR: Judge, I'm going to handle for the State.

THE COURT: All right. Let's hear it.

MR. TAYLOR: All right. Judge, the State calls Whit Brooks, is the officer who organized that lineup in question.

WHIT BROOKS, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Taylor:

Q Tell the Court what your name is and where you work?

A My name is Whitfield Brooks. I am a detective with the Greenwood County Sheriff's Office assigned to the

Violent Crime Task Force.
Q Now, were you assigned to investigate a case involving Corey Brown and Christopher Johnson?
A Yes, sir.
Q Okay. As part of your investigation did you use a photo lineup?
A I did.
Q Just more than one photo lineup?
A Yes, sir.
Q All right. Today, I just want to talk about one in particular.
MR. TAYLOR: Judge, if I may approach the witness?
THE COURT: You may.
MR. TAYLOR: Y'all have been given a copy of these lineups. Y'all have seen these.
Q Just see if you can identify. It's a front and back.
A Yes, sir. Yes, sir. I recognize it.
Q Could you tell us what that is?
A Yes, sir. On one side it's a six-person photo lineup showing six persons of six different black males. They all appear to be of similar complexion, facial hair, length of hair. Number three of this photo lineup has been marked. It was identified by Shadarron Evans on July 31st of 2013. On the opposite side is one of our photo lineup forms where the person making the identification

fills it in indicating that they have ID'd the person. In this case, it was Shadarron Evans who was identifying who he knew as C-Lo.

Q Now, does that appear to be altered or changed by anybody?

A No sir, this is the original.

Q Could you, I'll take that back. Just if you could tell the Court, generally, when you conduct a photo lineup, what's the process you do when you're trying to create these documents?

A We try to locate the pictures of six different individuals, one of which being the person in question. We then have that picture on a page along with pictures of five different individuals. The main criteria there is that in the picture, they appeared to be, to look similar physically. In particular, they're complexion, facial hair, hairstyle, everything of that nature so that it's not, there's not completely different-looking people on the piece of paper.

Q Now, in this particular lineup, how was this produced? I mean, did you go and pick out individual photos and put them in this little group or was there a computer program? Tell us about that.

A In this particular situation as, Mr. Brown was not from Greenwood or South Carolina for that matter, we

didn't have access to pictures of him where we could generate a photo lineup. We then contacted his local jurisdiction in Georgia, provided them with a name, and asked if they could assemble a six-person photo lineup for us. They did and then sent it to me via email. I printed that lineup out and that is the lineup that was used.

Q Now, after they sent it to you, let's say it had Mr. Brown's photo and four or five other white males in this picture that looked nothing like him, would you have shown that to Mr. Evans?

A No, sir.

Q Okay. So is the, is the goal of this to identify the right person?

A Yes, sir.

Q Okay. And do you, are you ever suggestive or tell them who to pick out?

A No, sir.

Q Did you do it on this one?

A No, sir.

Q And just once again who was it that picked Mr. Brown out of this lineup?

A Shadarron Evans.

MR. TAYLOR: Judge, at this time, the State moves to put this into evidence just for the purpose of this hearing, not for the case-in-chief.

(Whereupon, State's Exhibit 23 was marked for identification only.)

MR. TAYLOR: I have no further questions. Just answer any questions that Ms. Merrill or Mr. Nicholson may have.

CROSS-EXAMINATION

By Ms. Merrill:

Q Mr. Brooks, who was present when you showed this lineup to Mr. Evans?

A To the best of my recollection there was a second detective present. I don't recognize the signature on the page right off.

Q Was anybody else present?

A Other than myself, Shadarron Evans and the second detective; no, ma'am.

Q Okay. And this occurred on July 31st, 2013; is that correct?

A If you're referencing the identification by photo lineup, yes.

Q Yes, I was. Thank you for clarifying. And did Mr. Evans also tell you that he knew Mr. Brown before this incident?

A Yes, ma'am.

Q Okay. Do you know how long he had known Mr. Brown?

A No, ma'am.

Q Do you know where he met Mr. Brown?
A Not for certain, no ma'am.
Q And looking at the photo lineup, do you still have the exhibit?
A It's before me.
MS. MERRILL: Your Honor, may I approach the witness?
THE COURT: You may.
Q I'm going to hand you what's been marked as Exhibit 23.
A Yes, ma'am.
Q That first photo, does that person have a full beard?
A Whether or not it's full, it's hard to tell. I would categorize it as scruffy facial hair.
Q In number one, I can see a mustache fairly well. Can you see that?
A It's light, but it doesn't appear to be a thick mustache. I do see what appears to be facial hair on his upper lip.
Q Okay. And number two, looking at number two, the hair on his head is thicker and not cut as closely as all of the other ones; is that correct?
A Number two's hair seems to be somewhat longer, maybe only slightly longer than number six.
Q Okay. And number two is wearing a white shirt, correct?

A That is correct.
Q And was this shown to Mr. Evans in black and white or color?
A In black and white.
Q Okay. And so number one, number three, number five, and number six have on dark shirts; is that correct?
A Correct.
Q And number four has on a dark shirt, and then a lighter-colored shirt on top; is that correct?
A Yes.
Q And you still believe all of these, all of these Defendants, excuse me, all of these people in these pictures looked close enough to Mr. Brown that the photo lineup is not suggestive?
A I do believe that it is not suggestive.
Q What description did Mr. Evans give you of Mr. Brown prior to viewing this lineup?
A To the best of my recollection, a black male, thin, with scruffy facial hair.
Q Okay.
MS. MERRILL: Beg the Court's indulgence.
Q Officer Brooks, I understand that another agency created this photo lineup. When your office creates a photo lineup, does everyone in the picture usually have on the same color shirt?

A Typically when we create a photo lineup we try to match that as best as possible. And the way we do that is using a jail booking photos where they are taken wearing the cape of the same color that covers their shirt.
Q So would you agree with me that this lineup, this Exhibit 23 is not the typical lineup that you would compile if you had pictures of your own to use? Is that correct?
A Not entirely.
Q That's all. Thank you.
MR. TAYLOR: I just have one follow-up, Judge, if I may?
THE COURT: Okay.

REDIRECT EXAMINATION

By Mr. Taylor:
Q Did you tell Mr. Evans when you conducted this lineup, this photo lineup that the guy was definitely in the picture --
A No, sir.
Q -- or that Mr. Brown was definitely in the picture?
A No, sir.
Q So what did you tell him?
A I told him that I was going to show him a sheet of paper with six pictures of six different black males and to let me know if one of the black male's picture was the

suspect in question in this case.

MR. TAYLOR: I have no further questions.

THE COURT: Anything else, Ms. Merrill?

MS. MERRILL: No, sir. Thank you.

THE COURT: Mr. Nicholson, I know this isn't your identification, but do you have any questions at all?

MR. NICHOLSON: No questions, Your Honor.

THE COURT: Okay. Very well. All right. You may step down.

MR. TAYLOR: Judge, we're going to get one of the Codefendants that's testifying for him. He's the gentleman that --

THE COURT: Spell that name for her, because I'd like to hear it, too.

MR. TAYLOR: Oh, Judge, I'm going to hand it up so I can, I'll tell you what, I'll just write it and tell you. Shadarron is S-H-A-D-A-R-R-O-N Evans, E-V-A-N-S. And, Judge, he's the individual that picked Mr. Brown out of the lineup.

THE COURT: Right there in the center.

SHADARRON EVANS, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Taylor:

Q Could you tell the Court your name, please?

A Shadarron Evans.
Q Mr. Evans, are you, what crimes are you in jail for right now?
A Armed robbery and kidnapping.
Q Okay. Do you know a guy named Corey Brown?
A Yes, sir.
Q Did you pick him out of a photo lineup?
A Yes, sir.
Q Okay.
MR. TAYLOR: Judge, may I approach the witness?
THE COURT: Yes.
Q That was marked for ID, State's Exhibit 23. Is this, you can look at, it's two-sided. Look at both sides for me and tell us if you can, if you know what that is?
A A lineup sheet.
Q Okay. Now, is that where you picked Mr. Brown out?
A Yes, sir.
Q Okay. Who's the one, who gave you that photo lineup?
A Detective.
Q Which one?
A Detective Brooks.
Q Okay. Do you remember what he told you before you picked him out of lineup?
A He said the dude might not be in this lineup, but if you see him, point him out.

Q Okay. And you were able to do that?
A Yes, sir.
Q Which one is he on there?
A The third one, I could tell.
Q May I have that back, please? And now did he threaten you or suggest in any way to pick him or promise you anything to pick that guy out?
A No, sir.
MR. TAYLOR: I have no further questions.
THE COURT: Ms. Merrill.

CROSS-EXAMINATION

By Ms. Merrill:
Q Mr. Evans, you knew Mr. Brown before picking him out of this lineup, right?
A Yes, ma'am.
Q So it was easy to pick him out?
A Ma'am?
Q So it was easy to pick him out; is that correct?
A Yes, ma'am.
MS. MERRILL: Thank you. I have no further questions. Answer their questions.
MR. TAYLOR: And last question, Judge.

REDIRECT EXAMINATION

By Mr. Taylor:
Q And you picked him out why?

A Because he was with me the night of the incident.
Q Was he involved with the crime?
A Yes, sir.
Q Okay.
MR. TAYLOR: I have no further questions.
THE COURT: Anything else? All right. You can step down. All right.
MR. TAYLOR: Judge, my understanding the burden in this particular hearing is on the Defense. You know, obviously, I'll let Ms. Merrill speak first, but I don't have a whole lot to add to the record, Judge.
THE COURT: All right. Ms. Merrill, let's hear your argument.
MS. MERRILL: Thank you, Your Honor. This line up is suggestive in the sense that Mr. Evans was asked to pick out somebody he already knew. If I was asked to pick Judge Griffith out of the lineup, I would be able to do that and as such, it's going to be fairly easy for him to pick it out. I also think there are some concerns with the lineup that was shown to him where some of the pictures, particularly number two and number six on Exhibit 23, show having thicker hair. If number one has facial hair, it's difficult to see anything more than a mustache. For those reasons I believe it's suggestive, Your Honor.

MR. TAYLOR: And, Judge, based on the case that everybody knows as Neil vs. Biggers from our State. And, but my understanding, Judge, is that it's impermissibly suggestive and the Court must basically throw this out if there is a very substantial likelihood of irreparable misidentification. I think the fact that Mr. Evans knew him beforehand makes it even stronger. He knows him. There's no doubt that he was identified and that's the whole purpose, the accuracy of identification. I don't believe it's suggestive using those guys and, Judge, if I may approach, I'm going to hand that up to you which is State's 23. I mean, you can, you can look there, Judge. Is was black and white when it was shown to them. Yeah, the one guy has a white shirt and they all appear to be very similar-looking. There's nobody with an afro, one guy white, a woman. So again, Judge, the State's position is not unduly suggestive in any way.

THE COURT: Do they really need it and, I mean, they knew each other?

MR. TAYLOR: Well, Judge, the reason we were going to get into it with the detective about tools he uses as he investigates. We were never, unless I'm misunderstood, put it in evidence and making a big show of it. We're just going to say did you use a lineup? Does that help you go in the right direction to gain some credibility

sort of deal, not like very necessary to the case because you're right, he can ID him here on the stand.

THE COURT: If he knows him, that's him --

MR. TAYLOR: Right.

THE COURT: -- and that's him. I mean it's --

MR. TAYLOR: Yes, sir.

MS. WHITE: Judge, it's more of just, I think, in the beginning they just had street names to go by and this is how we put real names or street names. That's the only thing we're going to explain to the jury. But we were not going to show it to the jury, Your Honor.

THE COURT: I'll be honest with you, you're not going to show it to the jury. I think testimony will be easier. A lineup in and of itself does not seem unduly suggestive to me, six black males, all similar build, similar coloring, similar facial hair. I agree with you. A typical line up is, the victim, do you know who it was? No. Or if I showed you a lineup and you then ask who did this? Yes. And they do that. But Codefendants or a Codefendant is kind of a little bit different. I'll tell you what we'll do. We'll allow it if, no, I can't do it that way. All right. If you don't plan to introduce it, how do you plan on using it? I mean, the detective can testify, I did an investigation, I was given a nickname and I asked him if I showed him a picture of people could

he then identify a real name. And that's what he did. And I don't think Ms. Merrill is going to challenge that and I'm not positive.

MS. WHITE: That's what we spoke about in the hall earlier, Judge, and I think she wanted to make the motion just in case. But that's all the State was intending to do is exactly what you outlined.

THE COURT: All right. Ms. Merrill, now do you intend to challenge that if that's the testimony, is we were trying to validate a proper name from a nickname or a street name and the conversation involved and if I showed you a picture of him can you assure, I mean,--

MS. MERRILL: No, sir. That doesn't need, that won't be disputed.

THE COURT: Okay.

MS. MERRILL: As far as the process. I do want a clarification with the actual photo lineup. And I know the State has said they don't intend to introduce it. So I'm assuming that that part itself won't be shown to the jury. Is that correct?

THE COURT: That's what they're saying and that's why I'm --

MS. MERRILL: Make sure we're all on the same page.

THE COURT: Okay.

MS. MERRILL: Then, no, sir, I don't intend to

address that.

THE COURT: If y'all don't plan on using it, then--

MS. WHITE: Absent something going very awry in prior testimony, I don't anticipate using it.

THE COURT: Okay. Well, then the lineup was done properly under Neil vs. Biggers. But assuming the testimony goes somewhat predictably, I don't envision y'all trying to introduce it. And Ms. Merrill will be allowed to be heard if that issue arises. Y'all alert me if it comes up and we'll just see how to handle it. So for purposes of Neil vs. Biggers, it's okay. I'd be careful using it during trial since you, from what y'all have told me, I'm not sure you need it.

MR. TAYLOR: Yes, sir. I agree. Judge we had a couple other very minor issues. We have two Codefendants testifying. They both have prior records. I believe we have worked out amongst the four of us on what can be brought up. I'll be honest with you, Judge, and I told them, we're going to bring it up first. I guess, if I accidentally miss a prior conviction, but we know the rules. Anything over ten years and it has to carry --

THE COURT: Y'all have looked, y'all have seen the records?

MS. MERRILL: Yes, sir.

THE COURT: Did y'all?

MR. NICHOLSON: Yes, sir.

THE COURT: You comfortable with what they're going to do? If they want to out front, they can do that. Y'all call your client and you can, and you know what I mean by that.

MR. TAYLOR: That's true.

MS. MERRILL: Oh, yes, sir.

THE COURT: Okay.

MS. MERRILL: And, Your Honor, I have one other pretrial motion that I wasn't expecting to bring but right about two minutes before this hearing began, before you took the bench, the Assistant Solicitor, Deputy Solicitor Aaron Taylor told me that the victim has now determined that he can pick out my client, Mr. Brown, in a face-to-face setting. But he was previously shown a lineup and was not able to pick him out. And based on a case from 1981, State versus Thompson, I'd like to make the motion that, that he is not allowed to identify Mr. Brown in court based on the length of time that has gone by and that it's more prejudicial to my client to learn at this late hour that he's going to identify him. And I'm happy to proffer testimony if that's what you prefer.

MR. TAYLOR: And, Judge, I think our position, we're pulling up some case law, now would be, that's something that Ms. Merrill can cross-examine him on, wait a minute.

You're waiting until today to --

THE COURT: I think there's a cross-examination issue. But tell you what --

MS. MERRILL: Well, the case I referred to and I apologize, I failed to give the cite, 276 S.C. 616. It was an inquiry identification that was made two years after the crime. Here, this one is a little more than a year. The victim in that case had failed to pick out the Defendant on two previous lineups. So these facts aren't exactly like that. But the other Defendant on trial is not present. And so I think it's, and I was just notified of this a few moments ago and Mr. Spearman has had all morning in court to see that only one person is sitting here who is charged. In that case it did hold that the in-court identification was inadmissible.

THE COURT: Let me read that case first. Are we going to get to that today, are we going to reach that issue today?

MR. TAYLOR: Yes, sir. Because he is actually first up for testimony for the State.

THE COURT: Well, I'm going to read that case. What's your case cite, Ms. Merrill?

MS. MERRILL: 276 S.C. 616.

THE COURT: I think this is going to be fact determinative, hence it would depend on testimony coming

out. It's amazing it's a similar case for armed robbery and Codefendants and Codefendant identified him. It's better than the victim. It's real similar, so let's --

MS. MERRILL: Your Honor, can I add just one thing for purposes of the record. How I know that the victim was shown a lineup was an email I received from Mr. Taylor on June 25th based on an email he received --

MR. TAYLOR: And, Judge, we're not, I agree with Ms. Merrill. He could not pick him out of a lineup, showing it to him, that there's no disputing that fact.

MS. MERRILL: And it says, and I'm just noting this for the record so the Court knows what was looked at because what I got back --

THE COURT: Well, certainly --

MS. MERRILL: -- was a blank photo lineup sheet.

THE COURT: Certainly, we'll, no matter what, depending on the testimony, you will still be allowed and so will Mr. Nicholson, a wide latitude of cross-examination as to the inconsistency or lack of confidence. You're certainly allowed that, so let's see how it goes. I'm going to read this case while y'all doing your openings. Before we get to that, we can address it further.

MS. MERRILL: Your Honor, do you want to take testimony from the victim outside the presence of the jury

so we'd have a few more facts about --

THE COURT: Sure.

MS. MERRILL: Because I know that case that I referenced discusses the amount of time and length that the person had to see. I don't know if you want to do that now before we, while the jury is still out.

THE COURT: Before you do that, let's go over a little bit of that, so call your witness.

MS. WHITE: The State calls Latavius Spearman.

Latavius Spearman, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Ms. White:

Q If you could just tell us your name and spell your first name for the record.

A My name is Latavius Spearman. It's L-A-T-A-V-I-U-S.

Q Okay. And your last name?

A Spearman, S-P-E-A-R-M-A-N.

Q Okay. Mr. Spearman, we're here today, obviously, about a robbery that you were the victim of, correct?

A Correct.

Q To save time, I'm going to kind of skip ahead in everything that happened. How many individuals were involved in robbing and abducting you?

A It was five.

Q Okay. How many people, were you taken in a car?
A Yes.
Q Whose vehicle was that?
A It was mine.
Q How many people were initially in the car with you?
A It was two of them.
Q Okay. At the time, were you able to give law enforcement a description of those two individuals?
A Not a discreet description but from what I could see at night.
Q Do you recall the description you gave law enforcement that night?
A No, ma'am.
Q The two individuals who were in the car with you, did either one of them have a gun?
A Yes, ma'am.
Q The one who had the gun, where was he?
A He was in the backseat with me.
Q Where was the other individual?
A Driving my car.
Q Was this nighttime/daytime?
A It was nighttime.
Q Did you have, what kind of opportunity did you have to see the guy who was driving your car?
A When he walked up to the car.

Q And when he walked up to the car, was that before when they first held you at gunpoint?
A Yes, ma'am.
Q What could you see about him when he first walked up?
A His height and I seen, I seen his face, but I couldn't, it was nighttime. So really couldn't just say that's him.
Q When you say, "his height," was he a tall guy/short guy?
A Tall.
Q How long would you say you were standing in front of him?
A I was at my driver door and he was at the trunk.
Q Okay. About how far away?
A Approximately, four or five feet.
Q How long were y'all standing there, was it just a minute/seconds?
A We was out there about approximately five minutes.
Q How long were you in the car with the two individuals before you were able to get away?
A It was probably thirty minutes/forty-five minutes.
Q Were they talking back and forth?
A Yes, ma'am.
Q Were you able to see them in the car?
A No, ma'am.

Q Did anyone ever open a door?
A When we stopped the car, yes.
Q Was there an interior light in your car?
A Yes, ma'am.
Q Would that come on when the door opened?
A Yes, ma'am.
Q Were you able to see them then?
A No, ma'am; I was face down in the seat.
Q Were you ever shown any lineups in this case?
A Yes, ma'am.
Q Do you remember how many you were shown?
A It was two of them.
Q Okay. Now, the first one, you were able to pick somebody out, correct?
A Yes, ma'am.
Q What about the second one?
A No, ma'am.
Q Okay. The one you were able to pick out, which guy was that?
A He is not in here.
Q Was that the guy who had the gun?
A Yes, ma'am.
Q But you weren't able to pick out the second individual from the lineup?
A No, ma'am.

Q Since being here today, have you been able to recognize anyone?
A Yes, ma'am.
Q And who have you recognized?
A The Defendant.
Q Is that Mr. Brown?
A Mr. Brown.
Q And which individual is he?
A He was driving the car.
Q Is there any particular reason why you can recognize him today and you couldn't a year ago or a month ago when you were shown the other lineup?
A The photo lineup, I can't say. Face to face, it kind of brought back memories.
Q Have you heard his voice any today in the courtroom?
A No, ma'am.

MS. WHITE: Please answer any questions Ms. Merrill has.

CROSS-EXAMINATION

By Ms. Merrill:

Q Can you go back, Mr. Spearman, to, you mentioned something about that you had an opportunity when the two men walked up to your car and that they were standing in front of you for five minutes. Is that correct?
A Yes, ma'am.

Q Tell me what you, explain that to me. I don't understand at what point in the sequence of events that happened?
A There was a gun pointed at me the whole time. I was looking at the gun and the person with the gun.
Q And you were looking at the person with the gun and the gun?
A Yes, ma'am.
Q And where were you standing, you said you were standing beside the driver's side door?
A Yes, ma'am. I was at the driver's door.
Q During that five minutes, were there any outside lights that would help you see?
A No, ma'am.
Q So they talked to you or held you there for five minutes before you got in the car. Is that correct?
A Correct.
Q Okay. Now, where were you standing when the people, these two men approached you the very first time?
A I was walking toward my apartment complex to go in the house.
Q You were walking towards your apartment complex?
A Yes, ma'am.
Q Okay. Were you like in a breezeway?
A I was just finished, entered the breezeway. I was

still on the sidewalk.
Q Okay. And then did these two men approach you and then you turned around and went back to your car?
A No, it was one approached me at first, and then he made me go back to the car. And that's when I seen the Defendant walk towards my car. He came from out of nowhere.
Q Okay. And how many people were in the car initially when it left, you and two others? Is that correct?
A Yes.
Q And where were you, the front seat or the backseat?
A I was in the, I started off initially as the driver until we stopped the car.
Q Okay. And when the car was stopped, what happened?
A I had to get in the backseat.
Q And during your time you were in the backseat, did you say you were facedown?
A Yes, ma'am.
Q Okay. Where you stopped to, when you got out of the car when you were initially driving, where did you stop?
A On the side of the road.
Q Was it dark there?
A Yeah, it was dark.
Q During the time you were in your car with these two men, did anybody else get in the car?

A On the second stop.
Q And where were you in the car, were you still in the backseat?
A Correct.
Q You were still in the backseat?
A Correct.
Q And where, was the same person driving?
A Yes.
Q And the third person who got in the car, third being not including you, where did they sit?
A They sat on the passenger seat.
Q Front or back?
A Front.
Q Was the person holding the gun in the backseat with you?
A Correct.
Q In preparing for this case, have you met with the Solicitors and/or law enforcement?
A Correct.
Q And have you had an opportunity to review their file and documents, incident reports?
A Yes.
Q So you've had an opportunity to view this photo lineup again?
A No, ma'am.

Q You've not reviewed it again. Is that a no?
A No, ma'am.
Q Okay. And you were shown that in, give me one minute, please. The sheet of paper I have is blank, so it's not dated. So what I'm looking at, for your reference and the Court's reference, is an email that was sent to me. And it looks like, I don't know exactly when it was shown to you, but notification from law enforcement to the Solicitor's office was sent on June 24th of 2014, that the last is the Corey Brown one which is left blank, he was unable to make the identification. Is that accurate?
A Correct.
Q And so when you were shown this, did you sign anything?
A Yes, ma'am.
Q What did you sign?
A To show that I picked the correct person out of the lineup.
Q Okay. So and that's the other one, which is not Mr. Brown. But the other one you signed that you picked, and then when you were shown the one of Mr. Brown and you couldn't pick it out, did you sign anything on that?
A I signed to show I tried to pick it out.
Q You signed to show you tried to pick it out?

A Yeah.
Q Do you know what the form looked like that you signed?
A No, ma'am.
Q Did you sign on what the State has presented as Exhibit 23 --
A Yes, ma'am.
Q -- which is the actual pictures?
A Yes, ma'am.
Q So you signed on there --
MS. MERRILL: May I approach the witness, Your Honor?
THE COURT: You may.
MS. MERRILL: Do you have 23?
THE COURT: This is the other guy signed.
MR. TAYLOR: Yeah, the lineup, you have the correct thing.
THE COURT: This is Mr --
MS. MERRILL: That's the other one. That's right. Okay.
THE COURT: Well, the gentleman who just testified, he signed this form that I have and which is State's Exhibit 23 for ID.
MS. MERRILL: Okay. May I approach the witness, Your Honor?
THE COURT: Yes, ma'am.

Q I'm going to show you what I was provided by the prosecution. Is that the photo lineup you were shown that includes a picture of Mr. Brown?
A No, ma'am.
Q So that's not a copy of the photo lineup you were shown?
A I can't remember, not the exact picture.
Q Okay. And looking at this lineup on the one where you could not identify the person, where on that sheet of paper did you sign?
A Right there at the signature line.
Q The signature, and were any of the pictures circled?
A Yes, ma'am.
Q Okay. I want to make sure I'm not confusing the one that you picked out first where you could identify the person, you circled that picture and made the initial beside it, is that correct?
A Correct.
Q Okay. Let's don't talk about that one for a minute. Let's talk about the one where you could not pick out the person. On that one, did you write anything --
A I don't remember.
Q -- on the sheet?
A I don't remember.
Q You don't remember?

A No, ma'am.
Q Okay. And on the one that you did not identify anyone, is that the same one you were shown, what I'm presenting to you?
A I don't remember.
Q You don't remember. Okay. Were you in the courtroom all this morning?
A Yes, ma'am.
Q And Mr. Brown is the only Defendant who is charged in this crime who is sitting at the Defense table; is that correct?
A Correct.
Q And you knew that it was Corey Brown, because we've said that in the courtroom and you knew which Defendant was sitting at the Defense table; is that correct?
A Correct.
MS. MERRILL: I have no further questions. Thank you.

REDIRECT EXAMINATION

By Ms. White:
Q Just very brief follow up. When you say you stood there for five minutes, you obviously weren't staring at a clock, were you?
A No, ma'am.
Q And you don't know, really; that's just an estimate?

A Yeah. He was make, he was trying to make me do certain stuff but --

Q I mean, was he doing, what was going on while you were standing there at gunpoint?

A I'm taking my, emptying my pockets and he grabbed me at the same time with the gun in his hand. He grabbed me while I'm taking stuff out my pockets.

Q And was the other guy helping him at all?

A He was just standing behind making sure I didn't do anything.

MS. WHITE: No further questions, Mr. Spearman.

THE COURT: Anything else, Ms. Merrill?

MS. MERRILL: I beg the Court's indulgence, please.

RECROSS-EXAMINATION

By Ms. Merrill:

Q What was the person standing behind you doing to make sure you didn't do anything?

A He was just sitting there. He was standing at the trunk of my car.

Q And was your back to him?

A No, I was, I backed in in the driveway, so that's why it's --

Q So you were standing near the driver's door; is that correct?

A Yes.

Q Okay. Where was the person with the gun?
A He was right there as from me to him.
Q Okay. And you're pointing to the bailiff who's standing right beside the witness stand?
A Yeah.
Q Was he closer, the person with the gun, was he closest to the trunk or the hood?
A See, my car, as I'm standing right here, my car is facing this way. The front is right here and the back is right there, so that's how I am.
Q Okay. I understand you've backed into the parking space; is that correct?
A Yes. Correct.
Q Okay. But when you were standing by the door and looking at the person with a gun, is that person with a gun standing closer to the trunk side of the car or closer to the hood side of the car?
A The person with the gun was standing close to me. He had the gun on me the whole time.
Q Was he, was there anything between you and him?
A No, ma'am.
Q How was your body positioned in relationship to the car?
A Standing right there at the driver door.
Q Was your back to the car or was your side --

A No, my side is to the car.

MS. MERRILL: Beg the Court's indulgence.

Q Where was the third person, the person who did not have a gun? Where was that person standing?

A The third person?

Q Yes.

A He was standing at the trunk.

Q When you say, "standing at the trunk," since the trunk, would you agree with me the trunk on your car goes all the way across the back?

A Yes.

Q So one could be standing literally behind the trunk and open it up, one could be standing on the driver's side of the trunk and --

A He was standing behind the trunk like he is wanting to open up the trunk.

Q Okay. Thank you. Behind the trunk. Okay.

MS. MERRILL: I think that's all the questions. No further questions. Thank you, Judge.

THE COURT: All right. You can step down. Thank you. All right. Ms. White?

MS. WHITE: Your Honor, I'm looking at State vs. Thompson, which Ms. Merrill has already cited. And I think that our case is distinguishable. In the Thompson case, there were two different photo lineups, one two

months after the robbery and the other ten days before trial. Here, we just have the one lineup that was shown some time back in June. Also, and I think the biggest factor that's distinguishable, in Thompson, the witness was actually told after the second lineup, "this is the guy that robbed you." Here, we don't have anyone telling the Defendant, after a lineup, or the victim after a lineup, or at any point, this is the guy who robbed you. He's just in the courtroom and as he stated, it's a lot different looking at someone live versus looking at a 2D picture in black and white. He was able to identify him. At the time of the crime, he said that they stood there for a good length of time. He said around five minutes. He was able to see them as he approached the vehicle. It was dark, but when they were inside the car, he testified that the dome light would come on which would light up the inside. He drove around with this guy for approximately thirty minutes to forty-five minutes, so he had a good length of time that he did spend with him, Your Honor. So I think that it's distinguishable from the Thompson case and that he's explained why he's able to identify Mr. Brown now when he was not able to in June.

THE COURT: All right. Ms. Merrill?

MS. MERRILL: And, Your Honor, this case is distinguishable. However, Mr. Spearman testified that he

was, when he was outside when this man initially approached him, he was looking at the gun or the man holding the gun the whole time. He said that he was driving, excuse me, Mr. Spearman was driving, and then he was in the backseat with his face down and he said it was dark and that he couldn't get a good look at him. And even if no one showed him that picture and said, well, this is Corey Brown, Mr. Spearman has been in court all morning in which he knows that Corey Brown is the only person who is charged out of five Defendants in this case who is seated at the Counsel table. So even though he wasn't shown the picture in that exact same manner, he's had knowledge all morning that Mr. Brown is the one sitting here at the Counsel table.

THE COURT: So I'll know because I don't, what's the name of the gentleman with the gun trained on him in the backseat?

MR. TAYLOR: Judge, his name is Torrance McLean and the reason that he would --

THE COURT: Oh, he's not Mr. Nicholson's client --

MR. TAYLOR: No, sir. He is the --

THE COURT: -- nor the gentleman who said that I was there.

MR. TAYLOR: He is in jail.

THE COURT: Another one?

MR. TAYLOR: Yes, sir. We have not been able to charge him. He is fighting extradition and we are having all sorts of issues with Georgia, but he is not on trial today.

THE COURT: Okay.

MS. MERRILL: Your Honor, other than the victim in State v. Thompson being shown two different lineups, this isn't that distinguishable if you, it says, "testifies she really never got a good look at the appellant except for his eyes." And at this point, Mr. Spearman hasn't even been able to say he could identify specifically his eyes or anything like that. He said it was dark, where the breezeway, where it was not lit. Even though the dome light came on when he got out of the car, he said he was immediately face down in the backseat and that he couldn't see well. And, Your Honor, if I can add one other point from Mr. Spearman's testimony. He said he was not able to give law enforcement a description.

MS. WHITE: Actually, Your Honor, I believe he said he was tall and kind of slim, so he did give some description.

MS. MERRILL: Yes, that is correct. I do have where it's tall, but he gave no description to law enforcement about his face and in the photo lineup, all he was shown is a picture of his face. You can't tell from the photo

lineup how tall someone is.

THE COURT: All right. Reading the facts of the case, it says, "Ruling upon misidentification, determined likely to have miscommunication, opportunity to view the criminal at the time of the crime." There was opportunity subject to the dim lights, the number of people. It wasn't a one-on-one, it was a one-on-five. I mean, there's several things there. The degree of attention to the accuracy. Degree of attention I think was high to the gentleman with the gun trained on him. Actual require description of criminal is what Ms. Merrill is representing to the Court, seems relatively low. But apparently, he must have given better descriptions of the one with the gun rather than the one standing toward the end of the car. The time between the crime and the confrontation, twelve months. Is that roughly it, twelve months?

MS. MERRILL: Yes, sir.

THE COURT: I don't believe that's too long. I think preliminary an in-court identification would be questionable. We got a motion in limine I think I need to hear, I mean I'm going to hear it in the context of the trial. But right now, I probably would not allow an in-court identification. And part of the reason is I know you got a Codefendant and want to say that is him and

that's impacting a little bit of my decision. But right now, until we get there, I want to address the issue right before that question is asked, if it's allowed to be asked. But if he's keen to identify him in court, point him out, that question, when we get there, I want to review this ruling.

MR. TAYLOR: Judge, I want --

THE COURT: Preliminarily. Unless something really changes, I'm probably not going to allow it.

MR. TAYLOR: And we respect the Court's decision. I'm going to be handling his testimony. So what I'll do when I get to that point, I'll say, "Judge, as a matter of law and that, and I won't ask him.

THE COURT: I mean, it may be time to take a break and we'll review --

MR. TAYLOR: Yes, sir.

THE COURT: -- I'll review the testimony I've been presented and go from there. All right. Anything else?

MR. NICHOLSON: Judge, one matter in limine and I think it's been agreed to. I think all of these young men are known by some nicknames or especially the Codefendants who are testifying, they keep referring by the name, Mr. Johnson, my client. He's referred to by the nickname "Bow-Wow" and they keep saying Bow-Wow this/Bow-Wow that. It would be okay to say that that person has a nickname,

but I would ask that they not continue to refer to him by their nickname, that they would refer to them by their proper name.

THE COURT: I think that would make a clearer record.

MS. WHITE: Yes, sir. And the only caveat I would have to that, sometimes, I know one of the Codefendant's can get mixed up a little bit. And so if we have to go back to nicknames to, because they didn't know any real names, the Codefendants. So if we have to refer back and we'll try to steer clear of it as much as possible, but we may have to go beyond just the initial, who's Bow-Wow? That's Christopher Johnson.

THE COURT: Well, let's tell them in that initial part of the question to identify who all was there. If they identify by nicknames and the real name is and for the purpose for the rest of the question, can we stick with the real name and if they digress back to it, we just kind of guide them and then continuing to use their real name.

MS. WHITE: Your Honor, The State at this time is moving for a bench warrant for Christopher Johnson. He failed to show for trial this morning. His bond required him to be here.

THE COURT: I'm surprised we didn't ask for one earlier. Sure, we'll give you one. Mr. Nicholson, you

had him, you were with him yesterday?

MR. NICHOLSON: I was with him yesterday; yes, sir.

THE COURT: And you made attempts to try to round him up?

MR. NICHOLSON: I have called, I called his home number and didn't get an answer. I called his girlfriend and I sincerely think she was surprised he wasn't here because she thought he was here for picking the jury.

THE COURT: I was sincerely hopeful he would be here after lunch. That's kind of what I --

MS. WHITE: And that's why I didn't move for a bench warrant, Your Honor.

THE COURT: I was hoping he would somehow, he may call, because certainly he knows something's going on today and he would --

MR. NICHOLSON: Well, I would tell the Court I did advise him to be in my office at 9:30 this morning and that we were going to come up here at 10 o'clock.

THE COURT: All right. We'll issue a bench warrant. When we find him and we'll have him here when he's brought in. And perhaps we can find him before the trial is over. Okay. All right. It is a few minutes until three. I'm a little bit late with the jury. Let's take a break while Mr. Willingham moves the jury.

(Whereupon, a short break was taken.)

THE COURT: All right. Bring them in.

(Whereupon, the jury came into open court at approximately 2:58 a.m.)

THE COURT: We're ready to begin the trial. I'm going to give you a little preview kind of what's coming. As I told you, the indictments y'all heard mentioned, they're up here on my desk. There's four of them, four for each Defendant. Indictments are formal accusations made by the State against each of the Defendants. The indictments stand on their own, each charge, each defendant. They're all separate. When we get to the end, we're going to consider each indictment, each Defendant, each indictment, each Defendant. They don't have to all be the same. I mean, not guilty, guilty, they can be anything. They're not all parallel. They are right now as they are accusations. In order for the State to prove its case against each of the Defendants, they've got to present evidence and testimony for your consideration. There are certain questions of fact that jury's answers. Judges answer or resolve the issue of questions of law. Y'all are judges of the fact. I'm the Judge of the law. Now, as the trial goes, the lawyers have tried to resolve some of the issues of law that they believe may or may not come up and told me ahead of time, Judge, this issue may come up. Can we preview it so we kind of know, you can go

ahead and rule on it so the trial moves faster. And so that's what we've been doing. Now, other issues may come up, but I want you to know, I'm going to be taking notes. And I forgot to tell them to look for notepads. We can do that later. Let's go get them before we start. Some jurors like to take notes. I allow note taking. I have to take notes because I'm keeping certain determinations and rules I've got to make. I've got to have notes to go by. As jurors, you can take notes or you can just listen. It doesn't matter to me. Some people just like something in their hand, something to do as they listen. I told you I provide you with hard candy. There were some chocolate in here and I fussed at the lawyers, I don't buy the candy for the lawyers or the witnesses, they get some, I don't mind a whole lot. They are bad about fishing the chocolate out. And so I've got some more chocolate in the back but if I put it all out, it all gets gone early and that's really not fair to y'all, so the candy is for y'all. I eat a piece when I'm listening, too. It's for y'all to enjoy if you like while you're listening. Now, if an issue of law comes up as the lawyers are presenting its case, the typical alert to me is, Judge, objection, relevance, hearsay, Rule 404(b), something along those lines. That's legalese for, Judge, we've got a legal issue for you. I may have already heard part of it and I

was waiting until the testimony goes and I'm going to make a ruling right there on the fly and I'm going to say sustained or overruled and keep right on rolling. Now, if a lawyer wants to be heard in any greater depth and argue a legal issue, that is an issue of law, matter of law, lawyers call it different things. That is a tip off to me that the lawyer wants to be heard more fully. I don't need y'all to be here in the courtroom while I'm doing my job as the Judge in making a determination of legal issues. I've got to hear it in full. Now, if I excuse you while we're hearing a legal issue, it's not to try to hide anything from you, it's just you're really not trained to understand the process I'm going through to make my ruling one way or the other. The same thing with this, y'all being the judges of the fact and answering the questions of fact, eventually you're going to have questions of fact to respond to. Y'all will be in the jury room and I won't be back there with you when y'all make y'all's determination as y'all become the judges. So that's kind of the deal. While I'm doing my job, if I have to make a ruling, I really don't need y'all to help me hear discussions. So, likewise, when y'all are discussing the testimony you've heard, the evidence that has been presented, nobody will be back in the jury room but the twelve of y'all. Now, if someone is incapable or

unable to go all the way through the trial, something comes up, then the alternate could be substituted in so you have got to listen just attentively as the rest of them. But when we get to the very end and nobody has been substituted in or out, you don't get to deliberate, that's the only catch. Later on, probably tomorrow, I'll pick a foreperson. I got my own couple of y'all and so I'll just see how that goes. Anyway, a preview of how the case goes. The State brought the indictments, they bring the allegations, they go first. They are going to present an opening argument and say in this case, this is kind of a summary of the facts. We intend to prove that, that this happened when, thus, thus and thus. We will present testimony/evidence, whatever they got. Just kind of give you a preview or a roadmap of what's going on. The Defense gets the same opportunity to say, I'm representing this person. I'm representing that person. Listen carefully to the testimony, whatever they want to say, because they know more about the case and the facts and testimony and evidence than I, than you do right now. After they present it, we'll all know what is out there and what do y'all consider. Now, I do note that one of the Defendant's is not in the courtroom today, so you cannot take anything from that. I just note that he's not here. He may come later. He just didn't get here at the

start of the trial and that's Mr. Nicholson's client and so he if he gets here he can join us. If he doesn't we can handle the case because the Defendants doesn't have to prove anything, doesn't have to disprove anything, doesn't have to testify. He can remain silent all the way through. Defendant's don't have to prove their innocence. The State has to prove their guilt. That's how it works. So and my other cautionary instructions about stay off the Internet, Facebook, Twitter, independent research. Stay away from that. You may not discuss the case until I say begin deliberations. You must accept the law as I instruct it to you, part of your oath momentarily when Ms. Heery and y'all stand as a group, you will have to accept the law as I'm instructing it to you. So I always give a little instruction that says if you have a belief or an understanding or you heard that the law is thus and such and my instructions are different, then y'all accept it as I have given it to you. All right. Those are my preliminary instructions. If y'all all stand, Ms. Heery will place you under oath.

(WHEREUPON, the jury was sworn at approximately 3:06 p.m.)

THE COURT: All right. Ms. White.

MS. WHITE: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, ma'am.

MS. WHITE: I had a nightmare last night that I tripped and fell in front of y'all, so I'm going to walk around real carefully just in case. I want to introduce y'all to Latavius Spearman. He's sitting over here and he's got on a white shirt. Latavius is twenty-three years old. He lives here in Greenwood. He works at Eaton. He's worked there for about three years. Since he's been working there, he's been working night shift and he has an absolutely precious four-year-old little girl. Latavius Spearman is the victim in the case we're here on today because one night, July 26, 2013, he got off work at Eaton at 3:30 in the morning and he's working hard, he's working night shift. That's hard on the body. And he takes an hour and goes to a friend's house just to unwind after work and he goes back home and now, he's looking forward, it's now about 4:00 o'clock in the morning. He's going to go in and go to bed. He's been working all night. Well, he gets out of his car and instead of being able to go into his house and into his bed, he looks down and like something out of a movie, sees the red tracer laser beam on his chest. If y'all have seen on Hollywood and you see the red dot on somebody's forehead or on their chest about two seconds before they get blown away, that's the dot that's on his chest. So he stands there and he looks up

and low and behold there's a man walking towards him holding a gun. And that man and somebody else who joins him take him, they rob him, go through his pockets, take his money, his cellphone and that's not enough. They put him in his own vehicle, make him drive, make him leave his house. And they're driving around and again, it's like something out of a movie. They're following a car that's ahead of them. The people in the car are talking back and forth with the people in front of them and they have to pull over. And then, at some point, he has to get in the backseat and again, he's being held at gunpoint. He's got a gun held on him. And he has to crouch down in the backseat like this and someone else gets in the car and they're driving around. He doesn't know what's about to happen to him. They're driving around. He doesn't know where they're going. He doesn't know what's going on. They stop again. They try to put him in his trunk. Now, in his trunk, ladies and gentlemen, they can't put him in his trunk because he's got a big speaker. So he gets back in the back of the car and they're heading out of town. They're heading towards Georgia. The last spot is the Hot Spot down in south Greenwood and that's where he decides, I got to get out of this. So the guy who's got the gun on him, he attacks him and they wrestle around in the backseat and he bites the guy with the gun. The guy with

the gun bites him. Shot goes off. It's absolute chaos but he is able, in all of the pandemonium, thank goodness, to get away and he runs in the store. Now, while he's wrestling around in the backseat in the back of this car, the guy who's driving, because there has been a driver the whole time he's been in the back held at gunpoint. The guy who's driving panics and hits the car in front of them that they've been following as they're at the Hot Spot pulled up at the pumps. He runs inside, like I said, and the two guys who were in the car in front of them get out and they start trying to play it off. Oh, oh, well, he hit us. There's been a wreck and he recognizes one of them as being the guy who had gotten in the car. He's no, no, no. They just robbed me. They just kidnapped me. And that's when law enforcement comes. And as law enforcement starts talking to people, they identify the two who are in the front car. Because, like I said, there's two different cars. The two guys who were in the front are Antonio Nicholson and Shadarron Evans and y'all are going to hear from the two of them today because they talked to law enforcement. After a few days, you know, they initially give a statement that they got hit, it was a wreck, then they give a little bit more and a little bit more. Kind of like those of you who have kids, you know, you never get the full story up front. They minimize and

then you get a little bit more and a little bit more. Well, they eventually tell law enforcement what happened. And I'm not going to get into all of those details because what I say, what comes from that witness stand is what's the most important thing. But some of the details that y'all are going to hear from Mr. Nicholson and Mr. Evans are that Christopher Johnson, Mr. Nicholson's client, is the only one from Greenwood. He's the one who knew the victim. He's the one who picked the victim out and he's the one who got all of these other guys, there were five total, to come to Greenwood. And their whole plan was to steal cars and they're going around in the middle of the night armed with a gun to steal cars. You're also going to hear how Mr. Brown, who is seated right here in this brown shirt, was one of the guys who got out and who robbed Mr. Spearman. He's not the one who had the gun, but he's the one who was standing there and he's the one who was driving that car that he was in and you'll hear that from Mr. Nicholson and Mr. Evans. And I'll go ahead and tell y'all up front, Mr. Nicholson and Mr. Evans, they're not choir boys. They were in on this. They were in on this plan to go steal cars and they have records and y'all are going to hear all of that. We're not trying to hide that. But the fact remains, they're the people who were there and they're the people are going to tell y'all

what happened. And there are some important details to listen for again, who set it up, what did each person do once they knew that Mr. Spearman had been kidnapped and robbed, what was their reaction. What did Mr. Johnson do after he left because he left in the middle of all of this because he didn't want to be identified. You'll hear that from the witnesses. He was the only one Mr. Spearman could identify. But what did he do after that, he was called. You'll hear about that. And, ladies and gentlemen, we have to prove our case beyond a reasonable doubt. What that means is we don't have to prove it beyond all that one-hundred percent, there is no doubt in any one, any of your minds that this happened because we could never do that. I could never convince each and every one of y'all, there's thirteen of you sitting there, one-hundred percent that this happened. What reasonable doubt means is that you're firmly convinced that they are guilty. That when you go in the jury room and you sit down and you vote guilty, you say yes, that was the right thing to do. That is firmly convinced. I've also heard it described, and I don't know which charge Judge Griffith uses, but I've heard it described as the prudence that someone would use in making an important decision for themselves, that you never have every doubt. But you know that it's the right thing. And another thing you're going

to hear about a lot in this case is something called "the hand of one is the hand of all". And that means that if Mr. Taylor and I decide that we're going to go rob a bank and while I'm inside, he's the lookout, he's out in the car ready to go and I'm inside and I've got a gun. And the whole plan is for me to rob the bank. No plan for me to shoot anybody. No plan for me to hold anybody against their will. But while I'm inside, I shoot somebody. He's just as guilty for that as I am because it was a natural or probable consequence of what we were doing. And, ladies and gentlemen, Mr. Johnson and Mr. Brown, when they agreed to go around at 4:00 o'clock in the morning, armed with a gun, go onto people's property and steal cars, it was a natural or probable consequence that somebody would get robbed. Mr. Taylor and I represent the State. What that means, we don't represent Mr. Spearman. We represent society and we have a duty and an obligation to seek justice in every case and in this case, justice demands that you find Mr. Brown and Mr. Johnson guilty. Thank you.

THE COURT: All right. Mr. Nicholson, are you first?

MR. NICHOLSON: May it please the Court.

THE COURT: Yes.

MR. NICHOLSON: Good afternoon, ladies and gentlemen. My name is Billy Nicholson and I represent Christopher

Johnson in this case, in this trial. And the first thing that should become apparent and it's already mentioned by the Judge and, I think, by Ms. White, is that my client is not here. Mr. Johnson is not here and we've already figured out that under the circumstances, the prosecution wants to try somebody when they're not there and the Judge allows that to happen, then it is able to proceed that way. And the Judge has told you that you are not to try to figure out why the person is not there or try to determine whether that's fair or unfair and you're not supposed to give that any weight in evidence in your consideration at all. The case proceeds with the State presenting evidence and you're trying to decide based on that evidence whether a person is guilty or not guilty of the charges that are put before you, so you have to move on from that. The next thing that should become very noticeable in this case is that there's an allegation that there are five young men involved in a very serious crime and you have two people being put on trial with one of them not being here, but there are three other people that kind of are unaccounted for in this trial and that wouldn't be that unusual if those people pled guilty or they've gone to trial and been convicted. But that isn't the case. You will find out that the person who is alleged to have a gun and is the most serious person in

this whole matter is not in court, will not be in court this week, today or tomorrow for this trial and he's not being prosecuted as part of this trial. The other two people who are very seriously involved in this matter that's before you are going to be testifying for the State under whatever deal is going on, it hasn't been stated. It's kind of a sub-current on this between these two people who are not choirboys as Ms. White said, these are two people who have a very questionable history are being cut a deal or given some preference, whatever is happening for them to testify against other people. So you end up with two people being put on trial that I'm going to tell you at this point you cannot take any significance in that that these two people are the most involved in this crime. I'm going to tell you that upfront and I want you to keep that in mind. Another thing I want to bring your attention to right off the bat is that you notice that I am sitting there in a chair. I introduced my son who's working at my office now and who's attending law school. He's not a lawyer yet and Corey Brown is sitting beside me and Ms. Merrill and Mr. Powers is an investigator. This courtroom is arranged because there's a very small desk there and I'm sitting there representing Mr. Johnson. The fact that I'm sitting with Ms. Merrill and Mr. Brown there, you're not to take any significance from that, as

well. There's no allegations that these two men knew each other much at all and you'll hear that when we get into the facts of the case. And I can tell you this from the beginning before we walked into the courtroom, I had only spoken to Ms. Merrill for about two minutes about this case before we got in here to start this trial. Now, from time to time during the trial, I will probably have to pass papers back and forth to her. We may ask questions about scheduling and that kind of thing, but we are not presenting a defense for these two men together. These two men have very different defenses and there's very different evidence against the two of them, so you are making a decision about them separately. The fact that we're having, in this courtroom, having to sit together there and that we may have to talk from time to time about exhibits and that kind of thing, please do not take any significance to that. I'd like to state again that Mr. Spearman, what happened to Mr. Spearman is a very, very terrible thing. I mean, nobody in this town in our society should have to go through what he went through. He was a victim of having his car stolen. He's the victim of an armed robbery, a victim of a kidnapping and that is a very, very serious thing and they charged, as you've heard, they've charged five different people of being involved in this thing in one way or another. With that

being said and how terrible to think it was, the allegation in this case is not if Christopher Johnson held a gun to Mr. Spearman, that he approached him in any way, that he touched him in any way, that he pushed him inside the car, that he got in the car with him, that he assaulted him, that he took any money from him. That's not the allegation at all. The allegation is not even going to, as evidence is presented in this case, the allegation is not going to be that Mr. Johnson even planned to rob at gunpoint or to kidnap Mr. Spearman. That isn't even going to be the allegation. It is going to be alleged, and I'm not going to argue with you that this is not the truth that Mr. Johnson was with these four other men and they did plan to steal cars, and I'm not going to argue that he is not guilty of that. At the end of this case, I'm not going to argue that he's not guilty of that, even though he didn't have a tool to steal a car, he didn't put his hands on a car, he didn't take a car, he didn't dispose of a car. He didn't do any of that. The law in South Carolina is that if you enter an enterprise and there is a plan and you're talking with other people working in concert with them to do an illegal act, you don't have to fulfill the whole act. You don't have to do everything with it to be guilty of that act. But you are going to hear evidence that these five men rode around

that night. And I will say that Ms. White said she wants to present Christopher Johnson as a mastermind or a, you know, someone behind this whole plan. You are going to hear the evidence that these four men came from Augusta, Georgia to steal cars and that, this is their witness. They came to Greenwood to steal cars. They rode around for a while. They were looking for cars with rims on them and trying to find something they could take back to Augusta and fence. They called Christopher Johnson on numerous occasions. He wouldn't answer the phone. I think there are seven, eight, ten phone calls he wouldn't answer. They rode around and they said let's go do something. We don't want to get in touch with him anyway because we'll have to share the money if we sell the car. So they did not, they wanted to do something without finding him. They rode around. They saw his car. They didn't know where he lived. They saw his car and where they saw his car, they went and knocked on the door at 3:00 in the morning and said come on out, you need to come with us. And, you know, just what they say is he said, well, you're waking up my grandmother. I mean, what are you doing this time of night. And he ends up going, but it's not a situation that Ms. White described that Mr. Johnson said, oh, y'all come here, please come here and I've got all this stuff worked out. He jumps out of bed

and gets in the car with them at 3:00 o'clock in the morning. So they go riding around looking for cars to steal and that's what they wanted to do, they wanted to steal cars. They wanted to steal cars without anybody knowing about it. They had a burglary tool that one of them had out in the open because they were going to go around and try to, you know, pull, walk up, bust the window or whatever you got to do to steal a car and hot wire a car. And they rode around to numerous locations looking for cars that weren't in a lighted area that didn't have alarms on them. They stopped at a couple of cars that had alarms and they stopped at cars where people drove up. They stopped at cars where security lights came on and they kept driving around neighborhoods and apartment complexes and different places and they particularly didn't go after cars where there were people located there that would find out they were stealing cars. They were trying to just steal a car off the street and that's bad enough in itself and I'm not going to say that's, none of these are choirboys in what they were doing. But they were particularly trying to steal a car without anybody knowing about it. And they came up on the car that Mr. Spearman had pulled into his driveway and two of these guys got out of the car to go see if they could, you know, steal that car once he got inside. Now,

Christopher Johnson wasn't one of those two people and it's not alleged that he was one of those two people, and I do not believe that the two people that they are getting to testify on behalf of the State that there was any plan to rob anybody or any plan to kidnap someone because the explanations from the other car when they found out that Mr. Spearman was, had been kidnapped, there was utter disbelief by everybody. That's just not what was planned. And shortly after it was found out that that happened, Christopher Johnson got out of the car and he left and he wasn't involved in the rest of this, these events. And Ms. White has brought up a legal theory that says "the hand of one is the hand of wall". The Judge is going to explain that at the end of this case and he has already told you he's going to tell you what the law is at the end that you would apply in making your decisions and you're judging the facts and seeing how that fits with the law and as to all these different indictments on these two different people and decide whether they're guilty or not guilty, whether the State has proven those cases beyond a reasonable doubt. With just a short comment on the hand of one is the hand of all. You can be responsible if you're an accessory or a coconspirator or there are three or four people acting in concert. You can be held guilty for what your, the other Codefendants or other principals

in this crime have done if it is reasonably expected that that is what is going to happen. Based on what you know and what's going on that night, could that reasonably be expected to happen from what's taken place. And in this case as to Christopher Johnson, we will say no as to armed robbery and no as to kidnapping. In the other case as to grand larceny, I've already told you that based on the evidence presented, it is going to be guilty of that even though he didn't steal the car, even though he didn't put his hands on the car. I'm going to tell you that up front. Thank you for your attention, and please listen to what Ms. Merrill has to say about Mr. Brown.

THE COURT: Thank you, Mr. Nicholson. Ms. Merrill.

MS. MERRILL: Thank you. May it please the Court?

THE COURT: Yes, ma'am.

MS. MERRILL: I'm Jane Merrill, and I stand here today with Corey Brown and you will hear that Corey is not from Greenwood. He lives in Augusta, Georgia and Mr. Brown has with him here today his father, Mr. Clark, who's come from Augusta to support his son. A deal with the devil, that's what we make when nothing else is left. When the devil goes down, he tries to take as many people as he can with him. In this case, I was thinking about it and there's five Codefendants and they're all pointing fingers at each other. It reminded me when I was thinking

about that and the Wizard of Oz and pictured the scarecrow doing all this and pointing fingers. The two Codefendants, one who is a convicted robber five times is pointing fingers and the other one up there who has other criminal convictions is pointing fingers. The one that the victim says had the gun, he's not here. And as Mr. Nicholson said he and I, while seated at the same table, I don't represent his client and he doesn't represent mine, and we want you to take this case back when it's time to deliberate and think about those separately. There is absolutely no physical evidence linking Mr. Brown to this crime scene. There were fingerprints taken when they processed the crime scene, but none were his. There was also a video at the store that showed everything that went on early this morning/late night, but we don't have that here for you today. Law enforcement didn't go back and get it even though they watched it. What better piece of evidence to show a jury and let you decide what happened that day via a video of the crime scene but unfortunately, we don't have that to show you today. The burden of proof in this case is that beyond a reasonable doubt. We've all heard it on TV. We've all heard it on movies, and we've heard it from the prosecutor today and that is the burden and it's a high burden and it's a high burden because the criminal justice system seeks to convict those who are

guilty but not convict those who are not. It's important for, a justice system requires that those of us involved, including you as jury members, seeking justice and looking for the truth, not just running after a conviction. So keep that in mind as you hear the evidence in this case through the testimony, see evidence and then when you go back in that room to deliberate, remember that. I want you to keep an open mind when you're listening to these things, and I also want you to pay attention that the only people pointing fingers at Mr. Brown are two Codefendants. That's it. What happened to Mr. Spearman that night, I wouldn't wish that on my worse enemy. It's terrible. He was injured. He was terrified. Who wouldn't be? But Mr. Brown was not the one who did these terrible things to Mr. Spearman. Mr. Brown was driving his car in Augusta, Georgia in 2013 and was pulled over for having his windows tinted too darkly and finds out I'm being arrested. For what? He didn't fight extradition. He came willingly to South Carolina charged with these five crimes. But he was driving his car on a day in August when he was arrested for these charges. Mr. Brown has a grandfather in Clinton that he has gotten to know a little better but, other than that, he doesn't have connections with our area. He's never lived here. The Prosecutor is correct when she stated that these Codefendants who will testify right here

in front of you didn't give the full story the first time. And I think the analogy to children is accurate. We've all been there when our child or children get in trouble, oh, it was this, a little bit and then the story grows. But, in this case, these Codefendants still haven't told the full story. They still haven't told the full story and you will see that their story differs from what Mr. Spearman told law enforcement that day. Their stories different from each other or at least they did initially. So pay attention, please, to all these details. Ladies and gentlemen, I ask you to have the courage to find Mr. Brown not guilty of all these charges. Thank you.

THE COURT: All right. Let's go to the top of the hour and then we'll take a break. The reason I'm saying this, generally, the earlier witnesses are in trial, the ones that I've presided over the last five and a half years, earlier witnesses are generally the lengthier ones. The later witnesses are generally short, tell one thing, two things. So I don't want to, I want some predictability to the attorneys to know that I'd like to take a break about 4:00 o'clock for your benefit but, particularly, for mine. Okay. All right. Mr. Taylor, call your witness.

MR. TAYLOR: Thank you, Your Honor. The State calls Latavius Spearman.

LATAVIUS SPEARMAN, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Taylor:

Q Tell the jury your name, please.

A My name is Latavius Spearman.

Q And where are you from, Mr. Spearman?

A Greenwood, South Carolina.

Q What do you do here in Greenwood?

A I work at Eaton Electrical Services.

Q How long have you worked at Eaton?

A Three years.

Q Now, do you have any other family here in town?

A Yes, sir.

Q Who is that?

A My whole family.

Q Your whole family. Now, do you have any children?

A Yes, sir.

Q How many?

A I got one daughter.

Q Okay. How old is she?

A She is four.

Q Okay. All right. Let's go back or do you remember what happened on July 26, 2013?

A Yes, sir.

Q What's so significant about that day?
A I was kidnapped and robbed.
Q Now, back then, where were you working?
A At Eaton.
Q You were at the same place?
A The same place.
Q What was your schedule like back then?
A It was 4:00 o'clock to 2:30 a.m.
Q Was it 4:00 --
A 4:00 p.m. to 2:30 a.m.
Q Okay. So it was, you were usually up late at night, I guess, early morning, however you want to say it?
A Correct.
Q All right. On that day, July 26, 2013, tell us a little bit about after you got off work, what did you do?
A I went to a friend's house. I just had fixed my car up. They wanted to look at my car and we were talking about fixing up cars. We were talking out there for probably about an hour to an hour and a half.
Q Okay. At your friend's house?
A Correct.
Q What did you do after you went out to your friend's?
A I went home.
Q Okay. Let's talk a little bit about your car. I got what's marked as State's Exhibit 1 and 2.

MR. TAYLOR: Judge, may I approach the witness, please?

THE COURT: Yes, you may.

Q I hand you up a stack of these and just tell me if you, anyway just look through all of them. Look through them and tell me if anything looks like we altered anything or anything's been changed in those pictures, anything like that? Does it look like they're doctored? Do those appear to be accurate pictures of different things?

A Yes, sir.

Q I'll take those back from you real quick and we'll talk about them.

MR. TAYLOR: Your Honor, at this time, I'd like to put State's 1 through 8 and 20, 21, and 22 into evidence.

THE COURT: And y'all discussed these pretrial?

MR. TAYLOR: Yes, sir.

THE COURT: Any objection from the Defense about those photographs? No objection?

MS. MERRILL: Beg the Court's indulgence.

THE COURT: All right.

MS. MERRILL: Your Honor, may we approach briefly?

THE COURT: You may.

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

jury.)

MR. TAYLOR: Judge, at this time, The State's just moving to admit, let's mark The State's Exhibits 1 through 6.

THE COURT: Okay. And that's without objection from both Defense Counsel?

MS. MERRILL: No objection.

THE COURT: And the other ones, you'll lay further foundations later?

MR. TAYLOR: Yes, sir.

THE COURT: Very well.

(Whereupon, State's Exhibits 1 through 6 were admitted into evidence.)

THE COURT: All right. Now, she's busy. When she's unbusy, she can listen to me. She keeps track of all the inventory of all the exhibits and their numbers. She keeps track of that. As they come in, she marks them and she accepts them and once she does, then y'all get to see them. You don't have to memorize them and flash them up and show them to the witness. Y'all will have them in the jury room. Once they're in, y'all can look at them all you like, so don't worry about that. Now, when she's doing that and she's talking, no one else really can talk because she can't do two things at once, this and that. If I had the little sidebar conference over there to talk

to lawyers, y'all can stand up and stretch if you like, get a piece of candy. While we're talking, y'all can be at ease a little bit and y'all can do that, because I'm standing and I like to move around a little bit, so that's okay, too. So Ms. Holston's job, one of her jobs is to inventory and identify specifically so we can make a clear record of Exhibit 1, Exhibit 2, that kind of thing. So that's what she's doing and that's why I was listening to y'all over here because she wasn't able to take it down, but that's her job to take it all down. Now, we'll get back to work.

CONTINUE DIRECT EXAMINATION

By Mr. Taylor:

Q All right. Mr. Spearman, let's get back to that night. You mentioned a car that you were showing first?

A Correct.

Q Could you describe your car, please?

A It's a white Chevrolet Caprice. It's got some big rims on it.

Q Now, are you still driving that car now?

A Correct.

Q Okay. Now, when did you buy that car?

A It was in July of last year.

Q So it was a couple of weeks before this incident happened?

A Correct.
Q Okay. I'm going to show you what's marked as State's Exhibits 1 and 2.
MR. TAYLOR: If I may publish those for the jury, Your Honor?
THE COURT: You may.
(Whereupon, State's Exhibits 1 and 2 were published to the jury.)
Q Now, is that the car you're describing?
A Correct.
Q Okay. And up top there, that top picture, you said something about rims. Is there anything special about the rims?
A No, sir.
Q How much would those rims cost?
A Around $2,200.00 dollars.
Q And I assume about the same price as the car?
A Correct.
Q Okay. All right. Now, you mentioned that you eventually was headed home that night. Now, before that, did you see any cars, suspicious vehicles that night?
A When I went to my friend's house when I got off work, I seen a gray Camry, a silver-looking Camry.
Q Well, what was so suspicious about the Camry?
A He kept riding through, but I didn't pay no attention

to it.
Q So at the time, you didn't really think a whole lot about it?
A No. No.
Q Okay. Now, if you saw a picture of it, could you, I mean would you remember it?
A Yeah.
Q Okay.
MR. TAYLOR: If I may approach, Judge?
THE COURT: You may.
Q This is in evidence as State's 3. What's going on in that picture?
A That is the car I kept seeing riding through.
Q Okay. Now, do you see it later in the night?
A Yes, sir.
Q Okay. I'll take that back from you.
MR. TAYLOR: If I may publish that to the jury, as well, Your Honor. It's State's 3.
(Whereupon, State's Exhibit 3 was published to the jury.)
Q Okay. Is that the exact car you're talking about?
A Yes, sir.
Q Okay. All right. So you drove home. Well, what happened, or, excuse me. Where were you staying at that point?

A I was staying in Deerfield Apartments.
Q Now, what county is that located in?
A It's in Greenwood County.
Q Okay. And what time of the early morning was this when you got home?
A It was 3:30 or 4:00.
Q Okay. And explain just to the jury, kind of describe the apartment complex. I mean, things like is it lit up or is it easy to get in and out, that sort of thing.
A There's one way in and one way out --
Q Okay.
A -- and all the apartments are in sections and you have two parking spaces on each side of the section. I had to park on the opposite because I have more parking spots in my section.
Q Okay. Now, did you live there by yourself?
A Me and my girlfriend and my daughter.
Q Okay. So anything happen when you parked and went to go inside your apartment?
A I parked. I see a guy walking up. I didn't pay no attention to him. I just thought it was somebody just going to the apartment.
Q Well, and describe, you said a guy walked up to you?
A Yes, sir.
Q Well, describe that person. Do you remember what he

looked like?
A No, sir.
Q Okay. All right. So keep going.
A I was walking and I was turning, as I was standing, stepped on the sidewalk when I'm going to the breezeway, I seen a red beam on my chest.
Q What do you mean by a red beam?
A An infrared beam from a gun.
Q Okay. All right. Now, did anybody say anything to you?
A Yeah, he said, "You know what it is."
Q Who said that?
A The guy, the guy that had the gun.
Q Was it the same guy you saw walking up?
A Yes, sir.
Q All right. And repeat. I'm sorry. I didn't hear you. He said what to you?
A "You know what it is."
Q Okay. And did he say anything else to you?
A Well, he made me go back to my car.
Q Okay. Now, was he walking behind you, in front of you?
A Well, he was walking behind me with the gun to my back.
Q Okay. Did he say anything else to you?

A No, sir.
Q Okay. Was there anybody else with him?
A Not at the moment. When I got to the car, I seen somebody walk out of nowhere.
Q Okay. And you mean walk out and were they hiding?
A I guess. Now, I ain't seen--
Q Do you remember kind of a description of the guy that walked up afterwards?
A He was tall and slim.
Q Was he white or black?
A He was black.
Q Now, could you tell what color the guy with the gun was?
A No, not a accurate description.
Q At that point?
A Yeah.
Q Okay. I got you. All right. And so when you got to your car, did they make you do anything? Did they just stand there or what happened?
A They made me empty out my pockets. They were wanting me to take my pants off but I refused.
Q When you say, did you help them take stuff out of your pocket or did they force you?
A Yeah, as I'm pulling stuff out my pocket, they grabbed me as I'm pulling them out.

Q And what did you have in your possession that night?
A I had approximately $25.00 to $30.00 dollars and a cellphone.
Q Okay. Did they take both of those items?
A Correct.
Q Okay. Was the laser beam still on you?
A Yes, sir.
Q Okay. And so when you got to the car after they took your, you know, robbed you, what happened then?
A I mean, they ordered me to leave. They ordered me to get in the car and crank up the car and leave. As we left, I seen the gray Camry.
Q We'll stop for a second. You were in the car by yourself?
A No, they got in the car too.
Q Okay. Where were these guys sitting when they got in the car? Well, let's talk about the guy with the gun. You're driving, where was he sitting, the guy with the gun?
A The guy with the gun was sitting in the backseat.
Q Okay. Was he, did he say anything to you when he got in?
A He told me, "Don't do nothing stupid."
Q Okay. And you said the other guy that walked up, the taller guy, where was he sitting?

A He sat on the front passenger seat.
Q Okay. And, I mean, what were you thinking or feeling at this point?
A I'm feeling shocked. I couldn't believe it. I was just going home and kiss my baby before I go to sleep.
Q Okay. Now, you kind of jumped ahead, but you said you left the parking lot?
A Yeah.
Q Okay. Did you see any other cars move around that time of morning?
A I seen the gray Camry.
Q Is that the same one we got still up on the screen there?
A Correct.
Q Where did you see them?
A They pulled out from another parking space on that opposite side of the complex.
Q Okay. Did you go the same direction as the car?
A They led out and I followed behind them.
Q And the guys in the car with you, did they tell you to follow them?
A Yes.
Q Was there any conversations between the two of them as you're driving?
A Yeah.

Q What were they saying?
A They just telling me be still and, or they just wanted to know was I, they just wanted to know did they keep me under control.
Q When you say, "they", does that mean that they called somebody?
A The guys that are in the car right there. They was calling the guys in my car.
Q Okay. All right. Now, when you left where you were living, the apartments, you were driving. Do you remember what direction you went?
A As we left out of Deerfield Apartment, I know I turned to the left.
Q Now, what's on that road when you turn out of Deerfield Apartments?
A A bunch of woods.
Q Okay. Do you know the name of that road?
A Emerald Road.
Q And is that the same road that ends up going past the new Brewer Middle School and goes into town past Piedmont Tech?
A Correct.
Q Okay. Now, did y'all immediately pull over?
A Like a minute or two after I started driving.
Q Okay. And what happened with this whole stopping

type deal, what happened?
A They wanted me to get out so I couldn't --
Q Who's they?
A The guy in the backseat with the gun, he wanted me to get out --
Q Okay.
A -- and he ordered me to go into the backseat and put my head down.
Q Now, which backseat were you in --
A I was in my own backseat.
Q No, I know, but I'm saying were you on the passenger or driver's side backseat?
A More in the middle.
Q Okay. Now, could you still look at them when they got you out of the front seat and to the back?
A No, not accurate.
Q Was it still dark outside?
A Yes, it was still dark.
Q Okay. All right. Now, could you see anything with your head down?
A No, sir.
Q Were they threatening you in any way at that point?
A Yes, sir.
Q What were they saying to you now?
A They were mad because I didn't have much money on me.

They said they were going to kill me because I ain't had that much money.

Q Was there any mentioning of somebody setting you up or anything like that?

A Yes, sir. They said, "They set you up good for $24-$25.00 dollars."

Q Did you know who they were talking about at that time?

A No, sir.

Q So you had no clue who was in the other car?

A No, sir.

Q Okay. All right. So did the car take off again?

A Yes, sir.

Q All right. And did you know where it was going?

A I didn't know where we was going.

Q But you did turn around and --

A No.

Q So you were still going down Emerald Road?

A Correct.

Q All right. Now, did you stop again at any point?

A Yes, we stopped again.

Q Okay. Do you have any idea where you stopped?

A No, sir.

Q Did anybody get in or out of the vehicle that you were driving or were riding in?

A Yes, sir.
Q And do you know who it was?
A It was Shadarron Evans.
Q Now, is he on trial today?
A No, sir.
Q So you don't see him in the courtroom at this point?
A No, sir.
Q Could you describe him for the jury, please?
A Oh, he's light-skinned with tattoos all over him, curly hair.
Q Do you know how big he is?
A Medium-build.
Q Okay. When he got in the car, where did he sit?
A He sat on the front seat, the front passenger seat.
Q Now, this is the second stop?
A Yeah. Correct.
Q Okay. Did he say anything to you?
A Yes. He was mad also that I hadn't had that much money on me. He said he wanted to kill me.
Q That's what he said?
A Yeah.
Q Okay. Now, were they talking? Now, that there's three guys, were they talking amongst themselves in the car?
A Yes, sir.

Q What else, just the same type of stuff?
A The same type of stuff.
Q Okay. I mean, did you think you were --
A Yes, sir.
Q -- may not make it out of this?
A Yes, sir.
Q Okay. All right. So did you stop again?
A Yes, we stopped again.
Q What happened on that stop?
A They pulled me out of my car. They wanted to put me in the trunk.
Q Was it still three guys in the car with you?
A It was still three guys in the car.
Q Okay. And they tried to put you in your own trunk?
A Yeah, they tried to put me in my own trunk.
Q And why did that not work out?
A I had a big speaker box and it took up the entire trunk.
Q Well, what did they do whenever they figured out they couldn't put you in there?
A They put me right back in the backseat.
Q Okay. The same setup?
A The same setup.
Q Did anybody leave at that point?
A No, sir.

Q Okay. Now, when you got out of the car, could you see anything?
A Yeah, I just looked behind me and I just seen woods.
Q Okay. So you're still out in the middle of nowhere?
A Yeah.
Q And you to this day don't really know where you were at at that point?
A No, sir.
Q Okay. Now, did you stop again at another point?
A No, sir. We stopped at the Hot Spot. That was the last stop.
Q Okay. Well, let's talk about the Hot Spot. So is this the first place that's actually lit up like where you can kind of see what's going on --
A Correct.
Q -- since you were robbed and kidnapped?
A Correct.
Q Okay. Did you see any of the guys in the car with you?
A I happened to look over there and seen Shadarron in the car with me.
Q He was still in the car?
A Yeah.
Q Okay. Now, the guy with the gun in the backseat, was he still holding the gun?

A He was still holding the gun on me.
Q When you say have the gun, tell us, tell the jury about how he's, was he just --
A The gun was at my shoulder.
Q Okay.
A He had the gun at my shoulder.
Q Now, were they, just did you have any idea why he, I mean, any clue why you're at the Hot Spot at this point?
A They needed to get gas.
Q Okay.
A My car was fixing to run out of gas.
Q Did you have any indication they were still on the phone or contacting the car in front of you?
A Yes.
Q Okay. All right. Tell us what happens once you pull in the Hot Spot or before we do, are you still in the car following the gray car?
A Correct.
Q All right. Where is the gray car?
A They had to pump, like, they had to get gas first.
Q So they're right in front of you?
A No, they on the side of me.
Q Okay. Got you. All right. So tell us what happened once you pulled in and that car and everybody is trying to get, fill up their gas tanks.

A Shadarron got out the car. He was fixing to go pay for the gas.
Q For everybody?
A I guess.
Q Okay. All right. So he got out.
A He was fixing to go pay for the gas and I tried to open up the door. I tried to unlock and open up the door, but he grabbed me back down and put the gun back to my head and told me don't move.
Q Who, the guy in the backseat did?
A The guy with the gun in the backseat.
Q Did you have any clue where y'all were going?
A No, sir.
Q You had not an idea?
A No, sir.
Q Did you ever ask them to let you out?
A Yes, sir.
Q And what did they say?
A No, sir.
Q Okay.
A They said no.
Q All right. So Shadarron Evans is out of the car. What happens with the other two guys in the car with you?
A As I tried to open up the door, he grabbed me. I said, "I can't do this no more," and I --

Q Who did?
A The guy in the back with the gun.
Q Okay.
A He grabbed me and put the gun back to my head. He put the gun to my head at that point and told me, "Don't move no more again." At that point, I grabbed the gun and we go to fighting and go to wrestling. I bit him. He bit me. The gun go off in my backseat. It didn't penetrate, you know, it hit the backseat.
Q It hit the seat --
A The passenger seat, the front passenger seat.
Q All right. And you said y'all both bit each other?
A Yes, bit each other.
Q Where did you bite him?
A On the head.
Q On the head. So you're just desperate at this point?
A Yeah, I'm desperate.
Q Okay. Where did he bite you?
A On the arm, on the forearm.
Q Was it pretty visible that night?
A Yes, sir.
Q Okay. Let me show you some pictures here.
MR. TAYLOR: May I approach the witness, Judge?
THE COURT: You may.
Q I have what's not into evidence, just marked as

State's Exhibit 20, 21, and 22. If you can take a look at those for me and do those appear to be accurate representations of what's going on there, are those doctored or changed in any way?

A No.

Q All right. Well, tell us what these three pictures are? Just take a look at them and tell us what they are?

A This is a bite mark --

Q Okay.

A -- and this one is right when I was fighting for the gun and that's kind of both of them together.

Q Okay. I can take them back from you and show everybody.

MR. TAYLOR: Judge, at this time, these are the pictures we discussed earlier, State's Exhibit 20, 21, and 22, we would like to enter those into evidence.

THE COURT: Any objection, Mr. Nicholson?

MR. NICHOLSON: No objection.

THE COURT: Ms. Merrill?

MS. MERRILL: No objection.

THE COURT: They're admitted without objection.

(Whereupon, State's Exhibits 20, 21 and 22 were admitted into evidence.)

THE COURT: This is a good time for that 4:00 o'clock break I spoke of. Y'all all right on that?

MR. TAYLOR: Yes, sir. The State has no problem with that, Your Honor.

THE COURT: Okay. That's what I, I mean, I said 4:00 o'clock and I want to kind of hold, I need to stretch my legs. So, all right, ladies and gentlemen, we're going to take a ten-minute break and come back and do some more testimony, then we'll probably adjourn for the day right at about 5:00. Y'all take a short break, we'll finish up in just a little bit. You can't talk about the case. Mr. Spearman, you can't discuss your testimony.

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

(Whereupon a short break was taken.)

THE COURT: Let's bring them in.

(Whereupon, the jury came into open court at approximately 4:14 p.m.)

THE COURT: You may proceed.

MR. TAYLOR: Thank you, Your Honor. At this time, the State would like to publish Exhibits 20, 21, and 22 that are in evidence.

THE COURT: All right. You may do so.

(Whereupon, State's Exhibits 20, 21, and 22 were published to the jury.)

CONTINUE DIRECT EXAMINATION

By Mr. Taylor:

Q All right. Mr. Spearman, you were just telling us that, basically, you bit the guy in the backseat with the gun on the head, he bit you?
A Correct.
Q So I'm going to let you look at these pictures and you tell us what's going on there. What is that a picture of?
A That's the bite mark on my forearm.
Q So did that hurt?
A Yes, sir.
Q Okay. And what is in this picture right here?
A That is the scar from when I was bit--
Q Okay. Let's back it up a little bit so we can see it. What hand is that on?
A That's my, it's my left hand.
Q Now, hold on. Let's get there. Let me show you what's Exhibit 22.
A That's my right hand.
Q Right hand. So all the, is there any other damage on your body or any other injuries during this thing?
A No, sir.
Q Okay. All right. We got some other little pictures we want to look at here. I have what is in evidence as State's Exhibits 4, 5, and 6. If you'd tell, I'm going to publish these for the jury. If you'd tell us what is

going on.
A That's my backseat.
Q Okay. Now, is that the side, you told us a little earlier and just remind us. Where were you in the backseat there during this whole, where were you?
A I was kind of in the middle of the backseat.
Q Okay. And they didn't really move you a whole lot at that point?
A No, sir.
Q That was just the one time. All right. Let's look at this picture. You told us that, you said a gun went off?
A Yes, sir.
Q How many times did it?
A One time.
Q Okay. And based on where you were sitting, where, what direction was the gun pointing when it went off?
A Pointed in front of my chest.
Q Okay. So away from you?
A Yes.
Q Okay. And is anything different going on here?
A No, sir.
Q Okay. The same thing --
A The same thing.
Q -- just a little closer? Okay. All right. Now, you

mentioned that this happened at this point at the Hot Spot?
A Correct.
Q What county is the Hot Spot in?
A Greenwood County.
Q But where in Greenwood is the Hot Spot located?
A South Greenwood.
Q What, do you know a road it's on?
A No, sir.
Q Okay. Is it on, do you know if it's on a big road or not?
A Yes, it was on a big road.
Q Okay. And it's all lit up?
A Yes, sir.
Q Okay. All right. So after the gun went off and you were bitten, what happened?
A All right. After the gun went off when I was bitten, the driver of the car, I guess, he panicked and he tried to drive off and he hit the other car.
Q What other car?
A The gray Camry. He hit the gray Camry.
Q And what, how did he hit him?
A He hit him on the side. Like my car rolled up on the side of the vehicle --
Q Okay.

A -- and he jumped out of the car and he went around the car to open up the front passenger door.
Q Why didn't he open up the backdoor, do you know?
A It was too close to the other car.
Q Got you. Did he put the car in park?
A I have no idea.
Q I mean, the car wasn't still moving?
A It didn't move, only pushed the car.
Q All right. So it may have been stuck on the car --
A Yeah.
Q Okay. Now, you said he ran around and opened the front passenger door?
A Correct.
Q What happened next?
A The guy that had the gun on me, he jumped over the seat, the front seat and jumped out of the front passenger door. I followed right behind him, and I ran into the store and they ran across the street.
Q They didn't yell anything at you to turn around and they were just running away?
A No, sir.
Q What direction, do you know where they ran to?
A They ran toward the road.
Q So they didn't run to the store?
A No, sir.

Q They ran away?
A They ran away.
Q Okay. And I forgot to ask you this earlier, do you remember getting a good look at the gun?
A I looked at the gun but I can't tell, now, it wasn't a revolver.
Q Okay. So it was an automatic?
A Yes, sir.
Q Do you, based on your recollection and what you saw, was that a big or a small, medium-sized handgun? Well, describe the size of it.
A I'd say a medium-sized handgun.
Q Okay. And it had --
A A laser beam on it.
Q Okay. Again, based on what you saw, is that, is it small enough to fit in a pocket?
A Yes, sir.
Q It is?
A Yes, sir.
Q You could hide it in there. Okay. All right. All right. So you ran inside the store. What did you do once you got inside the store?
A I asked the clerk for the phone. She already knew I was hurt, so I asked her for the phone. She give me the phone. She finally brought me the phone. I called my

girlfriend.
Q When you say finally, how long were you waiting for her to give you the phone?
A Approximately, a minute or a minute or two.
Q Well, now, when you ran inside, did you look at anybody in the gray car? Was there anybody in the car?
A No, sir.
Q Okay.
A They had everybody in the parking lot and came back into the parking lot as I was in the store.
Q So after the collision, the gray car left --
A Yes, sir.
Q -- and came back?
A Correct.
Q So you called who again?
A I called my girlfriend.
Q Okay.
A I just told her to get her and my daughter out the house and go to my mom's.
Q Now, why would you call them first and not call 911?
A Because I had to get them out the house first.
Q So you didn't know if anybody was still there?
A Exactly.
Q And at this point, you still have no idea or do you know who these people are?

A I don't know nothing.
Q Okay. And then you called who after your girlfriend?
A I called 911.
Q All right. How long before the police showed up?
A Approximately, forty, forty-five minutes.
Q Okay. And when they got there, what happened?
A Well, before the police got there, Shadarron Evans opened up the front door --
Q Now, you, before you go. You mentioned his name earlier. Describe him again so we'll know who he is?
A Light-skinned with tattoos all over him with curly hair.
Q Okay. So you saw him earlier in the night?
A Correct.
Q All right. And you said he opened the front door of the --
A He opened up the front door of the store.
Q Okay.
A He's screaming at me, "I just hit that car. I just hit that car." Again, I got blood trickling from my hand.
Q I'm just having a hard time understanding. He saying you hit him?
A I hit their car. I hit the gray Camry.
Q So he's claiming to be a victim?
A Correct.

Q Okay. All right. And did you say anything back to him?
A No, sir.
Q All right. Well, what happened when the cops showed up?
A I finally walked outside. The people in the store told the cops I was outside. I finally felt it was safe to go outside now.
Q Well, what did, what did you tell the police?
A Them two, there was one of them robbed me.
Q Okay. Now, did you see anybody else with this Shadarron Evans guy?
A Yes, sir.
Q Now, do you see the other guy that was with him that night? Do you see him in the courtroom anywhere?
A No, sir.
Q Okay. Now, did you find out what his name was after the fact?
A Correct.
Q What's his name?
A Antonio Nicholson.
Q Okay. What does he look like?
A He's light-skinned, medium, you know, he was sort of thin.
Q Now, does he have tattoos all over his face?

A No, sir.
Q So could you tell the difference pretty easily between the two?
A Yes, sir.
Q Okay. And were they speaking to the police?
A Yes, sir.
Q What were they saying to the police?
A Well, they trying to tell their side. I was telling my side. We get in an argument and, I guess, they finally put two and two together what happened.
Q Well, what do you mean their side? What were they saying?
A They were saying I hit their car at the gas pump.
Q So they came up with some different story?
A They had a totally different story.
Q Okay. Now, how long after this incident did you figure out who was involved? I'm not saying whether they're guilty, but who was arrested, that sort of thing?
A Early Saturday morning.
Q How did you find that out?
A The newspaper.
Q Okay. Now, before this incident, had you ever heard of the person, a person named Christopher Johnson?
A I'd heard of him, but I never talked to and never had any kind of association with him.

Q Did you know him by a nickname?
A Yes, sir.
Q What was the name?
A Bow-wow.
Q Okay. If I showed you a picture of him, could you pick him out?
A Yeah.
Q So you had seen him before this?
A Yes, sir.
Q Okay. I have what's marked as State Exhibit 24 for identification.
MR. TAYLOR: May I approach the witness, Judge?
THE COURT: You may.
Q See if you recognize who's in this picture?
A Christopher Johnson.
Q Okay. Is that anything odd about the picture, I mean, nothing's changed?
A No.
MR. TAYLOR: Judge, at this time, the State moves to put State's Exhibit 24 into evidence.
THE COURT: Any objections, Ms. Merrill?
MS. MERRILL: No objection.
THE COURT: State's 24 is a photo of Mr. Johnson.
(Whereupon, State's Exhibit 24 was admitted into evidence.)

Q All right. Now, did you have any --
THE COURT: Wait, wait--
MR. TAYLOR: Oh, I'm sorry, Judge.
THE COURT: Admitted without objection.
Q All right. Did you have any connection with him --
A No, sir.
Q -- like any business dealings with him?
A No, sir.
Q Did he have any connection to the car you were driving?
A Yes, sir.
Q What's the connection with your car?
A He was the previous, he wasn't the previous, he was the owner before the previous owner when I got it.
Q Who did you buy it from?
A I bought it from Big A Auto Sales.
Q Okay. So he sold it to them?
A No. He had put a title loan on it and he sold it to a guy that worked with them.
Q Got you. Okay. Now, had you heard of any of these other guys again, and we'll have other people testify, but any of the names that were arrested, do you know anybody else?
A No, sir.
Q Okay.

MR. TAYLOR: Judge, we have a matter we need to take up outside the presence of the jury.

THE COURT: All right. Step in the jury room. Let me hear this issue. Y'all can't begin discussing the case. I'll have you back out here in a minute.

(Whereupon, the jury was excused from open court.)

MR. TAYLOR: Judge, at that point, I was going to ask him to identify Mr. Brown. And I know you've heard that motion and I know what we're inclined to do on that. But again, I did want to stop the Court and do it outside of the jurors presence. You know, we had the same argument, Judge. It seems someone in person is way different than seeing them in a black and white photo. Our position is that it would be appropriate. However, Judge, we again respect your decision. And, Judge, you know, there's a little more testimony that came out about the Hot Spot. It's actually a well lit area convenience store. You can see they were in the car. He saw him come around and open the door. I mean, he had some opportunity to get a good look at him.

THE COURT: I don't think I've heard anything from his testimony that's going to change my mind. I think I'd leave it alone. Thus far, his testimony has been consistent which I'll represent as to the lot of movement in the dark, the gentleman with the gun being the most

interactive other than this Evans fellow. I think I would, unless you've got something else, I'm not going to allow any court identification of Mr. Brown.

MR. TAYLOR: I understand, Your Honor.

THE COURT: Okay.

MR. TAYLOR: And I'd just, when he comes back, I have one other follow up and nothing to do with the identification of Mr. Brown and I was going to be done in that.

THE COURT: Okay. I mean, you ready to go?

MR. TAYLOR: Yes, sir. We are.

THE COURT: Great. I believe we're ready.

(Whereupon, the jury entered open court at approximately 4:28 p.m.)

THE COURT: All right. All right. Mr. Taylor, you may proceed.

MR. TAYLOR: All right. Thank you, Your Honor.

CONTINUE DIRECT EXAMINATION

By Mr. Taylor:

Q All right. Mr. Spearman, last question. The guy with the gun, do you see him in the courtroom?

A No, sir.

Q Okay. So he's not here today?

A No, sir.

MR. TAYLOR: I have no further questions. Listen up

for any questions that Mr. Nicholson or Ms. Merrill may have.

THE COURT: All right. We're going through the same order. Mr. Nicholson will go first and Ms. Merrill will go second.

CROSS-EXAMINATION

By Mr. Nicholson:

Q Mr. Spearman, you identified this photograph and said you knew what Christopher Johnson looked like. Is that right?

A Correct.

Q Now, he wasn't the guy that held a gun on you?

A No, sir.

Q And he wasn't the other guy that was out there that when the two guys first approached you?

A No, sir.

Q You know he wasn't that guy?

A No, sir.

Q And this guy you talked about, Evans, that's not Christopher Johnson, is it?

A No, sir.

Q The guy with the tattoos, light-skinned with tattoos?

A No, sir.

Q Okay. What about the other guy that was at the Hot Spot? There were two guys that were accusing you of

running into their car, Evans and one other guy, and was Christopher Johnson this other guy?

A No, sir.

Q Did you ever see Christopher Johnson that night?

A No, sir.

Q Did you have any beef or argument or anything with Christopher Johnson?

A No, sir.

Q And you bought your car from the car sales place called Big A, didn't you?

A Correct.

MR. NICHOLSON: Okay. That's all I have.

THE COURT: All right. Ms. Merrill.

MS. MERRILL: Thank you, Your Honor. May it please the Court.

CROSS-EXAMINATION

By Ms. Merrill:

Q Mr. Spearman, you were shown a photo lineup and picked someone that you said was the person who held the gun. Is that correct?

A Correct.

Q And that person is not Mr. Brown, is that correct?

A No. No, ma'am.

Q And until you knew who had been arrested for this charge, you'd never heard of Corey Brown, had you?

A No, sir.
Q Going to the Hot Spot, when you pulled, when your car pulled into the Hot Spot, I believe you testified that this silver Camry was on one side of you. Is that correct?
A Yes, ma'am.
Q Was your car to the right or the left of the silver Camry?
A To the right of the silver Camry.
Q So the silver Camry was on your car's left?
A Yes.
Q And when, again at the Hot Spot, you testified about the gun going off in your car and then your car hitting the Camry. Is that correct?
A Correct.
Q I was a little confused about that timing. Were you still in the car when the two cars collided?
A Correct.
Q You were in the car when the two cars collided, and then you jumped out. Is that correct?
A Correct.
MS. MERRILL: I beg the Court's indulgence.
Q Is your testimony here today the same thing you told officers at the Hot Spot?
A I am not sure.

Q Okay. So do you know why information that's been provided to me might say that the two cars were not beside each other but lined up in a line? Do you have any idea why it would say that?
A They wasn't. They were beside each other. They weren't lined up in a line.
Q Okay. They were not lined up in a line?
A No.
Q Mr. Spearman, when you pulled up, when your car pulled into the Hot Spot, how many people total were in the car?
A It was, it was four people, including me.
Q Four people including you. So you were in the car; the person driving was in the car; the person with the gun was in the car; and Shadarron Evans was in the car. Is that correct?
A Correct.
MS. MERRILL: Your Honor, if I can have one more moment, please.
THE COURT: Yes.
Q When you were in your car and there were three other people, so four including you, at any time were there, was there more than one gun?
A Yes, ma'am.
Q And you told law enforcement the day that you talked

to them that there actually was two guns. Is that correct?
A Yes, ma'am.
Q And I want to clarify. One of those people holding the gun or holding a gun was the same person who'd had the gun the whole time. Is that correct?
A Correct.
Q And that person is not in the courtroom today. Is that correct?
A No, ma'am.
Q And the other person who had the gun on you, was that Evans?
A Yes, ma'am.
Q And you, I just want to clarify this because, like I said, the information I was provided might be a little bit different. When you say you saw the car, your car collide with the Camry, were you in your car?
A Yes, ma'am.
Q Okay. A couple of more questions about Mr. Brown. At one point you were shown a lineup that included a picture of Mr. Brown. Were you able to pick him out as one who was involved in this crime?
A No, ma'am.
Q And you're not able to identify him in the courtroom, are you?

A Now, I do.
Q But you don't know that that's, but you can't identify him as one who was, is that correct?
A Say that again?
Q When you got out of your car at the Hot Spot to go into the Hot Spot, which door did you get out of?
A I got out of the front passenger seat, because I climbed over the seat and hop out the front passenger door.
Q So it would be incorrect if information provided to me said that you got out the backdoor. Is that correct?
A No, ma'am, yes, ma'am. Yes, ma'am.
Q Okay. And did the gun go off in your car before or after you bit the person holding the gun?
A It was all like the same time.

MS. MERRILL: Thank you, Mr. Spearman.

THE COURT: Any redirect?

MR. TAYLOR: Yes, sir.

REDIRECT EXAMINATION

By Mr. Taylor:

Q I just want to, you didn't really get a chance to answer. Ms. Merrill asked you, you couldn't have said, you couldn't identify the person that was in the car that night in the courtroom, could you? Can you identify anybody in the courtroom today that was in the car that

night?
A Now, I can.
Q Who is it?
A It's Corey Brown.
Q Can you point him out?
A The guy in the brown shirt.
Q What was he doing in the car?
A He was driving.
MR. TAYLOR: Okay. I have no further questions.
THE COURT: Any recross, Mr. Nicholson?
MR. NICHOLSON: Not at this time.
THE COURT: Ms. Merrill:
MS. MERRILL: No recross.
THE COURT: You may step down. Mr. Taylor, you and Ms. White, any witnesses? Are we going to get done fairly quickly?
MS. WHITE: We may need to approach, Your Honor.
THE COURT: Okay.
(Whereupon, a bench conference was held.)
THE COURT: All right, folks. Here's what I want you to do. We're done for the day. Y'all can put your notebooks in the jury room. Any objections to this being the foreperson? Look a there. You said you liked the seat. That's where the foreperson sits, Mr. Annese. All right. I don't care how you organize the notepads, it

will be in there and that door is secured at night. Nobody can go through your stuff, so Mr. Willingham will be assured of that, so y'all can put it back in there. You can't begin discussing the case. When you get home, you can tell anybody in your family, I'm on the jury, but the Judge said do not discuss the case. Please don't go on the Internet and say anything. Stay off of that, because Greenwood is a small community, things get back. It is not fair to either side to do anything like that. There's several interested parties in here and some of which aren't here. But, if y'all say nothing, nothing will happen. So and I say this to every jury. It's not like I'm fussing at y'all and I promise you, it's just imperative for y'all to do that. Blame it on me. You can't discuss the case until the case is over. When the case is closed, you can talk to everybody about it. So, anyway, we're done for the day. Please step in the jury room and we'll see you in the morning. Oh, we didn't decide what time. Is 9:30 early enough? Be back at 9:30. Okay. Y'all be in the jury room by 9:30 and we'll get started at 9:30 sharp.

(Whereupon, the jury was excused from open court for the day.)

THE COURT: All right. Anything else before we adjourn for the day?

MR. TAYLOR: Nothing from the State, Your Honor.

THE COURT: All right.

MS. MERRILL: Your Honor, I'd like to be given overnight to research the issue and then if we can argue it in the morning regarding the Solicitor questioning that last witness, the victim, saying that he could identify him as the person driving. I'd also like to get more information from the Court Reporter, but I believe the phrasing of my question is a restatement of your ruling that he couldn't identify him. And then the State proceeded to ask anyway, and I think that is a violation of your prior in-limine motion that there could not be an in-court identification.

MR. TAYLOR: Judge, I would have never in a million, I wasn't going to bring it up, didn't bring it up. I think she's, I think it happened, the door was open, I walked through it. I really would have been remiss not to mention it because I thought, yeah, if we can't identify him, we're not going to mention it, nobody's bringing it up and the door was opened. I walked through it.

THE COURT: Now, Ms. Merrill, correct me if I'm wrong, did you not ask basically that very question as you can't identify him in court here today?

MS. MERRILL: Well, and that's why I wanted to check with the Court Reporter. My intentions in asking that is

basically restating what you ruled is that he can't identify him.

THE COURT: I think you opened the door and I don't want to announce that as my ruling, but when you asked the question, I was caught by surprise thinking you opened the door. Let's think about it overnight and you can address it or not. I'll be here shortly after 9:00 and so will Joy and we will put that on the record.

MS. MERRILL: Thank you, Your Honor.

THE COURT: All right. See y'all in the morning.

(Whereupon, the trial will resume the next day at 9:00 a.m.)

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THE COURT: All right. Y'all be seated, please. All right. It's my recollection we have one issue before we bring the jury out. Ms. Merrill, have you got it.

MS. MERRILL: Yes, sir. I was just going to renew my objection to the testimony yesterday afternoon that I objected to regarding the identity of Mr. Brown.

THE COURT: And I had my court reporter draft up the very, very brief transcript, maybe half a page. I thought you may have asked the question and it appears you did and so, therefore, I think you cracked the door open and they walked on through it. So I'm going to deny your motion to suppress your question.

MS. MERRILL: Thank you, Judge.

THE COURT: All right. Y'all ready?

MS. WHITE: Yes, sir.

(Whereupon, the jury came into open court at approximately 9:40 a.m.)

THE COURT: Call your next witness.

MS. WHITE: Thank you, Your Honor. The State calls Antonio Nicholson.

THE COURT: Mr. Nicholson, come forward to be sworn. Turn around and be seated.

ANTONIO NICHOLSON, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Ms. White:

Q Please state your name for the record.

A Antonio Nicholson.

Q Mr. Nicholson, where are you from?

A I'm originally from Greenwood, South Carolina.

Q Okay. How old were you when you left Greenwood?

A About 19 or 20.

Q Where did you move to?

A Augusta, Georgia.

Q All right. How old are you now?

A Thirty-four.

Q And so you've lived in Augusta for a while?

A Yes, ma'am.
Q Do you know somebody who goes by the name of Bow-wow?
A Yes, ma'am.
Q And do you know what his real name is?
A Christopher Johnson.
Q I'm going to hand you what's already been entered as State's 24.
MS. WHITE: May I approach the witness?
THE COURT: Yes.
Q Can you identify who that is for me?
A That's Bow-wow.
Q Christopher Johnson?
A Yes, ma'am.
Q Now, turning our attention to July 26, 2013, had you seen Mr. Johnson in the weeks prior to that?
A Yes, ma'am.
Q Did y'all make any plans regarding coming to Greenwood?
A Yes, ma'am. He had gave us the idea about coming to Greenwood and pointing out some cars for us to take back to Georgia.
Q Okay. What were y'all going to do with the cars?
A Take the parts off of it and put them on other cars. Take the motor out of them and put them in other cars.
Q Did y'all have any discussions specifically about

what kind of cars you were looking for?
A Just cars that's been fixed up with systems, big motors in them, rims, that type of thing.
Q When you say a system, are you talking about a stereo system, CD players?
A TVs and stereo systems, CD players. Yes, ma'am.
Q And when you say rims, what are you talking about there?
A 28-inches/26-inches.
Q Did he ever tell you how many cars he had to steal?
A Not exactly. He just said there was a few cars that he know where we can go get them at.
Q Now, on July 26, 2013, did you have any conversations with him that day?
A Not that day until we came to Greenwood that night.
Q Okay. When you say, "we came to Greenwood," who all came to Greenwood?
A Me, myself, Shadarron Evans, C-Lo, and Tee.
Q Okay. When you say, "C-Lo," do you know his real name?
A Corey Brown.
Q Okay. Is Corey Brown in the courtroom today?
A Yes, ma'am.
Q Can you point him out for us?
A Right there.

Q Okay. Are you talking about the gentleman in the brown shirt?
A Yes, ma'am.
MS. WHITE: Your Honor, the record can reflect he's pointed out the Defendant, Corey Brown.
THE COURT: So reflect.
Q All right. So you said it was you, Shadarron Evans, Corey Brown, and somebody named Tee?
A Yes, ma'am.
Q Do you know Tee's real name?
A No, ma'am. I just know him by Tee.
Q Okay. Why did you have them with you?
A Shadarron Evans and them said they know what they was doing by getting the cars, so we would be in and out.
Q All right. Now, before this night, did you know Tee or Mr. Brown?
A No, ma'am.
Q Okay. So did you meet them through Mr. Evans?
A Yes, ma'am.
Q All right. So y'all are in Augusta. About what time of day is this?
A It was after 12:00 a.m., early in the morning time.
Q Whose car were y'all in?
A My ex-wife's car.
Q What kind of car is that?

A A Toyota Corolla or a Toyota Camry. It's a little gray car.
Q Before y'all left Augusta, did you make any stops anywhere?
A Yes, ma'am.
Q Where did y'all go?
A We went by Shadarron Evans' girlfriend's house. Supposedly picked up a gun but, from my knowledge what was told to me, it wasn't there, so we didn't have, I didn't see no gun.
Q Whose idea was it to go get a gun?
A Tee's.
Q And that was Shadarron Evans' gun y'all were going to get?
A Yes, ma'am.
Q Now, I'm going to show you what's already in evidence as State's Exhibit 3. Is this the Camry? I don't know if you can see. Is that your wife's car?
A Yes ma'am, it is.
Q So that's the car that, I guess, the four of y'all drove to Greenwood in?
A Yes, ma'am.
Q Was it in that shape when y'all drove it to Greenwood?
A No, ma'am.

Q All right. So you got to Greenwood. Had you talked to Christopher Johnson any on the way?
A I was calling him, but I didn't get in contact with him. And I remember what the area he said he stayed in which was Raintree and we rode through there trying to find his house or whatnot. And I seen his car and I went to his house and knocked on the front door. No one came. By the time I pull off, he called me back and asked me like, "Man, what's going on. You got my kids up, my mama up, my grandmamma up. They about to call the police. They thought you was a white boy." So I was like I told you we was coming, you know, so he told us to turn back around, he walking up the street and we turned around. He walked up the street. Tee got out the car and let him get in the middle and he was sitting in the middle.
Q When you say, "in the middle", was he in the backseat?
A In the backseat in the middle up between C-Lo and Tee.
Q So as soon as y'all got to his house and told him y'all were here, he came to get in the car?
A As soon as we got to his house, no. No one came to the door. We pulled off. He called me back and we turned around to go pick him up.
Q But you turned around to go back and get him?

A Yes.
Q And you said he was in the backseat between Tee and Mr. Brown?
A Yes, ma'am.
Q Was he smallest guy out of the whole group?
A Yes, ma'am.
Q What did y'all do after you picked up Mr. Johnson?
A We rode around looking for a few cars and he tell us about the area, which is Country Homes. And he showed us two cars on the main road of Country Homes and C-Lo and Tee jumped out to go get it, but they couldn't get it. They say the flashlight or the floodlight beside the house came on, so they walked off. We turned around, riding around that little area and they was walking down the street. They got back in the car.
Q And when you say C-Lo, you mean Mr. Brown?
A Mr. Brown, yes ma'am.
Q And you said he was, Mr. Johnson is the one directing you where to go?
A Yes, ma'am.
Q Okay. So you tried to get a few cars at Country Homes and you weren't able to. What happened after that?
A Well, the two cars on the front road wasn't able to get them, so we turned inside the Country Homes in the little area part. And then like if you turn off the main

road the inside area, so we was riding around in there. We didn't see any. We getting ready to pull off. We see a white car. I want to say a box Chevy or a white Brougham with rims. We was pulling in and Mr. Bow-wow said, well, Mr. Johnson said, "That's a car right there we can get. You know, that used to be my car. I know you can easily get it. They ain't no alarm or nothing on it. We can get it and go." So we pulled at, we was at the stop sign when they was pulling in. So we made a right and turned into the, and made another right turning back into the entrance coming back around and we rode around looking for the car. We couldn't see them, but then we turned in like a little circle, a little cut and there was the car. They was standing outside so they went and I was like they was trying to get the car then and they were like, "Well, we can't get it, because the guy outside." So Mr. Johnson say, "They just getting off of work. They work at Eaton, so they going to be, he fixing to go home. The dude fixing to go home. I know where he stay." He asked me, I want to say Deer Park or Deerfield, did I know where it's at. And I told him, no. And he said it's right down the street. So he showed us the area where it was at. So we went to park outside the apartment complex and we was on this side. His apartment was like in another court. So when we parked, we sat there for a

minute, but then Mr. Johnson say he should be getting ready to pull up. But I guess they were just out there enjoying their little time off, and then fixing to come home and lay down. Well, finally, Johnson, Brown, and Tee got out the car to go walk around. I guess, Mr. Johnson was showing them where they stay, where he stay in, what apartment complex or whatnot. So they walked around for a few seconds. Tee and Mr. Brown stayed outside. They supposed to been hiding in the bushes. That is what Mr. Johnson told us when he got back in the car.

Q So Mr. Johnson got back in the car after walking around with Tee and Mr. Brown?

A Yes, ma'am.

Q And Mr. Johnson, I think you said, is the one that told you where, did you know Latavius Spearman?

A No, ma'am.

Q So you didn't know where he lived or anything like that?

A I never even met him. I don't even know him, period.

Q So Mr. Johnson told you where Mr. Spearman lived?

A Yes, ma'am.

Q Did you even know his name that night?

A I still don't know it until this day until I seen it on my warrant paper that it's Spearman. That's all I know.

Q All right. So Mr. Johnson is back in the car and Tee and Mr. Brown are out of the car.
A Yes, ma'am.
Q What happened next?
A That's when we see the guy pulling up or whatnot and that's when Bow-wow said, "There he go. There he go." So he pulled in and we, I couldn't see because he was in the apartment complex on another court. We was in the same apartment complex though. So when he pulled in, I guess he was getting out of the car or whatnot. We see --
Q Well, don't, I mean, don't tell us what you couldn't see.
A Oh, okay. I ain't going to guess he was at the time.
Q Just what you saw.
A When he got out the car, we see the lights go off, and then we see the lights come back on.
Q You talking about the headlights?
A Yes, ma'am. So when we seen the headlights come back on, we pulled off and that was the key, when the lights came back on, that was the key for us to pull off so they could pull behind us and follow us out of Augusta, I mean, out of Greenwood to Augusta.
Q So they were supposed to follow you all the way back to Georgia?
A Yes, ma'am.

Q So you came out of the apartment complex. Which way did you turn?
A We made a left.
Q And do you know what road that is?
A No, ma'am.
Q What happened next?
A They was a little slow coming behind us or whatnot and Shadarron Evans had gave them a car and asked them was they all right and they been like, "Yeah, we good. We got the dude driving." And that's when Mr. Evans snapped like, "What, you got the dude driving? What's going on?"
Q Could you hear what the people in the other car were saying?
A Yes, ma'am. It was speakerphone; yes, ma'am.
Q It was on speaker. Okay. Sorry. Getting back to what they were saying.
A So we pulled over because they was a little slow of getting behind us. So when they came up behind us, we pulled back off and we was going, I want to say, that's Emma Road over by Piedmont Tech. So we went to that area. We went to the red light by Bi-lo getting ready to make a left on the 72 Bypass. So Shadarron Evans done called him back and told them that you got to let Bow-wow out. So then that's when Mr. Johnson say make sure he can't see me because the dude, make sure the dude can't see or whatnot.

Q All right. And let me, let me stop you right there. Going back a little bit. When you first found out that Mr. Spearman was driving the car --

A Yeah.

Q -- what was everybody's reaction?

A Well, me, Johnson, and Evans was like we were shocked, so Mr. Evans told them to make, pull them, when we pulled over for them to catch up, Mr. Evans told them to put him in the backseat and somebody else drive which was, which was Tee.

Q Now, Mr. Johnson, what was he saying during this time-period before y'all, before y'all got out of the car?

A He was wondering was Mr. Evans going to pay him his money for the car, for us pulling out the car, so he was worrying about his money.

Q Was he, did he ever say anything about going back to Georgia with you?

A Yes, he wanted to go back because he thought Mr. Evans was not going to pay him.

Q What made him decide to get out of the car?

A Evans told them that he was going to get paid, you don't have nothing to worry about. Everything going to be all right. So when we came down the Bypass, that's when he was telling Evans to tell the guy that Tee, which it was Tee on the phone, to make sure the dude cannot see him

when he jumped out the car because we about to let him out.

Q Did Mr. Johnson try to hide himself in any way when he got out of the car?

A Yes, ma'am. He grabbed a shirt from the backseat, covered his head and jumped out the backseat and just, we really didn't even stop the car. We just slowed down and he just jumped out and ran.

Q Okay. Now, at this point, where is Mr. Evans?

A Mr. Evans is in the front seat with me.

Q With you. Did he ever get in the other car?

A Yes, ma'am. At that time, he kind of like jumped out the car, too, to jump in the next car to contain Mr. Spearman because Mr. Brown and Tee couldn't control him, what was told over the phone.

Q Did he get out before or after Mr. Johnson got out of the car?

A Around the same time, they both jumped out.

Q Did y'all make any more stops on your way back to Augusta?

A Yes, ma'am.

Q And what, what was the next stop?

A Mr. Evans called me and told me that we needed gas, to pull over at the, this used to be called the Hickory Point but I think it's the 7/11 on 25. And I told him,

"No, I'm not pulling over." I said, "Y'all got the dude in the car with you." That didn't even supposed to be going on. We didn't supposed to have that dude. You supposed to just got the car and how it look like if you pull into the gas station and y'all got this guy in the car. So that's when he told us to go on down the road, pull over on the back road behind the Hot Spot and that's when we pulled on the back road by the Hot Spot on 25.

Q Was there anything around where y'all pulled over?

A Nothing but bushes/woods.

Q All right. What happened there?

A That's when Mr. Tee and Mr. Brown wanted to put the guy in the trunk and Mr. Evans and I'm like, "Hell, no. We got to leave this dude here. We not fixing to take this dude with us." So I'm like, "Man, I'm gone. I'm fixing to go get some gas and I'm gone." So I jumped in the car. Mr. Evans jumped in the car with me. We pull up to the Hot Spot to get gas. By the time I open the door to get out to go pay the gas, I just heard a "brmmmm" and that's when Mr. Spearman's car ran over top of my car. And I seen Mr. Spearman run into the Hot Spot. I see Mr. Brown and Tee run down 25 or wherever. I didn't know where they went.

Q Did you know who was driving Mr. Spearman's car at that point?

A Tee.
Q Tee was driving?
A Yes, ma'am.
Q Who had been driving it earlier?
A Mr. Brown.
Q Now, what happened after the wreck at the Hot Spot?
A After the wreck, I called 911 and I'm like, "It's a guy, it's a car just ran over my guy and two black males ran down 25 and one black male ran into the store."
Q How long did it take for law enforcement to get there?
A Five to seven minutes. Not long.
Q When they got there, did you give them a statement?
A Yes, ma'am.
Q Was it the truth?
A No, ma'am.
Q What'd you tell them?
A I told him I need to know who the heck, I was cussing trying to play it off like, who the heck these two guys is. I'm even going off on Mr. Spearman like, "Man, what's going on? Who they was with you? How did y'all hit the car." And that's when he tell me I don't know them guys. Them guys robbed me, taken my car and whatnot. And that's the same story that I gave the officers when I was at the Hot Spot.

Q Did law enforcement separate you from Mr. Spearman and Mr. Brown when they got there?
A Mr. Brown wasn't even on the scene.
Q I'm sorry, Mr. Evans?
A Yes, ma'am.
MS. WHITE: May I approach the witness, Your Honor.
THE COURT: You may.
Q Let me show you what's been marked as State's Exhibit 25. Can you identify that for me?
A That's my wife's car.
Q Okay. Is that picture, is it an accurate reflection of what your car looked like that day or your wife's car?
A No, it wasn't in, it wasn't like that until after Mr. Spearman ran over to my car.
Q Okay. So that's the damaged caused by the wreck?
A Yes, ma'am.
MS. WHITE: The State moves to enter Exhibit 25 into evidence?
MS. MERRILL: No objection.
THE COURT: With no objection, 25 is admitted.
(Whereupon, State's Exhibit 25 is admitted into evidence.
Q So that shows some of the damage caused by the wreck at the Hot Spot?
A Yes, ma'am.

Q So which side of their car hit your wife's car?
A I want to say their left side hit my right side, but when it was all over, his whole front tire was on top of my wife's hood kind of like it just rolled right over it.
Q Okay. So was the driver's side of that car pressed up against your car?
A The passenger side, yes, because they went straight across.
Q So the only way out of --
A Was the driver's side.
Q -- victim's car would have been the passenger side?
A Yeah, the, out the victim's car would have been the passenger side or either the backdoor, the backdoor.
Q And just to be clear, the Christopher Johnson pictured in State's Exhibit 24, is that the Christopher Johnson who was there that night?
A Yes, ma'am.
Q Now, you're obviously charged with armed robbery and kidnapping coming out of this whole incident, correct?
A Yes, ma'am.
Q Has anyone from my office, law enforcement, anyone connected with the prosecution offered you any deal or made you any promises to be here today?
A No, ma'am.
Q What did we tell you about getting on the stand and

testifying? What did we ask you to do?
A To be honest and tell the truth of everything that went on that night of this incident.
Q Now, you've been in trouble before, haven't you?
A Yes, ma'am.
Q What convictions do you have?
A I have common law robbery.
Q And when was that from?
A This is from 2002-2003.
Q And is that out of Edgefield?
A Yes, ma'am.
Q Do you have any other convictions?
A Yes, ma'am. I have false imprisonment and aggravated assault.
Q Now, tell me, I think it shows up on your record as something about terroristic threats and acts?
A Yes. That was, the whole incident was dealing with me and my wife and when you make threats like I'm going to beat your butt or whatever, they charge you with terroristic threats in Georgia.
Q Okay. So it's not you weren't planning a terrorist attack?
A Oh, no, ma'am.
Q Okay.
A No, ma'am.

Q You were, I think you said earlier that you and Mr. Johnson were calling back and forth. Was his number stored in your telephone?
A Yes, ma'am, as Bow-wow.
Q Would you have ever come to Greenwood on July 26th, 2013 if it wasn't for Mr. Johnson having this plan?
A I wouldn't have even been up here.
Q Would you have ever come into contact with Mr. Spearman and Mr. Johnson not pointed them out?
A No, ma'am.
Q Would you have known where he lived?
A No, ma'am.
Q Would you have known anything about his car?
A No, ma'am.
Q Now, Mr. Nicholson, you said that you told, you didn't tell law enforcement the truth the night that this happened?
A No, ma'am.
Q When did you first tell them what happened?
A Well, the night that it happened and we went to Greenwood County, I didn't tell the truth. And when they took me back to the cell and whatnot, I sat down and thought about it and how serious this charge is and how serious the incident was, so I wrote them a letter to come to them with the truth of what's going on.

Q All right. So you actually initiated contact with law enforcement to tell them what had happened?
A Yes, ma'am. I wrote Captain Futch a letter and told him I wanted to be honest.
Q And were you honest with them at that point?
A Yes, ma'am.
Q Have you been honest with this jury today?
A Yes, ma'am.
MS. WHITE: Please answer any questions Ms. Merrill and Mr. Nicholson have for you.
THE COURT: Mr. Nicholson are you going to go first?

CROSS-EXAMINATION

By Mr. Nicholson:
Q Your name is Antonio Nicholson, right?
A Yes, sir.
Q Do you mind if I call you Antonio?
A Yes, no ma'am. No, sir.
Q We're both, Mr. Nicholson's, spelled the same way, so it might create a better record if you don't mind.
A I don't mind.
Q Okay. Antonio, you say you didn't speak to Christopher Johnson during either the day before or the early morning hours before you got to Greenwood; is that what you, did you have any contact with him before you say you pulled up to the house and knocked on the door?

A Before I came to Greenwood, that week, prior to that week, I did speak with Mr. Johnson.
Q Okay. And I understand that but that, in the twelve or twenty-four hours before you actually came to Greenwood, you didn't speak to him, did you?
A Yes. I told him that like a couple of days we would be there. I cannot remember the date, but I can't remember what date that date was on and I told him, hey, we'll be up there that date.
Q And my question is in the twelve or twenty-four hours before you came to Greenwood, you said the two days before you did but in the twelve or twenty-four hours before you came to Greenwood, did you have any contact with Christopher Johnson?
A No.
Q Okay. So you had had some talk with him in the days prior and said at some point, I'll come to Greenwood and he said I got some cars to point out, I can show you cars to steal is that --
A No, I didn't tell him I'd come to Greenwood. He tell me we need to come to Greenwood because he got plenty of cars down there that we can get.
Q All right. So the discussion was that you were going to steal some cars?
A Yes, sir.

Q Was the discussion at that point that you were going to rob some people?
A Oh, no.
Q That you were going to hold some people at gun point?
A No, sir.
Q That you would kidnap somebody to take their car?
A No, sir.
Q All right. So there was no discussions at any point then that you were going to use a gun to rob somebody or to kidnap somebody?
A No, sir.
Q Was there any discussions at that point that you were going to use a gun to steal a car?
A No, sir.
Q So the idea was to steal some cars off the street?
A Yes, sir.
Q And that was without the owners knowing about it, just to break in cars and take them?
A Get in the car and go.
Q Okay. And by what you've, by what you've said here in court today, you were involved in this whole incident from the beginning, from getting with Shadarron Evans to driving to Greenwood to picking up Christopher Johnson to the incident with the white car, and then all the way to the Hot Spot and talking to the police after that? You

were involved with this all that time, right?
A Yes.
Q And you never saw a gun?
A No, sir.
Q You never saw a gun?
A I never saw a gun until, well, I ain't saying until. I never saw a gun, period. I never knew about a gun until Mr. Spearman said there may be a round in, there was a gun went off in his car and that's when I snapped on him and wondered how in the hell we got a gun in the car. And they wasn't, and they tell us we ain't have no gun before we left Georgia, because it wasn't in Mr. Evan's girlfriend's house.
Q Okay. And that was at the Hot Spot where you first heard about a gun?
A Yes, sir.
Q And Christopher Johnson had already left y'all at that point, hadn't he?
A At the Hot Spot; yes, sir.
Q Yeah, he was there at the Hot Spot?
A No, sir.
Q All right. When you and Shadarron and Tee and C-Lo, before y'all got to Greenwood, y'all started looking for cars to steal, didn't you?
A We were riding through headed towards the location

where Mr. Bow-wow stayed, calling him because he wasn't picking up the phone. So I said, well, we can just ride through and we'll probably see his car out there and which I did, and that's when we stopped at his house and knocked on his door.

Q Well, I can't remember whether it was your statement or Mr. Evans' statement, but one of y'all said we were driving around trying to find some cars because we, it'd be better to take some cars without getting Christopher Johnson involved, because you won't have to give him any of the money?

A No, that wasn't said, sir.

Q That wasn't --

A Not from my statement.

Q Okay. Did y'all have some kind of tool with you that one of the four of y'all, did you have a tool with you that you could steal a car with like a crowbar or something like that?

A It was a crowbar and a screwdriver.

Q A crowbar and a screwdriver?

A Yeah.

Q All right. And was the plan to steal a car off the street without the owner knowing about it?

A Yes.

Q All right. When you went and knocked on the door

where you thought Christopher Johnson lived and you say you didn't get an answer at the door?
A No, sir. But I knocked on the door where I knew Christopher Johnson and them because that's where his, that was his car and they were sitting in the driveway.
Q Well, did it seem like he was expecting you?
A He wasn't expecting me; no, sir, not at that time. He wasn't answering the phone before we got there.
Q All right. But he agreed to join you and try to point out some cars; is that what you are saying?
A Yes.
Q All right. And after he joined you, didn't y'all ride around to a bunch of different locations looking at, trying to look for cars with rims or cars like you were describing?
A Well, we rode to the first place which was Country Homes. That's where he told us to go to.
Q Isn't the first place you drove up Highway 72, you went by a place, a guy that does some work on cars that may have some cars in the lot out there that had some rims on them?
A No, sir.
Q You don't remember that?
A I don't remember that.
Q But before you spotted this white car, you had looked

at a number of other cars with an intent of stealing them off the street?

A Just the two cars that was on the front street of Country Homes.

Q All right. I read in one of your statements that at one point you spotted a car that had an alarm system on it, so you didn't want to get that one. Is that right?

A I guess, that was the two cars that where the flashlight came on in it, because they said the light was blinking in the car where the flashlight came on. So we took off. So they said the light came on and it had an alarm, so they weren't going to be able to get it.

Q All right. And wasn't there another situation where there was a security light came on?

A That's the same situation when that flashlight came on.

Q I got you. Well, was there another situation where there were people around so you couldn't take the car because --

A Well, that was Mr. Spearman's car, sir.

Q Okay. So the plan was trying to get his car when he wasn't around. Is that right?

A Yes.

Q Is that the plan?

A Yes, sir.

Q Okay. And again you never saw a gun while you were in Christopher Johnson's presence?
A I never saw a gun period. I never knew we had one.
Q You never saw a gun. You never saw anybody show Christopher Johnson a gun?
A No, sir.
Q You never were in the presence when somebody discussed with Christopher Johnson that they had a gun and that they were going to rob somebody with a gun?
A No, sir.
Q And you were there the whole time?
A They were in the backseat, Mr. Johnson, Tee, and Mr. Brown.
Q All right.
A I was driving the car.
Q Did you ever hear a discussion among them that there was a gun and they were going to, somebody was going to use a gun to rob somebody?
A No, sir.
Q Is that yes or no?
A No, sir.
Q All right.
A You said did I have the discussion of they showing Mr. Johnson the gun and they was going to rob anybody?
Q Right.

A No, sir; I didn't.
Q Did you ever hear anything like that, any discussions similar to that?
A No, sir.
Q Now, when you were parked in the area where Mr. Spearman lived and his car pulled back in, I think that was at Deerfield Apartments.
A Yes, sir.
Q What'd you think was going to happen?
A Well, my understanding, what supposed to happen was they supposed to wait until Mr. Spearman got out the car and went in his apartment and jump in the car and steal the car.
Q And when you saw the car, the headlights on his car turn on after he got home and pull off, is that what you thought had happened?
A Well, when he got in, when he came home, he parked his car, the headlights went off. And, I guess, he locking his door up and getting out and a couple of seconds later, headlights come on, so I pull off. The car pulled behind me.
Q Now, you, you are saying a couple of seconds. And yesterday we heard Mr. Spearman say there was a period of five minutes and I imagine we talking about something in between there.

A Well, from my, I don't know exactly how long it took, but that could have been a period to five seconds or five minutes. In that time, you really don't know how long it could take or it is because you in a, you kind of scare a little bit because you just ready to get it and go.
Q All right. Antonio, when the headlights came back on on his car, what did you think had happened?
A That Mr. Brown and C-Lo got the car and we fixing to head back to Augusta.
Q Did you think that they had waited until he got in the house and then used the crowbar and stolen the car?
A Yes, sir.
Q So what was the reaction when y'all found out by telephone that Mr. Spearman was in the car?
A Me, Mr. Johnson, and Mr. Evans was shocked.
Q All right. Now, I've heard I think it, from both of y'all it wasn't, it was utter shock, wasn't it?
A Utter shock.
Q Utter shocked, you were terribly shocked?
A Yes.
Q In fact, I think the language was what the F?
A What the, yes, it was.
Q And there was a lot of that, wasn't it? Why is he in the car; is that right?
A Yes, sir.

Q Now, why was anybody interested in that white box Chevy with the rims? Was there any particular reason anybody was interested in that car?
A Well, it was a easy car to get because Mr. Johnson said it didn't have an alarm system and he knew the dude who got the car. He know where he stayed. It was an easy car to get because it don't have an alarm and we can just get it and go. It got a good motor in it and it got rims and a system in it.
Q Well, if you going to rob somebody at gunpoint, it doesn't matter whether it has an alarm or not, does it?
A Well, we wasn't fixing to, we didn't supposed to plan to rob nobody at no gunpoint.
Q All right. Did Mr. Evans really want that particular car because he had a car like that and wanted some rims for it?
A Yes.
O And wasn't that the real reason Mr. Evans decided that those rims would look good on his car?
A No, he decided that it'll be a easy car to get it because it don't have no alarm and we can get it and go.
Q But didn't Mr. Evans want the rims for his car?
A He wanted the rims; yes, sir.
Q Now, Antonio, you don't think you're guilty of armed robbery or kidnapping, do you?

A No, sir.
Q And, in fact, you've had discussions with the detectives involved in this and the basis of your discussions were that you tell the truth about it and they agree that it's not appropriate for you to be charged with armed robbery and kidnapping?
A They did not agree at first. He just tell me once I gave my statement and he knew, and if he found out that I was telling the truth, which I am, he would, he don't think I should be, the seriousness of my charge should be kidnapping and armed robbery after he found out that my statement was true.
Q And what you telling in court today is what's true?
A Yes, sir.
Q Please answer any questions, Ms. Merrill has.
A Yes, sir.
MS. MERRILL: Thank you. May it please the Court?
THE COURT: Yes, ma'am.

CROSS-EXAMINATION

By Ms. Merrill:
Q Mr. Nicholson, you gave a statement to law enforcement, isn't that correct?
A Yes, ma'am.
Q And that statement was audio recorded; is that correct?

A Yes, ma'am; it was.
Q And you've listened to that statement before you came to court today; is that right?
A Not today; no, ma'am.
Q Have you listened to it before, after you gave it and before you came to court today at some time?
A Yes.
Q Okay. At the beginning of this statement, the officer interviewing you says, "Today's date is Sunday, July 28th, 2013. The time is 1:46 a.m. This is Captain Nick Futch." And that's just standard procedure for what an officer says at the beginning of the interview; is that right?
A You said the date was Sunday, July 28th?
Q Sunday, July 28th, 2013?
A I'm going to, can I place, I don't think that was the date.
Q You don't think that was the date?
A No.
Q Well, what I'm looking at is a transcript of that audio statement --
A Okay.
Q -- and it says July 28th, 2013.
A I'm not sure, I cannot remember what day it was, ma'am.

Q Okay. Was it at least, do you recall it being several days after you were arrested?
A No, it was the next morning or later on that next day.
Q Okay. Okay. And then the officer read you your rights and told you about your right to --
MS. WHITE: Your Honor, can we approach for a second?
THE COURT: You may.
(Whereupon, a bench conference was held in the presence of the jury but out of the hearing of the jury.)
Q And then during that statement the officer read you your rights and told you about being silent, getting an attorney, those things we hear on TV; is that correct?
A Yes, ma'am.
Q Okay. And in that statement you stated you understood all those rights; is that correct?
A Yes, ma'am.
Q And before you gave your statement, you and the officer talked about a bond; is that right?
A Did we talk about a bond?
Q A bond?
A I asked him if I came up with the truth and would I be able to get a bond so I can go back to the streets with my family.

Q Okay. And what was your bond set at originally?
A Originally, I think it was $200,000.00 dollars. But Mr --
Q Go ahead.
A Captain Futch, he had tell me if he can, if my charges was as seriously, he tell and find out that I'm telling the truth about the situation, he could get me a bond.
Q Okay. And after you gave your statement, you did get a $20,000.00 dollar bond; is that correct?
A Not right after I gave my statement, no. After they confirmed that I was telling the truth.
Q So the court records show that you got that $20,000.00 dollar bond on August 5th, 2013; is that correct?
A I don't remember the date, ma'am.
Q Okay. Thank you. And in that statement, you also asked the officer if probation was a possibility for your sentence; is that correct?
A Yes. And what was told to me was the charges that I am being charged with, it would not be no probation on those charges.
Q Okay. Did the officer tell you during that that it would be difficult to work with you if you were the mastermind of this plan?

A Would it be difficult?
Q Did the officer tell you during this audio recorded statement that it would be difficult to work with you if you were the mastermind of this plan?
A No, ma'am. He said if he found out that I am telling the truth and that I am not the mastermind of this plan, I could get a bond.
Q Okay. And you told the officer that you were not the mastermind of this plan, is that right?
A Yes, ma'am.
Q But you and Evans made the plans together to steal cars in Greenwood; is that right?
A No, ma'am; we didn't. Mr. Johnson told us about coming to Greenwood --
Q I'm sorry. I think I misspoke.
A -- to get some cars.
Q You and Mr. Johnson made the plans; is that correct?
A Yes.
Q Okay. And then you and Mr. Evans talked about it?
A Well, Mr. Johnson tell us about coming to get the cars or whatnot. So Mr. Evans and I talked about coming to get the cars and Mr. Evans tell us that he know two people that he, that they're friends, that they can come get the cars and we can get back to Augusta fast.
Q Okay. And you only knew the nicknames of some of the

people in the car going from Augusta to Greenwood; is that right?
A Yes.
Q And you still don't know Tee's real name; is that correct?
A I want to say it's Terrell or Torrance or Terrance, something like that. I just know it by from my warrant paper. That's it.
Q And, Mr. Nicholson, you've met Mr. Johnson before this night; is that correct?
A No, ma'am.
Q And you know Mr. Johnson is the one that they call Bow-wow; is that correct?
A Yes.
Q And you're saying here today that you had never met him?
A Mr. Johnson?
Q Mr. Johnson.
A I met him prior, the weeks prior to we came, before we came to Augusta.
Q Okay. That's what I was asking. So you knew him before, right?
A Yes.
Q And you met him for the first time, he was with your cousin; is that right?

A Yes, ma'am.
Q Okay. And your cousin called you to come pick him up in Columbia County, Georgia; is that correct?
A Yes, ma'am.
Q And when you picked him up, is that when you met Mr. Johnson?
A Yes, ma'am.
Q What did you do with Mr. Johnson and your cousin after you picked them up in Columbia County, Georgia?
A I rode back to Augusta, Richmond County and we went and got some weed. We smoked like two blunts and him and my cousin got back in the car and went back to Greenwood.
Q And you just testified that Mr. Johnson's name was stored in your phone as Bow-wow. But in the statement you gave to law enforcement in July of 2013, you said his name was stored as Little Bro. Is that correct? Did you call him Little Bro before you knew his name?
A I don't remember. No, I call him Bow-wow, because that's the easy name to remember.
Q Okay. And you didn't have any dealings with Tee until the night you came to Greenwood from Augusta to steal cars, did you?
A That's my first time seeing Tee.
Q Okay. And you didn't have any dealings before with C-Lo until that night; is that correct?

A That's my first time seeing Mr. Brown.
Q And you don't really know either one of them besides that night, do you?
A I just knew him through Mr. Evans and like --
Q You knew them through Mr. Evans?
A That night. Yes.
Q Okay.
A That they can get the car. We can go.
Q How many times did y'all stop the car? After the white Caprice, you stole the white Caprice, when you were driving the other car and y'all were driving together. Were you in front of or behind the Caprice?
A I was in front. They were following me.
Q How many times did y'all stop between leaving Mr. Spearman's neighborhood and getting to the Hot Spot, total?
A Well, we stopped when we pulled off up the street a little bit after we left Deerfield so they can catch up.
Q So that's one stop?
A Yes.
Q Okay. When did you stop again?
A And we stopped off of 72 Bypass. It's where East School is, the house is right there. We stopped there and that's when Mr. Evans got out the car and Mr. Johnson got out of the car.

Q Okay. So that's stop two?
A Yes.
Q Okay.
A And we stopped again behind the Hot Spot to be able to go get gas and let Mr. Spearman out the car. And that's when Mr. Evans got back in the car with me. And that's when Mr. Brown and Mr. Tee and Mr. Evans, at the time, was talking about putting Mr. Spearman in the trunk and that's when I snapped.
Q Okay. And that's stop three.
A And that's it.
Q I want to clarify. You said behind the Hot Spot for this stop, not at the Hot Spot; is that correct?
A Yes.
Q And then what was your next stop?
A I went to the Hot Spot to get gas.
Q Okay. So four stops total; is that correct?
A Yes.
Q And officers asked you to describe Tee and you described him as having dark skin; is that correct?
A Brown skin.
Q Okay.
A Brown skin; yes, ma'am.
Q And you guessed his height at anywhere between 5'11" and 6'2", is that correct?

A Yes.
Q Okay. And you told officers that C-Lo had a mustache but Tee had a whole beard; is that correct?
A Yes, I say Mr. Brown was slim, no face, just mustache. Tee had a whole beard.
Q Okay. And you haven't pled guilty to any of these charges pending against you in South Carolina, have you?
A No, ma'am.
Q And you are charged or your conviction for false imprisonment, what does that mean?
A It's like you not letting, it was dealing with a family matter with me and my wife and they was telling me like I wouldn't let her leave when she wanted to leave the house. And I'm like, and I kept trying to, nah, you stay because we just needed to talk and I wouldn't let her leave when she tried to leave.
Q And while you were in the Greenwood County Detention Center before you made bond, you wrote some letters to Captain Futch and Officer Brooks; is that correct?
A Yes, that I wanted to be honest with them and talk to them about the charge that I was charged with.
Q Okay. And from what's been provided to me, it looks like there were fifteen letters written, does that seem about right?
A I'm not sure.

Q Okay. Would you agree with me you wrote more than a handful?
A I'm not sure. I don't remember.
Q Okay. All right.
MS. MERRILL: Your Honor, may I approach?
Q If you will flip through and count them for me.
A (Witness Complies.)
Q Thank you. Does fifteen sound right?
A Yes.
Q Okay. I just don't want to hold you to a number without you even seeing them. And at any time, did law enforcement show you a lineup of anybody? Did you pick anybody out of any lineups?
A Yes, they showed me a lineup. They showed me a lineup of Mr. Johnson.
Q Of Mr. Johnson, but no one else; is that correct?
A They showed me a lineup of Mr. Brown and Tee.
MS. MERRILL: Your Honor, may we approach?
THE COURT: Sure.
(Whereupon, a bench conference was held in the presence of the jury but out of the hearing of the jury.)
Q Mr. Nicholson, I just have a couple of questions about these letters. In most of these letters, you were asking either Captain Futch or Investigator

Brooks/Detective Brooks that you wanted to talk to them; is that correct?

A Yes.

MS. MERRILL: Your Honor, may I approach the witness?

THE COURT: You may.

Q I just want to be able to show you these while I'm asking about them so you and I are on the same page. In this letter dated August 1st, 2013 --

MS. WHITE: Your Honor, is she going to introduce that or, if it's being published to the jury, you could ask the question first.

MS. MERRILL: You want me to ask him about them and then show them to him if he has questions?

THE COURT: Well, you've asked him to identify them. He has.

MS. MERRILL: Okay.

THE COURT: There was fifteen. You can ask him about them.

Q Okay. In this letter on August 1st, did you write Detective Brooks and say, "Thanks for all that you have done on my behalf."

A Yes.

Q And this letter on August 5th, 2013, to Detective Brooks, did you write, "If my old lady, Laverne Nelson, come for the phones, will you just go on and give her both

of them?"
A Yes.
Q You wrote that? And in this one dated August 6, 2013, you would like, excuse me. "Plus, I would like for you to take me and Johnson, a/k/a Bow-wow, off separation." Did you write that?
A Yes.
Q And this one dated August 7th says, "Captain you said, to Captain Futch. "Captain, you said my bond has been dropped to a lower bond but in the computer it's saying $200,000. My family called and my bond is still the same."
A Yes.
Q And then on August the 8th, this letter to Captain Futch, you said, "I apologize about doubting you, sir. My bond is $20,000. Thanks a lot, sir." You wrote that?
A Yes.
MS. MERRILL: Thank you.
THE WITNESS: Yes, ma'am.
THE COURT: Are you ready?

REDIRECT EXAMINATION

By Ms. White:
Q After y'all knew that the victim was in the car did Mr. Johnson ask to get out from your vehicle immediately?
A No.

Q What was it he was worried about again?
A His money situation. He was worrying about getting paid.
Q Now, did Mr. Johnson have a phone on him?
A Yes, ma'am.
Q Did he call the police?
A No, ma'am.
Q Now, your vehicle and the victim's car driven by first the victim, then Mr. Brown. Were y'all traveling together around Greenwood?
A Well, see we tried. They was following me.
Q Okay. So when you would stop, they would stop?
A Yes.
Q Ms. Merrill asked you about the mastermind. Were you the mastermind?
A No, ma'am.
Q Who was the one who put all these pieces together and set this whole thing in motion?
A Mr. Johnson.
MS. WHITE: All right. No further questions, Your Honor.
THE COURT: Anything else?
MR. NICHOLSON: No questions.
THE COURT: Ms. Merrill, anything else?
MS. MERRILL: No questions. Thank you.

THE COURT: You may step down, Mr. Nicholson. All right. Let's take a short break.

MR. TAYLOR: Yes, sir.

THE COURT: All right. Let's take a short break. You got anybody who wants to step outside to smoke or whatever, let Mr. Willingham know and we'll get you out there.

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

MR. TAYLOR: We do need, just very briefly on the record about releasing Mr. Nicholson.

THE COURT: You want to go on the record right now?

MR. TAYLOR: Yes, sir. Do y'all have any objections, does the Defense have any objection to releasing Mr. Nicholson from his subpoena?

MS. MERRILL: I have not.

MR. NICHOLSON: I don't think he can.

MR. TAYLOR: What's that?

MR. NICHOLSON: I don't think I can.

MR. TAYLOR: Can he at least go for the day? We would ask for him to be released and Ms. Merrill did not object but I think Mr. Nicholson, Billy Nicholson is wanting to keep him here.

THE COURT: All right.

MR. NICHOLSON: I don't want him released completely.

THE COURT: Can we get him back if we need him?

MR. TAYLOR: We had a very hard time getting him here yesterday and today.

MR. NICHOLSON: When is the officer testifying?

MR. TAYLOR: This afternoon.

THE COURT: Let's hang on to him.

(Whereupon, a short break was taken.)

MS. MERRILL: Your Honor, one statement I received from The State, the next witness testified that he knew Mr. Brown from prison. The State had agreed and it's stipulated that they will not bring that up and we've talked about he may even lead him on that question and I've agreed that I won't object to any sort of, I won't have any leading objection if it's --

THE COURT: However you wish to characterize it that he may, they became friends some years ago.

MR. TAYLOR: Yes, sir; in the past that you knew him before. That's all we're making a point. In other words, these aren't strangers.

THE COURT: Okay. All right. Fair enough.

MR. TAYLOR: Can you go ahead and bring him in, please?

THE COURT: And this is about Evans?

MR. TAYLOR: Yes, sir. And, Judge, he's in a jumpsuit and we left him in cuffs. I mean, we're not --

THE COURT: Bring the jury in and we'll call him.

(Whereupon, the jury came into open court at approximately 10:55 a.m.)

THE COURT: Mr. Taylor, call your next witness.

MR. TAYLOR: Thank you, Your Honor. The State calls Shadarron Evans.

THE COURT: Ladies and gentlemen, Mr. Evans is in custody so he will come out in shackles and a jumpsuit. He has already been placed under oath from a prior hearing we had.

MR. TAYLOR: Okay.

THE COURT: But he can come around. He's already been placed under oath. I remind you, Mr. Evans, you are still under oath.

DIRECT EXAMINATION

By Mr. Taylor:

Q Tell the jury your name, please?

A Shadarron Evans.

Q Now, are you from Greenwood?

A No, sir.

Q Where are you from?

A Augusta, Georgia.

Q Is that where you've lived --

A Yes, sir.

Q -- and have been living for the last few years?

A Yes, sir.
Q Okay. Now, have you, how many times have you been in Greenwood?
A It was my first time.
Q Well, when was your first time?
A The night of this incident, July the 26th, 2013.
Q Okay. So you had never been to Greenwood before that?
A No, sir.
Q All right. And let's just, we're going to be real open with the jury, so let's just get it, get out there. You're in a jumpsuit and cuffs?
A Yes, sir.
Q Okay. What are you in jail for?
A Armed robbery and kidnapping.
Q So you are a Codefendant of the people that are on trial today?
A Yes, sir.
Q Okay. Now, have I promised you anything to testify today?
A No, sir.
Q Have I threatened you to testify?
A No, sir.
Q Okay. Now, why are you testifying?
A To tell the truth about the incident that happened,

that occurred on this date, the 26th of July.
Q What was the one thing I told you before you got on the stand that I wanted you to do today?
A Tell the truth.
Q Okay. Is that what you're going to do?
A Yes, sir.
Q All right. Well, let's talk also, again, we're being open with everybody. Let's talk about your prior record. Have you been convicted of selling marijuana in 2011?
A Yes, sir. Yes, sir.
Q Were you convicted of robbery in 2008?
A Yes, sir.
Q Now, on your record, you're, and it's from Georgia. Is that where you were convicted?
A Yes, sir.
Q It has a robbery five different times from 2008. Is that, is that correct?
A No, sir; it's not. I caught a robbery charge in 2005 and I plead out to a robbery charge in 2008. They gave me five years in prison.
Q So it's on there as if it's five different convictions for robbery.
A No, sir; it's only one.
Q Okay.
A The numbers might, the numbers are the same. If you

look at the numbers on there, all the numbers should be the same.

Q Okay. Now, tell me how you ended up in Greenwood on July 26th? Who did you know that kind of brought you into this whole situation?

A Antonio Nicholson.

Q Okay. And you just were friends with Mr. Nicholson in the past?

A Yes, sir.

Q Okay. And what did he say to you?

A Well, two days prior to the incident, I got a call from Antonio Nicholson advising me that he had a homeboy in Greenwood that was willing to steal cars and he asked me was I down for the lick, and I told him yeah. So the day of the incident was July the 26th, 2013, I got a call from Antonio Nicholson and asked me was I ready and I told him yeah. And I advised him where I was located at was in Augusta, Georgia on Lingering, (phonetic), Road and he say he'll be able to pick me up.

Q Okay. Now, when you said you're down for the lick, what does that mean?

A Like, down to steal the car.

Q Now, did he ever tell you who the, you said homeboy, but who his friend was that was in Greenwood?

A He never said the time that he called, but he never

said who his friend was at that specific time.
Q All right. We'll get there to who that person was. Did you end up finding out who the friend was?
A Yes, I did.
Q Okay. All right. So you told him you were ready to go steal cars?
A Yes, sir.
Q All right. Now, did he ask you to get anybody to help or anything like that?
A Yes. He asked me did I know anybody that knew how to steal cars and I advised him I did.
Q Okay. Who were the two people that you brought along for the ride to Greenwood?
A Tee, which is Torrance McLean, and Corey Brown.
Q Corey Brown. All right. Now, you were friends with those guys before --
A Yes, sir.
Q -- and you knew those guys?
A Yes, sir.
Q So these aren't strangers?
A No, sir.
Q All right. Tell me how you got down to Greenwood. Who drove? Who picked who up, sort of deal with it before we get to Greenwood. Tell me a little bit about that.
A Well, like I said, the night of the incident, Antonio

Nicholson picked me up. As he picked me up, me and him drove my car. I called Tee's cellphone and asked Tee was he ready and he advised us where he was located at and which he was located in my neighborhood at a residence I'm always located at, so I go pick him up. As I pick him up, C-Lo was with him at the same time.

Q Now, do you know C-Lo's real name?

A Corey Brown.

Q Okay.

A He was with me at the time, so they got in the car. When they got in the car and Tee advised me did I have a screwdriver. I advised him that we didn't have a screwdriver. So, at this point in time, we got a crowbar. When we got a crowbar, Tee asked me again, advised me did I have my gun. I told him, no, I didn't have my gun and said we wouldn't need it because we just going to steal cars. And that's when he said, yeah, we might need it, because I might need it for protection. So I was like, I advised V.J. to go to my residence to get it.

Q Hold on. Who's V.J.?

A Antonio Nicholson.

Q Okay. All right. So just, you kind of going a little fast here.

A I apologize.

Q That's okay. You were at this point with Corey Brown

and Torrance McLean?
A Yes, sir.
Q Okay. And you said you contacted Antonio Nicholson or he contacted you?
A Oh, Nicholson contacted me.
Q At that point about what?
A About stealing the cars and going to Greenwood.
Q Okay. So you're trying to get, you're trying to get tools to go down there?
A Yes, sir.
Q Okay. All right. So once you got that, you mentioned a gun. Did you ever go get a gun?
A Yes, sir.
Q Okay. Where'd you get the gun from?
A From my residence.
Q What type of gun was it?
A A Glock 40. It was mine with a laser and a beam on it.
Q Okay. Now, how big could, just if you don't mind sort of telling us with, with the laser on it, how tall is this?
A I think about that tall, about that wide.
Q So seven/eight inches high?
A Yes, sir.
Q Six inches high or something like that?

A I wouldn't say that tall but it's, it's pretty --

MR. NICHOLSON: Judge, I would object to Aaron Taylor holding his hands eighteen inches apart and saying, "Is this seven inches."

Q Okay. All right.

MR. NICHOLSON: So let him show you.

THE COURT: Yeah. Ask the question and --

MR. TAYLOR: I got you.

THE COURT: -- he was making an answer and I think you kind of stopped him.

MR. TAYLOR: I think while I was asking, my hands kept getting bigger. All right.

Q So let's go down to that. How, with the laser on the gun, how tall is it? How big is that gun?

A That gun probably like about that tall, but the beam, the laser on it, it probably make the front of the barrel a little bit taller.

Q Okay. So it's not a, how big would you describe it as?

A I'd say about five inches tall or six inches, something like that.

Q All right. So where did you get the gun from?

A From my residence.

Q All right. Did you carry the gun with you?

A When I got in the car, I gave the gun to Tee,

Torrance McLean.
Q Now, did, at that point, the three of you in the car. Was Antonio Nicholson there yet?
A Yes, sir. I was in the car at the same time.
Q Did everybody, based on your recollection, everybody know there was a gun in the car?
A Yes, sir.
Q Okay. Everybody saw it?
A Yes, sir.
Q Okay. All right. So who drove to Greenwood?
A Antonio Nicholson.
Q Okay. And whose car were y'all riding in?
A Antonio Nicholson.
Q Okay. All right. So how long did it take you to get to Greenwood then?
A I'd say about 45 minutes, 40 minutes.
Q And what time of the day was it?
A It was nighttime, about 2:00, 1:30-2:00.
Q Okay. So on the way down there, was there any discussion about robbing or kidnapping anybody?
A No, sir; there wasn't.
Q What did y'all talk about on the way down there?
A The whole time we was stealing cars with good rims on them.
Q Okay. So that's just what you were going to do?

A That's it.
Q I got you. Tell the jury about what happened when you got to Greenwood.
A Okay. When we get to Greenwood, at first Antonio Nicholson drives us around to look for some cars and he couldn't find any, so ended up at a residential neighborhood and which, later on, I didn't know that it was Bow-wow neighborhood. We were cruising for Johnson. We ended up in Christopher Johnson's neighborhood and that's when Antonio Nicholson advises us that was his homeboy car parked in the yard. So he was like, I think should call him, so he called Christopher Johnson. At this point in time, Christopher Johnson never answered the phone, so we pulled up in Christopher Johnson's residence and driveway. Antonio Nicholson got out of the car. He went and knocked on the door and no one answered the door. So we get ready to leave out. At this point in time while we leaving out, before we leave out of the street, Christopher Johnson calls Antonio Nicholson's phone and asked him why he knocked on my door this time of night. He said, you scared my grandmamma or whatever. So, at this point in time, he like, my bad, bro. He was like I'm fixing to go ahead and come out, so Christopher Johnson comes out of the house and get in the car with us. At this time, Antonio Nicholson is talking and Christopher

Johnson talking about coming to his house and he say he should have let him know ahead of time so he could have had everything planned. So at this point and time, they finished talking, so Christopher Johnson drove us around in Greenwood looking for cars to steal.

Q Oh, but before we get there. So he was in the car? Mr. Johnson was in the same car as the four of you from Georgia?

A Yes, sir.

Q Where was he sitting in the car?

A In the middle, in the middle backseat.

Q Okay. Did he see the gun?

A Yes, sir; he seen the gun.

Q Do you have, is there any way he didn't know there was a gun in the car?

A No, he seen a gun.

Q All right. So let's talk about him showing around where to find cars.

A Christopher Johnson showed us around a couple of little spots where cars could be at. We went to one residence, which I think he go by the name of Tioki. There was three cars in the driveway. They was all bumper-to-bumper. That's when Tee got out of the car. Tee was fixing to get out of the car and try to steal cars but instead, he went up and he was scared by a sensor

light, a motion light came on. So that's when it's me, C-Lo, Corey Brown and Christopher Johnson in the car, and then Antonio Nicholson said that we was going to drive around. So Tee went up to look for the car, but he was, like I say he was scared away from the motion light and as he was scared away from the motion light, we came back to pick him up. When he gets in the car he say, I think somebody in the house and that's when Christopher Johnson and I assumed that nobody's in the house, probably his old lady. He was like I don't think he's home because he got another car that he drive. At this point in time, that's when we pulled--

Q So this first house, Mr. Johnson knew who lived there, as well?

A Yes, sir.

Q Okay. Now, did y'all steal a radio out of a car at this point?

A We stole the radio out of that car and after this incident, after we left form Tioki house, we went --

Q Okay. But the first house where you got scared away?

A Yes, sir. Yes, sir.

Q Okay. I just wanted to make sure I understood. And you went to another location?

A Yes, sir.

Q All right. Tell us about that when you stole the

radio.

A We went back to Christopher Johnson's neighborhood and at this time, we rode around there. We seen a green car with some, we didn't get that because we seen the kitchen light come. And after that, we, Tee got out of the car and I told Tee that it was a car beside his house that had, that was there. So Tee was like, he went to the lady's house because he, well, I want to say it was his lady's house because she the only one stayed there. But he never seen her drive the car. So Tee got out of the car and went to the residence and he, we was in the car probably ten minutes. So all of us, me, Christopher Johnson, Corey Brown, and Antonio Nicholson in the car and Torrance McLean was beside the next door house to Bow-wow inside of the car trying to steal it. So we went waited ten to fifteen minutes. He ain't come, so all of us got out of the car and walked up the street. As we walked up the street, Tee was coming back and he was like, the car won't crank up. I think it need a battery. At this point in time, he had a CD player in his hand or it looked like a DVD player, and he got back inside the car with us.

Q Okay. Let me stop you for a second.

MR. TAYLOR: I've got what's marked as State's Exhibit 11 for identification.

(Whereupon, State's Exhibit 11 was marked for

identification.)

MR. TAYLOR: All right. Judge, may I approach the witness?

THE COURT: You may.

Q Do you recognize what's in that picture?

A Yes, sir.

Q What is that?

A The CD player.

Q Is this the one that was stolen that night?

A Yes, sir.

Q Okay.

MR. TAYLOR: Judge, may I publish, or excuse me, what's marked as State's 11, I'd like to admit that into evidence.

THE COURT: Any objection.

MR. NICHOLSON: No objection.

MS. MERRILL: No objection.

THE COURT: This going to be 27?

MR. TAYLOR: 11, Judge.

THE COURT: 11 will be admitted without objection.

(Whereupon, State's Exhibit 11 was admitted into evidence.

MR. TAYLOR: Judge, at this time, The State would like to publish State's 11.

(Whereupon, State's Exhibit 11 was published for the

jury.)

Q All right. Just one more time. Do you see the stolen radio in that picture? Do you see it in there, Mr. Evans?

A Yes, sir.

Q You do? Is that it sitting in the back seat?

A Yes, sir; that's it.

Q Okay. All right. Let's move on. So after the, did y'all get back in the car after this?

A Yes, sir.

Q All right. What did y'all do next?

A After that, we rode around a couple more neighborhoods. And then we ended up being, if I'm not mistaken, Country Homes where we ran into Bow-wow's old car. We rode in that neighborhood for a little while and he seen a white Caprice sitting on the road and we seen two guys standing outside. We rode around. That's when Bow-wow said that was his old car and he said that he used to have that car and it'd be easy to steal. So we rode around in the little circle park where the car is parked out even though there's two guys standing outside talking. So we be like, we can't get it because people outside and that's when Christopher Johnson acknowledge us that he didn't stay there. He must be just getting off of work. So at this point in time, Christopher Johnson said that he

knew where he stayed at. So we asked Antonio Nicholson did he know where Deerfield at, Deerfield Apartments and Antonio Nicholson said, yeah, I do. So he was like that where he stay at, so we rode over to Deerfield Apartments. At this point in time, we rode over to Deerfield Apartments. We rode in and rode to the back and we looking for cars to steal out there. We seen a couple of cars looked like he had blinker lights on it like an alarm or something, so we didn't get it. So as we come back out of Deerfield Apartments, Christopher Johnson acknowledge that the victim stayed on the right-hand side. As you coming out, he's on the right hand side. So we park on the left-hand side behind a bush and we parked behind a bush. We sitting there for probably fifteen minutes or so and that's when Antonio Nicholson and I said, well, we'll just come back tomorrow and try to steal cars and Bow-wow is like, yeah, I can have everything planned by then. So at this point, Tee and I acknowledged us, nah, just wait ten more minutes, we'll wait ten more minutes see can we hit a lick because I ain't trying to go back empty-handed at this time. So we was like, all right, we'll wait ten more minutes. So at this point, it's probably I say eight minutes pass or so, probably ten minutes at the most pass and I heard Christopher Johnson say do you hear that? I was like what? So I guess we heard, he heard the

speediness of the car coming. So then at that time, we see the victim come inside of Deerfield Apartments. We see the headlights, so me and Christopher Johnson, I mean, me and Antonio Nicholson, we ducked down in the front seat. As we ducked down in the front seat, we seen the white Caprice come inside the apartment complex, which as you coming in, he turned to the left and parked on the left-hand side.

Q All right. Let me stop you for a second and I know you're getting going, all right. We're going to slow it down a little bit here. Now, I have what's marked as State's Exhibit 3 and the jury has seen this. I want to make sure, do you know who's car that is?

A Yes, sir.

Q Who's car is that?

A Antonio Nicholson.

Q Is that the one y'all drove from Georgia?

A Yes, sir.

Q Okay. Now, you keep talking about a white car and rims. Is that the car?

A Yes, sir.

Q Okay. That hadn't been changed in any way?

A No, sir.

Q You can still recognize it. Yeah. All right. So let's pick up where you were going when you see the white

Caprice turn in.
A Yes, sir.
Q All right. Just tell us what happened.
A As the white Caprice pull in, he turned into his parking spot where he was, where his residence stayed, I guess. So at this point in time, that's when Tee got out of the vehicle. Tee asked me to get out of the vehicle with him, because he felt that he was safer if I get out of the vehicle with him. At this time, I acknowledged Tee that I was not getting out of the vehicle. At this point in time, this is when Christopher Johnson acknowledged Corey Brown, "You might as well get out of the car because you dark skin. Nobody can see you." So at this point in time, Tee was already out of the vehicle and that's when Corey Brown get out of the vehicle and they go around the bushes. At this point in time, I'll say it's probably been a minute or two later, we see the headlights come on and that's when I acknowledge Antonio Nicholson that they got the car.
Q All right. Which headlights came on?
A The victim's headlight. The Caprice.
Q Okay. Continue.
A Okay. And I acknowledged them that they got the car. We seen the headlights come on. So at this point in time, that's when the white Caprice left out of the car place

and we pulled behind the white Caprice. As we leave out of the apartment complex, that's when I get a call from Tee advising us to go around the vehicle so they can follow us. So as we go around the vehicle and get in front of the victim's car, that's when I was acknowledged again that the victim was inside the car and at this point in time, this is when I quote, "Why the F is he in the car?" I was advised that the victim was driving the car. Then, I quote again, "Why the F would he be driving the car," and that's when Antonio Nicholson and Bow-wow was like, well, Christopher Johnson was like "Why is the dude in the car? What is he doing in the car?" At this point in time, and I acknowledge Christopher Johnson that you need to get out of the car.

Q All right. Let's stop there for a second. All right. So who's in the front of the car with you?

A Antonio Nicholson. Antonio Nicholson.

Q Who else?

A Antonio Nicholson and Christopher Johnson.

Q All right. And you said you got, you called the car, the stolen car or they called you?

A They called me.

Q All right. Did you have it on speakerphone?

A No, sir.

Q I mean, but was it loud enough for everybody in the

car to hear what was going on?
A Yes, sir. He heard me talking loud.
Q Okay. All right. And what was your reaction besides, I mean, were you shocked when you found out the guy was in the car?
A Yeah. When we found out the guy was in the car, we were shocked because we thought they just stole the car. We never knew nobody was in the car.
Q All right. So y'all, you said you stopped to let them catch up?
A Yes, sir.
Q Okay. Did y'all keep going?
A No, sir. Well, at this point in time, that's when we acknowledge to Christopher Johnson that he needed to get out of the vehicle and he said, nah, I'll ride with y'all to Georgia. So Antonio Nicholson said, nah, I'll just call you when we get to Georgia and tell you how much we get for the car. So at this point in time, Christopher Johnson asked him to have a T-shirt in the backseat so he can put over his head because the victim knew who he were. So at this point in time is when Christopher Johnson exits the vehicle and run across the street.
Q I think you're getting ahead of yourself. When you first, y'all's car first left the apartment complex did y'all wait for them to get out and kind of stop and wait

for them to catch up with you?
A Like I said, when we left out, they pulled in, they was in front us when we left out. We was behind them.
Q All right.
A I got the call from Tee and Tee advised us to go around them so that they could follow us. At this point in time we was going around, we was in front of the white Caprice at this time.
Q Okay. Now, you said something about Mr. Johnson getting out of the car. Where was this, right after you left the apartment complex or?
A I say he go up the street and he wasn't even a five-minute drive. I believe a five or ten minute drive.
Q Had y'all gotten into town at this point?
A I don't really know about Greenwood, so I can't say exactly where it was.
Q All right. Did Mr. Johnson mention anything about money?
A The only thing was mentioned about money was that we was going to tell him how much we got for the car after we sold the car.
Q Okay. And I kind of interrupted you. You said something about a T-shirt over his head?
A Yes, sir. When we acknowledged and Christopher Johnson exit the vehicle, that's when he told him to let

me have a T-shirt to put over his head because the victim knew who he was, so he put a T-shirt over his head and exits the vehicle and ran across the street.

Q Did Christopher Johnson or anybody else and specifically him, did he call 911 at any time during the night?

A No, sir.

Q Did he demand to be let out of the car?

A No, sir.

Q Okay. Did he try to get those guys to let the victim go?

A No, sir.

Q Okay. All right. Let's keep going. So after Mr. Johnson got out of the car, tell us who were in the two different vehicles?

A Me and Antonio Nicholson was in his vehicle, and Corey Brown and Tee was inside the victim's vehicle which was, victim inside the vehicle.

Q Okay. All right. So let's keep going. What happened after that?

A That's when at this point in time, that's when I exited Antonio Nicholson's car to get inside the victim's vehicle as well. I get on the passenger side of the victim's vehicle and when I entered the vehicle, he was laying face down on the front of the passenger board in

the front of the seat, which his face was face down to the driver's side and his feet was to the passenger side but in front of the seat laid down. Okay.

Q Hold. Wait. Hold on. Who was driving the car?

A Corey Brown was driving the car.

Q And what was Torrance McLean doing?

A He was in the backseat.

Q But what was he doing, was he just sitting there?

A Just sitting there.

Q Did he have the gun out?

A I didn't see the gun at that point in time.

Q Okay. Was the victim, Mr. Spearman, was he fighting at all or what was he doing?

A At this point in time, I got in the car, Mr. Spearman was just face down in the front seat on the floorboard.

Q Okay. All right. Did the victim get a look at you? Did he see you?

A Not at that point in time, he didn't.

Q All right. So you're in the car with them. What happened then?

A And we are in the car and that's when I called V.J.'s phone and told him we need to --

Q Who's V.J.?

A Antonio Nicholson.

Q Okay.

A Called V.J's phone and told him that we needed to get gas and he said that we was going to go to Express Gas Station. Which Express Gas Station wasn't far up that street. It's right up the street. As we driving toward the Express Gas Station, you got Antonio Nicholson in front of us driving his vehicle. And me, Corey Brown, and Tee is inside the victim's vehicle. As we're riding to the gas station, we noticed a state trooper behind us. We go inside the Express Gas station. We was about to get gas then, but that's when we were like, nah, because we see the police car. So we said, nah, we won't be going to get gas from there. So as we exit out the Express Gas station, that's when I acknowledge V.J., which is Antonio Nicholson. I advised him to pull over somewhere so I can get out of the car and get back in the car with him. He was like, yeah, okay, we going to Main Street right now. So, at this point in time we just driving until we get to the Hot Spot and we pull over on the street beside the Hot Spot.

Q Okay. Now, when you get right near the Hot Spot, is there a, is it lit up where you stopped?

A You could see the store lights, but the street wasn't lit.

Q Okay. So what did you do when you stopped there?

A At this point in time, we pulled to the side of the

street and when we pull on the side of the street, I exit the vehicle. I tell Corey Brown and Tee I need to get him out of the car. Man, you know what I'm saying, get him out the car. So that's when Tee be like, yeah, we going to get him out of the car when we get gas. So he advise C-Lo to pop the trunk. So as I'm exiting the vehicle, I'm in the back at the trunk. When I turn around and look, I see Mr. Spearman getting out of the front seat with Tee taking him to the trunk of the car. When he takes him to the trunk of the car, I hear him say the speakers are in the trunk of the car. So, at this point in time, I see Tee take the victim back to the backseat of his vehicle and I'm getting inside the passenger side of Antonio Nicholson's car. At that point in time, I acknowledge Antonio Nicholson what was going on and I advised him that they was trying to put the victim inside the trunk, but due to the speakers, he didn't put him in the trunk. So he put him in the backseat of the vehicle. At this point in time, after that, that's when Antonio Nicholson said we going over here to get gas. So we turn around in the middle of the street, like made a little circle in the middle of the street and go into the Hot Spot.

Q All right. Hold on a second. The car with Mr. Brown, the victim and Mr., with Torrance McLean, did y'all talk about them continuing to follow you? I mean, how did

they know what to do?
A No, they just followed behind because they didn't know where to go any way and then and plus, they needed the gas for the car.
Q So both cars were low on fuel?
A Yes, sir.
Q Okay. So what happened after you got back in the car with Mr. Nicholson?
A Okay. Then, I get back in the car with Mr. Nicholson and we going to the Hot Spot to get gas. We pull up in the Hot Spot at the gas pump. When we pull up at the gas pump, I give Antonio Nicholson $20. I tell him to put $10 in his car and put $10 in the victim's car. At this point in time, he never get out of the car. He was hesitating. So I say and probably a minute later, that's when the victim's car crashed into us at the Hot Spot and I'm sitting on the passenger side and Antonio Nicholson on the driver side. I see the victim's car hit us and it's like the front of his tires on the front of the hood of the car and I could see as I look up, I see Corey Brown in the driver's seat. I see Corey Brown in the driver's seat and I see, I telling Corey Brown to get off of the car. So V.J. tried to pull his car up some and the car flop off our car. I see Corey Brown take off running out of the vehicle, and I see Tee jump out. So when they jump out,

that's when Tee, I mean, Corey Brown took off running. I ain't see him no more and Tee was at the top of the store, like on the grass part. He tried to get back in the car with us, but I wave him on telling him to go on and go, you know what I'm saying, and he jumped back in the victim's car and he speed off in the victim's car. At this point in time, me and him --

Q Hold on a second. So now did you see the victim get into a fight in the car?

A No, sir; I didn't.

Q Did you hear a gunshot?

A No, sir; I didn't.

Q So the, everybody ran out, jumped out of the back of the victim's car; is that right?

A Yes, sir.

Q All right. Now, I want to make sure I understood. You said Torrance McClain ran away but came back?

A Yes, sir.

Q All right. And he jumped in which car?

A The victim's car.

Q And drove away?

A Yes, sir.

Q Okay. All right. Now, what did you, what did you do after this?

A After that happened, me and Antonio Nicholson was

driving out and he asked me was his tire bust and I said yeah, because I heard the front fender hitting the tire. So I'm thinking that the tire was bust, so I said yeah, the tire bust. So at this point in time, he say he was going to call the police and say somebody crashed into the car. And then we exited out of the Hot Spot, we turned back inside of the Hot Spot and Antonio Nicholson calls the police and said that his car was crashed into. At this point in time, I see the victim inside the store, which I noticed him because he had a blue T-shirt on and I'm telling the victim to come outside the store so we can talk. He never come out the store. So at this point in time, the police arrived and when the police arrived, Mr. Spearman comes out of the store and I'm talking to Mr. Spearman like, "Why y'all crashed into the car," and Mr. Spearman said, "Why you trying to play it off, y'all know y'all had something to do with it." At this point in time, I was like, "We ain't did nothing," you know what I'm saying and then I noticed Mr. Spearman talking to the police officer and said somebody bit him and I seen he had a bite mark on his hand because he was bleeding. At this point, the police pulled Mr. Spearman to the side talking to him and me and V.J. was at his car, which is Antonio Nicholson. And then after that, that's when the police came and arrested us and put us in the backseat of the

police car and we were transported to Greenwood Detention Center.

Q Okay. So the whole thing about a wreck, it was a lie, right?

A Sir? Yes, sir.

Q The whole wreck thing was a lie?

A Yes, sir.

Q Why did y'all lie?

A Because we tried to cover ourself.

Q Now, after y'all are arrested, have you talked to any of the other Codefendants on this case?

A Yes, sir; I have.

Q Who was that?

A I talked to Christopher Johnson, I talk to Antonio Nicholson, and I talked to Corey Brown.

Q Okay. Did y'all plan any lies? Did y'all talk about doing anything when you got here in court?

A Well, at first, me and Antonio Nicholson was planning, our first plan was to say that we came to Greenwood and we was trying to mess with his cousin and some girls and then somebody crashed into the car and we never knew who was in the Caprice was the first statement that we was supposed to make.

Q Okay. And that's a lie?

A That's a lie.

Q Okay. And then what story did you give next?
A The story I gave to the first I give at the store, I didn't give complete truth because I didn't try to implicate myself in a crime when I first gave my statement, because I tried to free myself. So I gave a story, but I didn't give the complete truth.
Q Okay. And did the police know it wasn't the full truth?
A Yes, sir.
Q Did they call you on it?
A Yes, sir; they did.
Q Okay. What'd you do after that?
A Well, a couple of minutes, well, a couple of minutes later I tried to tell the truth. I did tell, like I said, I didn't indicate myself in a crime, but a couple of months later, I felt like if I was going to go down, I need to go down with something that I was accused of doing and I did do. So I admitted the whole truth and nothing but the truth.
Q Okay. Now, did law enforcement promise you any deals?
A No, sir; they didn't.
Q Okay. To testify? I mean, nobody, like I said, make any promises?
A No, sir.

Q Okay. Now, you mentioned you had contact with all your Codefendants --
A Yes, sir.
Q -- in jail?
A Yes, sir.
Q Except you didn't say Mr. McLean, right?
A No, sir.
Q You hadn't see him?
A (No response.)
Q Did any of the Codefendants try to tell you to come in here and lie?
A Well, you know, I talked to little Christopher Johnson. At this point, me and Christopher Johnson had a conversation. He was in the room window and I was outside on the rec yard, and we was talking about the incident and I advised Christopher Johnson to go and tell the truth, because he know we wrong about it. So he was planning on telling the truth for a while, but then he said, no, because he going to say that he wasn't there at the scene of the crime. So at this point, a couple of months later, me and Christopher Johnson had another conversation and he told me that he'll pay me $200.00 dollars if I was to tell his lawyer that he wasn't there.
Q Okay. Now, how about Corey Brown, did he ever say anything to you in jail?

A When Corey Brown got to the jailhouse, we had a conversation and the first conversation was that I asked him why did they crash into the car and he told me how they crashed into the car. He said that Tee was in the backseat. He was on the driver's side. He said that Tee was in the backseat and he said something about the victim was tussling with Tee. Both of them bit each other and he say he hear the gun go off so, at this point, he trying not to get shot by the gun. So he was trying to pull off but that's how he crashed into the car. That's how I found out what happened in the back of the vehicle.

Q Did he try to bribe or threaten you at all?

A No, he just told me that he'll take care of my kids if I take the charge.

Q Okay. Could you identify Corey Brown if you saw him?

A Yes, sir; I can.

Q Is he in the courtroom today?

A Yes, sir; he is.

Q Could you point him out, please?

A (The witness complies.)

Q What's he wearing over there?

A Brown.

Q A brown shirt?

A Yes, sir.

Q Okay.

MR. TAYLOR: Okay. Judge, may the record reflect that he's pointing to the defendant.

THE COURT: So reflect.

Q All right. Also --

MR. TAYLOR: May I approach the witness, Judge?

THE COURT: Yes.

Q I have what's marked and is in evidence as State's Exhibit 24. Do you recognize him in this picture?

A Christopher Johnson.

Q Okay. And what's his nickname?

A Bow-wow.

MR. TAYLOR: I have no further questions, Mr. Evans, so just listen up and answer any questions that Mr. Nicholson or Ms. Merrill have.

THE WITNESS: Yes, sir.

CROSS-EXAMINATION

By Mr. Nicholson:

Q Mr. Evans, there was a little bit of confusion about the robbery charge that you pled guilty to.

A Yes, sir.

Q Can you explain that? I mean, what was that all about?

A The charge I pleaded guilty to in 2005?

Q Yeah.

A Yes, sir. Well, I caught a charge in 2005. I had

two Codefendants. I caught a armed robbery charge and a kidnapping charge. I pleaded guilty, I stayed in the county jail from 2005 to 2008. Pled guilty to a robbery charged. I was sentenced to ten years, five years incarcerated and five years probation, which was dropped to a robbery charge.

Q It was dropped to a robbery?

A Yes, sir.

Q What did they allege that you had done? What did they say that you had done?

A Armed robbery.

Q Armed robbery?

A Yes, sir.

Q I mean, what was it? What kind of robbery was that?

A A street robbery like the dude says he was robbed.

Q On the street?

A Yes, sir.

Q With a gun?

A Yes, sir.

Q Is that what was alleged?

A Yes, sir.

Q Because for some reason, they're, I'm just looking at your record. There are five different charges of robbery with different numbers on them.

A That's not true, sir.

Q All right. Were there five different victims?
A I had five different Codefendants; yes, sir.
Q Okay. But there weren't five different people that you were alleged to have robbed?
A No, sir.
Q All right. Mr. Evans, I want to start out with, I want to know what instructions you received from Christopher Johnson before you left Augusta?
A Before I left Augusta?
Q Right.
A I never talked to Christopher Johnson before I left Augusta. I never knew Christopher Johnson before I left Augusta.
Q Okay. So you received no instructions from him before you left Augusta?
A No, sir.
Q All right. And from what I heard you said that you contacted Tee and C-Lo, whoever those guys are --
A Yes, sir.
Q -- to help you with a, stealing some cars?
A Yes, sir. But I contacted Tee, which was the one supposed to steal the car. I never knew Corey Brown was going to be with him and we picked him up, Corey Brown got inside the vehicle. I had no knowledge that Corey Brown was going to take the ride with us until we picked Tee up.

Q All right. So you had discussed something with Antonio Nicholson --
A Yes, sir.
Q -- without having ever talked to Christopher Johnson?
A Yes, sir.
Q And you knew a guy who could steal some cars pretty good and that was being Tee?
A Yes, sir.
Q And he was, was he pretty good at stealing cars?
A Yes, sir.
Q And what do you mean by that? Is he good at stealing cars off the street, like breaking into cars and hot wire them or getting them started?
A Yes, sir; hot wiring them.
Q All right. Had you seen him do this before?
A Yes, I have.
Q Had you stole cars with him before?
A No, sir.
Q So you just were standing by looking at him stealing cars, but you weren't involved in it?
A I never stole no car. I don't know how to steal a car, sir.
Q But you had seen him break in a car and hot wire a car?
A In Augusta, I was in another vehicle when he stole

another car; yes, sir.
Q So you happened to see it and you were standing by or close by, but you weren't involved in it?
A Yes, sir.
Q So that's how you knew that he was a good guy to get, to bring along on this trip?
A Yes, sir.
Q And you're saying it was his idea to bring a gun?
A Yes, sir; it was.
Q It wasn't your idea?
A No, sir.
Q So was Tee doing what you were telling him to do or were you doing what Tee was telling you to do?
A At that point in time, Tee asked me to get my gun, so I was doing basically what he asked me to do was to go get my gun.
Q So were you, I'm just trying to figure out what's going on. Are you working for Tee at that point?
A No, sir; I was working for nobody.
Q Do you work for Christopher Johnson?
A No, sir.
Q Okay. So Tee wasn't telling you what to do?
A The only thing Tee told me to do was get my gun from my residence. He didn't tell me. He asked me would I get my gun from my residence, and I went and got my gun.

Q Okay. And I think you said you didn't want to go get it?
A No, sir; I didn't.
Q So why'd you get it?
A Because he said he needed it for protection just in case.
Q In case of what?
A When he go in people's driveways to get cars.
Q So did you have any kind of tools to get in a car?
A We had a crowbar.
Q All right. Mr. Nicholson, Antonio said you had a screwdriver?
A I'm not sure if we had a screwdriver. I never seen it. I know we had a crowbar.
Q All right. Is it, among these people that are, you weren't the expert at getting into cars, were you?
A No, sir; I wasn't.
Q So when you left Augusta, what was the plan?
A To steal cars.
Q To steal cars?
A Yes, sir.
Q Was there a plan to rob anybody?
A No, sir. There wasn't.
Q Was there a plan to hold a gun on somebody and take their car at that point?

A No, sir; there wasn't.
Q Was there a plan to kidnap anybody?
A No, sir; there wasn't.
Q All right. And let's move on to Greenwood. Y'all drove to Greenwood.
A Yes, sir.
Q All right. When you first got to Greenwood, what instructions did you receive from Christopher Johnson?
A I didn't never talk to Christopher Johnson when I first got to Greenwood.
Q All right. And you said that when you first got to Greenwood, you started looking around trying to steal some cars?
A Yes, sir.
Q And that was without talking to Christopher Johnson whatsoever?
A Yes, sir.
Q What kind of cars were y'all looking to steal?
A Cars with rims on them.
Q Did you find any cars?
A No, sir. We seen a couple of cars, but we never got to steal them.
Q Now, how long were you here before you, Mr. Nicholson went up and knocked on that house that he thought was Christopher Johnson's house?

A About fifteen minutes, twenty minutes, somewhere in there.
Q All right. Did it appear that Christopher Johnson was waiting on y'all to get there?
A No, sir.
Q And why you say that?
A Because we called Christopher Johnson and he never answered the phone. We also knocked on the door. Well, Antonio Nicholson knocked on the door, he didn't pick up, he didn't answer the door. But he did call Antonio Nicholson's phone after we left and told him that he's coming outside. He'll be outside in a minute.
Q Did he appear to be upset that you all were knocking on his door?
A Not necessarily.
Q Well, didn't he say something about waking up his grandmamma?
A Yeah, but he wasn't upset about the situation.
Q All right. So he came outside and he got in the car with you?
A Yes, sir.
Q All right. Did y'all go looking for, riding around town, that's what you're saying, looking for cars?
A Yes, sir.
Q Were y'all looking to rob anybody or hold a gun on

anybody?
A No, sir; I wasn't.
Q Did Christopher Johnson ever tell you or Tee or anybody else in the car to go hold a gun on somebody?
A No, sir.
Q Well, what was the plan at that point once Christopher Johnson got in the car?
A To take us to where cars was located at.
Q And was that for the purpose of trying to take a car when nobody else was around?
A Yes, sir.
Q And were y'all looking for cars that didn't have alarms on them so nobody would know when you'd steal a car?
A Yes, sir.
Q And how did that go?
A Not too well. We drove around and coasted, but, like I say, the first spot Christopher Johnson took us to, we was scared away from the motion sensor light. We left and drove around a couple of more spots, and then it didn't go too well.
Q All right. So you didn't go for certain cars because you were worried that people were around or that people would find out about it; isn't that right?
A Yes, sir.

Q Okay. And so how did you end up on the, Mr. Spearman's car, the white car?
A Like I say, we rode around a couple of more neighborhoods and we ended up in Country Homes and when we end up in Country Homes, that's when Christopher Johnson acknowledged us that was his old vehicle that he used to, he said that was his vehicle but it was on a repo. So he sold it to a white guy with this fake title and got $3,000.00 dollars. At this point, the repo came and got the car and I guess being, he bought the car from the repo people and the victim must have bought the car from Big A's, is what I acknowledged.
Q All right. So why didn't you try to take that car in Country Homes?
A Because two people were standing outside.
Q So somebody at that point could have taken a gun and gone and robbed the car from those people, couldn't they?
A Yes, sir.
Q But was that the plan?
A No, sir; it wasn't.
Q So at that point still, was y'all trying to take the car without anybody knowing about it?
A Yes, sir.
Q And so when y'all got over to Deerfield Apartments, was it still the plan to try to take a car without anybody

knowing about it?
A Yes, sir; it was.
Q And I think you looked, you said you looked at some other cars at Deerfield Apartments. It wasn't just this white car, but there were some other cars y'all looked at but couldn't get them for some reason?
A Yes, sir.
Q And then you decided to stick around to see if the guy came home, Mr. Spearman?
A Yes, sir.
Q Now, Mr. Evans, wasn't it you that really wanted that white car because you had a similar car or you had a car that those rims would look good on?
A No, sir; it wasn't.
Q You deny that?
A I didn't choose to pick that car to steal. No, sir; I didn't.
Q Well, I'm just asking once you saw the car, you particularly wanted that car because you wanted those rims, didn't you?
A I wanted in on the car, yeah. I wanted dealing on the car, but it wasn't particular because we could have sold the rims and I'll split the money. Everything was going to be 50/50.
Q Well, I know you could have, but you wanted that car.

I mean, somebody else has said that you wanted that car, in particular. You wanted that car because you liked that car and those rims.

A Because it is easy, they say it was easy to get, so I said I wanted dibs on the rims.

Q So you deny that you really wanted the rims that were on that car?

A I said I wanted dibs on the rims.

MR. TAYLOR: Judge, asked and answered. It's kind of pitting witnesses talking about what other people have testified to.

THE COURT: Said the same answer: "I wanted dibs on the rims." I think "dibs" can be explained.

A I wanted in on, we all going to split the car. If we sell the car, I get the rims and everybody else split the money between whatever we sell off of the car.

Q So you get the rims and everybody else is going to split whatever comes out of the car, whatever else comes out of the car?

A Whatever we sell the car for.

Q But you were getting the rims?

A Yes, sir.

Q Now, what did you expect was going to happen when whoever Tee and C-Lo are, they got out of the car and they were waiting for him to come home, what did you think was

going to happen at that point?
A I thought they were just going to steal the car.
Q And you think they were going to wait until he got inside his apartment and then try to steal the car?
A Yes, sir. At this point, we thought that he was already in the car, I mean, in the house.
Q All right. So when his, he came home, his headlights went off and then the headlights came back on, what did you think had happened?
A I thought they had stole the car.
Q With or without him?
A Without him.
Q Now, what was your reaction when you found out that Mr. Spearman was in that car?
A I was shocked, because, you know, it shocking because we didn't think that nobody was going to be in the car. You know what I'm saying, we asked. Like we asked why is he in the car. What is he doing in the car?
Q All right. Did you think Christopher Johnson was shocked that he was in the car?
A Christopher Johnson and Antonio Nicholson was shocked at the same time they heard me say it.
Q So all three of y'all were shocked that he was in the car --
A Yes, sir.

Q -- because that's not what you expected?
A No, sir; it wasn't.
Q And that's not what y'all could see happening at that point?
A No, sir; it wasn't.
Q And you didn't see Christopher Johnson with a gun that night, did you?
A No, sir; he didn't.
Q And I heard you say that you talked to Christopher Johnson on the jail yard over here --
A Yes; I did.
Q -- at the detention center and you told him, you said, "Why don't you go ahead and tell the truth, because you know we didn't rob nobody."
A Yes, sir; I did.
Q That's what you told him?
A Yes, sir; I did.
Q Is that what you believed?
A Yes, sir.
Q So you, and you believe you didn't rob anybody?
A No, sir; I didn't put a gun on nobody.
Q And Christopher Johnson didn't put a gun on nobody?
A No, sir; he didn't.
Q So you think you're not guilty of armed robbery and kidnapping?

A No, sir; I don't. But I do believe that I had, by me being accomplice of my Codefendant, I should be punished for my part in the crime. We all had intentions of committing a crime.
Q And the crime being grand larceny or stealing a car; is that it?
A Stealing the car. I can't really say what the crime would be, but that's what our intentions would be.
Q All right. In your discussions with the detectives in this case, the discussions were that the appropriate charges for you would not be kidnapping and armed robbery? Isn't that what your discussions are, have been with the detectives?
A Repeat that again.
Q Your discussions with the detectives, they've asked you to tell the truth; is that right?
A Yes, sir.
Q And also your discussions with the detectives were tell the truth and it bears out what you're saying, it tells the truth, then the appropriate charges would not be armed robbery and kidnapping for you?
A Yes, sir; he did. He said if he found out I never had possession of a firearm and I never held a victim against his will, that he will talk to the Solicitor about reducing the charge to a more reasonable sentence.

Q And because that would be the appropriate charge for you, right?
A Yes, sir.
Q Please answer any questions Ms. Merrill may have.
MS. MERRILL: May it please the Court?
THE COURT: Yes, ma'am.

CROSS-EXAMINATION

By Ms. Merrill:
Q Mr. Evans, if you were convicted of the charges that you've got right now, you might be looking at a lot of time in prison, is that right?
A Yes, ma'am; I would.
Q And you actually gave law enforcement two different statements; is that correct?
A Yes, ma'am; I did.
Q So did you give one statement on July 30th, 2013; is that right?
A Yes, ma'am.
Q Okay. And then you gave another statement on June, I believe it was June 13th, 2014; is that correct?
A Yes, ma'am.
Q Okay. And the very first time you talked to law enforcement, you asked them about a deal for your charges; is that right?
A Yes, ma'am.

Q And following up on what Mr. Nicholson was asking you, there was some discussion about what would be the appropriate charge; is that right?
A Yes, ma'am.
Q And actually during that first conversation with law enforcement of July of 2013, the detective actually wrote on a board "grand larceny," is that right?
A Yes, ma'am; he did.
Q And detective told you he didn't know if that would be your charge --
A Yes, ma'am.
Q -- but that might could be a charge; is that right?
A Yes, ma'am.
Q And if you told the truth, you would be reduced, it would definitely be some lesser offense than kidnapping or armed robbery; is that right?
A Yes, ma'am.
Q Now, let's go to when you got to Greenwood. I'm just a little confused, so I want you to clarify for me. How many stops did you make from the time you left the apartment complex following the white Caprice to the time you got to the Hot Spot?
A Maybe--
Q -- can you tell me about each one?
A Yes, ma'am.

Q Okay. What was the first one?
A The first stop we got to the complex was when we dropped Bow-wow and Bow-wow jumped out of the vehicle.
Q And that was the only person who changed vehicles or left the vehicle at that time?
A Yes, ma'am.
Q Okay. What was your next stop?
A We pulled up, I say, right before we get to the store, I get out of the vehicle and that's when I get in the victim's vehicle. That's two stops. We went to the gas station, which we was about to get gas. That will be three stops.
Q Let me ask you real quick on that, the gas station you're referencing, is that the Hot Spot or the Sphinx?
A That's the Sphinx Gas Station.
Q Okay. And did you actually stop at that gas station?
A Yes, ma'am. We pulled up to the pump.
Q Okay.
A We left out of the Sphinx Gas Station. At this point, I let, our next stop was right beside, it's a street beside the Hot Spot.
Q Okay. So that would be your fourth stop; is that right?
A Yes, ma'am.
Q And that would be the street behind or close to the

Hot Spot?
A Yes, ma'am.
Q Okay. What happened at that stop?
A At that time, that's when I exited the vehicle and I acknowledged Tee and C-Lo that they needed to get the victim out of the vehicle. At this point in time, I exited the vehicle and I hear Tee telling that he was going to put the victim in the trunk and asking C-Lo to find, try to pop the trunk. So I'm getting out of the vehicle at this point in time in the back of Antonio Nicholson's car and I see Tee taking the victim out of the front seat and walking him to the trunk of the car. At this point in time, that's when I hear Tee saying the speakers in the trunk of the car. So I seen Tee put the victim back into the back seat of the Caprice and I was inside of Antonio Nicholson's car.
Q Okay. And did you stop after that?
A We went to the Hot Spot.
Q Okay. So that would be your fifth stop; is that correct?
A Yes, ma'am.
Q And that would be at the Hot Spot?
A Yes, ma'am.
Q At this time, tell me what car you're in?
A I'm in Antonio Nicholson's car.

Q Okay. Did you have a gun with you during this incident?
A No, ma'am; I didn't. The only time I had a possession of a firearm is when I got the firearm from my residence.
Q And then you gave that to Tee; is that right?
A Yes, ma'am.
Q And are you aware that Mr. Spearman, the victim, says there were two guns in the car?
A Yes, ma'am. I read that in the paperwork.
Q But you dispute that? You don't agree with that; is that correct?
A Yes, ma'am. I did not have, there was not two guns involved. There was only one gun involved.
Q So the victim is lying about there being two guns; is that what you're saying?
MR. TAYLOR: Objection, Your Honor.
THE COURT: That is pitting the witnesses.
Q When you got into Mr. Spearman's car the first time, and let me make sure I understand. This would be at the second stop, is that correct?
A Yes, ma'am.
Q Okay. Did you get in the front seat?
A Yes, ma'am. I got in the passenger side.
Q Front passenger side. And where was Mr. Spearman?

A On the floorboard.
Q Of the front seat or the backseat?
A The backseat.
Q The passenger side floorboard front seat; is that correct?
A His face was towards the driver side and his feet was towards the passenger side, which he was laying, I would say, sideways.
Q Okay. Did Mr. Spearman stay there after you got in the car at the second stop?
A Yes, ma'am.
Q And the first statement you gave to law enforcement in July of 2013, you told the detective you didn't realize there was anybody in the car until you got to the gas station; is that right?
A Yes, ma'am; I did.
Q And in that first statement, again, July 2013, to law enforcement, did you tell them that when Mr. Johnson left the car with a t-shirt over his head is when you got out of the car and got into Mr. Spearman's car?
A Yes, ma'am; about the same time.
Q During those first statements, you also, the first statement July 2013, there was something said about you giving, was it, Mr. Nicholson $20.00 dollars?
A Yes, ma'am.

Q So would that be when y'all were in Augusta?
A I gave Mr. Nicholson $20.00 dollars two times. I gave Mr. Nicholson $20.00 when he first picked me up to put in his car to take us to South Carolina. When we got to the Hot Spot, I also gave Antonio Nicholson $20.00 to put $10.00 inside of his vehicle and $10.00 inside the victim's vehicle.
Q Okay. Then, why in that same statement did you tell officers that you only had $4.00 dollars left in your pocket after giving Mr. Nicholson $20.00?
A I never said about no $4.00 dollars left in my pocket.
Q So you deny that was in your statement?
A Yes, ma'am.
Q During that first statement, you also told officers that you thought there may be a gun; is that correct?
A Yes, ma'am; I did.
Q And you told them you thought it might be a pistol; is that right?
A Yes, ma'am; I did.
Q But you actually knew exactly what kind of gun was there; is that right?
A No, ma'am.
Q And it's correct or let me make sure I understand. You said that Nicholson contacted you about stealing cars;

is that correct?
A Yes, ma'am.
Q You did not contact Nicholson?
A No, ma'am.
MS. MERRILL: Beg the Court's indulgence.
Q When you were in Augusta this night before you drove to Greenwood, was Antonio Nicholson in the car when you and Tee discussed the gun?
A Yes, ma'am; he was.
Q And was Antonio Nicholson in the car when he went inside and got your gun?
A Yes, ma'am; he was.
Q And, Mr. Evans, at one point, you had a relationship with a woman named Tameka Johnson; is that right?
A Tameka Johnson?
Q Yes.
A No, ma'am.
Q And you found out in 2013 that Mr. Brown was also having a relationship with her?
A I don't know anything about that.
Q You don't know anything about that?
A No, ma'am.
MS. MERRILL: All right. Thank you, Mr. Evans.
THE COURT: Redirect?
MR. TAYLOR: Nothing from The State, Your Honor.

THE COURT: How long is the next witness going to be?

MR. TAYLOR: Judge, we're actually, that's what we're going to ask about. We've got two shorter witnesses. They were both from out-of-state.

THE COURT: They're not here yet?

MR. TAYLOR: We can get, even if we have a five-minute break, Judge, we can get it done before lunch.

THE COURT: Well, here's what I'm going to try to do is see if those witnesses are ready, we can maybe do those fairly quickly, and then we can go to lunch. If they're not quite ready, then we'll go to lunch and we'll do them shortly after lunch. So y'all step in the jury room. You can't begin discussing the case. As soon as we find out where they are.

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

THE COURT: Bring the jury back in.

(Whereupon, the jury came into open court at approximately 12:06 p.m.)

THE COURT: Call your witness.

MS. WHITE: The State calls Jasmin Tell.

JASMIN TELL, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Ms. White:

Q All right. Ms. Tell, where do you work?
A Verizon Wireless.
Q And where do you work out of?
A Alpharetta, Georgia.
Q Are you involved as a records custodian or do you keep records for Verizon?
A Yes, I'm the records custodian.
Q Okay. And are you here today pursuant to a subpoena sent by my office?
A Yes.
Q I'm going to hand you what's been marked for identification as State's Exhibit 8 or, excuse me, 28. Can you identify that for me?
A Yes, these are call records.
Q Okay. Are those kept by Verizon Wireless in the ordinary course of business?
A Yes.
Q And did y'all produce those to Greenwood law enforcement pursuant to a search warrant?
A Yes.
MS. WHITE: Your Honor, the State moves Exhibit 28 into evidence at this time?
MR. NICHOLSON: No objection.
MS. MERRILL: No objection.
THE COURT: No objection. So it's State's 28 without

objection--

MS. WHITE: Yes, sir.

THE COURT: -- which are call records from Verizon, but which phone numbers.

(Whereupon, State's Exhibit 28 was admitted into evidence.)

Q Looking at that, what is the phone number that's the subject of those records?

A These records are for cellphone number 706-244-2566.

Q And do you know what area code 706 covers?

A I don't personally.

Q Has any changes been made to those records?

A No.

Q Okay. Is there any highlighting on them?

A There are a few highlights.

Q And what's highlighted on those records?

A Well, there's a few calls that are highlighted on a few pages.

Q All right. Are those to a specific number or from a specific number?

A Oh, let me see. Yes. It looks like the number that's highlighted or the additional number is 864-933-4207.

Q Okay. And one more question about those. Are there several different calls at different times to and from

that number?
A Yes.
MS. WHITE: All right. Please answer any questions Mr. Nicholson or Ms. Merrill have for you.
MR. NICHOLSON: I have no questions.
MS. MERRILL: I have no questions.
THE COURT: You may step down.
MR. TAYLOR: Judge, we also ask that she be released from her subpoena.
THE COURT: She'll be so released.
MS. WHITE: Your Honor, The State calls Andrea Paz.

ANDREA PAZ, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Ms. White:
Q If you can spell your name for the court reporter.
A A-N-D-R-E-A. The last name is Paz, P-A-Z.
Q And that's Andrea Paz?
A Yes.
Q How are you employed, Ms. Paz?
A I am employed by New Star and I'm the custodian of records for Alltel. We handle their legal compliance.
Q Are you here today pursuant to a subpoena sent from my office?
A Yes.

MS. WHITE: May I approach the witness, Your Honor?

THE COURT: Yes, ma'am.

Q I'm going to hand you what's been marked for identification as State's Exhibits 26 and 27. Can you identify those for me?

A Yes. Exhibit 27 is the call detail report for phone number 864-933-4207. Exhibit 26 is the report for text messages for the same phone number, 864-933-4207.

Q Are those kept in the ordinary course of business?

A Yes.

Q And were those produced to the Greenwood County Sheriff's Office pursuant to a search warrant?

A Yes.

MS. WHITE: Your Honor, The State moves Exhibits 26 and 27 into evidence at this time.

THE COURT: Any objection, Mr. Nicholson?

MR. NICHOLSON: No objection.

MS. MERRILL: No objection.

(Whereupon, State's Exhibits 26 and 27 were admitted into evidence.)

Q All right. Just a question, the call number detail report, what does that show?

A The first and second column is labeled the start and end date and time that shows what time and date the call is placed and what time and date the call ended. The

originating number on the third column shows where the number, the call is placed from; destination number is where the call was placed to. The duration would be how long that call lasted. The first cell I.D. would show what tower used to make the call and the call direction shows incoming or outgoing in regards to the target number.

Q Okay. So that's what somebody would see on their own cellphone bill, essentially, calls placed to and from that phone number?

A Yes.

Q The second document, the text messages, are those just text messages sent to and from that particular number for the date range?

A Yes, the logs.

Q And has there been anything changed or added to those exhibits that wouldn't have been in your copy?

A Besides a highlight, no. This is all.

Q What's highlighted on those?

A It shows two rows, a text message from target number 864-933-4207 to text, to phone number 706-244-2566 on July 26, 2013 at 4:30 p.m. with the text message, "What up, Bro? Get with me, man." And the second row highlighted is from target number 864-933-4207 to target number 706-495-0044 on July 26, 2013 at 4:39 with the text

message, "Do you know a guy named V.J. up here or Yellow Boy?"

Q And without getting into each specific time the calls were made, what phone numbers are highlighted on the call number detail report?

A The phone numbers highlighted are 706-244-2566 making the call to 864-933-4207. The other number highlighted would be 706-244-2566. Those three numbers are highlighted.

MS. WHITE: Please answer any questions Mr. Nicholson or Ms. Merrill have for you.

MR. NICHOLSON: No questions.

MS. MERRILL: No questions.

THE COURT: Thank you for coming.

MS. WHITE: And if Ms. Paz can be released from her subpoena, Judge.

THE COURT: She may be.

MR. TAYLOR: Thank you. And, Judge, I believe that's it before lunch. I know everybody's ready to have a break.

THE COURT: How about is 1:30 sufficient time or do y'all need 1:45?

MR. TAYLOR: That's okay with The State, Judge.

THE COURT: 1:45?

MR. NICHOLSON: That's fine.

MS. MERRILL: That will be fine. Thank you.

THE COURT: You got any witnesses are coming at 2:00 we got to wait on?

MR. TAYLOR: No, sir; not from The State. I can have our next witness here at 1:45.

THE COURT: All right. Y'all be back just before 1:45, so you get an hour and a half. You cannot begin discussing the case.

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

(Whereupon, a lunch break was taken.)

THE COURT: Bring them in.

(Whereupon, the jury came into open court at approximately 1:50 p.m.)

THE COURT: Call your witness.

MR. TAYLOR: Thank you, Your Honor. The State calls Derrick Smith.

DERRICK SMITH, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Taylor:

Q Could you tell the jury your name, please?

A My name is Lieutenant Derrick Smith.

Q And I can see you're a police officer?

A That's correct, sir.

Q Who do you work for?
A Greenwood County Sheriff's Office.
Q How long have you been a police officer?
A In eight days, it'll be nineteen years, sir.
Q Have you always worked at the Sheriff's Department here in Greenwood?
A I have.
Q Okay. Now, will you tell the jury a little bit about what job, what's your job that's within the Sheriff's Department.
A Sure. I'm Assistant Shift Supervisor under the care of Captain Mark Cromer. He's a captain on the Team 3 Greenwood Sheriff's Office. I assist in supervision of guys on the shift and also answer calls that come throughout the county.
Q Now, how many guys are on shift with you?
A At times, it's six to seven to eight. It just depends.
Q And do y'all control the whole county?
A Yes, sir.
Q Okay. All right. Let's talk about, do you remember working early in the morning July 26, 2013?
A I do, sir.
Q Okay. Anything particular about that day that you would remember?

A Yes, sir. Deputies of the Greenwood County Sheriff's Office were dispatched to the Gordan Hot Spot on Highway 25 South which is in Greenwood County, South Carolina, in regards to a possible armed robbery. The victim had been held at gunpoint. While in route, we were also provided information there was two other subjects possibly on foot leaving the scene. Captain Cromer arrived in the area first. He patrolled the area looking for the guys that were on foot. I arrived at the Hot Spot to try to make contact with the initial victim in the case. Upon arrival I observed two light-skinned black males standing at a vehicle parked across from the entrance of Jordan's Hot Spot. When I got out of my vehicle, one of the individuals told me that somebody had hit their vehicle with another vehicle. I assumed at first it was a different incident. I said, "Well, I'm here on a possible armed robbery. Do you know by any chance, know where I can locate another victim." And one of the individuals pointed out, "Yes, he's a guy inside with a blue shirt on." When he pointed out the guy inside in the blue shirt, I looked inside the store and I motioned for him to come to my direction. The victim, who was identified as Mr. Spearman walked out toward me in a very nervous-acting way. I could see that he had a right bite mark on his right arm and possible blood on his thumb. He continued

to act nervous and agitated. I asked him what's wrong. He said, "I think the two individuals in that vehicle in front of me are involved." I said, "Really?" He said, "Yeah." I said, "Okay. So at that time, I called for backup, because I didn't know what I had at the time.

Q Now, had you talked to these two individuals that were at the car?

A No, sir. Not at, the only thing I asked them was did they know where, I was here on an armed robbery. Did they know where the victim of a case may be that I'm looking for.

Q All right. Let me show you what's in evidence as State's Exhibit 3.

MR. TAYLOR: May I publish this again, Judge?

THE COURT: Yes.

Q Does this look familiar, this vehicle?

A That is. It was nighttime when I seen it. That vehicle does look familiar to me.

Q And the two you're describing as light-skinned black males are standing next to that vehicle?

A That's correct.

Q Okay. All right. Did you see what's marked as State's, it's in evidence as State's Exhibit 1. Did you see this at the Hot Spot, this car there?

A I never seen that vehicle at the Hot Spot.

Q Okay. All right. We'll get back to that, to the white car in a minute. So you called for backup?
A I called for backup.
Q And when you say backup, like send one guy out here to me or what does that mean?
A As many as I could get at the time because I knew I was possibly fixing to have a physical altercation because of the way they were exchanging words, the two light-skinned black males and the victim in the case, Mr. Spearman.
Q So they were, were they, what were they yelling at him about?
A I don't recall what they were yelling about, but I knew, remember it was heated.
Q Okay. Now, what happened once backup arrived?
A I separated Mr. Spearman to investigate my part of it to see exactly what was going on at the incident. He provided me his account of what happened to him, where he was just got off of work and I think it was around 3:00, 4:00 o'clock in the morning at his apartment complex in Greenwood County on 1870 Emerald Road, formerly known as Lexington II Apartments. He was telling me he was walking in the breezeway. And at the time he noticed a red beam light was pointed at him, and then he had a individual say, "You know what this is?" At that time, he produced

all his, everything material-wise he had on him, and then he handed back, they handed him back supposedly his ID and they forced him in a vehicle at gunpoint with his head down. He said he remembered, as more than he could tell as they were traveling, that they'd stop and stop and kept on going and it was more individuals than just one involved in this. And at the time, he did hear them talking about that, because he was in his vehicle when they kidnapped him. They stole his car also. At the time, he recalled talking and communicating by phone that this vehicle is low on gas, we got to get some gas. So they stopped at one location to try to put Mr. Spearman in the trunk. Well, he couldn't fit in the trunk because Mr. Spearman had speakers in the back of the trunk. So they forced him head down and they continue on down the road. They got to the Hot Spot. Mr. Spearman said he saw a chance to break free, so he tried to open the door. At that time, the door wouldn't open, so the guy put a gun to his head and Mr. Spearman grabbed the gun and the gun went off. Mr. Spearman said to react, to try to get free, he in return bit one of the suspect's and he was hoping to get, able to get free. The suspect bit him back as he was leaving the vehicle to run inside the store. Now, at that time, Mr. Spearman looked back and saw his vehicle collide with the Toyota that the two individuals that were

standing at the Hot Spot I identified. He collided, their vehicle collided with their vehicle. The white, it is a white vehicle is what he was telling me his vehicle, left the scene and the two other suspects stayed on the scene.

Q So you didn't see anybody in that white car or anybody matching the description of who was in the car?

A No, sir.

Q Okay. Now, who were the two light-skinned black males that were there?

A I believe they're identified as Mr. Evans and Mr. Nicholson, if I'm not mistaken, sir.

Q Okay. And both of them had tattoos?

A They were tattooed. They were light-skinned tattooed; yes, sir.

Q Now, was the white car ever found?

A Later, as we was canvassing the area and getting the investigation going, we received a call down on Sherwood Drive which is in August Field subdivision about an abandoned vehicle. Several deputies arrived there and were able to determine that this vehicle was, indeed, Mr. Spearman's vehicle and it was towed to be processed, too, I think.

Q How far is where the white car was found, the victim's car to the Hot Spot?

A From the Hot Spot to Augusta, the vehicle was

probably a mile maybe.
Q Okay. And what happened? Were any detectives called? Did anybody start working this robbery case?
A During the investigation, we did contact the Violent Crime Task Unit for Greenwood County to respond to the scene. I did have one of their units to respond on my scene. I think, well, one or two. The other ones came and responded to the sheriff's office.
Q Now, was anybody arrested at the Hot Spot?
A I transported Mr. Evans or either Mr. Nicholson. I can't remember which one, to the Greenwood County Sheriff's Office and another deputy transferred the other one.
Q Okay. And then at that point, you said it was turned over to detectives?
A It was turned over to Investigations; that's correct.
MR. TAYLOR: All right. I have no further questions, Deputy Smith. Just listen up for any questions Mr. Nicholson or Ms. Merrill may have.
THE COURT: Thank you.

CROSS-EXAMINATION

By Mr. Nicholson:
Q Officer Smith, it doesn't sound like you saw Christopher Johnson that night?
A No, sir. I didn't see Johnson. I just saw Mr. Evans

and Nicholson.
Q And nobody mentioned, even mentioned his name that night?
A We didn't know who we were looking for; that's correct.
Q All right. Okay. Thank you.
MS. MERRILL: I have no questions.
THE COURT: You may step down.
MR. TAYLOR: Judge, we just ask that Deputy Smith be released from his subpoena.
THE COURT: He may want to stay out here and watch. Good luck.
MS. WHITE: The State calls Investigator Whit Brooks.
THE COURT: Captain Brooks come forward to be sworn.

WHIT BROOKS, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Ms. White:
Q Would you please state your name for the court reporter?
A Yes, ma'am. Whitfield Brooks.
Q And what's your job?
A I'm a detective with the Greenwood County Sheriff's Office assigned to the Violent Crime Task Force.
Q All right. What's the Violent Crimes Task Force?

A We're a unit comprised of city detectives and county detectives, that is detectives for the Greenwood County Police Department, as well as the Greenwood Sheriff's Office, who are responsible for investigating all violent crimes such as homicides, robberies, kidnappings, forceful rapes, shootings, stabbings, everything of that nature that occurs within Greenwood County.

Q How long have you been on the task force?

A Since its existence which was a year and a couple of months ago, I believe.

Q All right. How long have you been in law enforcement?

A This is my eighth year.

Q All right. Now, as a detective, you don't respond to every crime in the county, do you?

A Not typically; no, ma'am.

Q Okay. How do you get involved in a case typically?

A Typically, either by being assigned a case by my supervisor for follow-up investigation when I come into work or being called in after hours for an incident that has occurred, that's deemed to be an investigation by members of my unit.

Q Turning your attention to July 26, 2013, were you called in to investigate any cases that day?

A I was.

Q Okay. Kind of just beginning from the phone call you got, tell us what you did after that?
A It was early in the morning, if I'm not mistaken, somewhere maybe in the neighborhood of 6:00 o'clock a.m., I received a call from Captain Nick Futch, who is the commander of the Violent Crime Task force. He advised me that there had been an armed robbery and kidnapping, incident, which ended at the Hot Spot. That he was on his way into work and needed me to respond as well. Once I'd gotten up and gotten dressed and was on my way in, as well, I called Captain Futch back and he told me to meet with him at the Greenwood Law Enforcement Center where our office is located.
Q Okay. Is that over here right behind the courthouse?
A It is. It's in the same building as the Sheriff's Office.
Q Okay. What did you do there?
A Once I arrived, Captain Futch was conducting an interview with the victim. I stood by until that was completed. Once that was completed, we took photographs of the victim and of the victim's injuries and also, I swabbed the bite wound on the victim's arm and placed those swabs where they would be submitted to evidence for later DNA comparison.
Q Okay. What's your information? Who were you hoping

to compare those swabs to?
A To ultimately whoever we identified was the suspect that bit Mr. Spearman, the victim.
Q And what's your understanding of who that person is now?
A The suspect that every, all the other Codefendants knew by the name of Tee who we later identified his real name was possibly Torrance McLean.
Q Okay. And we've heard a lot of talk about Tee and, I think where he may or may not be. Where is Tee today?
A He's incarcerated in Georgia right now.
Q Okay. And have we tried to get him back to South Carolina?
A Yes, ma'am. He, the last I was advised, he had attempted to fight extradition. We went through that process. My understanding is that that process has come to where he can be released to us with the exception of he is facing pending or is currently incarcerated on probation violation charges in Georgia. It's currently my understanding that when they finish with him, that we'll be able to extradite him to Greenwood.
Q So he would be here today if Georgia would release him to us?
A Correct.
Q Now, after you interviewed the victim and swabbed his

bite-mark, what did you do then?
A Once we completed at the office and to the best, if I recall correctly, had released Mr. Spearman, myself and Captain Futch then went to the Hot Spot on 25 South.
Q Okay. And what did you do there?
A We went inside and made contact with the clerk on duty and the manager or assistant manager on duty and requested if we could, if they had cameras that would have possibly picked up any of this incident and if we could view them.
Q And did you watch a video?
A We did.
Q What, if anything, did it show?
A It showed very little. There was a camera pointing in the general direction of where this, of where the vehicles pulled up to the fuel pump. All that we were able to observe was the two vehicles pull in the parking lot from a southern direction facing north. They were, they parked on the far side of the fuel pumps, that is between the road and the fuel pumps. So, essentially, from where the camera was recording the incident from, the large actual structure of the fuel pumps was blocking much of what happened. Also, whereas where the camera was lit, it was focusing in a area of darkness whereas the road was dark. So essentially where the camera was lit, there was

the fuel pumps, these cars on the other side of the fuel pumps which the fuel pumps were obstructing the view and then the dark roadway.

Q Could you make out anyone's face or did you even see anyone close enough to see who they were and what they were doing?

A No, ma'am. At the fuel pumps where the vehicles were parked, it was unable to, you couldn't see anything other than that the vehicles had pulled up. A short time later, you then saw the one vehicle pull forward. You couldn't really tell that there was a collision, again, because the fuel pumps were in the way, and then that vehicle pulled off. Possibly, the other vehicle, which would be the white Caprice, pulled off, as well and then the victim proceeded to the inside of the store.

Q Did you ask the manager to make you a copy of the video?

A I did.

Q Now, generally speaking, do you respond to a lot of incidents involving surveillance systems or stores that have surveillance systems?

A Not often, but on occasion.

Q Are these, is it like something where you can just pop in a video, make the copy and be done with it, usually?

A No, ma'am. Typically, the people onsite at the store often have limited knowledge as to the operation of the system itself. Very often, they, you know, indicate to us that they need to either, have some time to figure it out or to call someone who knows more about it.

Q Was the manager able to make you a copy that day?

A No, ma'am.

Q Did you ever go back and try to get a copy?

A We left a, I can't remember if it was my business card or Captain Futch's business card with the manager asking that whenever a copy was made, she would call us so we could come pick it up. In the days and weeks following, we did not return to try to pick one up as we were, we had had a conversation between ourselves, as myself and Captain Futch, during which we discussed that, essentially, there appeared to be nothing of evidentiary value on the video. But that just as a matter of procedure and good practice, we would attempt to obtain a copy of it anyway. Later, once it came back up, we did attempt to see if we could possibly get a copy of the video, but we were informed that it had been erased.

Q All right. After viewing the video at the Hot Spot, what did you do next?

A We then asked, I'm trying to remember if it was the manager or if it was the store clerk. We asked if the

trashcans located around those fuel pumps where the incident occurred, had they been emptied yet. We were told that they had not. We then indicated to them our desire to go searching for any potential evidence. And the manager indicated she didn't have a problem with that. So myself and Captain Futch then went and searched the trashcans near where the incident occurred at the Hot Spot.

Q Did you find anything?

A No, ma'am. Just what you would expect to find in a trashcan.

Q And where did you go after that?

A If my memory serves me correctly, we then proceeded to the Greenwood County shop on Siloam Church Road which is where the county impound lot is located. The victim's vehicle had been towed to that location. At that point and once we arrived there, we then processed and searched the victim's vehicle.

Q All right. I'm going to hand you what's been marked for identification as State's 12 through 19.

MS. WHITE: May I approach the witness, Your Honor?

THE COURT: You may.

Q If you could just look at all of those as a group.

A Yes, ma'am.

Q Are all of those pictures that were taken at the

county impound lot?
A Yes, ma'am; they are.
Q And what are they pictures of?
A Of either the interior or the exterior of the victim's vehicle of the --
Q Have --
A Go ahead.
Q I'm sorry. Go ahead.
A There's also two pictures of a weapon-type laser which we found within the car, and then also pictures of a fragment of a lead projectile from a firearm.
Q And are all of those pictures accurate depictions of what you saw that day?
A Yes, ma'am; they are.
MS. WHITE: Your Honor, the State moves Exhibits 12 through 19 into evidence.
THE COURT: No objection, Mr. Nicholson?
MR. NICHOLSON: No objection.
MS. MERRILL: No objection.
THE COURT: Ms. Merrill? Thank you. 12 through 19 admitted as State's Exhibits without objection.
(Whereupon, State's Exhibits 12 through 19 were admitted into evidence.)
MS. WHITE: So I can publish these, Your Honor?
THE COURT: You may.

Q All right. You just mentioned a laser, Detective Brooks. Can you see from up there?
A I can.
Q Okay. Can you see the laser in that picture?
A Yes, ma'am; I can.
Q Okay. Is that, it's sitting in the middle of the front seat?
A Yes, ma'am.
Q Okay. And that was State's 12 for the record, and this is State's Exhibit 18. What is that a picture of?
A That's the same laser. In that picture, you can tell that the laser is still on and activated by the red dot.
Q Okay. That dot showing on the seat right there?
A Yes, ma'am..
Q Had anyone touched the laser or turned it on?
A No, ma'am. Both those pictures are before it was disturbed at all by anyone from law enforcement.
Q What's this right here, is that a cellphone, do you know?
A I believe, I'm not for sure, but I believe that appears to be a remote for a stereo system.
Q Okay. Now, in looking at the victim's car, did y'all do anything to try to identify any perpetrators?
A Oh, yes, ma'am. We did dust for in an attempt to collect latent prints.

Q Okay. So this black stuff all over the door of the car, what is that?
A The fingerprint powder.
Q Is that another, a shot of a different side of the car?
A It is, also showing the fingerprint powder.
Q This is a close up?
A Yes, ma'am.
Q Were you able or did you send anything off for analysis, fingerprint analysis?
A I didn't personally. Any lifted prints were collected by Sergeant Griffin of the Greenwood Police Department. She's the crime scene technician and from reports I saw, my understanding is samples were sent to SLED for analysis.
Q Were they able to identify anyone?
A No, ma'am.
Q And just generally speaking, you said you've been in law enforcement eight years?
A Yes, ma'am.
Q How many cases, ballpark, would you say you've investigated?
A As far as an investigator, I've probably investigated northward above a thousand cases. As a uniformed deputy, I quite likely responded to thousands of incidents.

Q All right. Is it common to have fingerprints come back?
A In eight years, I've had it happen twice.
Q What about DNA, just generally speaking --
A All right.
Q -- any sort of forensic smoking-gun-type evidence, is it common to have that come back?
A I can't recall a situation where I ever had DNA come back on one of my cases. On occasions, I have heard of other officers or detectives that have had successful DNA results come back.
Q And again in this case, you haven't had the individual compare the swabs to that?
A Regarding the bite, that's correct.
Q Now, in further searching the victim's car, did you recover anything besides the laser?
A Yes, ma'am. We located what appeared to be a impact spot from what appeared to be a bullet hole in the back of the front passenger seat. That location was consistent with the information the victim had provided regarded where in the direction the weapon would have been discharged while inside the vehicle. We then attempted to see if we could locate any type of projectile within this bullet hole and did find the fragments of a projectile inside.

Q Okay. I'm going to show you State's Exhibit 6. It's already in evidence. That's the hole you're talking about?
A Yes, ma'am.
Q Was it long like that or did y'all do that digging in it?
A Honestly, I don't recall. In that picture, you can see the hole in the, in the phone.
Q You're talking about right there?
A Yes, ma'am. Which is, as it was.
Q And you mentioned a fragment and this is State's Exhibit 13. Is that what you're talking about?
A Yes, ma'am.
Q All right. Is that enough to really, well, you don't have a weapon in this case to compare to the fragment?
A No, ma'am.
Q Did you ever process or look at the, Mr. Nicholson's car?
A Yes, ma'am.
Q All right. I'm going to approach you with what's been marked with State's Exhibit 9 and 10.
MS. WHITE: May I approach, Your Honor?
THE COURT: Yes.
Q For identification purposes.
A Yes, ma'am.

Q Is that the victim's car as you saw it?
A Not the victim's, but Mr. Nicholson's.
Q I'm sorry. Mr. Nicholson's?
A Yes, ma'am.
Q And is that an accurate depiction of what Mr. Nicholson's vehicle looked like?
A Yes, ma'am.
MS. WHITE: The State moves Exhibits 9 and 10 into evidence, Your Honor.
THE COURT: Any objection?
MR. NICHOLSON: No objection.
MS. MERRILL: Can I see. No objection, Your Honor.
THE COURT: 9 and 10 will be admitted without objection.
(Whereupon, State's Exhibits 9 and 10 were admitted into evidence.)
Q Okay. This is State's Exhibit 9. Is that the damage to Mr. Nicholson's vehicle?
A Yes, ma'am.
Q His bumper is kind of dragging the ground?
A Yes, ma'am.
Q And then a better view of the bumper. Did you search Mr. Nicholson's vehicle?
A We did.
Q Did you find anything of evidentiary value in it?

A At the time nothing we believe was evidentiary value.
Q Okay. Okay. Did you find a CD player?
A We did observe a CD player. It was photographed as a part of our search. At the time, we didn't have any information or knowledge that it was, that it applied to this case at all.
Q Now, after you searched the vehicles, you didn't search them on the same day, did you?
A No, ma'am. I believe it was probably at least a day or two later.
Q Because you had to get a search warrant for Mr. Nicholson's car?
A Yes, ma'am.
Q After searching the vehicles, did you, what did you do next?
A Regarding interviewing of suspects?
Q Yes.
A Okay. To the best of my recollection, on the same day as the incident occurred, later that day, myself and Captain Futch attempted to interview Mr. Antonio Nicholson. We advised him of his Miranda rights. He agreed to speak with us. After speaking with him for a short period of time, it became every obvious that he was still telling a false story regarding an alleged wreck that had occurred between his vehicle and another vehicle

at the Hot Spot and he was indicating that he had no further knowledge of anything about this. Based on the information from the victim, we knew that to be false. I can't remember how many, but it was, I believe, couple of days when Mr. Nicholson was re-interviewed for a second time. I believe he had sent a letter out from the jail requesting for us to speak with him. At that point, he was interviewed by Captain Futch.

Q And we'll get back to that in a second, going back to jail letters. Is it common for you to get mail from people in jail?

A Yes, sir.

Q What's typically the tone of those letters?

A They're usually pretty cordial. They're normally the inmate writing, the inmate seems to be desiring something from you as the investigator on this case which is why he's writing the letter. So they usually begin really cordial with a lot of thanks, how you doing, how's everything going, stuff like that. And they get down to, you know, usually wanting to speak with you further or about whatever their issue is.

Q Are they usually wanting something from you?

A Almost exclusively.

Q Do you respond to every letter you get from the jail?

A No, ma'am.

Q Now, getting back to, you had another occasion to speak with Mr. Nicholson. Did you have his phone in evidence?
A Yes, ma'am.
Q Were you able to get his phone number for his phone?
A Yes, ma'am. If I remember correctly, while willingly cooperating with us, provided us with his phone number which was corroborated by the fact that this phone was in evidence.
Q Was he able to give you a phone number for Christopher Johnson?
A He was.
Q Do you happen to have those numbers? Do you know what those numbers were?
A Yes, ma'am; I do. Mr. Nicholson's phone number was 706-244-2566 and Mr. Johnson's phone number was 864-933-4207.
Q And what did you do once you had those phone numbers?
A Once we had Mr. Nicholson's phone number, to the best of my recollection, we then sent a letter of preservation to Verizon Wireless in an attempt to preserve any potential evidence that would be contained within the phone records. Subsequent to that, we then drafted a search warrant for the phone records for Mr. Nicholson's phone which we sent to Verizon Wireless. It was days

later, once we had more information corroborating the phone number in Christopher Johnson's possession that I then sent a search warrant and sent it to, ultimately to New Star who handles legal compliance for Alltel to obtain his phone records.

Q And you ultimately got records for Mr. Nicholson and Mr. Johnson's phones?

A Yes, ma'am.

Q All right. Did you look at those records and go through them as well?

A Yes, ma'am.

Q All right. I'm going to show you what's been previously entered as State's Exhibit 26.

MS. WHITE: May I publish, Your Honor.

Q These are the text messages from Mr. Johnson's phone. Do you see that first line is highlighted?

A I can see it. I can't make out what the phone number is from here.

Q Do you need to --

MS. WHITE: Your Honor, can I have the witness stand down?

THE COURT: Sure.

A I can step down?

Q Yes. Okay. Who is that text message from and to?

A Those text messages appear to be originating from Mr.

Johnson's cellphone. The first one was sent to Mr. Nicholson's cellphone. The second one is sent to a different number. I don't know what, but it does have a area code that corresponds.

Q Okay. And when were those messages sent?

A On July 26th, 2013, it appears the one to Mr. Nicholson was sent at 16:30 which would be 4:30 p.m. And the one with the unidentified number, was sent at 16:39 which would be 4:39 p.m.

Q So this is roughly twelve hours after Mr. Nicholson is in custody?

A Yes, ma'am.

Q I'm going to show you what's been marked as State's Exhibit 27, which is Mr. Johnson's phone records and without getting into all of the phone calls. Do you need to step down again? Can you see that?

A I apologize. I shouldn't have sat back down.

Q The one that's highlighted --

A Yes, ma'am.

Q -- can you tell who that's from and to?

A The two numbers, the number on the left is Mr. Nicholson's number. The number on the right is Mr. Johnson's number and looking at these, it appears to be showing there was an incoming call which would indicate, I believe it was received--

Q Was it received by Mr. Johnson from Mr. Nicholson?
A I obtained copies of the records of them both. Was this Nicholson's phone or the records from Johnson?
Q This is the records from Johnson's phone.
A This would be received by Johnson from Nicholson.
Q All right. And what time and day is that phone?
A 5:49 a.m. I'm sorry. I was looking at the wrong spot. 3:12 p.m. on July 25th.
Q So that was approximately twelve hours before they met up?
A Yes, ma'am.
Q And they spoke for about five minutes?
A Yes, ma'am.
Q And again, that's the day before, twelve hours before the incident occurred?
A Yes, ma'am.
Q Now, and then we can see lots of phone calls before the incident in the early a.m. Is that correct?
A Yes, ma'am.
Q Again, and who are those, are they two and from both of them?
A Yes, ma'am. They appear to be some outgoing and some incoming which indicates that they were calling back and forth.
Q All right. And going down to after the incident,

which I think would be this line right here. Starting from there, and I'll just hand this back to you. Can you, after Mr. Nicholson was in custody, can you tell me how many times Mr. Johnson tried to call him?

A It appears 19.

Q And when was the last time he tried to call him?

A 12:08 p.m.

Q That's all the questions I have about that. Turning more to the statements you took from Mr. Nicholson and later Mr. Evans, well, first of all, you didn't take the statement from Antonio Nicholson, did you?

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

Q Captain Futch took that?

A Yes, ma'am.

Q And you took several statements from Shadarron Evans?

A Yes, ma'am. At least two recorded statements, I believe.

Q All right. Again, generally speaking, is it common to get multiple statements from a Defendant?

A It happens fairly regularly.

Q Is it common to get more details as time goes on?

A Yes, ma'am. Usually, the first one will be the least truthful and the least detailed and usually, they may progress in truthfulness and details as time goes on.

Q Now, when you first started investigating this case,

was anyone able to give you real names?
A Not for the most part. I believe Antonio Nicholson knew Shadarron Evans' name and Shadarron knew Antonio, but other than that, no, ma'am.
Q So you had to, how did you develop the full names?
A The first nickname that came out was Bow-wow. That nickname is pretty commonly known in Greenwood in as far as who goes by it. Myself, Captain Futch, other officers know Christopher Johnson to go by that nickname. A photo lineup was then generated containing Christopher Johnson's picture and shown to Antonio Nicholson who identified that was, that the person in that photo lineup who was Christopher Johnson was Bow-wow.
Q And the picture, I think we've all seen it several times now, but State's Exhibit 24, is that who you understand to be Christopher Johnson?
A Yes, ma'am.
Q All right. So that's how you identified Mr. Johnson?
A Yes, ma'am.
Q And then was it a similar process for Mr. Brown to show the lineup to someone and identify him?
A Yes, ma'am. All we had to start with was the nickname. Through some research and some investigation, we were able to develop a real name. We then took that real name, had that person put in a photo lineup, and then

Shadarron Evans identified Mr. Brown out of that photo lineup.

MS. WHITE: All right. Please answer any questions Mr. Nicholson or Ms. Merrill has.

CROSS-EXAMINATION

By Mr. Nicholson:

Q Detective Brooks, has it turned out that Shadarron Evans and Antonio Nicholson are substantially telling the truth?

A Yes, sir.

Q And that's your opinion?

A Yes, sir.

Q Now, you say you've been in investigations for how long?

A In investigations for between three or four years.

Q And you've done a number of cases, dozens, hundreds of cases?

A Yes, sir.

Q And maybe I'm taking this from TV or whatever, but I know that it seems like detectives have different ways of dealing with suspects, witnesses and especially corroborating witnesses; is that right?

A Yes, sir.

Q And each detective kind of has a different way of doing things or getting things out of people; is that

right?
A To an extent, I would agree that everyone doesn't operate exactly the same. Typically, everyone has their own style.
Q All right. Well, I've seen this and, again, I'm talking about TV. I've seen where detectives want to misrepresent things to suspects to get them to say something; is that your style?
A No, sir.
Q Or is your style is when you tell somebody something that, you know, it's going to be the truth and you going to stick by what you say?
A In general; yes, sir.
Q Well, let me ask you this, in dealing with Antonio Nicholson and Shadarron Evans, were you, did you misrepresent things to get them to say something?
A I did not take a statement at all from Mr. Nicholson. But from Mr. Evans, no sir, I don't think I misrepresented to him.
Q So you sticking by what you said with them?
A Yes, sir.
Q All right. Now, do you remember in questioning Mr. Evans and in prefacing your conversation with him, you said if you tell me the truth about what happened and it turns out what you say is the truth, then I'll work with

you in getting more appropriate charges against you?
A You're leaving out a few parts but --
Q All right.
A -- that has an element of truth to it.
Q Well, tell me what you said in that regard.
A Without quoting myself, I essentially told him that if he was one-hundred percent honest and through the investigation it turned out that what he was telling was the truth, then at no point during this incident did he possess a firearm, that at no end during this incident did he commit the actual armed robbery by robbing someone with a firearm and then if at no point during this incident did he hold anyone against their will and, furthermore, if through the investigation, it came out that armed robbery and kidnapping were not appropriate charges for him, that I would speak on his behalf to have his charges amended to something more appropriate.
Q Okay. And you've substantially read that, but I would like to read what we have in a transcript. I want to see if this is what you remember being said.
A Okay.
Q This is your statement: "When this investigation is over, what proves to be the truth is that you had no part in kidnapping. At no time did you have, hold someone or help hold someone against their will. And you had no part

in armed robbery meaning that you didn't have a gun, you didn't rob somebody, anything like that. What I have told you is that if all of that, if all I've just said is true, you hold up your end of the deal and that part right there is true, that you will not be prosecuted for kidnapping and armed robbery."

A That sounds pretty correct.

Q Do you want to look at the transcript or do you agree that's what you said?

A I believe you read it off the transcript and that sounds correct.

Q Okay. And you're saying you didn't really deal with Nicholson; you weren't present when he was questioned?

A If I recall, I was present during his initial questioning which is when he stuck to that story that there was a wreck at the Hot Spot and the story has really zero truth to it. I was not present for the interview when he ultimately provided this statement that did have a lot of truth in it.

Q And that was to Detective Futch?

A That was to my supervisor, Captain Futch.

Q Okay. Captain Futch. All right. And you're saying what you found out from, after you made that statement to Evans and what you found out he said and you've been at this trial this whole time, right?

A I have.
Q So you thinking he's telling the truth?
A Who is that, Mr. Evans?
Q Yeah.
A Substantially; yes, sir.
Q All right. So that at this point, you don't think he's guilty of kidnapping and armed robbery?
A No, sir; that's not correct. You can ask me a question to where I can respond to your look.
Q All right. Well, he told you substantially the same thing back on that date, didn't he?
A Yes, sir.
Q Okay. Well, did --
A -- as a law enforcement officer, I'm familiar with the, "hand of one, hand of all", principle. And I do believe that Mr. Evans did have a part in this incident. He did have a part in kidnapping, holding someone against their will. He did have a part, was a party to this armed robbery.
Q Well, but did you tell him that at that point? You said, I mean, it sounded like you were leading him to believe that if he told the story he was telling you at that time, that the appropriate charge would not be kidnapping or armed robbery.
A And at that time, Mr. Nicholson and I had, we had not

completed the investigation.
Q Okay. So he had not told you the truth?
A You talking about that original statement?
Q Well, I'm wondering about your deal. You said that if you tell the truth, then I'm going to go with the appropriate charges of not armed robbery and not kidnapping and at the day --
A But you're leaving out some of what I said again.
Q Okay. What'd you say?
A What I said was if you tell the truth and you didn't have, possess a weapon at any time and you didn't have anything to do with holding someone against their will, which if I can go right there, I would indicate that at the point Mr. Evans testified, as well as the victim, as well I believe Mr. Nicholson, that he moved back from the silver Toyota Camry to the victim's vehicle which would contain the victim which was being held against his will. I would argue that that has to do with him holding someone against their will.
Q Okay. Because he got back in the other car with the victim?
A With the victim who is being held against his will.
Q All right. So that's what gets you out of your deal or your arrangement with Mr. Evans?
A I believe it has me sticking to my arrangement with

Mr. Evans.

Q So you can prosecute him for armed robbery and kidnapping?

A That's what he's been charged with.

Q All right. And both Evans and Nicholson lied about something about an accident happening at the Hot Spot; is that right?

A Yes, sir. Well, to clarify, there was a collision between the two vehicles. But their story regardless, they had no knowledge of this kidnapping or robbery incident of which Mr. Spearman was the victim is not true.

Q All right. From your investigation, isn't it true that Christopher Johnson was the last to become involved with these other four people? I mean, he's the last one to join the group?

A Physically?

Q Yes.

A Yes, sir.

Q And he's the first one to leave?

A Yes, sir. Physically; yes, sir.

Q All right. Well, what else is there?

A I would indicate that he didn't have to be physically present to be involved with this, which I believe was evidenced by Mr. Nicholson testifying the preplanning of this incident or, well, of the stealing of the cars, at

least.
Q Of the stealing of the cars, right. And that's what the plan was from your investigation, wasn't it?
A That's my understanding; yes, sir.
Q And you don't have any evidence whatsoever that at any point there was any discussion among these men that let's go rob somebody and hold them at gunpoint? Any discussions where Christopher Johnson would have been involved in that discussion?
A No, sir; I don't.
Q All right.
MS. MERRILL: Thank you. May it please the court?
THE COURT: Yes, ma'am.

CROSS-EXAMINATION

By Ms. Merrill:
Q Now, Mr. Brooks, as part of this investigation, you showed a lineup that included a picture of Mr. Brown to Mr. Evans; is that correct?
A Yes, ma'am.
Q And in that lineup, the picture of Mr. Brown, he is wearing a full beard; is that correct?
A I believe that was correct; yes, ma'am.
Q Do you need to see it to be certain?
A To the best of my recollection, he had facial hair all over his face. I don't have it right in front of me,

so I don't want to say for certain.
Q Okay. And when you talked to Mr. Evans about that, he told you that he was going to need to call some family members or somebody before he could give you a real name; is that right?
A Essentially, but that was well prior to him being shown a photo lineup. That's a bit out of order what you have.
Q Well, when was he shown the photo lineup?
A I don't have the date, which you probably do have in front of you.
Q No, I just have my notes. Would it be on your incident report?
A It would be on the photo lineup.
Q Oh, the date you showed --
MS. MERRILL: May I approach, Your Honor?
THE COURT: Yeah.
Q I'm going to show you what's marked as State's Exhibit 23 for identification purposes. What's the date on that?
A 7/31/13.
Q And that's the date that Mr. Evans picked up Mr. Brown; is that correct?
A That is correct.
Q And Mr. Evans gave his first statement to you on July

30th, 2013; is that correct?
A Yes, that sounds correct; yes, ma'am.
Q Okay. So the day after he saw this and then he told you he would need to get in touch with some family members before he could give you a real name?
A No, ma'am. I believe I can clear up the issue if you'll allow me to answer it.
Q Yeah. Go right ahead, please.
A All right. To the best of my recollection, it was during the interview with Mr. Evans, which as you referenced is on July 30th, that he acknowledged the suspects that he only knew them by their nicknames. Part of what I requested of him was as he spoke with family members to try to learn their real names. Evans later told me that he'd spoken with his mother who had indicated to him two things. One was that she believed C-Lo's real last name was Corey Brown. And two, that he has been arrested recently following this incident.
Q That who had been arrested recently following this incident?
A Mr. Brown.
Q That was her belief?
A That's what she told Shadarron Evans was her belief.
Q But that wasn't actually true, was it?
A It was completely truthful.

Q Mr. Brown was not in custody?
A He was in custody in Georgia.
Q After he was arrested for these warrants, correct?
A No, ma'am. As I recall, somewhere around the same time, he was arrested in Georgia in a completely unrelated incident. I believe he made bail and was released. He could have remained incarcerated. I'm not sure, but that led us to the identification of Mr. Brown.
Q So you're the investigator on this case. Do you know the circumstances behind Mr. Brown being picked up in Georgia?
A No, ma'am; I don't.
Q This is your case, right?
A It is. I'm not in Georgia.
Q You're the chief investigator, though?
A I certainly am.
Q So you requested to Georgia that they, you put a hold on him; is that what you would call it?
A We would have entered the warrant into NCIC or entered an arrest warrant into NCIC and at whatever point they came in contact with him, we would, NCIC, if it would have came back, we would confirm that he had been placed on hold on him until we could pick him up.
Q So you wouldn't have known that he was driving a car with dark windows when he was picked up by Georgia?

A No, ma'am.
Q And do you have any paperwork or have you shared any paperwork with the prosecutor's office that shows Mr. Brown was in custody shortly after this incident?
A No, ma'am; not that I'm aware of.
Q So you've not seen any documents, it's just based on a belief of Mr. Evans' mother that you made that statement; is that correct?
A No, ma'am.
Q Well, what else is it based on?
A It is based off of after we developed the information from Mr. Evans, which came to him via his mother, that Corey Brown was C-Lo's real name and that he had recently been arrested in Georgia.
Q That's what I'm asking about. Do you have any documentation showing that and have you given any documentation to the prosecutor's officer?
MS. WHITE: Your Honor,--
THE COURT: Wait,--
MS. WHITE: Your Honor, I believe he was answering when he got cut off.
THE COURT: I'm going to let her ask the question first, because I'm a little confused. But start with the question about the arrest in Georgia and then follow up into everybody's information he got from the mother.

Q Okay. The arrest in Georgia that you're saying occurred before he was picked on these charges --
A Yes.
Q -- do you have any documentation of that?
A I don't.
Q And did you talk to anybody else besides Mr. Evans to get this information?
A What information are you speaking of?
Q The information that Mr. Brown had been arrested in Georgia on an unrelated charge?
A I didn't talk to someone. I found a record, I found information, documentation of that information.
Q I just asked you if you found documentation.
A No, ma'am. You asked me if I turned over documentation to the Solicitor's Office.
Q Okay. So you have this documentation in your file?
A No, ma'am.
Q So this is your case. You have this documentation that exists somewhere?
THE COURT: Ms. Merrill, ask this question: What documentation did he find?
Q Well, yeah. What did you find?
A Once we received the information from Mr. Evans via his mother that Corey Brown was possibly C-Lo's real name and that he'd been arrested in Georgia, we then took to

the Internet to what was the equivalent of a website in Georgia that operates similar to our local jailbirds papers where mugshots and names are posted. We pulled that up. Being that we had received that information from Shadarron Evans, we then sat down with Antonio Nicholson and began looking through those, allowing him to look through those mugshots until he pointed out and said, "That person right there. That's C-Lo. That's who was with us." Once he did that --

Q Mr. Nicholson?

A Yes.

Q You're telling me that Mr. Nicholson has picked out Mr. Brown?

A Not out of a photo lineup.

Q But from a photo?

A Yes.

MS. MERRILL: Your Honor, may we approach?

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

THE COURT: All right, folks. I want to take a quick break. Y'all step in the jury room. You can't begin discussing the case.

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

THE COURT: All right. Ms. Merrill, I'm going to give you a chance to proffer a little further and explore further the issues and clarify some things, and then we'll hear what you want to put on the record.

MS. MERRILL: Thank you, Your Honor.

PROFFER TESTIMONY OF WHIT BROOKS

Q Officer Brooks, when you showed this picture, or let me get this, I just want to make sure I understand. You got a picture off the Internet of Corey Brown; is that correct?

A There were lots of pictures on the Internet that was --

THE COURT: Hold on. How about clarify whether they're printed out, how the methodology, because I still think that's unclear.

MS. MERRILL: Okay.

THE COURT: Were you looking on the Internet or were you reading it in a paper, or you had printed out something off the Internet. Start there.

MS. MERRILL: Okay.

Q Okay. Were you looking, you said earlier you went on a website; is that right?

A It was actually another detective in our office who was working side by side with me; but yes, he went on the Internet.

Q Were you there?
A I was in the room.
Q Okay. And was, in looking at this, looking at it over the computer screen, was it one picture?
A No, ma'am.
Q What was it?
A It was lots of pictures.
Q Of what?
A Imagine when you're looking at a jailbirds, you know, paper like from here, it's literally, ten, twenty, thirty, forty, bunches of mugshots on a piece of paper.
Q Okay. And was Mr. Nicholson in the room with you when you were looking at this computer screen?
A He was sitting beside another detective. I was in the room and he was viewing these pictures.
Q Okay. And on this website, were there pictures of males and females?
A I don't recall.
Q Were there pictures of white people and black people?
A I don't recall.
Q Did you ever print out a single picture to show Mr. Nicholson?
A We did, no, we did not. We did print out a single picture that was the picture contained on that website.
Q So when did Mr. Nicholson say, yeah, that's Mr.

Brown?
A When he saw Mr. Brown's picture.
Q On this website with other pictures that you don't, that you can't tell me anymore about?
A Correct. Once he saw Mr. Brown's picture, he said, "That's him." That picture was printed out and that was contained in the case file.
Q A single picture of Mr. Brown?
A Yes, ma'am.
Q Okay.
THE COURT: Is that it?
MR. BROOKS: No, sir; that's Mr. Johnson.
THE COURT: Okay.
Q And that would be from the website, the same place, the same source?
A Not only is there a picture, kind of over it like we get a proof, it says, you know, something like whatever the website's name was.
Q Okay. Because I've not seen this at all, so I'm, that's why I'm trying to get you to --
THE COURT: All right. Well, tell you what, hang on a second. Take a short break and we'll take a break. Give him his file and see if he can put his hands on it and let her see and then you --
MS. MERRILL: Okay.

THE COURT: -- and then you, then let's proffer a little bit more. We'll take about ten minutes and you give her whatever she wants.

(Whereupon, a short break was taken.)

THE COURT: All right, Ms. Merrill. You got any further questions. Well, I figured you would if you looked at them.

MS. MERRILL: Yes, sir. Yes, sir; I do, if I may.

THE COURT: Okay.

MS. MERRILL: I don't know if we've entered it, but if we want to enter this as a Court's exhibit.

MS. WHITE: Here's an extra copy.

MS. MERRILL: I think Ms. White laid one there for us.

(Whereupon, Court's Exhibit 1 was marked for identification.)

MS. MERRILL: May I approach the witness, Your Honor.

THE COURT: Yes.

CONTINUE PROFFER TESTIMONY OF WHIT BROOKS

By Ms. Merrill:

Q All right. Officer Brooks, I want to hand you what's marked as Court's Exhibit 1. Is this the picture you were referring to that you showed to Mr. Nicholson?

A I did not show him. This is, I believe this is the picture he looked at. It was not on a white sheet of

paper like this --
Q Okay.
A -- when he saw it. It was a computer screen with a bunch of other pictures.
Q Okay. And what's the name of the website on that picture?
A It says, "Mugshots.com."
Q Okay. And in looking at this, how did you arrive at this picture on that website?
A I did not. As I previously testified it was another detective, Detective Lewis --
Q Okay.
A -- was sitting at his computer with this website pulled up, looking at images with Antonio Nicholson.
Q So you don't know how he pulled it up? You don't know if he searched for a name or if he searched a county?
A From, I can tell you what he told me and that's that he went to, he found a website that was like Jailbirds and was looking at the mugshots.
THE COURT: Since you're proffering, you can ask more specific if he knows anything further, even though it would be hearsay.
Q So he said he found that website. Do you know if once he got to that website how he was able to arrive at that picture?

A No, ma'am.
Q You don't know if he searched for a name?
A No, I don't.
Q Okay.
MS. MERRILL: If I can, I don't know if it will be easier for all of us just to approach, Judge --
THE COURT: Sure.
MS. MERRILL: Judge, I'm going to show you what I'm seeing on this website on my computer screen realizing --
THE COURT: All right. I want you to bring it right here to Ms. Holston's bar.
MS. MERRILL: I mean, I --
MR. TAYLOR: Do we need to put your laptop into evidence?
MS. MERRILL: Yes. Yeah. It's website. It's called Mugshots.com and what I've done is I logged onto Mugshots.com and what I have done is at the top of the screen, you'll see this disclaimer and all this. And over here in the top right corner, I have typed in the name "Corey Brown" in quotation marks.
MR. TAYLOR: Now, did you have to have a password for that or you just typed it in and just anybody can get on there?
MS. MERRILL: No, it's a public website. Anybody can get on it. So I checked that and then when I clicked

search, it comes up with results. I don't know if it tells me exactly how many. One, two, it looks like there's ten results on this page and it looks like there's going to be ten results on each page as you scroll up.

MR. TAYLOR: If you go back, too, you can search by State, so you can pull it --

MS. MERRILL: Yeah, I was about to go there. But what I wanted to say is when you type in this name, Judge, you see the first picture that comes up is a white male. The second picture is a black male. This is the first page. The third picture is a black male. The fourth is a black male. The fifth is a black male. Sixth is a black male. Seventh is white male. Eighth is black female. Ninth picture is black male. Tenth picture is black male. And as Mr. Taylor was indicating, you can from here search on, click on a state. So it's not going to be exactly what he did, but we're going to click on Georgia. It looks like there's 86 results for Georgia.

THE COURT: All right. I get the idea, but what's the point.

MS. MERRILL: I was just asking if that's how he found it but --

THE COURT: Yeah.

Q I don't know. I mean, is that what that looked like when you and Mr. Lewis were looking at it together?

A Inasmuch as it's a relatively blank screen with mugshots and a name next to them. I was not looking at them. It was Detective Lewis, Antonio Nicholson. As our desk was located in the same room, I was in the same room.

Q Okay. And when you looked at your file, what information did you have that Mr. Brown had recently been arrested?

A Other than the picture we turned over to you. I guess, I don't get exactly what you're asking.

THE COURT: I thought, since we were proffering, I thought earlier the detective stated he was passed along information through Evans' mother's belief that there had been an arrest made an a gentleman named Corey Brown, who also went by C-Lo, after the 26th of July. But maybe somewhere else and with that information, this happened.

A That is substantially correct.

THE COURT: That's what I understood, Ms. Merrill, he has testified to over a series of three or four questions. I think I summarized the evolution of the discovery of potentially C-Lo's proper name.

A Yes, sir.

MS. MERRILL: Essentially, what this amounts to is Mr. Nicholson first identified Mr. Brown through a lineup. I was not provided that information and didn't have that lineup. Had I had that lineup, I may have made a pretrial

motion regarding that lineup and while this information is not exculpatory, it is material and Rule 5 under our court rules certainly covers that the State is to provide information to the Defense that is material. Under Rule 5(a)(1)(C), upon request anything in the custody or control of the prosecution which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial or were obtained for or belonged to the Defendant. So essentially and that's, the other thing I notice in this picture that I'm looking, that we both presented to the Court is in this picture of Mr. Brown, it looks like just has a mustache and that's what Mr. Nicholson has testified to. So I don't know that his in-court identification wasn't because he was shown this picture because I never had the opportunity to question him during a pretrial motion, because I didn't know about it. If you'll give me one minute, Your Honor, to discuss something with my client.

THE COURT: Sure.

MS. WHITE: Judge, can I ask Detective Brooks a question that may help with this a little bit?

THE COURT: Hold on. Ms. Merrill, anything else from you regarding his proffer?

MS. MERRILL: Not regarding his proffer but if we --

THE COURT: Okay.

MS. MERRILL: -- can continue after Ms. White asks. Thank you.

THE COURT: You may.

PROFFER TESTIMONY OF WHIT BROOKS BY MS. WHITE

By Ms. White:

Q Detective Brooks, did you ever have a discussion with Ms. Merrill about how you arrived at her client as a suspect?

A I did.

Q Did you explain this process to her?

A I did.

Q Thank you.

PROFFER TESTIMONY OF WHIT BOOKS BY MS. MERRILL

By Ms. Merrill:

Q When was that, Mr. Brooks?

A I don't recall the exact date. My, me, you, Mr. Powers, and Captain Futch were seated in Captain Futch's office when you asked me about this. Not only did I explain the process; I showed you the photo lineups.

Q I recall you showing me, I recall that conversation and I recall you showing me the lineup that we have been discussing where he's in there, the picture.

A Right.

MS. MERRILL: Give me one minute and let me see if Mr. Powers remembers something that I don't.

THE COURT: All right.

MS. MERRILL: Your Honor, some of the strongest evidence against Mr. Brown in this case are the identification by his two Codefendants and one of those Codefendants testified that, you know, Mr. Brown had a mustache and no beard. And that's exactly what this picture shows and perhaps, I have no memory and I, but I just asked Mr. Powers. We both recall talking to Captain Futch and Officer Brooks about the other lineup that Shadarron Evans showed, was shown. But I specifically remember talking to him and asking him had he shown the lineup to any other Codefendants or to the victim, and it was my understanding from our conversation that day that he had shown it to one Codefendant and that was Mr. Evans. Because I distinctly remember asking him, all right, have you shown it to other Codefendants or have you shown it to the victim and at that time, the victim had not been shown a lineup including Mr. Brown. And the only one I recall seeing is the one with the six pictures on it.

THE COURT: Okay. I'm going to distinguish, for the record, the lineup.

MS. MERRILL: I think it's in evidence as 23.

THE COURT: It is. I mean, I'm confident, but what I want to distinguish is, ask further questions to distinguish the paper lineup with six photographs in it

and the process done by you on the computer screen. Are you characterizing that as a lineup and that process, also, Ms. Merrill, because that's where I'm getting confused is, the Detective has not hesitated. He's explained it, but I don't characterize that as a lineup. It was a process looking at the computer screen at the gentleman/Codefendant standing there. I don't want to call it looking at mugshots maybe.

MS. MERRILL: Okay.

THE COURT: This, that in the traditional, I don't have it in my hand, but one, two, three, that's showing a photographic lineup.

MS. MERRILL: Yes.

THE COURT: Traditionally?

MS. MERRILL: Yes.

THE COURT: What he's described is a more computer and not police lineup, it was most wanted computer website. Reviewing it with the Codefendant, how about that?

MS. MERRILL: Are you making this clarification for --

THE COURT: Your record and so I understand what you're arguing.

MS. MERRILL: Okay. I would say it is characterized as a line up, because there is case law about being shown

one picture or different pictures of different genders, different races and that's essentially what's happened here. From what I understand, they were scrolling on a website and so he would have seen other ones.

THE COURT: Here's my problem. He wasn't doing it. I'd rather have the other guy here. I mean, can we not get Lewis here, is he around?

MR. BROOKS: I believe he is in Kiawah Island on vacation right now.

MS. WHITE: And, Your Honor, we had never intended to introduce any of this. I think, well, the State has an argument regarding that but I can put that on the record.

THE COURT: All right. Well, let Ms. Merrill finish.

MS. WHITE: And I'm kind of confused, Your Honor, just for the purposes of my own clarification. What kind of motion is this?

MS. MERRILL: And I haven't officially made it.

THE COURT: She's making a Rule 5 discovery motion violation is what's she characterizing thus far. She's mentioned Rule 5.

MS. WHITE: I guess my question is what remedy is she's seeking because she's the one who's--

THE COURT: Well, she's not gotten that far. We've been kind of herky-jerky.

MS. MERRILL: Well, I'm still getting a little more

information. I'm talking to my client and, frankly, we're still trying to make that decision.

THE COURT: Well, here's what I'm thinking about doing. I want you to finish your proffer and I think we'll break for the day and then you can decide what you want to do. That's kind of where I'm at, because I want to understand a little better, too, because it's not clear to me exactly what you're asking. And I think it's come upon you so quickly, you're not clear on what you want to ask for, too.

MS. MERRILL: And that's accurate, Judge, and my client and I have had some time to talk but I don't think I can make this motion without a little more information from him.

THE COURT: All right. Tell you what let's --

MS. WHITE: And, Judge, just for the record. The State, it is our position there is no Rule 5 or Brady violation and I can give you our argument on that --

THE COURT: Okay.

MS. WHITE: -- today or tomorrow.

THE COURT: All right. Well, Ms. Merrill, let's do this: Understanding that I am considering breaking, do you want to proffer or ask a little more questions of this detective to make certain that Detective Brooks, you understand the process he employed so then you can then

utilize that in consulting with your client and your team in characterizing your motion or have you done enough?

MS. MERRILL: I guess the problem is I have asked him things and he's not able to answer, because he doesn't know. And then the detective who may have that knowledge is apparently out of town on vacation. So I think I've asked him all I can that he may know, but I don't know that I have all the information I need.

THE COURT: All right. Well, I mean, take a couple of minutes. I'm going to let the jury go. You take a couple of minutes and if you want a couple more questions of him, you, I'm going to give you a few minutes.

MS. MERRILL: Okay.

THE COURT: I will tell the jury 9:30 in the morning?

MR. TAYLOR: Yes, sir.

MS. WHITE: Oh, Judge, can we move it back to 10:00.

MR. TAYLOR: 10:00 o'clock, Judge and I will deal with the jury pool.

THE COURT: Tell them to come, bring the Foreperson, Mr. Annese.

(Whereupon, the Foreperson came into open court.)

THE COURT: We are going to let y'all go for the day. We will start at 10:00 in the morning. Tell them that and we will see you then.

(Whereupon, the jury was excused from open court for

the day.)

MS. MERRILL: No, I was just going to say for scheduling purposes, I don't think I need to ask any more questions.

THE COURT: All right. It's just scheduling. Okay.

MS. MERRILL: It's just scheduling. I'm sorry. I don't think I can ask any more questions, but I could put my motions on the record now if you want me to.

THE COURT: I'd rather do them in the morning.

MS. MERRILL: Okay.

THE COURT: No, I'll tell you what. Understanding, I'm probably not going to rule on them until the morning, let's hear them now.

MS. MERRILL: Well, if you want to wait, the other thing I can confirm is what I'm trying, give me one minute, Judge.

THE COURT: All right. Ms. Merrill, go ahead and place the gist of your motion on the record. And I'm not going to preclude you from coming tomorrow and saying I'd like to add to it, but I want to go ahead and start thinking about it tonight. And I also want the Defense, I mean, the Prosecution team to kind of know what they need to go look for what they want to respond to in the morning. So the gist of it now. You'll have an opportunity to amend a little bit and modify it in the

morning. That way, we kind of know what you're thinking. So the material evidence, failure to disclose is where you were talking about earlier. So go ahead and let me hear your motion.

MS. MERRILL: Thank you, Judge. That's what I was actually going to request, is make sure, I'm going to request that all the indictments against Mr. Brown be dismissed with prejudice based on prosecutorial misconduct for failure to provide material evidence under Rule 5. And the one thing I'm not certain, I need to do a little research and I'm sure all of us do is as far as, I know Brady is more exculpatory evidence. And, in the alternative, I'd ask for a mistrial. And I am considering this website, "mugshot.com", a makeshift lineup because the way I understand the whole, the case law involving lineups, it's the methodology by which they compile it and how it's shown. And I think those things apply here, the methodology in which Mr. Nicholson was shown all this information and the way in which it was shown to him, some of the facts that go into a lineup question. So maybe we can all, for purposes of the record and because it's not the six pictures we're used to seeing, a makeshift lineup. But I think the line of cases regarding lineups would still apply to this because it was how he initially identified him. And the other thing I want to do, Your

Honor, because I want to be as candid as possible with the Court, is I want to look back at the discovery that they have provided me on the case. If the error is mine that I did receive that, I will certainly reveal that to the Court. That's what I was trying to look at now.

THE COURT: Okay.

MS. MERRILL: I do not recall it. I don't have it in my hard copy stuff, but I do want to look because I want to be as candid with the Court as possible as to whether or not I received this.

THE COURT: I think that's fair. All right. I understand the nature of your motion. What we will do, the jury will be here at 10:00, is I'll be here probably 9:15-9:30. As soon as y'all are ready to go we'll start and put the rest of that on the record regardless of the jury's presence or not. Okay. So y'all are done with whatever, I'm not going to start without you --

MS. MERRILL: I'll do my best.

THE COURT: Y'all don't tarry with your orientation too long.

MS. MERRILL: And if I could add one more thing, Your Honor. We had an agreement when we were talking about Mr. Evans that we would not expose anything involving Mr. Brown's criminal history. And there was testimony that he had been arrested within days of this incident for

something else. And, number one, I haven't had a chance to, he tells me that's not accurate. And I haven't had a chance to search any of the records. But that's testimony that the jury has heard and we agreed his record, we've never even had the, you know, the typical bench conference about you understand this would be, I mean on the record but out of the hearing of the jury that this would be on, this will be exposed if you testify and all those things. But we had talked about not discussing his criminal record at all in front of the jury.

THE COURT: And I think that came out when you were delving into the makeshift lineup issue is as the explanation continued to come, it finally came out in that fashion. And I agree with you, nobody went into it, but as we delve into it, the makeshift lineup, that issue did come to light. And so I don't think that was an intentional act at all. I think it was very unintentional. It's just kind of how it played out.

MS. WHITE: And, Your Honor, once it came out, she kept asking questions about it which, frankly, kind of shocked me.

THE COURT: All right. All right. The deal, we'll adjourn for the day. Ms. Merrill, you research any of those issues you'd like, including your client's arrests or lack thereof and we'll see everybody in the morning.

(Whereupon, the trial will resume the next day at 10:00 a.m.)

August 14, 2014

THE COURT: Ms. Merrill, I've kind of read over your brief. Tell me now, because I asked you to posture your motion or kind of give me a preview of what your motion may be this morning. And you tried to and you did that without the benefit of research, the transcript and other things. And so now, let's hear it again, then I'm going to decide whether I need to hear further testimony or the State needs further opportunity to be heard or whether I can rule based upon what's been presented. So let's hear what you got.

MS. MERRILL: Okay. Thank you, Your Honor. May it please the Court. So the Court's aware, the main reason yesterday for my motion for prosecutorial misconduct was not directed at this office at all. That was the motion that I could think of that there might be a possibility of dismissing indictments with prejudice if that was shown. That was my main reason. At this time, I am not making that motion. I am moving for a mistrial based on discovery violations and the State's witnesses' testimonies to the jury about a recent arrest in Georgia. And I apologize for getting this later to the Court. I thought I had emailed it earlier. But I don't know if you

want details now or do you want just the basic, what is the motion, and then you want to ask questions of counsel?

THE COURT: Yeah, go ahead and tell me. I want to hear your motion.

MS. MERRILL: Okay. Thank you. Your Honor, I think it's clear to or it's clear to me that I don't think the Solicitor's Office knew about this as a lineup and I do want to correct one thing. I did look back at my emails and I did have a December of 2013 email that included that picture, but there was nothing in there. All it was was that picture. There was nothing in there to indicate to me that this was shown to him and it still didn't change anything about a lineup. So that part wasn't, but I did have a copy of that picture. So, but I think there are several facts that support this position that a mistrial is appropriate. Number one, I think it's clear because the prosecution at no time during the Neil v. Biggers hearing or during direct asked Mr. Nicholson about a lineup. I didn't ask any testimony of Mr. Nicholson during the Neil v. Biggers hearing because I didn't know about it either. Had I known about it, I certainly would have. And even though showing somebody's pictures on a computer may or may not be a lineup, we really don't know. And we don't know because the officer testified, no, they don't have a copy printed out of everything that was

viewed on that website. So we don't know, it could be that Mr. Brown was the only picture with a mustache. And we looked it up yesterday and those were 86 Corey Brown's in Georgia. I don't know how many of them they went through, and I don't think we can go back and recreate that because the website is not static. I don't think we can go back and say, if we looked at it today, I don't think it would necessarily have the same information. So I don't think we can compare it. And I think, had they shown him, had they shown Mr. Nicholson a true six-pack lineup we may not have this issue. Because he may not have, I think the courts, most courts would say that's not suggestive so long as it was presented to him in the proper way but we don't have that here. Here we have somebody looking at a website and that's what we, he used to identify Mr. Brown. And we don't know if that, how the details of that because we never explored it.

THE COURT: All right. I want to ask a question. This is what I understood the process to be and we discussed traditional six-picture, eight-picture, photograph files when you trying to identify someone. As I understood, Mr. Evans' testimony and I coupled that with Detective Brooks' testimony. Mr. Evans knew the person with him, without question, as C-Lo. He wasn't confused about that. C-Lo is with me. C-Lo was with us. C-Lo did

this, C-Lo did that. He did this, he did that. When the police were trying to get further information from Mr. Evans and the other gentlemen, all these nicknames were used. But, as I understood it, but there wasn't any question in the Codefendant's understanding of who was with them. The confusion was what were the proper names of the nicknames like Bow-wow. That's Bow-wow. And then this process was utilized to find out Bow-wow's proper name is thus and so. So particularly even the --

MS. MERRILL: And I think that's correct, Your Honor.

THE COURT: -- Detective Brooks is saying, he told us C-Lo was with him and perhaps others. But they were trying to determine C-Lo's proper name and not his identification, his proper name which I find distinguishable in that the witness, according to Mr. Brooks, didn't hesitate. They were looking through pictures, not to determine who the man was with him, but can you confirm who C-Lo's name really is. That was the questioned proffered that the police were trying to answer. So I'm trying to distinguish what I'm hearing as a misidentification, which I do not believe was here, as from a proper identification and what is the proper name after that identification was made.

MS. MERRILL: And I am certainly not arguing it is a misidentification. What I'm arguing is Mr. Brown never

had the opportunity. We didn't know about this. He never had the opportunity to learn exactly how that lineup was--

THE COURT: All right. Well, let ask you this. How is your client prejudice if, let's suppose this. The police find out Mr. Brown's name from an opposite source and they never do enlighten Mr. Evans as to his proper name. He comes to court and testifies. The same face all the way down the line, what happened when, who is with you. He says C-Lo, that's C-Lo. And he could have done that. Obviously, you want to know how they figured out your client's real name but as far as Mr. Evans goes and his testimony, he didn't need your client's proper name.

MS. MERRILL: I don't think it's Mr. Evans. I'm talking about Mr. Nicholson.

THE COURT: Either one. It doesn't matter to me. Either one. They all call each other by their nicknames. And it may be Nicholson. I may be using Evans. But when Evans came here, he said that's C-Lo.

MS. MERRILL: Right. I understand that, Judge. Evans was shown the six-pack lineup. The website that Nicholson would show, we don't know because Detective Lewis wasn't here. And we don't know exactly what all he was shown. We don't know if it was suggested to him --

THE COURT: Well, what I'm telling you is, whoever was questioned in that room and you tell me it was

Nicholson, which is fine. It makes no difference in my analysis. He was not confused as to what C-Lo looked like at all. He just didn't have knowledge of what C-Lo's real name was. And so this was a process of the investigation to try to determine C-Lo's real name and that was it. It's not a miscommunication or a confused identification. It's very firm. C-Lo looked like, there he is. That's what I'm hearing. That's what I heard.

MS. MERRILL: Okay. Well, and I will answer the question about how my client is prejudice. We may have structured our defense completely differently. We may have argued, as I am now and I understand you don't agree with that, but we may have argued that that was a lineup. We may have then gone and gotten an ID expert who would say that's improper. And I have been proceeding this entire trial and I know I've had discussions with Mr. Taylor prior to this, "Aaron, this case is a little confusing to me. All I see that links Mr. Brown with this is his Codefendant Evans picking him out of a lineup." "Yeah, we don't have much more." And I never knew about this. I may have structured it totally differently. And I haven't had that opportunity. I also didn't have the opportunity in the Neil v. Biggers to ask for these things and I may not have, it may have been the Court exactly as you've ruled today. But I didn't know that and I didn't

have the opportunity. The Lawton case that I cite in my brief, the prosecution presented a letter for impeachment purposes. And the trial Court said, you know, they're just using that for impeachment, it's not a problem. The Court of Appeals held, yes, it is a problem because it's material to his defense. Had he had that information, he may not have testified. Had we had this information, we may have approached this case completely differently.

THE COURT: All right. Now, I want to make certain I understand you. Evans is the one that picked him out of a photo lineup and that's all you were told ahead of time. And now you're being told also Mr. Nicholson said C-Lo was with us and picked him off the computer in some fashion of a makeshift lineup. Is that what you're saying, so I understand it?

MS. MERRILL: I want to make sure I'm clear with the Court. As far as a lineup, anybody identifying him, pointing, connecting him to his picture is Evans. That was all I knew about it --

THE COURT: Okay.

MS. MERRILL: -- was Evans.

THE COURT: And Evans was on the traditional six-picture on a piece of paper.

MS. MERRILL: Yes. That was the traditional six people on a sheet of paper. And I had that information

from the get-go.

THE COURT: Okay.

MS. MERRILL: Once I had this, I had that information and like I said, I looked. I did have a picture of this mugshot. But I was never told and I think Mr. Taylor will confirm, we've had several conversations in this hallway about, all I have is this one person. Because I even asked them and probably this was dumb on my part, y'all never even showed this to the victim? You hadn't shown, I mean, what else connects him. So then they did show it to the victim later on.

THE COURT: And he couldn't do it.

MS. MERRILL: And he couldn't identify him, so I mean I'm --

THE COURT: But I'm clear on the victim.

MS. MERRILL: Yes.

THE COURT: The victim was offered two opportunities and was never certain, he was uncertain.

MS. MERRILL: Well, he only offered one that I'm, only offered one.

THE COURT: Okay. The victim was uncertain, therefore we had suppressed his in-court identification because of that--

MS. MERRILL: Yes, sir.

THE COURT: -- lack of certainty.

MS. MERRILL: Yes, sir. But in this entire case, that's the way I've been proceeding. That their evidence against my client was based on the nickname and Mr. Evans looking at a picture. And like you say, basically confirming that that was him. That's how I had proceeded, how I prepared my defense, witnesses I had interviewed. In fact, we talked with Mr. Nicholson with the permission of his attorney. We didn't ask any of these questions because we didn't know.

THE COURT: All right. Let me hear from, Ms. White.

MS. WHITE: Your Honor, first and foremost, it's our position that based on a conversation with Detective Brooks, Ms. Merrill knew about this. So I would like, again, proffer Detective Brooks. I didn't know yesterday enough about the process to know what questions to ask him. But I would like to proffer him about that conversation.

THE COURT: No, and I'm not going to put Ms. Merrill in the position of being a witness. I think we got enough to figure it out. I understand the process we're going in and Detective Brooks was kind of an observer. He wasn't, it was Lewis or someone else that was working with Evans, I'm sorry, Nicholson in the detective's office looking at the computer with the --

MS. WHITE: That's correct but --

THE COURT: -- what I'm saying is a makeshift lineup.

MS. WHITE: And Detective Brooks actually explained this to Ms. Merrill. She had come, and my understanding is she had come to the detective's office to meet with Captain Futch about a different case. She asked a question about this case. Captain Futch calls Detective Brooks into the office. Detective Brooks, and I think she wanted to see the lineup or had a question about the lineup that was shown to Mr. Evans. In discussing that she asked, "How did you come about getting this picture of Corey Brown?" Detective Brooks explains it and as he told me, the reason he understands this so clearly, is because he actually explained it backwards the first time. He explained that Evans was the one who looked at the Internet and Nicholson was the one who did the lineup. Then, when they actually looked at the lineup, they saw that it was Evans and he said, oh, no, no, I explained it backwards and then explained it the front way. So first and foremost, there was a conversation wherein she was told about that process. Second of all, I need to correct a misapprehension. I told Ms. Merrill about it just a minute ago. I actually knew somewhat about the process. I didn't know exactly what details they had gone through, but we were driving around last week and just out of curiosity more than anything I said, "Well, how did y'all

come about finding a picture of Corey Brown?" "Well, he had been arrested in Georgia, so we went on the website and found some mugshots and, you know, went through it that way." "Oh, okay." It never stuck out to me as a lineup, because it's not a lineup in the traditional sense. It is an investigative tool that they used. And as you said, there was absolutely no doubt on Mr. Nicholson's part who was with him that night. And they were merely going about, if they couldn't show him a lineup, a traditional six-person lineup at that point because they didn't have a picture, they had no clue who C-Lo actually was. This was a tool to find out who C-Lo was so then they could go back and crosscheck it against Mr. Evans. And pretty smart I think, not just relying on Mr. Evans to pick him out, but making sure both Defendants saying it's the same person. In terms of, you know, assuming Ms. Merrill did not know about it ahead of time is not material to the Defense, Your Honor. First of all, I don't think it's covered under Rule 5 or Brady. It's not a statement of Defendant. It's not something we introduced in our case-in-chief. I don't believe we could have introduced it in our case-in-chief without having gone into an arrest in a mugshot that clearly we would not have been able to get into in front of a jury. So the State never introduced it in our case-in-chief. As far as

material to the Defense, again, and I think we had this in the first Neil vs. Biggers hearing. These aren't lineups in the sense that you're actually challenging the in-court identification because there's no question that either of these Defendants knew who it was. It's not a situation where you have a victim who's never met someone before and comes into the courtroom and says, yeah, that's him. And the only time they've ever seen a picture was in a lineup. I think this is a completely different situation where they could have, as you said, could have come in here and said, yes, that's C-Lo.

THE COURT: Well, I mean, have y'all done any research on the distinguishing proper name and nickname, because that seems to be the issue, is when does it become a misidentification versus a discovery of the proper name. There's two separate things. There's who is it and are you certain who it was, or do you know his real name versus his nickname. And I think those issues, that's where I'm distinguishing it right now.

MS. WHITE: And I haven't done any of that research, Your Honor.

THE COURT: Right.

MS. WHITE: She cited Lawton in her case which is actually a Greenwood County case. The retrial was while I've been in this office. Lawton involved a Defendant

who, as I recall, had sent a victim a letter. It was an ex-girlfriend or someone that he had been familiar with. He had broken into her house. He sent her a letter saying essentially, I'm sorry I did that to you, I'm sorry I tried to come in. The State had the letter and John Anthony, I believe, was the first Prosecutor, decided not to produce it because he viewed it as impeachment evidence. That was actually a statement of the Defendant, which we don't have in this case. We have a quasi-lineup shown to a Codefendant.

THE COURT: Well, so as I understand Ms. Merrill's argument is that she, and I don't know that you'd have an actual paper record of the process employed by Detective Lewis as he utilized the Internet to search for photographs of a way to determine C-Lo's proper name. Her point of view is, that's a lineup. Your point of view is, it's discovery of the real name. Is there any record in your file as to that process that Lewis and Brooks being there utilized in their investigation that she would have been entitled to. That's what she's wanting, is she just, had she known that her defense would have been different. And I can understand that.

MS. WHITE: No, sir. There is absolutely nothing in our file other than the picture that was provided to her that says mugshots.com. We have no paper documentation of

anything. And, Your Honor, I would turn to, I'm looking at State v. Proctor, which is 358 S.C. 417, just for the definition of material evidence. There has to be a probability that had it been disclosed, the result wouldn't have been different. I don't think the result would have been any different other than maybe we would have found a creative way to get in to that with Mr. Nicholson on direct and it would have actually strengthened our case.

THE COURT: No, I think what she's talking about, she can, I don't want to put words in her mouth, but what she's saying is, if she had of known you had that maybe she'd have sought out something other than going to trial, I think.

MS. WHITE: I don't believe that's what she was saying, Your Honor.

THE COURT: Well, I thought she, you know, there's some deals made, otherwise had she known the case was worse against her client or better in your perspective but worse against her client, she may have explored those things a little more vigorously. I don't know that.

MS. WHITE: But, Your Honor, I would point out, none of that came out in our case-in-chief. So it really didn't end up making a difference in terms of proof against Mr. Brown.

THE COURT: All right. Let me hear from her again.

MS. MERRILL: Well, and, Your Honor, Nicholson is the one who testified that this was the only time he'd met Corey Brown. So I disagree that it's not choosing him. He saw, I mean, it's not the same as Evans. Evans testified that he previously knew him. But in this case, Nicholson said he met him that night. He wasn't a friend of his who could point his friend out in a lineup. He met him that night. So I disagree that it wasn't a lineup, and I don't know which order they did these, but I'm looking at the date on the mugshot picture is 7/31/13. The date on the six-pack lineup with Evans is 7/31/13 and Ms. White just said there wasn't a six-pack available to show him. And that may be accurate that they did the mugshot thing after, or I mean, excuse me, before this. But they wouldn't have been looking for Nicholson to confirm his real name because that was the only time they'd met him. They were looking for or they were requesting Evans, who knew him prior to this night, find out his real name. That's the difference in my mind. We're not talking about, if this situation were reversed in that Nicholson was shown this six-pack lineup and Evans, who already knew him, picked him out, it might be different because he knew him. He'd be like, yeah, yeah, that's him. But in this case, Nicholson said he met him

that night.

MS. WHITE: Judge, two things. Number one, he rode around with them for, I think, the testimony was probably close to four or five hours that night. Second of all, I think Ms. Merrill is a little bit confused on the timing. Evans talked to his mother and gave them the name. They then put Evans back in the jail, went and got Mr. Nicholson. Not just going on what Mr. Evans had told them, that it's Corey Brown and let's go get warrants on Corey Brown. They went and got Mr. Nicholson to confirm the information given to them by Evans or the name that they have. They showed Mr. Nicholson the mugshots on the computer. He, without hesitation, pointed to that picture and said, "That's C-Lo." They then called Georgia, got a lineup generated that they could take back to Mr. Evans and ask him, can you pick out the person, he may or may not be in here. Can you pick out the person you know as C-Lo. So they didn't have a photo lineup. Again, all they had was a name of a Corey Brown. How are they supposed to call Georgia to get six pictures of some random person named Corey Brown to show Mr. Nicholson?

MR. TAYLOR: And, Judge, too, just to jump in here. I heard Ms. Merrill make another motion about the arrest being brought up. I believe you ruled yesterday, right at the end of the day, that that was kind of the door was

opened by them. We didn't introduce this. She started, it kind of came out as she was questioning him.

THE COURT: Well, she didn't, she didn't know there was a trapdoor there.

MS. MERRILL: Well, and Your Honor --

THE COURT: But yes, she opened the door but she was venturing down something as to how you did this without knowledge that he was arrested in Georgia. She knows he has a prior record, but I don't think she knows what the Georgia arrest is all about. So that was a blind door-opening. What she did the day before yesterday, don't let him identify my client. And then she asked the exact question. That was a little different. She walked into that without knowing, y'all knew. She didn't know that. I mean, I'm going to have to, I don't know how I'm going to handle it. But she did not know she was going to get that answer and suppression prejudicial to my client and his prior record and there was an arrest in Georgia. She didn't know that, I don't believe.

MR. TAYLOR: Well, and I thought yesterday, I must have misunderstood. I thought at the end of the day you were actually standing here and said, yeah, that came out and it was kind of one of those he had to answer that way.

THE COURT: And I did, but I am not, I'm trying to think of a curative way to protect her on it and her

client on that. But that was, y'all knew it was coming, she didn't and she'd asked for prior records to be suppressed. I don't believe she realized that she was opening it, she was even standing at that door.

MS. MERRILL: Your Honor, and I, the Court reporter kindly gave me a rough draft and I forwarded that to counsel and Your Honor. On page three of that, line ten, I am asking the question. I say, "So the day after he saw this," and I'm talking about Evans who saw the six-pack lineup.

So the day after he saw this and then he told you he would need to get in touch with some family members before he could give you a real name?

The officer answers: No, ma'am. I believe I can clear up the issue.

And I said, Go right ahead, please.

He says, To the best of my recollection it was during the interview with Mr. Evans that you referenced on July 30th that he acknowledged the suspects. He only knew them by their nicknames. Part of what I requested of him was, as he spoke with family members to try to learn their real names. Evans later told me that he had spoken with his mother who indicated to him two things. One was that she believed C-Lo's real last name was Corey Brown. And two, that he had been arrested recently following this

incident.

So, I mean, perhaps I shouldn't, I don't, if somebody offers to explain and I allow them and that opens the door, then that prevents me from ever doing that again.

THE COURT: All right. I'm with you on that. I mean, and the thing is, is there some way I'm looking for to appropriately give a curative instruction. And that didn't open the door for them to come back and say let's go into his whole prior record. It didn't do that.

MS. WHITE: And we weren't going to go there.

MR. TAYLOR: And Judge --

THE COURT: I didn't think you were.

MR. TAYLOR: And, Judge, in closing, as well, I'm not, that's not even, I honestly am not going to mention that. It doesn't have anything, it's not even relevant. I know and understand the Court's concern. I'm not really sure, I don't know if that's, it sounds like that's part of the whole mistrial motion as well. I think at best it's harmless error. I mean, I don't know, Judge.

MS. MERRILL: Well, Your Honor. So the Court's aware, I've been trying to think of a way that that might be corrected and I'm not certain I have one at this point. But I did, my paralegal called Richmond County, which is where Augusta is. Now, it could have been another county. That's the only county we called, but the last arrest

record they had, per the clerk, was 2011. My paralegal asked for her to please send anything in paperwork that would show that. The clerk said she could not but that the D.A.'s office could. So my paralegal has left a message with the D.A.'s office but we haven't heard back.

THE COURT: Columbia County, there is a Columbia County over nearby.

MS. MERRILL: And that's what I mean, it may be somewhere else. You know, we started the process of trying to find that out. But even if I'm able to find that out, let's say, we can't unring that bell that, oh, he was arrested for something, no, for something else. I mean, we can't unring that bell. And then, I guess, one thing I could do is say oh, no, he wasn't arrested, see here are these records. That calls more attention to it.

MS. WHITE: Your Honor, she has the record of Mr. Brown that shows on July 27th, 2013 he was booked in for a probation violation.

MS. MERRILL: And, Your Honor, I was, I assumed it meant he was arrested for a different charge, not a probation violation. So I'm sorry, I didn't, I should have looked at that yesterday.

MR. TAYLOR: Judge, we'd like to put that in as a Court's, you know, a Court's exhibit just to show that's been turned over. There was notice.

MS. MERRILL: And that has been turned over, Your Honor. I don't dispute that.

THE COURT: Okay.

MS. MERRILL: But the way it would sound is if he was arrested and charged with a, I guess probation violation is a crime but that's what he was picked up for. But, Your Honor, one thing they said is that they let Mr. Nicholson be the one to look at the website and then prepared the six-pack lineup for Evans who already knew him.

MS. WHITE: Your Honor, Nicholson already knew him.

THE COURT: Now, wait a minute. Wait a minute. Wait a minute. Y'all are going to mess me up on my record. The proper way and I'm going to scold the Prosecutors. One Prosecutor per argument, so y'all can't gang up on her.

MR. TAYLOR: Yes, sir.

THE COURT: And y'all are double-thinking, so don't interrupt her. I'm going to give, I've given her a chance to say what she wanted to say and y'all a chance to say what y'all want to say. And I don't need a banter going back and forth because that makes it really difficult on Joy. So let's stand at ease for a couple of minutes and, Ms. Merrill, I want you to digest what they've said and I'm going to try to consider some of your argument and I

may have a question or two for you so I understand what you're asking. Okay?

MS. MERRILL: Okay. Thank you.

THE COURT: Because it is kind of difficult, it's at least two faceted whether it's a curative instruction for the arrest and/or was the process employed with Evans at the computer, was that a lineup or not. Right now those are the two issues I'm trying to answer.

MS. MERRILL: Okay.

THE COURT: All right. And I've not answered them. I've not ruled. I'm just, I want to think about it a little bit while you digest what they've said and they digesting what you've said. So let's just stand at ease for a couple of minutes. I don't want to hear anything else.

MS. MERRILL: Okay. Will we have the opportunity to argue anymore or you coming back with a --

THE COURT: Oh, no. I'm going to let you, I'm going to come back and say, okay, here are my questions.

MS. MERRILL: Thank you.

(Whereupon a short break was taken.)

THE COURT: All right. Ms. Merrill, re-characterize your argument or characterize your motion if you want to add anything to them. I think I understand them, but I want to be positive.

MS. MERRILL: I am making a motion for a mistrial based on discovery violations and testimony about Mr. Brown's arrest record or, excuse me, arrest in Georgia that was testified to yesterday.

THE COURT: All right. Now, the State did provide you the probation violation arrest which occurred the day after, more or less the incident?

MS. MERRILL: Yes, sir. That is on the criminal history and I'm trying to keep all these balls in the air and I didn't check that, after that.

THE COURT: Okay. All right. Fair enough. All right.

MS. MERRILL: They've given me that the entire time; yes, sir.

THE COURT: Now, they didn't provide you a full explanation of what they thought that meant but, nevertheless, the arrest before the day after was provided to you in discovery.

MS. MERRILL: Yes, sir.

THE COURT: But it was testified to, you believe, improperly?

MS. MERRILL: Yes, sir.

THE COURT: Okay. So for one, we may need a curative instruction on that. All right, next. Now, I'm not ruling. I am inventorying your motions.

MS. MERRILL: The motion for the mistrial based on the discovery violation and what in my brief I called the Nicholson lineup because it was easier to distinguish it from the Evans lineup.

THE COURT: All right. And that was the one with Detective Lewis and Brooks?

MS. MERRILL: Yes, sir.

THE COURT: Okay.

MS. MERRILL: Yes, sir.

THE COURT: But you do agree that the picture generated as a result of that conversation was also provided to you in discovery?

MS. MERRILL: Yes, sir; it was.

THE COURT: Okay.

MS. MERRILL: And I did go back and check that yesterday afternoon, and I told them I found that.

THE COURT: All right. Anything else?

MS. MERRILL: I don't think so.

THE COURT: Ms. White, let me hear from you and go ahead, you told me you wanted to place a couple of things particularly, and I know Ms. Merrill has no objection with us labeling her brief as Court's Exhibit 4?

MS. MERRILL: Yes, sir.

THE COURT: So it will be so labeled.

(Whereupon, Court's Exhibit 4 was marked for identification only.)

MS. WHITE: And, Your Honor, I don't know that it's necessary, but we have Court's Exhibit 3, which, I mean, she's acknowledged she got the criminal history that shows that arrest. Your Honor, assuming, first of all, I would point out, going back to the question regarding the arrest. And as I said yesterday, I think Mr. Taylor and I were both shocked that we started going down that line. We have no objection to any sort of curative instruction regarding that, obviously. But the fact that Detective Brooks responded in that manner I think bolsters his testimony from yesterday and what he's related to me that he had told Ms. Merrill about this. The fact that he responded in that way, I think, should have been a clue to her. You know, usually, when a witness says I can explain that if you want me to, a seasoned detective proceeds in that way. That's usually a clue to whoever is asking the question that you might not want to ask this. And short of saying, I don't think you want the jury to hear this, I don't know if how else he's supposed to clue someone in that something's coming. Setting all that aside, Your Honor, and the State's position that Ms. Merrill did know about this, even assuming she didn't, I think she has to show that it would have been material to her defense. I

think, I don't see how her preparation or how any of our motions would come out any differently had she known about this on the front. I think that the procedure that was followed was the least prejudicial, the least suggestive procedure that could have been followed. She cross-examined Mr. Evans, the one who testified that he had known Mr. Brown for quite some time. And asked him and she didn't get anywhere with it, but asked him about a potential beef involving a female. That is the very reason detectives didn't want to just blanket, didn't want to go completely on Mr. Evans picking Mr. Brown out, that they wanted to have someone else have that break in the chain to make sure they were picking out the right person. Because had they gone, Mr. Evans gave them the name C-Lo is Corey Brown, then they take Mr. Evans to the computer and let him pick out a picture, he could have picked out somebody that he just had a beef with and no one would have ever known the difference. Bringing Mr. Nicholson in makes the break in the chain and I don't see how it's unduly suggestive because he testified that he knew from riding around with him, he knew who he was with. I mean, he was with him the whole night and he immediately picked him out. And then as they are scrolling through and Your Honor saw yesterday, there were 286 pictures that came up when she pulled the website up. And then I think once we

narrowed it to Georgia there were eighty-something, but he immediately picked it out and I don't see how that's unduly suggestive. He saw that picture, but he identified him here in the courtroom, not based on, we didn't ask him about any sort of lineup. We didn't ask him about any sort of, any of that law enforcement. He identified him based on having been with him that night. So again, I don't see how anything could have come out differently or the cross-examination of Mr. Nicholson could have gone any differently. But because it's really, it's not, he wasn't, that didn't tell him who the person was. He already knew who the person was. He already said C-Lo and when Ms. Merrill was saying, asking Mr. Taylor, I was not privy to those conversations. But in the incident report, Mr. Nicholson said the whole time C-Lo was there. So it's his, Mr. Evan's lineup is not the only thing putting Mr. Brown at the scene. Mr. Nicholson said C-Lo was there before he ever knew that C-Lo was, in fact, Corey Brown. So, Your Honor, I just don't see how it would have come out any differently. I don't think it was material to the preparation of the defense and we believe a mistrial should be denied.

THE COURT: All right. Ms. Merrill, anything else?

MS. MERRILL: Yes, sir.

THE COURT: All right.

MS. MERRILL: Give me one minute, please. Your Honor, my notes, as far as Nicholson's testimony indicate that he says he just met him that night. The statement that he gave law enforcement says he just met him that night. There was also testimony about them being in a car at night, dark, that Mr. Nicholson was driving. That they rode around in his car, and then that C-Lo go out of his car and into the other one. So I think in Neil v. Biggers and being able to ask him about how dark was it, how long did you stay and talk at so and so, so that you could ID him and all these things, I could have at least explored that and I didn't have the opportunity to do. And I want to make sure the Court understands, I'm not denying having a conversation with Officer Brooks. And I, if I recall correctly this was right around the time I got appointed to this case, after the Public defender sent me the conflict letter. And I want to say, what's, I was kind of like, "What's this case all about?" I didn't have discovery, I don't think. I mean, again, I can't be certain. But it was fairly early on, I got appointed, I think, in October. I checked my letter yesterday. But so I mean it was fairly early on, but it was a casual conversation. I didn't know names. We weren't talking about this as exactly how it was done. The order in which it was done, the State claims was the least suggestive.

I'm going to argue it's actually the most suggestive. The order in which, and please let me know if I'm mistaken, but that it was they showed Evans the lineup --

THE COURT: No, the other way around.

MS. MERRILL: No, they showed, they showed Nicholson.

MS. WHITE: They got the name from Evans. They took the name, went to the computer, showed the computer to Nicholson, got the picture, called Georgia, generated a lineup which they then went back and showed Evans.

MS. MERRILL: Okay. And nothing would have prevented them from doing that the exact opposite way which would have been the person who says he knows him and knew him previously, showing him the website, getting that information and then creating a six-pack lineup to show the person who said I just met him that night. That would have actually been less suggestive than letting the one who said he just met him scroll through a website.

THE COURT: Well, here's where, I guess, I understand your argument. What I've heard is basically consistent testimony from the Codefendants as to who was there and who did what. There's some discrepancies in who went where, how many stops there were. But of the gentlemen that were in the car that left Augusta, that came to Greenwood to meet the guy in Greenwood, that's been fairly consistent. And it's been consistent that everybody had a

nickname. Where the trouble comes in is when the officers began an investigation and they are trying to take the statements with nicknames on them and convert those into proper names. But the victim had difficulty and was unable to pick out who the Defendants were. That hadn't come in but, I mean, that was suppressed. The testimony was a little different. As far as the Codefendants identifying who was with them, they knew or the testimony has been that they were confident who was with them and who did what.

MS. MERRILL: I mean, I agree with you the testimony has been confident they knew who was there, who did what. But I still have concern about this lineup, in the sense of I wasn't able to ask any of those things.

THE COURT: All right. Well, here's what I'm going to do. I'm going to deny your motion. I will give a curative instruction about the rest, if you want. If you want one, I will try to fashion one about the arrest in Georgia. Additionally, I will require the State to recall either one and allow you further cross-examination on those identification issues if you so choose. Okay?

MS. MERRILL: Can I, just to preserve my record, can I add the few other arguments I had.

THE COURT: Oh, yes, ma'am. Please do.

MS. MERRILL: The State said that, you know, it

should have been a clue to me that when the officer says, "Let me explain," I should have known where he was going and I think --

THE COURT: And I'm not going to let you --

MS. MERRILL: Well, if I can just say that he's the prosecution witness and he should have been instructed to not go there.

THE COURT: Well, one of the worse arguments in the world is, well, you should have known better. Well, that's not a legal issue. You asked the question and he offered an explanation and how you read that versus how I read that is not, I'm not going to rule on that and I didn't base my decision on that argument at all. So I don't agree with you on that, whether you should have known better or not is not an issue for me.

MS. MERRILL: And are you saying I can recross them. Are you meaning, like, basically go back and do a Neil v. Biggers, because all we've heard is the testimony that he immediately picked him out. We haven't heard that from Nicholson. I don't know what Nicholson is going to say. I have not had that opportunity to ask him. He may say --

THE COURT: Nicholson is in jail.

MS. WHITE: He's out of town, Your Honor, but he was not released from his subpoena. My only question about a Neil versus Biggers would be, would we have done one on

the front end had the State not been intending to introduce it anyway.

MS. MERRILL: Well, and I think the State even told me before I did the Neil v. Biggers for the six-pack that they weren't planning on introducing it, but I have to create a record.

THE COURT: Yes.

MS. MERRILL: And I was doing that.

MS. WHITE: And I have no problem doing another one.

THE COURT: We can do it in-camera if you like but my preliminary ruling, having heard the testimony, and I don't expect it'll go differently would be that it was not an exercise to identify an unknown person which and generally what an identification in Neil v. Biggers issues is. What I want you to have the opportunity to do is to explore any doubt that the identifying witness, whether it be Evans or Nicholson, as to who was with them.

MS. MERRILL: But we have no testimony from Nicholson about how long he saw him and things like that.

THE COURT: And I'll allow you to do that in the presence of the jury.

MS. MERRILL: I'd rather not do it in the presence of the jury, Judge, because I mean, like I say, and I also think and I realize I can't say with certainty. But if the State knew this--

THE COURT: I'll do it either way you want it.

MS. MERRILL: Okay. But if the State knew this, this is oral argument, I am sorry. I'm just trying to make sure I put everything on the record. If the State had known this, wouldn't they have also asked, because they certainly asked Evans, you picked him out of the lineup. Wouldn't they have asked Nicholson you were able to pick him out and, again, that's a strategy. I can't say why they did or didn't. But that they didn't, when we were talking about the Neil v. Biggers, it was never even suggested.

THE COURT: Well, see, here's what I think and what I'm basing my decision on is the State didn't realize identification was the issue; it was the unknown true proper name was the issue the police were trying to determine so that's not the same issue.

MS. MERRILL: I guess, how, what's in the record to show, what is in the record from Nicholson to show that other than in-court identification from Nicholson that it was an easy, he knew him, no problem.

THE COURT: You want to try, you want to retrieve him back?

MS. MERRILL: I mean, that's my concern is that I don't have that on the record and then if this goes to the appellate court and I don't have it there to say what

did--

THE COURT: All right. Tell you what, if you want him back, tell me right now and we'll send for him and don't know when he can get here. But if I don't ask now, he can't be here quickly.

MS. MERRILL: Right. Can you give me one minute?

THE COURT: I don't want to decide this afternoon late that we need him. I want to decide right now. I mean, we will retrieve him.

MS. MERRILL: May we approach briefly, Judge?

THE COURT: Well, we're in-camera.

MS. MERRILL: Okay.

THE COURT: I mean, if you want to, that suits me. It's just us chickens. I don't mind. If you want a conference in-chambers, we'll do that and then come back and put it on the record.

MS. MERRILL: If we can, that would be nice.

THE COURT: Oh, sure. Come on.

(Whereupon, a conference was held in-chambers with the Court and the attorneys.)

THE COURT: All right. We took a brief recess so we could speak in-chambers about my allowing Ms. Merrill the opportunity to speak with the Codefendant, if possible, if she wanted to. And while in-chambers, we spoke to Detective Lewis who was involved in the process of some

sort of engaging in computer with Detective Brooks, which has been testified to. Ms. Merrill, it's my understanding that you and the Prosecutors both spoke with Detective Lewis and he answered several questions. It's also my opinion you wish to make a proffer which the State is going to consent to your proffer as to the substance and summary of that conversation that took place in-chambers. Is that right?

MS. MERRILL: Yes, sir.

THE COURT: All right. But first, for the record, I will accept your proffer at this time.

MS. MERRILL: Thank you, Judge. We spoke to Officer Lewis on speakerphone with both Prosecutors, myself and Attorney Nicholson. He indicated that, I just want to make sure I, that when in looking at this site they had the name Corey Brown and were searching for that. He thinks that he was able to limit the site or there were limitations on the search that allowed him to just choose men. He couldn't, I can't recall what he said about races.

MR. TAYLOR: I believe that he said that only the --

MS. MERRILL: He said he thought was an option but --

MR. TAYLOR: He said black males and I think he even said that he believed it by age.

MS. MERRILL: By age, yes.

MR. TAYLOR: Yes.

MS. MERRILL: The officer said that he believes on the website he can filter by race and gender and believes, but wasn't certain, that he could even narrow it to a certain age or age range. And when he was showing this lineup or these websites, excuse me, to Mr. Nicholson, Officer Lewis did not know, had no idea what Mr. Brown looked like. I think that's everything, Judge.

THE COURT: With that being the case, it would be very difficult for law enforcement to suggest a particular person as a Codefendant and/or witness or otherwise. All right. Now, do you wish to or have you had an opportunity to speak to the Codefendant Evans?

MR. TAYLOR: You mean, Mr. Nicholson, Judge?

THE COURT: Nicholson, yes.

MR. TAYLOR: Yes, sir. We have not. I called him. He's got all these different phone numbers. I get a different call from, I called it and it was a white male named Chaz who's voice mail it was.

THE COURT: All right. Ms. Merrill, are you wanting to speak with him also or you think based upon what you've been told--

MS. MERRILL: I think the information from Officer Lewis is sufficient.

THE COURT: All right. Now, understanding that

proffer and the fact the State did not use that exercise in the detective room with the computer as a proof for identifying or bolstering testimony or anything or for any matter, that Detective Brooks did not utilize that testimony in substance as part of his case-in-chief. I do not believe that would be a violation of Neil versus Biggers or the discovery requests that were provided by any of the Defendants. And I don't believe the State intends on going into that matter in any way from this point forward. Is that right?

MS. WHITE: That's correct, sir.

THE COURT: All right. Ms. Merrill, would you like an opportunity to clarify any of that process with Detective Brooks, because he was on the witness stand when we adjourned yesterday, and I will afford you that opportunity.

MS. MERRILL: No, sir; I don't think that's necessary. Thank you. One thing I did want to add about the phone conversation with Officer Lewis, and I'm trying to find my notes on that one. I think he did say that they knew the name and they were looking, they were looking for the pictures so that Nicholson could point, could identify, match the picture with the name.

THE COURT: All right. So, as I suggested, it was my belief based upon the testimony I've heard is that the

Codefendants knowledge of who was present during the commission of the alleged crime, both Codefendants have given very similar testimony as to consistent nicknames, consistent behaviors, consistent facts, not identical but consistent. And that the proper names were found out through this process of your client. But I do not find that that process utilized was prejudicial because it was not unduly suggestive based on what I've been presented. So I don't believe that's an issue that would warrant a mistrial or hindrance in this case. I find that immaterial. So the only issue left, Ms. Merrill, I believe would be the curative instruction for the comment made by the officer saying who was recently arrested in Georgia for some matter or perhaps that. And I'll be happy to give a curative instruction to the jury, very brief, that that's not an issue for them to consider. And likewise, can give an additional instruction in my closing instructions to the jury that that's not a matter that needed to be addressed or considered by them, that testimony ordered stricken.

MS. MERRILL: May I just request the opportunity to discuss that with my client before charge, and then we will let you know?

THE COURT: Okay.

MS. MERRILL: And then I think the only other thing I

need to do is renew my motion for a mistrial, because the curative instruction will not be enough of a remedy to cure that error.

THE COURT: Okay. All right. I'm going to decline to grant a mistrial on the curative instruction relief. I believe a curative instruction would be proper or would you like me to give them a curative instruction as soon as they come back in as to that testimony being stricken?

MS. MERRILL: Yes sir, please.

THE COURT: All right. For the purposes of the record, too, is Detective Brooks still subject to cross-examination?

MS. MERRILL: Yes, sir.

THE COURT: All right. If you would, return to the witness stand.

(Whereupon, Detective Whit Brooks returns to the witness stand.)

THE COURT: Let's get the jury in, please.

(Whereupon, the jury came into open court at approximately 11:40 a.m.)

THE COURT: All right. Ms. Karen, tell me the name of the young lady.

THE CLERK: Brandy Wright.

THE COURT: Yes, ma'am. Tell me her name.

THE CLERK: Brandy Wright.

THE COURT: Rogers?

THE CLERK: Wright.

THE COURT: And she is juror number?

THE CLERK: 149.

THE COURT: Juror number 149 called the Clerk's office this morning and had a child very ill. She had to make arrangements for the child and there was no way she could get here. So my alternate now has moved into the twelfth juror. So this is our panel, ma'am, so everybody is within the proper seats. All right. Folks, I have been dealing with some other issues, different things. Sorry to have y'all outside and back here and whatnot. We're ready to continue. Detective Brooks is still on the witness stand. There was a brief comment made and trying to discern about the discovery and, I think, coordinating the nickname of one of the Codefendant's to the proper name. And there was a comment made by him, that there was a recent arrest from Georgia. That's not relevant to the facts and the question of fact that y'all will be basically answering. So I am going to ask y'all to disregard that. So the testimony that y'all can consider is the relevant testimony which has been presented from the witnesses. Ms. Merrill still has an opportunity to question Detective Brooks.

MS. MERRILL: Yes, sir. Thank you.

THE COURT: All right. Very good.

MS. MERRILL: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, ma'am.

CONTINUE CROSS EXAMINATION ON WHIT BROOKS

By Ms. Merrill:

Q Officer Brooks, when you were examined by the State, you mentioned a video at the Hot Spot gas station that you viewed the day of the incident; is that correct?

A Yes, ma'am.

Q Did you view that by yourself or with another detective?

A Another detective was present.

Q What detective was present?

A Captain Nick Futch.

Q And how many, who showed you the video?

A It was a white female. I believe she was the on-duty manager/assistant manager of the Hot Spot store.

Q What time did you watch it?

A To the best of my recollection, it would have been between the hours of 07:30 and 9:00 a.m.

Q And you mentioned seeing they were close to the road, and so there were pumps in between the camera view and being able to see the cars; is that correct?

A Yes, ma'am.

Q Were there any cars other than those two there on that video?
A I don't recall.
Q Do you recall if there was anything else besides the pumps blocking your view?
A I do recall that all the normal structure, the other pumps, everything such as that was present. As to whether or not there were other vehicles or other persons present not involved in this incident, I don't recall.
Q And then you left your card with the manager; is that right?
A I can't remember if it was my card or Captain Futch's card. But, between the two of us, one of us left a card with the manager.
Q Okay. And you left the card because you requested to get a copy of that, right?
A We did.
Q And how much later did you return to retrieve a copy of that video?
A I don't recall if I ever returned. I know someone from the State, either our office or the Solicitor's office, one of their investigators returned to try to obtain a copy.
Q And are surveillance videos from convenience stores and things like that, do those videos record on top of

each other oftentimes. Let me rephrase that question. That wasn't worded well. I apologize. Oftentimes, video starts will have, or excuse me, convenience stores will have videos and then it will be set to automatically record over what was recorded. I know every system is different, but maybe every seven days it starts recording over unless you retrieve that video. Is that correct?

A I believe as you've stated, every system is different. That is often the case.

Q Okay. Do you know if that was the case with this?

A No, ma'am; I don't.

Q Okay. And you've retrieved copies of surveillance videos in other cases; is that correct?

A I have.

Q And you checked back, well, you said you couldn't recall when you checked back or someone from your office or the Solicitor's office checked back with the store to get a copy. Would you think it was probably after you had gotten statements from Nicholson and Evans?

A Without a doubt, it was after those statements.

Q And in the cellphone records that you reviewed, there was no information in any of those cellphone records related to Corey Brown, was there?

A No, ma'am; not that I recall.

Q And when you were speaking with Mr. Evans in the

recorded statement taken after he was arrested and you told him if he cooperated you would help him out; is that right?

A No, ma'am.

Q What did you tell him then?

A What I told Mr. Evans was that if he was completely truthful in what he was telling me, if at no point during this incident did he possess a firearm, rob anyone at gunpoint or have any part in holding anyone against their will and that if these charges of armed robbery and kidnapping seemed inappropriate, at that point, that I would speak on his behalf to the Solicitor's office regarding reducing his charges.

Q And you haven't worked out a deal with him at this point because you don't want it to look like he did something to get his charges dropped; is that right?

A I haven't worked out a deal with him, period.

Q But you haven't worked out a deal with him at this point because you don't want it to look like you have, that he's done something and then his charges were dropped. Is that correct, that's why the charges are still pending?

A I believe I answered your question the first time.

MS. MERRILL: I beg the Court's indulgence.

Q I'm looking at a transcript created from the audio

recording with your conversation with Mr. Evans. Is it accurate that you told him, "So as I have told you, these two charges are going to remain with you until court is done and over with at a minimum. You see what I'm saying? So what won't happen is they will be like, you know, it looks like you did something because your charges got dropped. Do you see what I'm saying?" Would you agree that you told him that?

A I don't recall if I did or not. If it's part of an accurate transcript of me saying that, then I did say it.

Q Now, SLED is the South Carolina Law Enforcement Division, right?

A It is.

Q And SLED runs various tests for law enforcement agencies in the State, right?

A Out of the state crime lab; yes, ma'am.

Q Okay. And they would do different things like fingerprints, drug analysis, DNA analysis and things like that. Is that correct?

A That's my understanding.

Q And is that where you send, do you send it to anywhere else besides SLED if you want anything analyzed, evidence like that?

A Typically, when I've collected evidence, I have to submit it to either the Greenwood County Sheriff's Office

or the Greenwood Police Department evidence locker. At a point subsequent to that, out of my hands, it would be forwarded to SLED typically by whoever the evidence custodian or crime scene technician is.

Q And then they would, and you do that so you maintain a chain of custody; is that right?

A That is correct.

Q So you, yourself, may not take it to SLED, but there will be paperwork showing when you took it to your evidence custodian. And when that evidence custodian took it to SLED, when SLED returned it, that kind of thing. Is that correct?

A I believe so.

MS. MERRILL: Your Honor, permission to publish exhibits that are already in evidence.

THE COURT: Sure.

Q Now, Officer Brooks, I'm showing you what's marked as State's Exhibit 16 and you testified earlier that black stuff is fingerprint powder; is that right?

A It is.

Q And does fingerprint powder go onto the surface you want to get or try to get fingerprints from?

A That's typically how we apply it. Yes, ma'am.

Q Okay. And so that's applied to the door of the white Caprice; is that correct?

A Yes, ma'am.
Q And is that the other side of the Caprice?
A That appears to be; yes, ma'am.
Q Okay. And for the record, I just showed you Exhibit 15. And looking at State's Exhibit 19, is that just a close-up shot of that fingerprint powder?
A Yes, ma'am.
Q And you also took or attempted to get fingerprint lifts from the Camry; is that correct?
A Yes, ma'am; the silver Toyota Camry.
Q Were there any other surfaces besides the ones that we've seen pictures of with the black fingerprint powder that were tested for fingerprints?
A Not that I'm aware of.
Q And you decide how to or what areas you're going to test based on what you think the suspects most likely touched; is that right, or touched often?
A At times.
Q Would it be what they touched often or where you think their hands would have been?
A Typically, if we're dusting for latent fingerprints, we're going to put fingerprint powder and dust for those latent prints in areas that we believe it may be likely that the suspects touched.
Q And that's why you don't put it all over the car; is

that right?
A Correct.
Q Okay. I'm going to show you State's Exhibit 4. Did you take any fingerprint samples of the steering wheel?
A Not that I recall; no, ma'am.
Q Did you take any from that of the steering wheel of the Camry?
A Not that I recall.
Q And it's possible to try to obtain fingerprint lifts from a steering wheel; is that correct?
A I've never had success doing it but --
Q But it's possible to try, is that correct?
A It is possible to try, yes.
Q Okay. And is it also possible to try getting DNA evidence off of something like that, a steering wheel?
A Yes, ma'am.
Q And you didn't try to collect that from this scene either, did you?
A I did not.
MS. MERRILL: Beg the Court's indulgence.
Q And SLED can, has the capabilities of processing DNA evidence; is that correct?
A I believe so.
Q Do you believe so or have you used them to process DNA evidence before?

A As I testified previously, I've never received any results back on DNA from any case I've ever worked so --
Q But you --
A -- while I believe they have the capability of doing that, I've never been there and witnessed them do it. I don't know that firsthand. It's my understanding that SLED processes DNA evidence. I don't know that for a fact. I do not know that firsthand.
Q But you have sent evidence in other cases previously to SLED to be analyzed for DNA; is that correct?
A Ma'am, as I've already said, I turn evidence to in either the city or the county locker. Where it goes from there, I don't know. It's my understanding that it goes to the state crime lab which is maintained by SLED. The only way I believe that I would accurately be able to know where it was tested by is when I receive a report back indicating any success. And, as I've said, I've never received DNA back on any case I've worked.
Q And the fingerprint that you did take off of this white car and off the Camry, none of those matched Corey Brown; is that correct?
A I didn't lift any fingerprint's off either one of those cars.
Q I guess, I want to make sure, I'm not asking did you specifically, but your department as part of this

investigation, the fingerprint's were lifted. Those were sent to SLED; is that correct?

A To the best of my recollection, no prints were lifted from the Camry. The Camry was dusted for prints; however, no prints were lifted as after examining the prints, it didn't appear we had any useable prints. Sergeant Kenya Griffin, the police department's crime scene technician, I do recall witnessing her lifting or attempting to lift latent prints from the surface of the white Caprice.

Q Okay. And so and then once those were lifted from the white Caprice, were they then sent to SLED to be compared to known fingerprints?

A Yes, ma'am; that's my understanding.

Q Okay. And after that, from the white Chevy, the Caprice that the prints were lifted from, you did not know those matched Corey Brown; is that correct?

A According to the evidence report, that's correct; yes, ma'am.

Q And when you say evidence report, you mean the report you got back from SLED; is that correct?

A I do.

Q Thank you.

A You're welcome.

REDIRECT EXAMINATION

By Ms. White:

Q Just a couple of more questions about the fingerprints. From the report you received back, the fingerprints lifted from the victim's car, were those compared to the victim?
A Yes, ma'am.
Q And were they even able to identify the victim's fingerprints on his own vehicle?
A No, ma'am.
Q Now, Ms. Merrill asked you about phone records on Corey Brown. Did you have a phone number from Mr. Brown to obtain records?
A No, ma'am.
Q And she also asked a little bit about making deals with Mr. Evans or Mr. Nicholson. Is it the practice or even the place for the sheriff's office to make deals with Defendants?
A No, ma'am.
Q Typically, if you are wanting to help a Defendant, how would you go about doing that?
A I would speak to someone from the Solicitor's office.
Q So, ultimately, charging decisions, plea decisions, those decisions are made by my office?
A Yes, ma'am.
Q And there was a lot of talk, I think, Mr. Nicholson and Ms. Merrill asked you about your discussions with Mr.

Evans and whether they were guilty of armed robbery and kidnapping or lesser charges. As you sit here today, do you believe that Mr. Evans and Mr. Nicholson are guilty of armed robbery and kidnapping?

A I do.

MS. WHITE: All right. No further questions, Your Honor.

THE COURT: Mr. Nicholson, anything?

RECROSS-EXAMINATION

By Mr. Nicholson:

Q Detective Brooks --

A Yes, sir.

Q -- are you considered the lead detective on this case?

A I am, sir.

Q All right. And that's why you're testifying, I guess, right?

A That's my understanding.

Q Okay. And we talked yesterday about your statements during the questioning of Shadarron Evans; is that right?

A Yes sir; we did.

Q And I don't think you participated in the questioning of Antonio Nicholson, did you?

A No, sir.

Q Were you present for that?

A No, sir.
Q All right. As your, as being the lead investigator in this case, do you know what he said in his statement? Did you review his statement?
A Only because I've listened to it; yes, sir.
Q You have listened to his statement?
A Yes, sir.
Q All right. And I believe it was Captain Futch who did, who was present for that; is that right?
A Yes, sir.
Q And would you agree that Captain Futch kind of went through with Antonio Nicholson's the same --
MS. WHITE: Objection, Your Honor. This witness can't testify to what Captain Futch may or may not have done.
MR. NICHOLSON: Well, he just --
THE COURT: I'll let you clarify your question, but you can't, guessing of what Detective Futch had in mind.
MS. WHITE: And, also, Your Honor, hearsay.
THE COURT: Okay. Rephrase your question.
MR. NICHOLSON: Well, I'm asking --
Q My question is you have read, that you have listened to the statement?
A Yes, sir.
Q Antonio Nicholson's recorded statement, you've

listened to it in full?
A I think I, myself and you have.
Q Okay. My question for you, in your opinion, is what Captain Futch was saying in that to Antonio Nicholson similar to what you said to Shadarron Evans that you would entertain charging them appropriately as to what the appropriate charges would be if they were truthful?
MS. WHITE: The same objection, Your Honor.
THE COURT: I'm going to overrule it. I'm going to let him answer that question.
A I believe I can only speak to what I told Mr. Evans. I have listened to the recording as to what Captain Futch told Mr. Nicholson. I don't, haven't listened, I predominately listened to that recording, listening for details of the case, details of the incident. What I didn't listen to that recording trying to commit to memory were things Captain Futch told Mr. Nicholson regarding this question you're asking.
Q Well, in your opinion, was Captain Futch taking a different, let me rephrase that. Let me start over. Yesterday I asked you whether you were taking a law enforcement technique of misrepresenting things to a suspect in order to get them to make statements. And I believe that you said that you did not use that technique. And, particularly, didn't use that technique with

Shadarron Evans. Is that correct?
A Yes, sir; that's correct.
Q In your opinion, was --
MS. WHITE: Objection, Your Honor. He's calling for opinion testimony of a lay witness.
MR. NICHOLSON: Well, my question is, and I hadn't been able to ask my question yet.
THE COURT: I agree with that.
MS. WHITE: I think the best way to handle this is maybe if we could approach.
(Whereupon, a bench conference was held in the presence of the jury but out of the hearing of the jury.)
Q All right. Detective Brooks --
A Yes, sir.
Q -- let's go back so I can ask this question and we're on the same page. I asked you yesterday about your conversation with Shadarron Evans at the time of this statement. And, in fact, at the time of his two statements and you said you were truthful with him about making promises to do the appropriate charges. Is that right?
A Yes, sir. Just to point out, I believe what you are talking about is at the time of his first statement. As you referenced a second statement, it was several months

later.
Q Okay. And you have listened to the statement, the recorded statement that Antonio Nicholson gave to Captain Futch?
A I have.
Q And at the end of that statement, Captain Futch made similar comments to him as what you had noted to Shadarron Evans. Is that right?
A I don't recall how similar they were, Mr. Nicholson.
Q You don't remember that he made a --
THE COURT: Show him his statement.
Q It's really just the last two pages that were transcribed and stapled. Do you remember hearing that part of the statement?
A I do. It was helpful to read it and refresh my memory.
Q Okay. And my question to you is as the chief investigating officer of this case, was Captain Futch being straightforward with Antonio Nicholson about the intentions of law enforcement in this case?
A I believe Captain Futch was deliberately misleading the suspect at that point.
Q So Captain Futch was misleading Antonio Nicholson, but you were not misleading Shadarron Evans?
A I believe that to be true. Maybe we can distinguish

between misleading and lying. I believe what I said is I did not lie to Shadarron Evans.

Q Are you saying now that you did mislead Shadarron Evans?

A I don't believe I did. I believed what I told him was the truth. I think I explained that yesterday.

Q So how do you think that Captain Futch was misleading Antonio Nicholson?

A May I reference that sheet of paper you hold in your hand?

Q Sure.

A The statement that says, "Now, that I know the truth" -- may I read this?

THE COURT: Sure.

A The statement that says, "Now, that I know the truth and as long as I can prove and show that everything you told me is truthful. And I don't think that is going to be a problem, then absolutely, I'm going to do whatever I can to make your charges be appropriate."

I believe that part is misleading. I believe that part implies that as long as Mr. Nicholson was telling the truth, that he can expect reduced charges. I believe that was misleading.

Q You think Mr. Nicholson told the truth then?

A Substantially, yes sir.

Q Well, and you agree that this statement by Captain Futch was made at the end of Mr. Nicholson's statement?
A Yes, sir.
Q And not as an inducement to the statement but made at the end of the statement. Is that right?
A Yes, sir.
Q And you think he was being misleading?
A Yes, sir.
Q So you and Captain Futch are backing up on your promises to Antonio Nicholson and Shadarron Evans?
A Mr. Nicholson, I haven't made any promise to Antonio Nicholson or Shadarron Evans.
Q Were you backing up on your representations to them?
A I only made a representation to Shadarron Evans, and I believe that I have stood by that representation. At the time on the, if I may speak.
Q Well, is it true, nobody knows but you what you going to do for Shadarron Evans or Antonio Nicholson, do you?
A I don't believe that I can do much for them at this point. I believe that's in the hands of the Solicitor's office.
Q So it sounds like you and Captain Futch are writing checks you can't cash? Is that right? Is that a good way of characterizing it?
A Again, I can only speak to what I did, and I believe

that --

Q All right. Speak to what you did.

A -- I stood by what I told Shadarron Evans.

Q Speak to what you did.

A As I've previously testified, I told Shadarron that if he was being completely truthful with me, he was not. The complete truth did not come out until months later in another statement, so that part wasn't the case. I also told him if he possessed a firearm at no time during this incident, he did as he testified that the gun came from him. I also told him if he had no part in holding anyone against his will, as I testified yesterday, I believe when he moved from the silver Toyota Camry back to the victim's own vehicle that the victim was currently being held at gunpoint. I believe that indicates he did have something to do with being, the victim being held against his will.

Q So in making those statements, you characterized the crime as you looked at it?

A No, sir. I believe when I made those statements, I made those statements completely aware that Mr. Evans was not telling me the truth, the whole truth, at that point in time. I also knew, I knew that because of Mr. Nicholson's statement and because of the victim, information from the victim.

MR. NICHOLSON: Judge, I don't need any other

questions with him.

THE COURT: All right. Ms. Merrill.

MS. MERRILL: Thank you. May it please the Court.

RECROSS-EXAMINATION

By Ms. Merrill:

Q Have you heard of what SLED calls or has an acronym, A-F-I-S, AFIS?

MS. WHITE: Objection, Your Honor. Scope of redirect.

THE COURT: You went into, of the owner of the car, I believe, in your redirect.

MS. WHITE: Yes, sir.

THE COURT: And so I think that's where she's --

MS. MERRILL: I was going to ask --

THE COURT: Being familiar with the acronym, I'm going to allow the question.

MS. MERRILL: Thank you.

A I have heard of AFIS; yes, ma'am.

Q And what is AFIS?

A I may not get the acronym correct. I believe it's something to the effect of automated fingerprint identification or index system, something like that.

Q And it stores fingerprints, numerous fingerprints, correct?

A I've been told in a class that that's what AFIS does.

Q Okay. And SLED can search the AFIS system to compare prints; is that correct?
A Ms. Merrill, I think they can.
Q I mean, is that your understanding of how the process works?
A Well, essentially; yes, ma'am.
Q And if they search the AFIS system and find fingerprints to use for comparison, they will try to do that analysis based on the lifts. Is that correct?
A If they take the lifts, my understanding of how it works. And, again, I am not, I don't run AFIS. I'm not a expert in AFIS but my understanding of how it works --
Q I'm not asking you to be.
A -- is when lifted prints are submitted to SLED that they are, they are somehow run against all the other prints in the system. I think that's how it works. I'm really not sure.
Q Okay. And then if, are there any times where the prints it retrieves from AFIS are not suitable for comparison, SLED will request that law enforcement submit updated prints. Is that correct?
A Yes, ma'am.
Q And in this SLED report regarding these prints, the last sentence of that report requested that you, that your investigative office submit complete fingerprint cards.

Is that correct?
A Something like that, I think that's what it says.
Q And you never submitted those complete inked fingerprints, did you?
A No, ma'am.
Q And so that's why it may be that the victim's fingerprints couldn't be found on his own car. Is that correct?
A Ma'am, I don't know. That could be why, but also --
Q But they requested you send more and you didn't. Is that correct?
A That is correct.
Q And specifically I want to make sure, they requested a complete fingerprint card from Mr. Spearman, the victim. Is that correct?
A That sounds to be correct as I recall what the paperwork had.
MS. MERRILL: Okay. Thank you.

REDIRECT EXAMINATION

By Ms. White:
Q You knew whose car this was, didn't you, Detective?
A I did.
Q So would there have been any need to submit a card from Mr. Spearman?
A No, ma'am.

Q And just to be clear, have you been trained on law enforcement investigation techniques?

MS. MERRILL: Your Honor, may we approach quickly?

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

MS. WHITE: No further questions.

THE COURT: You may step down.

THE WITNESS: Thank you, sir.

MR. TAYLOR: Your Honor, at this time, the State rests.

THE COURT: All right. Folks, y'all step in the jury room. I got something to put on the record. I may take a lunch break, but I want to ask the lawyers for planning purposes what else we got left to do. Step in the jury room. I'm going to have that conversation and either I'm going to send you to lunch or have you right back out here, okay? You still cannot begin discussing the case.

(Whereupon, the jury was excused from open court.)

THE COURT: All right. I'm going to hear their motions momentarily. Are y'all going to put anything up? I figured you are.

MR. NICHOLSON: I just have motions. I have no evidence.

THE COURT: MS. MERRILL, were you, have y'all made a

decision?

MS. MERRILL: Let me double-check. I'm pretty sure.

THE COURT: I mean, my hope --

MS. MERRILL: Yes. That's correct, Your Honor. We're not going to put up any evidence or any witnesses.

THE COURT: Okay. I don't want to impact your decision, but it seems to me it'd be appropriate to send the jury home to lunch until roughly 2:00 o'clock and we can argue and charge at 2:00 o'clock. That's kind of what I was thinking. We can do the motions and we'll get them out of here real quick. Is that okay?

MS. MERRILL: That's fine.

THE COURT: Just from what I've seen, I don't want to suggest any strategies. But I just, my guess was you were not going to put anything up, either of you, therefore preserving your rights. All right. 2:00 o'clock.

(Whereupon, the jury was excused for a lunch break.)

THE COURT: All right. Let's hear the motions before we go to lunch. So, Mr. Nicholson, you've been going first.

MR. NICHOLSON: Yes, Judge. From what I understand, there are four indictments against Christopher Johnson, my client, Christopher Johnson. And those indictments being armed robbery, kidnapping, conspiracy of armed robbery and kidnapping, I believe, or one or the other. And one of

them is conspiracy to commit grand larceny. And I'm not making a motion for directed verdict on the indictment of conspiracy to commit grand larceny because I think there's plenty of evidence in there that Christopher Johnson on that night got together with these four other guys when they talked and planned about stealing cars. And based on the value of the car, it would be grand larceny. As to the other three charges, I make a motion for a directed verdict. And the way I understand the law and I have looked at it and I gave you some jury charges on it, both the conspiracy and the, I don't know if it's the principal agent or principal one/principal two accessory situation or Codefendant situation, it seems like the law is very similar, is that a person does not actually have to have actually committed a crime if he's a part of the planning or furthering the scheme or is involved with it and Coconspirators or Codefendants, people that were acting with another principal actually does the act. They can be responsible under the theory of the hand of one is the hand of all, which has been mentioned by the Solicitor. And that is a legal theory and that is true but it's kind of a shortened version of what that law says. The hand of one is hand of all as to crimes which a reasonable person in that person's position could foresee happening or would reasonably expect to see happen and that is what I think

the law is as to this. And in looking at the kidnapping and armed robbery from the standpoint of Christopher Johnson, there really has been no evidence to say he should reasonably have expected that to happen. The testimony was from everyone that Christopher Johnson, Antonio Nicholson and Shadarron Evans were in utter shock when they found out that had happened, that these five guys once Christopher Johnson got together with them were riding around purposely trying to avoid alarm systems, security lights, people. Their plan was to steal cars. The plan was not to rob anyone or to commit an armed robbery or a kidnapping. It was to stay away from people. They had a burglary tool where they were going to, a crowbar or whatever it was to break into cars. Supposedly, this guy Tee was an expert at breaking into cars and hot wiring them and that was the plan. So I think that at this point, Your Honor would have to decide if there is possibly some evidence where a jury could find beyond a reasonable doubt that Christopher Johnson should have foreseen from his standpoint, what we know in the facts in this case, that an armed robbery or a kidnapping could have happened that evening. And you really get down to, of course, armed robbery would have to be with a deadly weapon. You have to get down to the gun and there was really an absence of testimony from the Codefendants

as to anything said in the vehicle for the two guys that got out and actually did the kidnapping and armed robbery according to the facts presented in this case. There is really no evidence to say we were in this car, we discussed, you know, that somebody had a gun, if things go bad, we're just going to take it anyway. That, you know, if need be we're going to, you know, commit an armed robbery or take somebody hostage. My position is the hand one of, the hand of all doesn't go to any crime possibly committed by a codefendant and I know that's the law. The question is where you draw the line. The standard seems to be where someone could reasonably foresee that that could happen. And I think to establish that, I think the State would have to present at least a modicum of evidence that a jury could rely on to say there's some discussion about this is kind of what, we're going to point a gun at somebody. We're going to hold somebody up. The comparison is if you, if there's a plan to commit an armed robbery of a convenience store or of a bank or whatever it may be, you're pointing a gun and threatening to shoot somebody, then obviously you could foresee that the decision to be made to shoot somebody. So there you go to murder from armed robbery. And that's where I think that example was used by the Solicitor at the beginning of the case. But that is, you know, somebody is making a

decision to threaten to use a gun and then the gun goes off. And you could, you know, accessory could be responsible for murder. But there is a very clear line drawn by the Supreme Court as to when a person could be responsible for the crimes committed by others. There's no allegation that Christopher Johnson actually committed the armed robbery or the kidnapping. The allegation is that he pointed out cars to steal and the whole intent by all of them except possibly for the two that got out of the car was that they were just going to steal cars. The other thing to point out is that Christopher Johnson was with these two individuals for a very short period-of-time. There's no allegation that he knew them ahead of time, knew their personalities. It wasn't that he knew they were dangerous people who could commit this kind of crime. He wouldn't have had any knowledge of their background. So my motion to directed verdict is as to those other three indictments. I have no motion on the indictment of conspiracy to commit grand larceny.

THE COURT: All right. Ms. Merrill, I'm going to hear from the State first. It'll be easier for me to separate the Defendants' argument. So we're hearing just on Johnson. I want a response on Johnson.

MS. WHITE: Yes, Your Honor. As Mr. Nicholson stated that the jury does have to find that it was a natural

probable consequence. I think there's ample evidence in the record from which the jury can determine that. The witnesses testified it was the middle of the night. They were going onto other people's property. Mr. Evans testified that they all knew that there was a gun involved. That they had this plan. Also, Your Honor, there's evidence in the record that once the armed robbery and kidnapping occurred, Mr. Johnson did not lead the conspiracy, he actually stayed in the conspiracy. He was worried about his money. He had to be told to leave. They pulled over to allow him to leave at which point he covered his head. He remained in the conspiracy as is evidenced by the nineteen phone calls and text message the next day. So I think there is enough there for the jury to determine that he was, in fact, a member of the conspiracy all the way through, that he's liable for any acts committed by his Coconspirators. That he did, in fact, know that this was going on. It's not like he didn't know that the guy was in the car, that there had been conversation back and forth. So I do think that there is enough there for it to be a question of fact for the jury whether or not Mr. Johnson could have reasonably foreseen it or whether or not once it happened, he was still involved in it as part of this conspiracy that ended up being involved in the armed robbery and kidnapping.

THE COURT: Okay. All right. Mr. Nicholson, I'll hear from you, but I'm going to think about it over lunch.

MR. NICHOLSON: Okay. I've got two points to make. One is I think that the appropriate charge for what Ms. White is talking about is they had chosen to indict him the accessory after the facts of a felony, in that class of felony, which, in fact, we had offered to plead guilty to before this trial started. We offered and I was going to tell you that, that we had offered to plead guilty straight up to grand larceny and accessory after that class of felony. They did not chose to indict that and that was before my, while my client was still present and with me and coming to court. The other point is and we can look back at the record, there is no testimony that anybody knew that, you know, there was a brief testimony that they said everybody knew there was a gun somewhere in the car. There is no testimony that anybody knew that Tee was taking a gun, if that's the person, Tee was taking a gun when they went to steal that car. There is absolutely no testimony that he had a gun or either one of them had a gun, whoever the two people were.

THE COURT: All right. Ms. White, anything else from you on that?

MS. WHITE: Judge, I just wanted to point you to a case, 408 S.C. 461, State versus Reed. It's talking about

the hand of one, hand of all. And basically says under the theory of hand of one, hand of all, One who joins with another to accomplish an illegal purpose is liable for everything done by the other person by, to the education, to the execution, excuse me, of the common design and purpose. It says, They must personally commit the crime or be present at the scene, which Mr. Johnson was present, and intentionally aid, abet or assist in order to be guilty. Mr. Johnson is aiding, abetting and assisting and picking out the victim and the discussions of where to go and after the victim's been kidnapped, he's still involved in the discussions of what to do.

THE COURT: Okay. All right. I want to read that case over lunch.

MR. NICHOLSON: And there is a, in the State v. Peterson, which is strangely on point here.

THE COURT: What's that cite?

MR. NICHOLSON: 287 S.C. 244.

THE COURT: Okay.

MR. NICHOLSON: And it says, "In the present case, however, the jury reasonably could have found that murder was not the natural probable consequence of the larceny. Had the jury determined that either the appellant inspired only to commit an unarmed larceny of a car and that it further concluded that the State fails to establish beyond

a reasonable doubt that the homicide was the natural probable consequence of a plan to steal the victim's car."

THE COURT: Okay. All right. I'm going to read that over lunch, and I'll let you know. All right. Ms. Merrill, let's hear from you.

MR. NICHOLSON: Judge, could I ask you one question. Well, one is permission if I could go ahead and go to lunch.

THE COURT: Sure.

MR. NICHOLSON: If there's nothing else I'm needed for, I'll be back at 2:00 o'clock. The other thing is have you decided on as far as the jury instruction as far as what you're going to charge?

THE COURT: No, I was going to ask y'all about that, too. I've been working on them.

MR. NICHOLSON: Well, we can talk about that at 2:00 o'clock.

THE COURT: All right. Now, you're free to go.

MR. NICHOLSON: Okay.

MS. MERRILL: Your Honor, at this time, I have three motions. I'd like to renew my motion for a mistrial based on the curative instruction not being enough to cure that error.

THE COURT: Okay. I'm going to respectfully deny that motion.

MS. MERRILL: Thank you.

THE COURT: But you're protected. I mean, if I did it wrong you got me.

MS. MERRILL: And I'd also like to renew my motion for a mistrial based on the discovery violation that the Court previously denied.

THE COURT: All right. And I believe the State's substantially complied with providing the picture and the criminal record for both of those events, the computer research of the identification or the discovery of the true name, as well as the arrest which the curative instruction was in relation to. So respectfully, I'm going to rule consistently as I have before.

MS. MERRILL: Thank you, Your Honor. And I'd also like to make a motion for a directed verdict based on insufficient evidence against Mr. Brown and that the evidence that is against Mr. Brown at most just rises to the level of mere suspicion. Looking at this, basically what the State has shown is the two Codefendants identifying him and the victim identifying him. There is no physical evidence linking him at all to this, to these crimes, to these four indictments. There is only finger-pointing and testimonial evidence pointing, excuse me, testimonial evidence saying that he was present. And as such, that's the lack of evidence for this case to go

to the jury and it only rises to the level of mere suspicion.

THE COURT: Anybody got anything? All right, Mr. Taylor.

MR. TAYLOR: Judge, you've heard the testimony. You've got people that were there on scene, the victim, two Codefendants, one of them knew him well before this event. There is no physical evidence. That's not a requirement to reach more than a mere suspicion. And I think there's definitely, in the light most favorable to the State, there is enough to go to the jury.

THE COURT: All right. I agree with you. I think there's enough facts on this one for Mr. Brown's four indictments to go to the jury. There's a question of fact and, you know, I'm going to charge direct and circumstantial evidence. This is largely a circumstantial case and we're going to instruct mere presence. So I've got several things in here in my jury instructions I'll tell y'all. So y'all know what I have thus far and, Ms. Merrill, you're welcome to transmit this onto Mr. Nicholson. But I had planned on in addition to kidnapping and armed robbery and conspiracy, but constructive presence, hand of one, identification, mere presence, prior inconsistent statements and prior records of the witnesses to the extent they would be needed. All

charges, standard, just the regular stuff, the witness identification, failure to testify as to Defendants, multiple Defendants. I said that very fast, but I let y'all know how y'all talk. I'm considering a lesser plea to strong arm robbery charge and the grand larceny motor vehicle charge. And y'all think about it over lunch and let me know what you think about that. And I'll take any other suggestions. Constructive presence and the mere presence charges were appropriate. All right. We'll talk about that further. If you want to hear those again, Jane, slower?

MS. MERRILL: I think of all people I can't complain the least about somebody talking fast.

THE COURT: I agree with you.

MS. MERRILL: Thank you, Judge. We're still going to have a charging conference, right?

THE COURT: Yes, ma'am.

MS. MERRILL: That'll be fine. Thank you.

(Whereupon, Court's Exhibits 2 and 3 were marked for identification only.)

(Whereupon, a lunch break was taken.)

THE COURT: Let's hear, we have still got Mr. Nicholson's motion. Let's hear any suggestions, request to charge in regard to any of the charges, from the State.

MS. WHITE: Your Honor, I think what you outlined

earlier would be fine with us. Regarding the Defendant, Chris Johnson, request to charge. As to number two and three, I think that it is a correct statement of the law. We would object to you reading it in exactly this language, specifically on charge two. That we have to show that a reasonable person in the Defendant's position would have foreseen, I think that should probably, assuming you were going to read this at all, should probably read could have foreseen, it makes it, it increases the burden I think. He knew that it was going to happen as oppose to could possibly, that it was a natural and probable consequence. And, again, I think charge three is kind of the same thing. That they would have foreseen that it would have happened. That it kind of, it is more than that natural or probable consequence. And I think that is you just charge that, that you have to show beyond a reasonable doubt that, a reasonable person could see that it was a natural and probable consequence, that that is sufficient to the law. And also, Your Honor, regarding the lessor included. We are objecting to charging common law robbery. All of the testimony from the victim and from the witness stand was that there was a gun used, there was never any testimony from any witness that there was no gun. From start to finish that he was held at gunpoint the entire time was the testimony from

the victim. And I don't think there is any evidence in the record that the jury concur strong armed robbery as opposed to armed robbery.

THE COURT: All right. Mr. Nicholson, let's hear you.

MR. NICHOLSON: As to, I am trying to find it, I think I took that directly out of the charge.

MS. WHITE: Your Honor had mentioned that you had a hand of all charge already with the same language.

THE COURT: In what?

MS. WHITE: That is what Mr. Nicholson is asking or what's the standard charge.

THE COURT: Here is how it reads. A crime committed by two or more people who act together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the facts done in carrying out the common plan and purpose. And then there is an example.

MS. WHITE: I think that is a correct statement of the law, Judge.

THE COURT: It goes on further. Prior knowledge that a crime is gong to be committed, without more, is not sufficient to make a person guilty of that crime. Mere

knowledge that another person is going to commit a crime, even if the Defendant is present when the crime is committed, is not sufficient to convict the Defendant as a principal. Guilt as a principal is shown by actual or constructive presence at the scene as a result of the prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilty as a principal. The State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all. Do y'all need the rest of it. A principal in a crime or who is present aiding, abetting or assisting in committing the crime. When a person does an act in the presence of and with the assistance of another the act is done by both. Where two or more, acting with a common plan or scheme are present at the commission of a crime, it does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all present at the commission of a crime means to be sufficiently near to aid and abet and assist in the commission of the crime. To convict one as a principal on the theory of aiding and abetting intent is also a necessary element for there must be a common design or intent to commit the crime. Intent means intending the result which actually occurs, not accidentally or involuntary. Intent may be shown by acts and conduct of

the Defendant and other circumstances from which you can reasonably infer intent. That's it.

MS. WHITE: I think that is sufficient.

MR. NICHOLSON: I have got this charge book. And it actually, I think in one case. They include that language in two or three of the charges in here. And I picked out one. It is in this book.

THE COURT: Ms. Merrill, tell me your opinion on the lessor included and strong armed robbery or not.

MS. MERRILL: Your Honor, I was just looking over my notes about the testimony and I think it is accurate that, the testimony I was looking at for Mr. Nicholson, that he did testify that there was a gun, he did realize after the fact, even if he testified that they didn't know it at the time. And I am not sure there is a witness who is, said there was not a gun.

THE COURT: Mr. Nicholson, what say you about the lessor included, common law robbery.

MR. NICHOLSON: Pages 251 and 260, one says to aiding and abetting and principal and one is to conspiracy. And they both are included in the language.

MS. WHITE: And, Judge, going back, what would have foreseen that the criminal act of armed robbery and kidnapping would be committed. That is almost requiring that it be part of the plan in the beginning. And I just

don't think that is the case law in South Carolina.

THE COURT: The suggestion of instructions are provided to the Judges, come from other Judges, not from Court Administration. Court Administration may have a copy of them.

MR. NICHOLSON: On the charge number two, I am looking at it. There are two places is the word, would, occurs. And a reasonable person would have foreseen the criminal act. Substitute the word, could, I think it be in a second position.

MS. WHITE: Your Honor, I don't think we would have a problem with that, would have foreseen that it could be committed.

THE COURT: Which would you want to become a could, the first one or the second one.

MS. WHITE: The second one, Your Honor, in charge two and three if Your Honor is inclined.

THE COURT: I think my suggestion is that reading the case, the State versus Peterson case, it appears to me that we need to give directions to the jury as to what questions of fact to resolve in which order. Conspiracy for larceny, conspiracy of kidnapping and armed robbery. Then the armed robbery and then the kidnapping. The last two not necessarily in the same order but they can be tandem but the conspiracy, larceny first, conspiracy and

armed robbery and kidnapping second. In this case it says, a jury would be permitted to convict, appellate, found first the appellate and another commit a non-life threatening crime of grand larceny. And that thereafter the accomplice took the life without his prior knowledge. That is basically conspiracy to be answered first from what I am reading. That has got to be resolved. So my suggestion would be the verdict form provide that sort of direction to resolve these questions of fact in that progression. If the jury answers that question no, the second question, conspiracy to commit armed robbery then they would not even try to reach a verdict on the last. That is kind of what I am going to do, that makes the most sense to me considering the facts of this case and that allows both of you to argue just that.

MS. WHITE: Makes sense to me, Judge.

THE COURT: Makes sense to y'all? That answers the question about whether it is the natural and probable consequence of stealing a car to be committing, the case you gave me is murder, in this case is armed robbery and kidnapping.

MR. NICHOLSON: This is fact specific to this case.

THE COURT: Yes. The verdict will be separate, as to Corey Brown, Johnson, one, two, three, four. So respectfully I will deny your motion for the directed

verdict on the other, on the three charges. But I am going to submit the verdict form in that order. Let's bring the jury in.

(Whereupon, the jury came into open court at approximately 2:27 p.m.)

THE COURT: All right, folks, talked to the lawyers, had some conversations with them and they informed me that y'all have heard all the testimony and we've received all the evidence we're going to receive in this case. As I told you earlier, in a case with multiple charges and multiple Defendants, we have to go through in an orderly fashion. But the State bears the burden of proving all of these charges. Now, they get to summarize their case first. Now, because the Defense on either side for either Defendant, Mr. Johnson or Mr. Brown didn't put up any evidence they get to argue to you last. And I'm keeping with the same pattern. The State will argue, then Mr. Nicholson, and then Ms. Merrill in that order, because I started in that order and I have just maintained that order throughout the trial because that's seems to be appropriate. So once the lawyers finish their summaries of what they believe the facts have shown y'all, then, depending on how long they argue or summarize, we may take a brief break before I give you my instructions. There will basically be a, do y'all need to stretch your legs is

a question to y'all because my instructions will take about twenty minutes, maybe a little longer for me to read my instructions to you and to get the verdict form prepared. The verdict form hasn't been prepared, but basically it's going to be four questions for each Defendant to be considered in the order that I present it. Conspiracy to commit grand larceny will be the first question to answer, conspiracy, and then armed robbery. Kidnapping is the second question, and then armed robbery, and then kidnapping. Questions one, two, three, four and it's following that pattern, and there will be two verdict forms, one for each defendant. Now, until I give you the verdict form y'all can't begin discussing the case, but you get to hear the summaries, then my instructions, and then y'all can do your deliberations. With that in mind, Mr. Taylor.

MR. TAYLOR: Thank you, Your Honor. All right. Y'all got to hear Ms. White speak at the beginning. I didn't get to introduce myself. My name is Aaron Taylor. I'm obviously one of the prosecutors. Y'all have been the best I've seen at taking notes. Y'all have taken more notes than the attorneys, so I appreciate it. I mean, y'all paying attention, y'all care about the case. As I'm going through this, this won't, I won't be up here, I'll be fifteen, twenty minutes. I may say you probably want

to write this down just as a key point, so just keep that in mind. Before I get going here, let's make sure that everybody understand who's involved. A lot of, you know, nicknames have been thrown around. We got, we're changing back and forth between, you've got one attorney whose name is Nicholson. You got a witness whose last name is Nicholson. So let's start off with the victim, Latavius Spearman. He's sitting right there. He's been here all week and he had to come in here and relive what happened to him again after, I mean, thank God, he's not dead. He could have ended up in a ditch somewhere. You know, what if they, he wasn't able to escape and ends up, you know, off the bridge going over the lake on the way to Georgia. So, obviously, this matter is a lot to him. He's been sitting here missing work all week, Latavius Spearman. We also heard from Antonio Nicholson. He was the first witness that testified for us. His nickname is VJ. You may have heard that a little bit. There was some reference to that and, as Ms. White said in her, our opening statement, he's not a choir boy. He's not in the Boy Scouts. We understand that. That's who's involved. These are all people like this because we understand that and that don't mean he got up here and lied. He was there, we weren't. So we've got to use people like that to come in here and tell what happened. So that's why we

had him. He came to the police and said I want to tell the truth. Did he give the full story at the beginning. No. He admitted that. Nobody's hiding anything from y'all. He said, yeah, I lied, you know, about the acting like there was a wreck out at the Hot Spot and all that sort of thing. So you got Antonio Nicholson. You also have Shadarron Evans. He's a pretty scary-looking guy. He's got tattoos all over himself. He also testified. Shadarron Evans. And again, he's got a criminal record. He changed his story. At the beginning, he said I wasn't involved and played that little game and, eventually, he told the truth. He came up here and both him and Mr. Nicholson, for lack of a better term, stuck their head in the noose. They came in here and, you know, they admitted they were part of this and they're guilty. So even though when they were asked by these Defense attorneys, do you think you're guilty and they're like, well, not of the robbery. They are guilty of the robbery. No doubt about it. They were involved. They're helping. They're aiding and abetting and I don't care what they said, if they had to come to us and gave the truth and said we want to testify for you, they'd be sitting over there at trial right now looking at the same charges. And you also have Antonio Hargrove Torrance McLean. You kept hearing the name "Tee". He's the one in jail in Georgia. We've tried

to get him back. We cannot get him. They will not, you know, we can't just go to another state and take someone out of a jail there, so that's why he's not on trial today, but you heard his name a lot. Corey Brown, sitting right there. C-Lo, we've heard his nickname a lot and we'll get into him in a minute, but we believe he's driving the car while Mr. Spearman's kidnapped in the backseat. And then the last is Bow-wow, Christopher Johnson, and let me get this picture. I don't think y'all have got a chance to really look at him and y'all get to take this back to you. It's in evidence as State's Exhibit 24. This is Christopher Johnson and like I said, you'll get to take all those pictures back and look at them and you'll be able to, you know, hand them around just so you understand, but that's him. So you got C-Lo's on trial and Christopher Johnson's on trial. So let's talk about what they're charged with. What are they on trial for today. Each one of them has the same charges. So this won't be confusing, you've got one charged with two things and the other one, three. They each have four charges. The first is conspiracy to commit grand larceny. Now, what does that mean, conspiracy to commit grand larceny. That means that two or more people were working together. That doesn't mean it had to be in advance that they planned this, it's just that they're working together

to commit a crime to go steal something. You even heard Christopher Johnson's lawyer, Mr. Nicholson, in opening statements say he admitted he's guilty of trying to steal cars. That's what they came to Greenwood for. His guy is the one that was the connection with Greenwood. Christopher Johnson that knew one of them that got them to come down here. He's already said he's guilty. There's no reason to even keep talking about it. He has admitted he is guilty of conspiracy to commit grand larceny. The second one is conspiracy again to commit armed robbery and kidnapping and I want to tell you again, that does not have to be something in advance that is planned. They don't have to, you know, talk about it and plan it. This could be something on the fly and which is what happened. They're in the middle of trying to steal cars and one of the guys with them decides to rob somebody, Mr. Spearman, and then stick him in the back seat of his car at gunpoint. And we're going to talk about how the two people on trial there are guilty of it, because there's nobody that came in here this week and said that Christopher Johnson and Corey Brown had a gun or they were the ones that actually robbed him or anything like that. Nobody said that. We're not, but that's not what we're saying. And the last two, we all know what armed robbery is. It means using a weapon of some sort and you heard

the testimony, it was a gun. The guy who got the gun, Shadarron Evans, said it was a handgun. It had a laser pointer on it. You got pictures of the laser pointer and, it means you stole something from somebody with a weapon and that's what they did. You heard Mr. Spearman testify they made me empty out my pockets. I had twenty-four dollars on me and a gun. That's what the armed robbery is. And the last one is kidnapping which, by force, so with a gun is taking someone's freedom away from them, either keeping them in one place or with this weapon, moving them around, which is what happened in this case. It went from we're going to rob you to get in your own car and drive. Then, they stop and then stick him in the backseat. And you heard all the testimony. They even were going to stick him in his own trunk. Lucky, that didn't happen. He was able to, you know, eventually fight and get out of it, get out of this whole situation. So let's talk about, because there's different roles for each one of these. You know, we don't have testimony that each one of these Defendants did the same thing. We've got, let's talk about Corey Brown first, because he's more easy to understand. You heard two Codefendants and the victim, Mr. Spearman, both point him out and identify him in court as the one, the taller guy, who when Mr. Spearman was first robbed, remember he said there was a taller guy

standing behind there when the gun was pointed on me. He also testified that that's the guy that ended up driving the car while he's got a gun on him driving down the road. Does that sound like he's involved in a kidnapping and armed robbery. Absolutely, he is and absolutely conspiracy, because he's working with two, with another person. Remember, two or more people helping each other, working together to commit a crime. That's not hard. I'm not going to stand up here and talk all day as much about Corey Brown. You also heard testimony that Corey Brown tried to kind of a pseudo bribe, hey, man, to Shadarron Evans, the guy with the tattoos. Hey, man, I'll take care of your family for you if you take this charge when they were in jail together. Does that sound like an innocent person not involved. Why would he say that, that don't even make sense. Of course, he's involved. You got three people saying he's there. And then at the scene at the Hot Spot, he's one of the ones that jumped out of the car and ran away. Luckily, he had two Codefendants have courage, even though they're not great guys, to get up here and tell what happened because we may have never gotten the whole story. So you got that going. Let's talk about Christopher Johnson, the infamous "Bow-wow" we keep hearing about. We finally saw his picture. This never would have happened if Christopher Johnson hadn't

asked these guys, asked Antonio Nicholson to get somebody to come down to Greenwood. This never would have happened. There never would have been cars stolen. Mr. Spearman would have gotten home from work, gone home and gone to bed and this never would have happened. Christopher Johnson didn't have a gun. Nobody's saying that the plan when they came to Greenwood was to kidnap and rob somebody. Nobody's saying that. We know that. We've heard consistent testimony that they were coming down here just to steal cars and take them back to Georgia. And I did want to point something out, too, between all of these people. You're going to hear, I expect the defense attorneys are going to get up here and say, well, didn't, remember Mr. Nicholson said they only stopped three times or four times and Shadarron Evans, he testified that it was five times. I mean, they don't even, they can't even get their stories straight. Wouldn't it be weird if all of our witnesses came in here and gave the exact same story. It sounded like it was preplanned like they had talked about it and said we're going to create this story and come in here and lie to the jury. They didn't. It's just like if I told, if I talked here and you go back there, none of y'all, it'd be tough to get two people to agree with something. Just imagine this chaos is at night. You got a guy getting kidnapped

and robbed. The stories are not going to be one-hundred percent correct. But think about it, would Mr. Spearman who has no reason to come in here and lie and make this stuff up, it adds up with what these two guys said, does it not? I mean, everything falls in line. Nothing's different. There's a few little inaccuracies and that's normal. I think that's a good thing because again, it shows these are things really happening and these people are coming in here and telling the truth. Also, you're going to hear, I expect to hear both defense attorneys come in here and say, oh, you know Antonio Nicholson and Shadarron Evans are just telling everybody what they want to hear to get out of this stuff and you've heard them testify. There's no deal. I'm the one who's going to offer them something. I haven't offered. I haven't promised them anything. I didn't threaten them. If this was a lie by them, would you not, would they not have come in this court and say yeah, Christopher Johnson had a gun, Corey Brown had a gun and they're the ones that, they would have put them right in the middle and they didn't because they're telling the truth of what happened. Let's also, let's continue through this. Christopher Johnson, again, I expect Mr. Nicholson, his lawyer, to come over here and say he didn't have a gun, it wasn't planned at all to kidnap anybody. He never even, the victim, Mr.

Spearman never saw him that night. He didn't even know he was involved until he read he got arrested in the paper. And all you got is saying he was in the car to help them point out cars to steal and he eventually jumped out. That's true, but let's talk about, these are some things I think you need to write down. This is very important. Christopher Johnson also tried to bribe Shadarron Evans in jail. He said, hey, man I'll give you $200.00 dollars if you take these charges. Again, why would somebody do that? Why would you, and $200.00 dollars is a small amount of money. Why would you even offer a dollar unless you're guilty. That makes no sense. So you got that. Also, Mr. Johnson as part of the kidnapping I think is huge. He tells those guys in the other car to keep his head down. You heard testimony about that. Keep his head down so he doesn't see him, he'll know who I am. Well, how is that not taking part in the kidnapping? He's telling them, instructing them how to kidnap him and shove him down in the seat. Also, Christopher Johnson, you know we had went through that whole thing about the cellphone records. I know that was kind of painful having some, these two women get up here and testify to all this kind of minutia about cellphone records. It shows that Mr. Johnson called nineteen times after that happened, after this incident. The next morning, sent a couple of text

messages. He's still in it. He's still, you've heard testimony and he said, y'all, excuse my language, shit me out of my money. You better give me my money. That's all he, he didn't give, he didn't care about Mr. Spearman getting kidnapped or robbed. He couldn't care less. He wanted his money. They were going to chop the cars up. Take them to Georgia, chop them up and split the money up. That sounds like someone who's clearly involved. Yeah, it's, there's, here's a good analogy. It's kind of like and I'm going to use basketball because we've got five Codefendants even though two are on trial in a basketball team, five players on the floor. If a player, if one of the guys had two points and fouled out at halftime and you got another one who scores forty points and he's the star player and they lose, they both lost. There's no difference. One did a lot more in that game than the other. It's the same thing with these guys. You got Corey Brown driving. That's his role. You got Christopher Johnson picking out cars, you know, kind of running the show which cars are going to be good. You know, he even knew Mr. Spearman and pointed him out and said I used to own that car. It's a great one. It doesn't have an alarm. It's perfect. Easy victim. And that's just like in this case. There's no such thing as being kind of guilty or yeah, I'm a little bit guilty

because I didn't have a gun. I just was there and helping drive. I'm a little bit, you know, the other guys are more guilty. That's not how it works. When I get done talking and these two defense attorneys get finished talking and y'all go back in and talk about it, there's no kind of guilty. They're either guilty or they're not guilty and that's on y'all. Y'all are the finders of fact. Y'all are the ones that decide if they're guilty. The Judge at the end is going to explain these laws again. You're going to have it in writing. He'll read it out loud so it's not going to be tough to understand. And something, too, I think it's important to remember that the hand of one is the hand of all. You're going to hear the Judge talk about that. What does that mean. In this case, here's what that means. You got a group of guys. You heard testimony all of them knew there was a gun in that car. Christopher Johnson, the little smaller guy is sitting in the middle in the backseat with two other guys and Tee, who's got the gun with a laser pointer on it, is sitting in the backseat. Shadarron Evans said we all knew there was a gun. There is no doubt that he knew there was a gun. That's what he said. You've got guys, five young men at 3:00, 3:00 o'clock, 3:30 in the morning driving around in people's properties, terrible decision going on people's properties with a gun even though some of them

stayed in the car with a gun and you're going to hear about hand of one, hand of all is what is a probable outcome of that, of trying to steal cars with a gun at 3:30 in the morning. And you got people going on other people's properties. What is the probable outcome of that. What, is it surprising that someone was kidnapped and robbed. I don't think so when you have a gun involved. Again, thank God, he's not dead. Thankfully, we're not talking about a murder case and so that's real important, hand of one and hand of all. You got different roles, and I'm not going to keep standing up here repeating this, but I do want to make it clear one more time that these guys didn't have a gun? They're completely involved without their help in aiding and abetting and working together, this would have never happened, the bottom-line. So I'm going to close with this. Ms. White said what is beyond a reasonable doubt? That's, because you can't just say they're guilty and, you know, I'm fifty-one percent sure they're guilty. That's not how it works. It's got to be beyond a reasonable doubt. It is simple. They're going to get up here and some of these defense attorneys, I expect them to say, oh, we, it's insurmountable standard and if you have one little bit of doubt, you can't find them guilty. That is not true. It's simple as this, you can write this down

and you'll hear in the jury instruction. Are you firmly convinced. That's it, firmly convinced that he is guilty. That's not hard. What's in your gut, what is your gut. Y'all have common sense. Y'all are going to get to talk about this when you go back there. I know this is a tough decision. There's people's freedom on the line, but Mr. Spearman's freedom was on the line and again, I'm very happy that he's here and he come and testify and tell you about it because that means he didn't get hurt that night. He got bit. You're going to have pictures of that, too. This was an absolute nightmare for him and he got to come in here today. This should not be going on in any community, especially not Greenwood. This is ridiculous that we got four guys from Georgia linking up with a guy from Greenwood and we're going around stealing cars and robbing and kidnapping people. That should never happen and you have an opportunity to fix it. So I'm asking you to find both of these guys guilty of all four charges. Thank you.

THE COURT: Thank you, Mr. Taylor. Mr. Nicholson?

MR. NICHOLSON: Yes, sir. Judge, do you have the indictments.

THE COURT: Yes, sir; I do.

MR. NICHOLSON: Mr. Foreman and ladies and gentlemen of the jury, this case is very unusual for a number of

reasons. There are three reasons I can think about right off the bat. One is there's really not a big dispute on the facts. There's really not a big dispute on the facts. You've heard and almost everybody said the same thing and there's not, there's a lot of cases you have, you know, whether it's a civil case. If you ran the red light, you know, who did this or were you there when it happened and all that but as far as my client is concerned, Christopher Johnson, the facts are really undisputed. The second thing is that I'm standing here and I'm telling you that my client is guilty for a very serious offense, and I told you that from the very beginning. And the third thing is that the chief investigating officer in this case, when he testified yesterday and he said he was telling the truth and he said he was telling the truth when he was questioning Shadarron Evans, he looks at the case the same way I do. Keep that in mind as we move through this. The story is basically the same. Everybody has said the same thing. There are these five guys that got together and four guys came from Augusta and it was Mr. V.J., Mr. Nicholson contacted Shadarron Evans. He had had, Nicholson had had some contact with Christopher Johnson up here in Greenwood and it appears that Johnson was down there running his mouth and wanted to seem like a big guy and said, oh, I know where some cars are to steal. I

know, you know, I know where all the cars are, the rims are and have the stuff in them and, you know, I'm the big guy and I can show you where they are. So Nicholson takes that and contacts Shadarron Evans who he thinks would be involved in a robbery, I guess, and Shadarron Evans gets in touch with whoever he gets in touch with because, as he said, those people are good at pulling cars off the street. They're good at opening cars up and getting them without anybody knowing about it. At least that's what he says or why he chose them. And when they got to Greenwood that night, Christopher Johnson didn't know they were coming. He was in bed. He was upset that they'd woken up his grandmother. They didn't, you know, they called him a bunch of times, he didn't answer the phone. When somebody started knocking on the door, he come out, what the hell's going on. You waking up my grandmamma. So he ends up getting in the car with them and he did, that's why I say he's guilty of something. He did participate. He said, yeah, I'll take you around town. I can show you where some cars would be or where some cars are and he is, and that's why I say he's guilty of that and one of these charges, there are four indictments. You've got one that involves grand larceny. These others, conspiracy to armed robbery, a kidnapping and an armed robbery, you know, and these are all, I say, pretty much the same. This is much

different than these three right here. This is the one with the grand larceny. It's conspiracy to commit grand larceny. It's planning to steal a car. And as to these indictments, that's the one I submit to you that Christopher Johnson is guilty of and I'm going to go into the reasons why I say that. And, interestingly, these aren't all the charges that could have come out of this case. You may ask yourself that and I'm sure that is going to come up in the discussions in the jury room, because there are a lot of other things that come to mind. And really, conspiracy to grand larceny, there was a, there's a grand larceny that took place. I mean, this probably should say grand larceny and it's not the Judge and it's not myself who chooses to have indictments. The Solicitor chooses the indictments. He chooses what charges to submit to the grand jury and then it comes to you, but it's their decision and I cannot just simply change what they've submitted and really, the Judge can decide to throw something out, but he can't change what they've submitted and he can't add something later on during the middle of trial. And, ultimately, you can't go back in the jury room and say, well, these are these other charges like accessory after the fact or bribing a witness or, you know, other things they've brought up and they say, well, these are bad people because they did these

other things or they tried to hide something after it happened. Those were other crimes and if they had been submitted to you, I don't know, you know, it depends on what it is and I might have a different opinion on those, but they have chosen to submit these two. Those are what you have to act on and you have to make a decision on each of them and decide whether the State has proven each one of those beyond a reasonable doubt. Now, let's go back to the facts and without going through the whole thing because I'm saying this, is not really even in dispute. The guys were going around trying to get cars off the street. They had a burglary tool. They were trying to take cars without anybody knowing about it. In fact, they, the car that they ultimately took, the two guys ultimately took, they had seen it earlier and the guy was standing next to the car. If the intent was to carjack, to kidnap and rob somebody, they could have done it at that point. The reason they didn't do it then is because he was close to the car. The reason they didn't take other cars is because there was an alarm. They didn't want to confront people. The reason they left when there was a security light is because they didn't want to confront people. The plan was to steal a car without anybody knowing about it and that's the way the whole evening went up until the time when, according to

everybody's testimony, two people did something that everybody else didn't expect and these are two people, one thing I want you to think about. These are two people that, Christopher Johnson, by everybody's testimony, they'd only known for maybe thirty minutes or so. His whole life he's only known him. Now, I want you to, you know, you can think about your own lives. You know you may have a friend that you wouldn't go out to a bar with, because you know they have a couple of beers, they have a tendency to do a certain thing and you say, well, that's going to get me in trouble because I know what they're into. They might drink too much. They might fight. They might do whatever and it may be somebody you don't want to go with Walmart with because you know they have a tendency to shoplift, but you make those decisions based on what your knowledge is of them in your life. Christopher Johnson didn't know these guys. He didn't know whether they had a history of robbery or anything and that would be important to know. I think if these were people he had hung around with and he knew that was the kind of thing they did, that would probably make a difference in this case, but he didn't know that. Nobody's ever said Christopher Johnson had a gun in his hand, which Aaron Taylor said I would stand up and say that. Let me tell you why. They have not proven. They have not submitted

any evidence that anybody knew that Tee, whoever Tee is, got out of that car with a gun. Now, think about that. They have these two witnesses, two witnesses, their witnesses who are cooperating. They had all the time in the world. They've had a whole year to talk to them and they were in the car and the most important question that they could solicit from these witnesses was when Tee got out of the car and whoever C-Lo is got out of the car, did you know that they had a gun. I think they were scared to ask that question, but they had plenty of time or either they knew the answer and they didn't want to answer the question, ask the question. But nobody can say that Christopher Johnson knew they even had a gun when they left the car. Having a gun in a car. The testimony was, well, everybody knew there was a gun in the car. There are a bunch of guns in cars. Some of them are legal; some of them are illegal. Out of the people in this courtroom, probably half, maybe half the people, there may be a gun in the car when they drive home, but the presence of a gun doesn't mean there was a gun in somebody's hands when they got out of the car to go try to steal this car at that location. It simply did not put that proof in evidence and that might make a big difference in your consideration, but it's obvious that Christopher Johnson knew that those guys were getting out of that car to go

steal a car. That's what everybody thought and the other thing is that udder surprise, udder surprise when the phone call came back and said, we got the dude in the car. He said, what the F? What are you talking about? You got the dude in the car? What are you doing? It's udder surprise by everybody. Mr. Taylor said, he said, well, I'm going to discuss Corey Brown because that's easier. It's not, he said Corey Brown is more easier is what he said than Christopher Johnson because it gets kind of murky when they try to start trying to show that Christopher Johnson is guilty of armed robbery and kidnapping. That's a complete stretch. And if you noticed, their theory, because they're having this problem, their theory is Christopher Johnson is the mastermind is kind of what they wanted to say throughout the trial is well, you know, they wanted to try to figure out who the mastermind is and that is probably the best misuse of that word in the English language that I have ever heard, mastermind. When somebody steals the crown jewels out of the tower of London and gets away with it you say, "Who's the mastermind?" When you're watching the show on TV about the stupidest crimes, you don't watch a little segment and say, well, who was the mastermind behind that? There is no mastermind. It's a stupid crime. It's a serious crime, but it's a stupid crime.

It's five people who got together who had different parts in this whole thing. Stupid decision to steal cars and two people who went rogue and committed kidnapping and armed robbery. Two people who should be convicted of kidnapping and armed robbery and probably some people who need to be convicted of accessory after the fact of that because they knew about it later, but that isn't being submitted to you. Now, you've got these four charges and the Judge is going to tell you what the law is to apply in this case, and it is true they talk about the hand of one is the hand of all, but there's a qualification to that. The Judge is going to tell you what the whole law is. I mean, that's very easy to say as to the little thing that lawyers can say and special prosecutors can say. It means that if you enter into a criminal enterprise and we, and based on what you know is the Defendant is charged. Based on what that person knows at the time, would a reasonable person in that position know that this second crime, more serious crime had been submitted. You know, if a reasonable person is sitting there would expect that other crime could happen, would happen, that that second crime would happen and that's what it means the hand of one, the hand of all. Example, you go into a store and several people get together they're going to commit an armed robbery of a convenience store or bank and they say, well,

you go in there and you tell them you're going to blow them away if he don't give them the money. And then he does blow him away. He can't say, well, I didn't think that the guy was going to get killed, because he knew somebody was going to go in there with a gun and threaten to kill him. So the person that's driving the car can be held guilty under that, you know, under that scenario. That's what that means. It doesn't mean something that would not be suspected by a reasonable person in that position. There's something I really want, I think I need to tell you because I'm sitting here submitting to you that Christopher Johnson is not guilty of some pretty serious offenses, and I don't expect you to like Christopher Johnson. You hadn't seen him, I don't think any of you have seen him. You see a picture of him. I don't expect you to like him. I don't expect you to like what he did that night and I can tell you what happened to Mr. Spearman is a terrible thing. It's one of the most terrible things you can imagine happening to somebody in our society and it's scary. He thought he was going to die, and I know you have sympathy for him. I have sympathy for him. But that shouldn't affect your decision in analyzing these cases and saying is there proof beyond a reasonable doubt as to each Defendant and particularly with Christopher Johnson, you know, you may think he's a

punk. He's a punk who came out to steal cars. That he should be punished to the fullest extent of the law, and I submit to you that he's guilty of that on the grand larceny, but it is a big step to go to armed robbery and kidnapping if they can't even show that the guy that was getting out of the car even had a gun with him, that they knew that he had a gun with him. They can't even show that. The one thing I want to touch on before I sit down. Mr. Taylor has said, well, the reason he's really guilty is, well, after it happened, he sent text messages saying where is my money and now, you'll have the text messages. He never says where's my money? He says, what's up dude or something like that, and then he makes telephone calls. He's been involved in a crime. He has been involved in a crime, and he doesn't know whether he's going to get caught or not, and he was out there trying to steal cars, but he wants to know whether he's going to get caught or not. That's one thing that could be going on, but Mr. Taylor is misrepresenting if he's saying, oh, he said, oh, where's my money for this? He never said that. Look at the text message. He never said that. That's what he's extrapolating from that. The Judge is going to explain the law to you. And, you know, I didn't encourage you to write anything down because I want you to write it down if you do when he's telling you because I want you to listen

to what he has to say about it. And, in particular about that part about hand of one is hand of all and about it has, you know, a reasonable person in Christopher Johnson's position, what would he have expected to happen in that situation. And if he didn't, as to all three of these, conspiracy to commit armed robbery and kidnapping and armed robbery and kidnapping. Those are the three charges there. There is not proof beyond a reasonable doubt that he's guilty of those charges. I do submit to you that he's guilty of this one. Officer Brooks got up here and I was very specific. I said, are you, you know, are you being honest with these guys and he said yeah. That's not, I'm not that kind of detective. I'm an honest detective. And I'm saying, well, you went through this whole thing with them and you said, well, if it bears out that you really didn't hold a gun on him, you know, and you really didn't hold somebody against their will and you weren't there when they took him and kidnapped and all that, then, you know, we'll work on the appropriate charges. And I asked him and I said, this was yesterday afternoon and I said, well, do you think that's true about Shadarron Evans and he says no. And then I said, well, why, why. And he says, well, once he got out of that car and went over there and helped restrain him, then I would say he's guilty of kidnapping and armed robbery. That's

what he said. So the chief investigating officer agrees that what I'm submitting to you as to Christopher Johnson because Christopher Johnson wasn't even out of the car. He took off before he even got there. He did less than Shadarron Evans. Well, that's how the officers are looking at the case. Guilty on this; not guilty on these three.

THE COURT: Ms. Merrill.

MS. MERRILL: Thank you. May it please the Court?

THE COURT: Yes, ma'am.

MS. MERRILL: This case against Corey Brown should have never been brought to trial in the first place. The State is basing their case on the testimony of two criminals, testimony that investigators had plenty of opportunity to confirm with some sort of physical evidence and they never did. They have not presented one shred of physical evidence that links Mr. Brown to these serious charges. These are very serious charges and they're asking you to convict him based on those statements. Mr. Spearman is here today and as I told you in opening, I don't think there's a person in this world who would not think that that was not a very scary experience. I certainly do, but that doesn't mean Corey Brown, my client, was there during this incident. If you will look a little bit at the screen. Sometimes, I like to kind of,

I think it's easier to show it a little bit so you see where I'm going. There is only testimonial evidence from convicted criminals. There is no physical evidence and our justice system requires more than the uncorroborated testimony from two Defendants, Codefendants who were also charged. Our justice system requires so much more than that and investigators had plenty of opportunity to show you more and they haven't. There's testimonial evidence, that's evidence you've heard from witnesses and y'all have been listening to that for several days now. That's all you've heard against Mr. Brown. That's all. When you have that testimonial evidence you go to investigators and confirm it with physical evidence. Show that what they're saying is actually true. They never confirmed any of the statements with physical evidence and it wasn't because that physical evidence didn't exist. Statements change over time. You've seen that. The statements of, their statements are different from one time, one, or soon after Mr. Evans gives one statement and then about a year later, he gives a different one and that physical evidence that we don't have could confirm or dispute their testimony and physical evidence remains consistent. How important is this case to the State if they didn't even bother confirming this testimonial evidence. Let's look at the witnesses and talk about them. Mr. Spearman. Mr.

Spearman testified that he was shown a lineup that included a picture of Mr. Brown and he could not pick him out. The only time that Mr. Spearman identified Mr. Brown was here in the courtroom. Mr. Spearman said it was several black males that night. He never testified that there would be anybody else. Mr. Brown is the only black male sitting at counsel table. Makes that identification pretty easy. Other than that, Mr. Spearman, the rest of his testimony was not at all related to Mr. Brown. Antonio Nicholson, you heard from him second. As he said, he's also charged in this crime and as you say, he has a criminal record, aggravated assault. I want to make sure I tell you the right one and the right person, a terroristic threat, a robbery, I don't want to tell you wrong and he is a convicted criminal. He testified to that in front of you. His initial bond and he confirmed this was $200,000.00 dollars. He has that criminal record. The original Judge setting the bond, because they'll look at records and they'll also hear the allegations and then set a bond. That original Judge who set that original bond, heard Mr. Nicholson's record and set that bond at $200,000.00 dollars. That was on July 26th, 2013. On August 5th, 2015, his bond became $20,000.00 dollars and he testified up here that he wanted a bond so he could get back in the streets. He wrote

fifteen letters to the investigators in this case, fifteen. He has all the motivation in the world to lie. He also testified that he is not the mastermind. You heard that it was Mr. Nicholson who called Evans first, Nicholson to Evans. That's all you heard. All through several witnesses, not just him, Mr. Evans, yes, Nicholson call me, yet Nicholson is backing away and saying, oh, I'm not the mastermind. No, I didn't start all this. He has so much motivation to lie and I'm going to point out some inconsistencies in his testimony in a little white. Evans, he has a criminal record. One of those convictions is for robbery. He testified about Mr. Evans that he had known C-Lo for a while but didn't know his real name. He's the only one he picked out Mr. Brown in the courtroom and knew him as Corey Brown in the courtroom, yet he said he's known him for so long he didn't even know his real name. He had to talk to family members before he knew his real name. There was a lot of discussion regarding Mr. Evans about a more appropriate charge. More appropriate charge. I'm not sure that there is a more appropriate charge for what Evans has admitted to doing than what he is charged with, but since the State didn't have that physical evidence to confirm, they had to bring somebody in here. Mr. Evans signed up, whoever would help him. Evans brought the gun. He said, yeah, I went back to my

house and got the gun. He brought the gun. And what about Mr. Nicholson. Mr. Nicholson said, oh, I didn't know there was a gun until the very, until Mr. Spearman said something about it at the Hot Spot, yet Nicholson was in the car with Evans when Evans went back to his house to get the gun, but he's backing away from that. Jared Smith was the officer who responded at the scene. He responded promptly. He did his job, and then turned it over to the investigative unit. That's what he's supposed to do. Before we talk about the Investigator's testimony, some of these witnesses inconsistencies. The State told you it was just a few inaccuracies. If their stories match exactly, it would look like they planned it, but I'm going to show you there's more than a few inaccuracies that they have testified to in this courtroom. Most importantly, I think the gun. Mr. Spearman says there were two guns. Mr. Spearman was the one being held at gunpoint. I think Mr. Spearman knows exactly how many guns were there. Nicholson says I didn't know about a gun until Mr. Spearman told me. I didn't know anything about it. Yeah, we heard that Nicholson was in the car with Evans when Evans went back to his house. And Mr. Evans says there was one gun and everybody including Nicholson, yeah, I knew there was a gun. Mr. Spearman said that he was in the backseat during, after they had stolen his vehicle.

Well, he did testify first he drove. He made that correction after they stopped, made that first stop and Mr. Spearman, they made Mr. Spearman stop driving, he said he got in the back seat. But Evans said that when he got in Mr. Spearman's car, Mr. Spearman was in the front seat. He said he was in the front seat and I got in the front seat and he was, his head was toward the driver's seat and his body was this way, but I was in the front seat with him. Nicholson said Mr. Spearman was driving first, and then during the stop, he moved to the backseat. Again, I think Mr. Spearman knows exactly where he was, but it sounds like Nicholson and Evans, they need to get their stories straight on that very easy to identify detail. Number of stops. Mr. Spearman said four, Nicholson said four, and Evans says five, including stopping at a Sphinx store with a law enforcement officer there. Mr. Spearman testified that he got out the first chance he could. If that was accurate and they had stopped at a Sphinx store, wouldn't he have tried then. Nicholson said that Tee was driving after the first stop. Evans said C-Lo was driving after the first stop. This is after they had stolen the car. They have two totally different statements given the same vantage point to see this. They say two different things. When they're leaving the apartment complex, Mr. Spearman said that the silver Camry was behind his white

Caprice. Nicholson said the silver Camry was in front of the white Caprice and Evans, Evans said that the silver Camry was behind his white Caprice. Which one is it? A little bit more than a few inaccuracies in these statements. Speakerphone, there is testimony about a call from Tee to the car that Nicholson and Evans were in. Nicholson said yeah, yeah, the phone was on speakerphone when Tee called. Evans said, no, we weren't on speakerphone, but it was loud enough that I could hear. Rims, Nicholson said Evans picked out this car because he wanted his rims and then denied picking this car because he wanted the rims. A little bit later on in his testimony he said, well, yeah, I kind of like them and yeah, but he initially denied it. And then what I think is a keen, a critical, not just a keen, a critical piece of testimony that you need to pay attention to. Mr. Spearman testified there were four people in the car, including himself, when they arrived at the Hot Spot. Evans and Nicholson both say they weren't in the car, were not in the car. Evans and Nicholson are removing themselves from the crime as much as they possibly can. I don't think anyone disputed that Johnson, Bow-wow had already left. So based on their testimony, we're talking about four people left, not including Mr. Spearman, of course, four people left and Evans and Nicholson saying we

were both in the Camry. Mr. Spearman said, no, there were three other people in my car. There were four people total. And you heard Evans testify that yeah, I got out of the Camry and went and got in the car and but he conveniently, very conveniently gets back into the Camry at the stop before they get to the Hot Spot. The prosecution has said that, yes, Evans and Nicholson didn't tell the whole story the first time. They still haven't told the full story. At the Hot Spot, we heard testimony that the left front wheel of the Caprice was on the hood of the Camry. Picture yourself sitting in the passenger seat, which is where Evans said he was. Evans sitting in the passenger seat if the front wheel was on the hood and that's what he said, the hood. If you look out the window and the car is like this at an angle, you're going to be seeing underneath the car. You're not going to be seen in the window, because he testified that the front wheel was on the hood. Not that it ran into the side, but that it was on the hood. Officer Whit Brooks testified about his investigation. He testified about his investigation, investigative experience and that he had a lot of it and he also at that time, he had a video of the crime scene that morning. That video that would show all of us whether we thought the picture was very good or not, this jury should have at least had the opportunity. Mr. Brown

should have at least had the opportunity to see that video. That video may have been the very piece of physical evidence that exonerates Mr. Brown, but we don't have it. Officer Brooks testified that it just didn't seem that it would be that helpful, and then he admitted on the stand that he really couldn't recall if he ever went back and tried to get this video. Our justice system requires that we give more information than testimony and not feel like going to the store to get a video. We've heard the location of where his office is, right over here in the sheriff's office and we know where the Hot Spot is. I don't know the exact miles, but it's all in Greenwood County. Yet, he couldn't be bothered to go from his office to the Hot Spot to check on this critical piece of evidence. So he claims it's not critical. Oh, it didn't show a good view. The pumps were obscured and we just have to take his word for it, because we don't have it to see here. The fingerprints, there's a lot of discussion about the fingerprints and that SLED couldn't even match the victim, Mr. Spearman's fingerprints. They dusted the driver's side. They lifted, tried to lift for fingerprints from the driver side of the crease, the back of it, the passenger side, both the backdoor and the front door. See the black right along there, they dusted for prints there. This is the Camry, the passenger side.

Most if not all of us have driven a car before. Where are our hands the most when we're driving? On the steering wheel. There's a lot of confusion about who was driving. One person says this, one person says this, I got out here. A lot of confusion. This physical evidence may very well have been the critical piece of physical evidence, but they didn't even try. I'm not saying they definitely would have got anything. They didn't even try to get fingerprints off this steering wheel. They didn't try to get fingerprints from even inside the car. DNA would be a possibility. They didn't try that either. They didn't try that either. And Officer Brooks wants to tell you that there are no promises. There are no deals cut and that he can't even cut a deal so to speak with Nicholson and Evans, but you heard the different statements that they made. He admitted to you on the stand, too, that yes, I can, I can mislead, that's not a problem. He told you that, but he can't make promises. Yet, he told them all these different things and you know, one thing Nicholson really wanted was to get back out on the street. And after his statement, low and behold, his bond is reduced $180,000.00 dollars. With his criminal history that only a little over a week before, the Judge had looked at and set his bond at $200, yet they'd still want you to believe that there are no promises. One other

thing about the fingerprints. We talked a bit about the SLED AFIS system and that they'd go and look for these prints but if they aren't, if they are ones they find within their system aren't good enough, they'll go back to Officer Brooks and say, hey, can you get us a fingerprint card because this, what we have is not sufficient, so we need that so we can compare it. We've got these prints. We're happy to compare them. That SLED report requested that. There were questions of Mr. Spearman, but they didn't send it, because it helps their case to say, oh, well, even Mr. Spearman's fingerprints aren't on his own car. They could have sent a fingerprint card. Mr. Spearman has been here in trial. He's clearly a cooperative victim who was speaking to law enforcement. He's here today. He could have come up there. They never followed through. They never submitted that. Yet another piece of physical evidence they didn't follow up on. All those attempts at getting a fingerprint and that physical evidence may tell us exactly who was in the car, who might have been driving, who wasn't driving. You hear a lot about the burden of proof and I think that's just something you, that you hear on TV in shows about trials in courtrooms and the State's burden of proof is high. It should be. Our community, all of us should demand that this burden be high but that the justice system seeks the

truth. The justice system seeks the truth and that's why we have juries. That's why you are a part of the system, the justice system and it affects all of us. That burden of proof is firm conviction, firm conviction. They want you to send them, convict Mr. Brown of these very, very serious charges, very serious charges based on testimony of two people who were charged with the same thing who are looking to get out of it. You know, I asked Mr. Evans about a girlfriend and he, of course, denied anything. But Mr. Brown was seeing a woman that Evans had seen.

MR. TAYLOR: Objection, Your Honor. That never came out in trial.

THE COURT: Sustained. Only the facts that have been presented.

MS. MERRILL: Thank you, Your Honor. And also think about the testimony when they discussed C-Lo. He was never very involved. He was kind of an outlier almost. He was almost like oh, yeah, and he was there. So please keep this burden of proof in mind when you're deliberating, because the State had all these opportunities to confirm or deny what these two criminals who were trying to get out of more trouble and every one of those opportunities. They should want to present their strongest case, but there's no, no physical evidence whatsoever. There was this testimony about a pseudo bribe

that Mr. Brown told Evans he would take care of his family. Take care of his family. I guess, that's a very easy generic one for him to tell you. Oh, that's what he said. Not more specific. Not anything else. During closing argument, Aaron Taylor said police officers, they can't cut a deal. I'm going to be the one to make them an offer. Officers, they can't do that. I am going to be the one to make them an offer, not I'm going to be the one who will decide if I make them an offer. Not anything like that. I'm going to be the one to make them an offer and them being Nicholson and Evans. Because the State didn't follow up on any of this physical evidence, they had to resort to Nicholson and Evans being up here that they keep referring to as not choir boys. That softens it a little. But they had opportunities to collect this physical evidence, present it to you, but they didn't and so they were stuck with these two criminals unconfirmed by physical evidence testimony. The full story. Their stories, Nicholson and Evans with each other were inconsistent. Evans first statement with his second statement was inconsistent. But the State has promised you that you're, by the end of this, you're going to have the full story. Yet we just went through all those inconsistencies that remain, that they testified to. All of those remain. You have to decide in that jury room if

you have the full story. If they've really given you enough evidence to convict Mr. Brown of these very serious charges that would send a man to prison based on the testimony of two criminals. That's what they've got and it's not like there was not the opportunity to confirm or deny those statements with physical evidence, but that every time that opportunity presented itself, there was no follow up. We don't have a video here to show you because Officer Brooks is not even sure he ever went back to see if it was available. We don't know if fingerprints might have been able to match up. The State didn't send Mr. Spearman a pre-card of Mr. Spearman's to compare after SLED asked. It's up to you to decide if that's enough. If that's the full story, these two men sitting up here. These are main points and what I want you to think about and discuss as you're deliberating. All we've got is only testimonial evidence from criminals, what they said out of their mouths. No physical evidence despite numerous, numerous opportunities, no physical evidence. The American justice system requires so much more and I don't mean just in this case, but as a society, our community, but instead of following through and doing those things, they want you to convict Mr. Brown based on just what somebody says, what two people say, that alone is enough to send a man to prison. When I talked to you earlier and

told y'all I wanted you to have the courage to say that Mr. Brown is not guilty, I understand he's in here. He's charged with a crime. It's easy, natural, normal to think, well, he must have done something and it does take courage to come back with a not guilty. It also takes courage to come back with a guilty verdict. We are all, everybody in this courtroom, Mr. Spearman, who has suffered through this terrible ordeal and Mr. Brown who's charged. We all are affected by our justice system. Whatever your decision is, I want you to consider all of these things and keep that in mind, is that what as a society do we want to say it's okay to send a man to prison based on what two people said. That's okay. Is that really what we want in our community? Please have the courage to find Mr. Brown not guilty. Thank you.

THE COURT: All right. Folks, let's take a brief break. I got to print out my instructions for you. The printer makes a little noise and Ms. Holston can take a break. And I see her getting her printer working on my stuff, and then I'll have you right back out here as soon as y'all are ready.

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

(Whereupon, a short break was taken.)

THE COURT: Let's bring the jury in.

(Whereupon, the jury came into open court at approximately 3:50 p.m.)

THE COURT: I am going to read my instructions to you, I am going to talk to you and I am going to read them to you and then if need be, y'all need further instructions during your deliberations I will probably send you a copy of the instructions at that time. I think they are consistent with what the lawyers and I have discussed regarding all of these charges in the trial we have today, over the last couple of days. Mr. Annese and members of the jury, the State of South Carolina charges the Defendants, Brown and Johnson, in multiple indictments. The specifics of each I am going to discuss later. But you will bear in mind that both Defendants have plead not guilty and by those pleas they have denied all of the charges related to the indictments. Both of these Defendants came into court clothed with a presumption of innocence. And this presumption has remained with them and entitled to them a verdict of not guilty unless and until it is dispelled by the evidence satisfying you, the jury, beyond a reasonable doubt that both Defendants are guilty of the offenses charged and the State has proved each and every element of those alleged crimes beyond a reasonable doubt.

I told you earlier that each of the crimes, each of

the indictments and each of the Defendants all stand independently, not a house of cards, one charge, consider them separately.

Now, the same law and Constitution which makes you, the jury, the finders of facts also makes me the Judge, the sole and only instructor of the law. I told you in my preliminary instructions that you must accept as correct the law which I am instructing to you, apply to it the evidence as you find it and reach a verdict on each of these indictments. If I should make an error in the instructions given to you today there is another time and another place that that error can be considered and, if necessary, corrected. But for our purposes today you must accept the law as I am instructing it to you. And so, in that regard I tell you that neither you nor I should be concerned about what we believe the law ought to be or what it should be, but only concern yourselves with how I am instructing you the law as I understand it to, in fact, be.

Now, I remind you and told you earlier on that during the trial we, that being me the Judge, and you the jury, have separate and certain duties to perform. As the trial Judge it has been my responsibility to preside over the trial. I have had the responsibility ruling on admissibility of certain evidence. You are only to

consider the competent evidence which has been accepted into the record. If there was any testimony ordered stricken from the record during this trial you must disregard that testimony and not consider it during your deliberations. You are only to consider the testimony which has been presented from this witness stand, and the exhibits which have been admitted and made part of the record in the case. Now, it is also my additional duty to instruct you on the law. Now, at the very onset I did allow the jury to take a short break and accept note pads. I tell you this, is that the note pads are just that. Jurors have been allowed to do that. Some jurors are better note takers than others. Some jurors have not taken notes whatsoever. Juror notes should not be given any greater weight or consideration than that of the recollection of people who do not take notes. Recollections of individual jurors should be considered just as reliable as notes taken by jurors who took notes. And I tell you this, if it becomes a debate as to testimony and some jurors recollect this and some jurors recollect that, you as a group have the authority to say, Judge, we would like to hear the testimony of some particular witness replayed so that we can hear what was said because perhaps it was unclear, perhaps they were talking fast. So you have the authority to say, please

replay some testimony for us and we can do that because of Ms. Holston's record that she has made during the trial.

Now, in a criminal prosecution the State has the burden of proof. The defense has no burden whatsoever, as the Defendants are presumed innocent. In our State, and according to our Constitution, the prosecution must prove its case to the standard of proof called beyond a reasonable doubt before a finding of guilt may occur. If the State fails to meet this burden then the Defendant is entitled to a verdict of not guilty on that offense.

As the sole fact finders I have observed and I think the attorneys committed that they observed you listening closely to the evidence and taking good notes. And I tell you know that the weighing of evidence in your consideration as a juror is entirely a mental process. You must weigh the evidence which has been presented using your good judgment and your common sense.

So, understanding under the laws of South Carolina being the sole finders of the case that I am not allowed to suggest in any way my opinion as to the facts of the case or as to the guilt or innocence of the Defendants. That question is for you, the jury to resolve. As the finders of facts you must necessarily judge the credibility and the believability of the witnesses who have testified in the case. And so I tell you that in

passing upon credibility of any witness who has taken the stand you may take into consideration anything using the common experiences, your common sense in your every day lives when evaluating one's credibility as to whether or not a person is telling the truth. You may also taken into consideration things such as this, what was the manner and appearance of the witness who testified, was he or she straight forward or was they hesitant in answering. How did the witness come to know the facts that he or she testified to, what was her ability or his ability to know the facts to which they testified. Is there some reason a witness would want to give testimony which would hurt or help one side or the other. In other words, was a witness biased or prejudiced in any way towards one side or the other. Was the testimony of a witness strengthened or weakened by testimony of another witness or of other evidence. It is your responsibility and duty as you, the jury, may believe as much or as little of each witness' testimony as you deem appropriate. You may believe the testimony of a single witness against that of many or just the opposite. You may believe part of a witness' testimony and disbelieve the rest. The fact that testimony is not controverted does not mean you must accept it as true and undisputed. You still are allowed to gauge the credibility of the witness who testified to

those facts.

Now, I instruct and I emphasize to you that the fact that the Defendants did not testify is not a factor to be considered by you in any way during deliberations and in your consideration of the question of the guilt or the innocence of either of the Defendants. It must not be considered by you in any manner whatsoever. The Defendants have the Constitutional right to remain silent. And the assertion of that right is not to be considered by you in any way in your deliberations. So under your oath, you are not to draw conclusions whatsoever from the fact that neither of the Defendants testified. The fact that these Defendants did not testify should not even be discussed in the jury room during deliberations. As I told you before, the burden of proof is on the State to prove the guilt. It is not incumbent upon a Defendant to testify or prove his innocence.

Now, also under the laws of the State of South Carolina a Defendant may be tried even if the Defendant does not attend the trial. But the fact that the Defendant was not present may not be considered against that Defendant in any manner whatsoever.

Now during a trial there are generally two types of testimony in evidence presented to a jury for its consideration. There is direct evidence and

circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact such as an eyewitness. Circumstantial evidence on the other hand is proof of a chain of facts and circumstances indicating the existence of a fact. Our law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of proving circumstantial evidence than that of direct evidence. My instructions to you are to weigh all the evidence. After weighing all the evidence if you are not convinced of the guilt of the Defendants beyond a reasonable doubt you must find him guilty.

The term, reasonable doubt, has been used a great deal. What is a reasonable doubt. It is simply this. A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. A reasonable doubt may arise from evidence which is in this case or it may arise from the lack or absence of evidence in this case. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. Now, if a doubt, it is a doubt to which one can assign a reason if the assignment can be done reasonably, firmly and convincingly. A reasonable doubt is the kind of doubt that would make a reasonable, conscientious and sincere

person hesitate to act in a matter important to his own affairs. I further instruct you that a Defendant is entitled to every reasonable doubt that may arise in this case. And what that means is, if any of you had any doubt about anything during the trial you would be required to resolve that doubt in favor of the Defendant. I tell you further, that the very fact that the jury engages in a full and free discussion of the testimony presented is not automatically mean that a reasonable doubt exists in this case. It is for you, the jury, to make a determination of whether or not a reasonable doubt exists as to the guilt of either or both of the Defendants.

Now, a necessary element of each crime is criminal intent. And criminal intent must be proved by the State also beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. I tell you there is no way to prove intent to a mathematical certainty. There is no way medical science can dissect a person's brain and determine what he or she had in mind. So our law states that criminal intent may be inferred from the circumstances shown to have existed both before and after the fact. This is how you, the jury, make a determination of whether or not the element requiring an intent was present. Criminal intent is a state of mind that operates

jointly with an act or an omission in the commission of a crime. Criminal intent is a mental state of conscious wrongdoing. It is up to you, the jury, to determine what the Defendants intended based upon the circumstances shown to have existed. The State must prove criminal intent beyond a reasonable doubt just as the State must prove all of the elements of each crime beyond a reasonable doubt.

Now, I charge you that this case, there are two Defendants who are on trial, each of whom is charged with four crimes. Particularly, armed robbery, kidnapping, conspiracy to commit armed robbery and kidnapping and criminal conspiracy to commit grand larceny. The case of each Defendant and the evidence and the law concerning that Defendant should be considered separately and individually. Your verdict does not have to be the same for both or for either. The fact that you may find one Defendant guilty or not guilty should not control your verdict as to the others. When more than one person is charged with a crime, if the evidence warrants it, you may convict one and acquit the other or you may acquit both or you may convict both. It will depend upon your view of the testimony and the evidence. You must take each Defendant and consider the evidence as to that Defendant and my instructions to you on the law when you write a separate verdict of guilty or not guilty for each

individual Defendant as to each individual charge.

Now, the specifics of the law in this case, I am going to charge them in one order and give you the verdict form on the other. Both Defendants are charged with the offense of armed robbery. In order to prove this offense the State must prove beyond a reasonable doubt that the Defendant took personal property from the person or presence of another. Property is in the presence of a person if it is within that person's reach, inspection, observation or control so that the person could, if not overcome with violence or prevented by fear, keep possession of that property. The State must also prove beyond a reasonable doubt that the Defendant carried the property away intending to permanently deprive the owner of the property and to keep the property for the Defendant's own use. The slightest removal of the property or the complete possession of the property, even for an instant, by the Defendant is sufficient to show a taking and carrying away of the property. The taking and carrying away of the property must have been done with violence or by putting the owner of the property in fear of violence. Finally, the State, must prove that the Defendant was armed with a deadly weapon during the robbery. And a deadly weapon is any article or instrument or substance likely to cause death or great bodily harm.

Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. Some examples of deadly weapons are, pistol, shotgun, rifle, knife, gasoline or fire bomb. A gun may be a deadly weapon even if it is not operating properly. The State must also prove beyond a reasonable doubt that the Defendant intended to permanently deprive the owner of the property permanently and that the property had a value of more than $2,000.00 dollars.

Now, both Defendants are charged with the offense of kidnapping under the second indictment. In order to sustain a conviction the Defendants, either of the Defendants on the offense of kidnapping, the State must first prove beyond a reasonable doubt that the Defendant knowingly and unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted or carried away another person without authority of law. To do a thing unlawfully is to do it willfully against the law. Knowingly means with knowledge, consciously and not accidentally. Seize means to hold, take hold of suddenly or forcibly. Confine means to limit, restrict or enclose within bounds, to shut or keep in. Inveigle means to lure, entice or lead astray by false representations or other deceitful means. Decoy means to lure by or entice a person into a trap. Kidnap is to remove a person against his will by unlawful force

or by fraud. Abduct means to carry off secretly or by force for an illegal purpose. Carry away means to remove. The State does not have to prove that the Defendant did all of these things. Instead, if you find beyond a reasonable doubt that the Defendant did any of these things you may find the Defendant guilty of kidnapping. Something done without authority of law is something done which the law does not sanction, permit, allow, condone or provide a justification for. The kidnapping does not have to be for any personal or monetary gain or for an illegal purpose, but it may be for any reason whatsoever.

Regarding the offenses of conspiracy. Both Defendants are charged with conspiracies. The State must prove beyond a reasonable doubt that the Defendants combined with one or more persons for the purpose of committing an unlawful act or committing a lawful act by an unlawful means. There must be a mutual understanding, an agreement or common intention and plan. A mere passive knowledge of or consent to the criminal conduct of another is not enough to make a person a conspirator. There must be guilty knowledge and participation. Similarly the mere fact that a Defendant may have associated with another person or met with another person and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy or that the Defendant was

involved in a conspiracy. On the other hand, it is not necessary that the agreement be a formal one, that it be in writing, that the persons hold a meeting and expressly state the terms of the common plan or that the agreement be stated in words between them. The agreement of a criminal conspiracy may come into being through an implied or mutual understanding. The willful, intentional and knowingly adoption by two or more persons of a common plan is sufficient. No overt acts need to be shown to establish a conspiracy. A conspiracy may be shown by the circumstantial evidence and the conduct of the parties. In order to convict and the conduct of the parties. In order to convict either of the Defendants of conspiracy the State must prove beyond a reasonable doubt not only that he knew of the unlawful conduct but that the Defendant agreed to combine with the other persons for the purpose of accomplishing the unlawful conduct. To establish the unlawful act of armed robbery and kidnapping was a natural and probable consequence of the plan, agreed upon conspiracy to commit grand larceny the State must prove beyond a reasonable doubt that a reasonable person in the position of either Defendant, either Mr. Johnson or Mr. Brown, would have foreseen the criminal act of armed robbery and kidnapping would be committed. Additionally, in order to establish the criminal act of grand larceny,

that that was a natural and probably consequence of the plan agreed upon conspiracy, the State must show beyond a reasonable doubt that a reasonable position in either Defendant's position would have foreseen the criminal act of the grand larceny.

Now, a person may be constructively present at the commission of a crime even though the person is some distance away from the actual scene if it is shown beyond a reasonable doubt that that person played a role in the commission of a crime as a result of some prior arrangement.

If a crime is committed by two or more people who are acting together in committing a crime the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a natural or probable consequence of the acts done in carrying out the common plan or purpose. For example, two persons can be guilty of killing another person when only one of the two had a gun, there was only one bullet and only one of the two fired the shot that caused the death. If two or more people are together, acting together, assisting each other in committing the offense the act of one is the act of all or is said, the hand of one is the hand of all. Prior knowledge that a crime is going to be committed, without

more, is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the Defendant is present when the crime is committed, and is not sufficient to convict the Defendant as a principal. Guilt as a principal is shown by the actual or constructive presence at the scene as a result of the prior arrangement. Therefore a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a principal. The State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all. I tell you also that a principal in a crime is one who either actually commits the crime or who is present aiding and abetting or assisting in the commission of the crime. When a person does an act in the presence of or with the assistance of another the act is done by both. Where two or more acting with a common plan or intent are present at the commission of a crime it does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all. So presence at the commission of a crime means to be sufficiently near to aid, abet and assist in the commission of that crime. I tell you also that mere presence at the scene is not sufficient to convict one as a principal on the theory of aiding and abetting. Intent is a necessary element and therefore must have been a

common design or a common intent to commit the crime and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act. Intent means intending the result which naturally occurs, not accidentally and not involuntary. Intent may be shown by the acts and conduct of the Defendants and other circumstances from which you may naturally and reasonably infer intent. I tell you again, the State must prove all of these elements beyond a reasonable doubt.

Now, regarding the issue of identification. An issue in this case is the identification of the Defendant is the person who committed the crime charged. The State has the burden of proving identity beyond a reasonable doubt. You must be satisfied beyond a reasonable doubt of the accuracy of the identification of the Defendant before you may convict him. Identification testimony is an expression or a belief or an impression by a witness. You must determine the accuracy of the identification of the Defendant. You must consider the believability of each identification witness in the same way as you would have of other witnesses. You may consider whether the witness had an adequate opportunity to observe the offender at the time of the offense. This will be affected by things like how long or how short of a time was available, how far or close the witness was, the lighting conditions and whether

the witnesses had the chance to see or know the person in the past. Once again, the burden of proof is upon the State to prove each element of the crimes charged and specifically beyond a reasonable doubt the identity of the Defendant as the person who committed the crime.

I instruct you that mere presence at the scene is not sufficient to prove someone guilty of a crime. A Defendant's presence where a crime is being committed or mere association with a person who commits a crime does not make him an accomplice or an aider and abettor of the person committing the crime. It is incumbent, the burden upon the State to prove every element of the crimes charged. After reviewing all the evidence, the State has proved that the Defendant was only present at the scene of a crime and they have not proved beyond a reasonable doubt any other participation in the crime then you must find that Defendant not guilty. The law is that proof of at the scene of the crime is not sufficient to find someone guilty of that crime.

Now, there has been evidence presented that witnesses have made prior statements which are not consistent with the witnesses present testimony at trial. You may use this evidence to decide whether or not you believe the witnesses. You may also use evidence of the earlier contradictory statements to determine the truth of those

statements. It is up to you to decide whether to believe the earlier statements or the testimony given at trial. If a witness is shown to have knowingly testified untruthfully concerning material matters you may consider this in determining whether to trust that witness' testimony as to the other matters which they have testified to. Thus you may reject all of that testimony of that witness or give it all or part of the weight you thing it deems appropriate.

Now, prior record of a person testified was mentioned and so a person who has a past criminal record is competent to testify during a trial. A past record does not affect the ability of that witness to testify. The past record may only be considered by you in determining the witness' believability. Remember, you are the sole judges of the facts and the believability of any and all of the witnesses.

Now, in summary. In a criminal prosecution the State has the burden of proof. The Defense has no burden whatsoever as Defendants come into court presumed innocent. In our State, according to our Constitution, the prosecution must prove their case beyond a reasonable doubt. If the State fails to meet that burden, you have the duty to find the Defendants not guilty. Now, if the State has met its burden the State is entitled to a guilty

verdict. Thus, you must, after weighing all the evidence, make a determination of whether or not reasonable doubt exists as to the guilt of each of the Defendants. I tell you again, the very fact that you have a full and free discussion on the issue of guilt or non-guilt in this case does not automatically mean that a reasonable doubt exists. If you find the State has failed to meet its burden of proof then the Defendants are entitled to a verdict of not guilty. Your verdict may not be based upon conjecture or speculation. A mere suspicion is not sufficient to support a conviction. I emphasize to you the fact that neither of the Defendants testified is not a factor to be considered by you in any way in your deliberation. It must not be considered by you in any manner whatsoever as the Defendant has a constitutional right to remain silent and the assertion of this constitutional right must not be considered during your deliberations. The burden of proof remains with the State so if you are convinced of the guilt of either Defendant beyond a reasonable doubt you must find them guilty of those crimes the State has met its burden.

So, Mr. Allesee, and other members of the jury, as y'all retire to begin deliberations I want you to be mindful of the importance of your responsibility in this case. As I told you when I was qualifying you on Monday

morning, you are not called upon to serve as jurors very often. You as a group are acting for this community and this State. It has been my responsibility as the Judge to see that every Defendant tried receives fair and impartial justice. It is why I must see to it that this trial has been conducted fairly. And you must see to it that this verdict that you reach on all eight separate indictments are just. So I direct you and I emphasize to you that you go into the jury room, confine your consideration and your discussions to the evidence presented in the courtroom during the trial, applying the law as I have instructed it to you, weighing the evidence fairly and impartially and reaching a unanimous verdict. So your verdict must be unanimous.

Now, as I told you, on this very handsome beige paper, they are done similar, that is Mr. Johnson. This is Mr. Brown. They are written the same, indictment number to keep tract of them. Conspiracy, grand larceny, that is first. Conspiracy, armed robbery and kidnapping. Then armed robbery and kidnapping. You can consider either Defendant in either order. The order for your consideration is as I have written. Now, as I told you you have the authority to request testimony to be replayed, you may ask questions about my instructions, I can explain my instructions more. You may, during

deliberations, if a question arises, if you request during your deliberations and a question arises I will provide an entire charge I just read to you for the jury's review. What I worry about is this, is y'all can discuss the facts, the facts are non-legal. If I hand the charge to you and she gets to reading it, maybe she is not, that is my worry, a lack of focus on who is trying to digest this which I have studied 20 years to understand and give. That is my concern, it is 30 pages, someone reads it and they are not listening to a very important discussion of the facts. Y'all are very competent to decide those facts. That is why y'all are here. My job is to instruct the law and I would like to keep it that way. But if you need a particular instruction, say what is a reasonable doubt, I will just give you that portion if that would help you. So regarding your questions, you have got a note pad, send a note to Mr. Willingham, hand it to me. Judge, we would like to hear testimony of. We would like instructions on. We would like the elements of the law on the crime. Whatever the question is send that to me and I will be happy to try to respond to you or give it to you in writing. If it is lengthy explanation of the law I may bring you back in here and instruct you just like this. Once you begin your deliberations, the twelve of you, y'all can take a break, you can ask for more diet cokes or

more candy from you, you are on your time then. If y'all want to take a break so be it. Just let Mr. Willingham know you are taking a break. If one person needs to step in the restroom y'all stop. If one person wants to go outside and smoke, stop until you get all twelve back in there, no talking. If y'all get deliberating and y'all want something to eat let me know, send me a note. I will get the county to send to get y'all something to eat. The lawyers have an opportunity momentarily, when y'all step in the jury room, to say, Judge, you have glossed over this area of the law or you skipped over something that I thought you were going to instruct. Comments on my instructions and I want to hear those very briefly. If I did omit or gloss over an important part of my instructions I may bring you right back out here and address that. Otherwise I will send you the evidence and the verdict forms. Step in the jury room.

(Whereupon, the jury was excused from open court.)

THE COURT: Any comments about the instructions from the State?

MR. TAYLOR: Nothing from the State.

THE COURT: Mr. Nicholson?

MR. NICHOLSON: I couldn't hear very well, I trust you.

THE COURT: All right, y'all go over the exhibits and

we will take everything to them.

(Whereupon, the jury started deliberations at approximately 4:31 p.m.)

THE COURT: They sent a note out, real simple, definition of kidnapping. I am going to submit my instruction on kidnapping to them. The definition of kidnapping.

(Whereupon, the definition of kidnapping was sent to the jury.)

(Whereupon, Court's Exhibit 5 was marked for identification only.)

THE COURT: The jury wants to hear Spearman's testimony. Bring them in.

(Whereupon, the jury came into open court at approximately 6:31 p.m.)

(Whereupon, the testimony of Latavius Spearman was played from 6:31 p.m. to 6:42 p.m.)

(Whereupon, the jury continued deliberations at 6:45 p.m.)

(Whereupon, Court's Exhibit 6 was marked for identification only.)

THE COURT: They want to see the charges on armed robbery. I will send the charges, instructions back to them.

(Whereupon, Court's Exhibit 7 was marked for identification only.)

THE COURT: I understand we have a verdict. Please bring them in.

(Whereupon, the jury came into open court at approximately 6:45 p.m. with the verdict.)

THE COURT: Mr. Annese, have y'all reached a verdict.

MR. ANNESSE: We have.

THE COURT: Is your verdict unanimous?

MR. ANNESSE: Yes, sir.

THE COURT: Hand it to Mr. Willingham. You can read the verdicts.

CLERK OF COURT: The State of South Carolina, County of Greenwood, State of South Carolina versus Corey Jermaine Brown. We, the jury, find as follows. Count one, 2014-GS-24-1262, conspiracy to commit grand larceny. Guilty.

Count two, 2013-GS-24-1874, conspiracy to commit armed robbery and/or kidnapping. Not guilty.

Count three, 2013-GS-24-1872, armed robbery. We find the Defendant, Corey Jermaine Brown, guilty.

Count four, 2013-GS-24-1873, kidnapping. We find the Defendant, Corey Jermaine Brown, guilty.

State versus Christopher Brice Johnson. We, the jury, find as follows. Count one, 2014-GS-24-1296,

conspiracy to commit grand larceny. Guilty.

Count two, 2014-GS-24-1295, conspiracy to commit armed robbery and/or kidnapping. Not guilty.

Count three, 2014-GS-24-1293, armed robbery. Not guilty.

Count four, 2014-GS-24-1294, kidnapping. We find the Defendant guilty. Signed by Foreperson, Nicholas Annese dated August 14th, 2014.

THE COURT: Anything from the jury from the State?

MR. TAYLOR: Not from the State, Your Honor.

THE COURT: Mr. Nicholson, from you?

MR. NICHOLSON: No issue for the jury.

THE COURT: Ms. Merrill?

MS. MERRILL: No, Your Honor.

THE COURT: Very well. I want to talk to you for just a minute.

(Whereupon, the Court goes into the jury room to talk to jurors.)

THE COURT: All right, let's have sentencing and motions in the morning, 9:30.

(Whereupon, motions and sentencing will be conducted the next morning.)

AUGUST 15, 2014.

THE COURT: We are back on the record of the trial we finished last night. Mr. Taylor, are we ready to go

forward with motions and sentencing?

MR. TAYLOR: Yes, sir. The State has no motions and ready for sentencing after the Defense puts up any motions they may have.

THE COURT: All right. Verdict had been read last night. Mr. Nicholson, you may make post-trial motions.

MR. NICHOLSON: Yes, Judge, I do make a motion for a new trial notwithstanding the verdict on the count of kidnapping. As you know, my client, Mr. Johnson, was found not guilty of conspiracy. I made a motion for a directed verdict after the State's case as to, as well as armed robbery, the two that he was found not guilty of but also the kidnapping charge. And I would renew that motion for the same reason in that there is, I don't believe there is any evidence in the case that the jury could have found beyond a reasonable doubt to find my client guilty of kidnapping, shortly after leading to an individual that was surprised by the kidnapping left. I want to renew that motion. I also ask for ten days in order to file motions, concerning the inconsistencies of the verdicts. But I would like to reserve my rights to file a motion in ten days.

THE COURT: All right. Regarding your motion for a new trial based on the verdict, which you made this morning, I will deny that because the Court found enough

evidence to go the jury. And the instructions were clear that each charge was independent, each Defendant was independent. And the jury found, on your client, two not guilty's and two guilty's, I believe.

MR. NICHOLSON: That's correct.

THE COURT: And so I am not going to go behind the jury's findings of fact. I will allow you ten days to file any post-trial motions in addition to that. For those purposes I am willing to allow you to place those in writing. Your directed motion and a new trial is denied. And as to the issue you raised on directed verdict motion. It would be my understanding that your client would be sentenced today, the sentence will be sealed and open at such time as he appears. And it is my understanding that a bench warrant was issued and he has not been located yet. Whenever he is we will deal with him then.

MS. WHITE: Judge, I would just ask for ten days after Mr. Nicholson's files whatever motions he makes to respond to his brief.

THE COURT: Sure. Whatever the rules allow, ten days, you are allowed to respond to issues he raises in those written motions. Mr. Nicholson, you want to be heard on mitigation now or after Ms. Merrill makes her motions.

MR. NICHOLSON: I will wait until after her motions.

MS. MERRILL: Your Honor, I just make a motion based on the arguments I made in my directed verdict motion. And, Your Honor, I would also ask for ten days. Just want to make clear on the record that should Mr. Brown decide to appeal his, the time to appeal would not start until the Court issued a written order it had reviewed any motions I may make on the grounds I have and any response by the State.

THE COURT: Your motion for a new trial on the basis, on the grounds you provided at directed verdict is respectfully denied. And I will allow you ten days to file any additional written motions with the Court. I am not certain I can rule on when the times the appeal starts kicking, I am not positive on that. But I am not certain.

MS. MERRILL: I will doublecheck the rules, I just want to make sure I am preserved on the record as far as you, not losing that time to appeal. And while that is pending, once your order comes down the time to appeal then starts, I just want to make sure that is correct.

THE COURT: If that is the law and that is your understanding then you are correct. I am not positive that is the law. You have made a record thinking that. That is appropriate also. Are we ready to go forward with sentencing?

MR. TAYLOR: We are, Your Honor. We will go forward

with Mr. Johnson first.

THE COURT: All right, Mr. Taylor.

MR. TAYLOR: Judge, I was going to let Ms. White handle this one.

THE COURT: Ms. White.

MS. WHITE: Thank you, Your Honor. Mr. Johnson's record, I will begin with that. In July of 2009 he has a possession of cocaine, received one year suspended to 24 months probation. Also he had a failure to stop for blue light concurrent with that. In January of 2010 he had a violation of city ordinance. In July of 2010 a CDV first offense. In February of 2012 another possession of cocaine. He received 18 months, suspended to a probationary sentence. In March of 2012 a simple possession of marijuana, received a time served sentence. And in June of 2012 a driving without a license. That is my understanding of the entirety of his record. Mr. Spearman is present, Your Honor. I think he wants to speak as to sentencing on both Defendants. I don't know if it would be just easier to have him speak once as to both, Mr. Johnson and Mr. Brown. And before he speaks I just wanted to point out for purposes of sentencing, the complete indifference Mr. Johnson has had to Mr. Spearman's life throughout this process. Even after he knew he was kidnapped, even after he knew he was being

held at gunpoint his only concern, according to the testimony, was getting his money. He never, he told them, you put his head down so I can get out. The only person he was worried about was himself. And, Your Honor, he wasn't required to be here. In court procedure he was required to be here by his bond. But, again, just a complete indifference to the justice system by not being present for his trial. And Mr. Spearman does want to address the Court, Your Honor.

THE COURT: Mr. Spearman, you can make your comments, you can make comments to both Defendants for sentencing.

MR. SPEARMAN: Yes, Your Honor, I think it was a fair trial and I am glad justice was served. Yes, I want to see them go to prison, Your Honor.

THE COURT: All right. Mr. Nicholson, let me hear from you.

MR. NICHOLSON: Judge, I am not going to stand here and argue, and even make a request that he not be given a prison sentence. As to the conspiracy to commit grand larceny, I think probably could have been just a grand larceny charge. I told the jury he was guilty of that, request they being a verdict back for that. And I think that's up to a five year sentence. I know the Court has wide latitude on the kidnapping charge, I believe it is 0 to 30 years. And being a violent offense. So there is

wide latitude on that. The one thing that I would say is that both in the range, I am sorry, both in the range of possible kidnapping cases his involvement in this is, would not compare to some more serious kidnapping cases. And his involvement has compared both with, compared to Codefendants and compared to other involvement and other kidnapping cases is fairly minor. And I would ask that you take that into consideration. Because I don't think, even the jury or the Court or anybody thought that he expected or any of these guys, or any of the three guys that were in the car expected that a kidnapping would take place. And, again, I think his culpability in this is in failing to render or in continuing to his identity after he found out that this took place. And I think that is very different from someone who chooses to take somebody and kidnap them actively with a gun and physically assault someone during a kidnapping which is what has happened by all accounts and a couple of other individuals. So, I think his involvement is very different. As discussed earlier in this trial I thought that the appropriate indictment to submit to the jury would be accessory after the fact with a felony, with a kidnapping or an armed robbery would be. And I think he had a greater potential if he had of been found guilty of that than any of the others, the other three charges that we had really

contested. And I think the potential punishment on that would be 15 years non-violent, the way I read the law. And I would ask that the Court, obviously the legislature passed on what, that penalty would be. I ask the Court to sentence him according to that time because I really think that that is what the jury was looking at. And I discussed that in my closing argument, that there were charges out there I think that he could be found guilty of but the Solicitor chose not to do that. I think that is why the jury found him guilty of the kidnapping because they wanted a little bit more than just grand larceny. But I think the appropriate, the appropriate charge and really what he could have been found guilty of is accessory after the fact of that class of felony which is up to the 15 years. Now, as you see from his record he does not have anything that involves any guns. I don't see no armed robbery, no kidnapping, nothing of that nature. He is not a choir boy, to go back to some language used in closing statements. He is not a choir boy, he has been kind of the, on the perimeter, on the periphery of problems in the community but really hadn't been somebody that is doing something like an armed robbery or a kidnapping. I am not arguing against some kind of prison sentence but, again, I ask that it be in line with that range there, is what I think he really was

guilty of. And I do object to Ms. White was saying, all he was concerned about was his money. The text messages says, what's up, dude. And there are a number of phone calls. And she is characterizing that as asking for money. There was never was any, like, where is my money in any of those text messages. So, that doesn't, that still doesn't count for any indifference to the Victim's situation. But I don't know that it was about money, I think about going undetected.

MS. WHITE: Judge, I was referring to the actual testimony when they were in the car while the kidnapping was taking place, I am going to go to Georgia, y'all are going to, pardon my language, shit me out of my money, that testimony.

THE COURT: Wasn't the testimony is that they were aggravated, Mr. Spearman didn't have but a few dollars and the car, the money he had in his pocket was $20 or $30 bucks?

MS. WHITE: Yes, sir.

THE COURT: Aggravated by that fact because he didn't have more?

MS. WHITE: Yes, sir.

MR. TAYLOR: And then they said--

MR. NICHOLSON: Two individuals were aggravated. I don't think there is any testimony that Christopher

Johnson was aggravated. And, Judge, I would like for you to take another thing into consideration. We saw Shadarron Evans and we heard about the violence about whoever the person, Tee, is. So when Christopher Johnson left, I think a person in that situation would not only be worried about law enforcement but they would be worried about Shadarron Evans and Tee. So the perfect citizen would have left that situation and called the police and would have been worried about the victim. I think in that situation it is not only law enforcement but I believe these individuals that he was working under.

MR. TAYLOR: I am not trying to steal Ms. White's, he got in the car with three strangers, rode around all night looking for cars. He knew one of them had a gun, according to testimony. You get what you ask for, Judge, it was a probable outcome of doing that.

MS. WHITE: And, Your Honor, I am sorry that we are jumping back and forth but the fact that keeps jumping out to me is Mr. Spearman, but for being able to jump out of that car at the Hot Spot would probably be dead right now. I have a hard time imagining what they were going to do with him on the way back to Georgia. So Mr. Johnson very likely was the only person who could have saved his life, had he not been able to escape. And I think that is very important in this case, Your Honor.

THE COURT: On the sentencing sheet on the kidnapping. Does anyone disagree that I should make a finding there was no CSC, not a registered case.

MS. WHITE: That's correct, Your Honor.

MR. TAYLOR: Yes, sir.

THE COURT: I intend to make that finding, not a CSC, not a registered. Anything else from anybody.

(No response.)

THE COURT: All right, Madam Clerk, this sentence is sealed until he appears in court.

(Whereupon, the Court gave the sealed sentence to the Clerk of Court for Christopher Johnson.)

THE COURT: All right, Ms. White.

MR. TAYLOR: Judge, actually I am going to handle this one. May it please the Court. Judge, I also will start out with Mr. Brown's record. It is hard to read, a lot of it, but all of his record is out of Georgia, you heard that testimony, he is from Augusta. It dates back to 1997, possession, purchase or control of a controlled substance. He has another conviction of that in 1998. He has a DUI from 1998. He has a giving false information to law enforcement conviction in 1998. A possession of marijuana from 2000. Giving false information to police from 2000, another one from 2002. Has a manufacturing or distribute a controlled substance from 2004. And another

giving false information to the police from 2003. Judge, Mr. Brown is 35 years old, he is not a young man. He should know better. And I think something huge that I actually failed to mention in closing yesterday. According to Shadarron Evans who testified, he went just to get Torrance McClain, when he showed up Corey Brown was there and wanted to come along. So this isn't something where people are making Mr. Brown participate in this. He was wanting to come to Greenwood and get involved with all of this stuff. He was in the car, he knew there was a gun, he actually got out with Mr. McLean, when they robbed Mr. Spearman. Drove around the whole night, he is the driver which he is kidnapped in the backseat. Mr. Spearman testified that he was threatened by both of them. I am not going into all of the details but this is, other than killing somebody or raping somebody, Judge, this is as serious as it gets. I don't think it is inappropriate to sentence up to the maximum in this case. I really don't. Based on how brutal all of this was. And Ms. White hit the nail on the head. What were they going to do with him if he didn't escape. Were they going to kill him and kick him out of the car, I mean, I don't know, I don't know how else, what you do to him. It is, everything points to a very bad ending for Mr. Spearman. So I am glad he is here, I am glad he stands beside us

today. And I will leave that to you, Judge, that is all we have. That is it from the State, Your Honor.

THE COURT: Ms. Merrill.

MS. MERRILL: Thank you, Your Honor, may it please the Court. First I want to inform the Court at my advice Mr. Brown will not speak on the record in case there is any appellate issues. But that is at my advice and advised him to continue to exercise his right to remain silent. Your Honor, looking at his record, it is very different than the records of the two Codefendants who testified, who already had convictions for armed robberies that the State used in their case-in-chief to prove this case. During this time Mr. Brown was never offered anything by the State, was never given an offer at all for these charges. Your Honor, Mr. Brown, given that he is not, doesn't have any prior robberies, burglaries, anything violent, he has drug convictions, a DUI and giving false information to law enforcement. This is the first time he has dealt with very serious charges and I do not dispute what Mr. Taylor says, these are very serious charges. Mr. Brown is well aware of that. I explained to him the sentencing ranges on all of these. He understands the armed robbery. There is a minimum ten and that is a eighty-five percent. He understands that. And also in response to Ms. White, we certainly wouldn't come to court

and suggest that he should not serve prison time for this. So just to make that clear, I agree it would be inappropriate for me to come here and ask for that. And that is not what I am asking for. But I am asking you to consider his record, that there is nothing violent on there, there is not prior armed robberies, anything, burglaries, anything like that. And I am asking you to sentence him to ten years on the armed robbery and also on the kidnapping, run those concurrently. And I understand the conspiracy charge covers up to five. I am asking that you to run all of this time together concurrently, whatever you give him and give him credit for time served. Your Honor, I was hoping that Mr. Brown's father, James Clark would be able to be here, we have been in touch with him.

THE COURT: Has he been incarcerated since the 27th?

MR. TAYLOR: Yes, sir.

MS. MERRILL: Yes sir, he has been incarcerated since his arrest.

THE COURT: The 27th.

MS. MERRILL: I believe the arrest warrant was served, I believe, on August 15th or 17th of 2013.

MR. TAYLOR: Can I give you the date so you will know. It just says August 15th, 2013.

MS. MERRILL: And he has been incarcerated since

then. But I was hoping his father could come here to speak on his behalf. He has been in touch with us but he cannot get off of work. We contacted him late last night, of course, and he could not get off of work and get over here from Georgia. And as I stated earlier, I advised Mr. Brown not to speak on his sentencing in case of any appellate issues. But I just ask that you consider the record of, his record in comparison to the severe and lengthier criminal histories of the two Codefendants that the State used in their case-in-chief to prove their case. And, Your Honor, if I could just add one thing. Prior to the trial beginning the State had indicted Mr. Brown for possession of a weapon during a violent crime, they did not proceed to trial on that indictment. And I think that shows on their part that they do not believe that he had a weapon or else they would have also presented that to the jury.

MR. TAYLOR: And, Judge, I did dismiss that case this morning and I think, there is no allegation they did have a gun but also to make it easier on the jury we wanted to have four charges for each one of them. But I agree with Ms. Merrill, I don't believe he had a gun.

THE COURT: All right, anything else?

MR. TAYLOR: Nothing from the State, Your Honor.

THE COURT: All right. Having heard the facts of the

trial and everything presented, sentence on the conspiracy to commit grand larceny is five years. On the kidnapping and armed robbery is 25 years. They all run concurrently. He gets credit for the year he has done thus far.

MS. MERRILL: Thank you, Your Honor.

MR. TAYLOR: Thank you, Your Honor.

MS. WHITE: Thank you, Your Honor.

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Greenwood, South Carolina on the 12th through 15th of August, 2014.

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

September 28, 2018

Joy Holston

Joy E. Holston, Court Reporter

My Commission expires: May 2, 2026

State of South Carolina County of Greenwood	)	Court of General Sessions Eighth Judicial Circuit
State of South Carolina, vs. Corey Brown, Defendant.	)	Transcript of Record 2013-GS-24-01872 2013-GS-24-01873 2013-GS-24-01874 2013-GS-24-01875 2014-GS-24-01262

October 6, 2014
Laurens, South Carolina

B E F O R E:

The Honorable Eugene C. Griffith, Jr., Judge

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

Aaron Taylor
Elizabeth White
On behalf of the State of South Carolina

Jane H. Merrill
On behalf of the Defendant

Stacy S. Johnson
Circuit Court Reporter

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
C-1	Notice of Motion	3	3
C-2	Motion RE: Rule 5	3	3
C-3	Certificate of Service	3	3

(Whereupon, the following proceedings were held on October 6, 2014, beginning at 9:50 AM.)

(Court's Exhibit Numbers 1, 2 and 3 were marked and stipulated into evidence.)

BAILIFF: All rise. Court will come to order, please.

THE COURT: Be seated, please.

All right, Ms. Merrill. This is your motion for -- on several different grounds. The record is open.

MS. MERRILL: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, ma'am.

MS. MERRILL: I'm gonna do my best not to have oral argument on everything that's already in the motion. I'm not waiving any of those arguments made; however, the solicitor's office has consented to Court's Exhibit 1, 2 and 3 coming into evidence today, and that's my notice of motion and motion, my Rule 5 that I sent them and a certificate of service for that motion that I filed after the trial. And I believe the solicitor's office has also stipulated to some of the facts that I found out about after the trial, and Mr. Taylor can correct me if I give the wrong stipulation, but the -- the State had made an offer to the co-defendant who testified, Mr. Evans, of eighteen years originally.

MR. TAYLOR: (Nods head.)

MS. MERRILL: And then Evans through counsel countered with ten years, the State countered with thirteen years and then --

MR. TAYLOR: Actually it was -- it was countered. We went back with fifteen, which was in the middle, and then Mr. Goranson came back to me and said thirteen and I agreed to that with nothing to do with testimony, just he was -- Mr. Evans was gonna plead guilty.

MS. MERRILL: And then after that --

MR. TAYLOR: Yeah, I'll just -- do you want me to --

MS. MERRILL: You can supply that. That's fine.

MR. TAYLOR: We had the sentencing sheets printed out, he was gonna sign up, we had him over from the jail in Greenwood, and at that point they declined the offer, but Mr. Evans said I'm willing to give a full statement to law enforcement, I've not been completely true -- or truthful in what I've said to them. Also, I want to testify. And I made sure him and his lawyer both heard that there was no offer if he testifies, you know, who knows what's gonna happen at this point, and he understood. I went back and confirmed all this with Mr. Goranson, checked my notes. After the trial, I offered straight up with a cap of ten to kidnapping, which is 85 percent,

it's a strike and a most serious offense. They then countered with -- or their concern was, of all those things, was a strike on his record, all that sort of thing, so I then said straight up to false imprisonment, which also carries ten years, but it's nonviolent, they accepted it, and then they pled in front of Your Honor in Abbeville I think the next week or two and you sentenced him accordingly.

But I did want to -- I think we both agree there were concerns about whether there was an offer. We asked him on the stand did you have any offer to testify and the answer was no, there never has been, and so that's kind of, you know, how all that went.

MS. MERRILL: And I think you'll stipulate that I didn't know about that until after the trial when you and I -- when I you and I spoke last week about these stipulations.

MR. TAYLOR: Right. Right. She had made her motion and didn't know that. I think she had got some other information in terms of what was in her motion, but that -- that was what we discussed last week and she said we were both -- I mean, I think we're on the same page now.

THE COURT: Okay.

MS. MERRILL: Thank you.

Your Honor, in looking at whether or not there was

a deal, there's several cases I want to call to the Court's attention. And when I say deal, I mean deal with Mr. Evans. And one of them, and I'm not certain how to pronounce this, is the Giglio case, and it discusses that if there is -- when the reliability of a witness is at issue and the nondisclosure of material evidence falls within the Brady rule and a new trial is required if the false testimony could in any reasonable likelihood have affected the judgment.

U.S. versus Bagley, 473 U.S. 667. In that case, the defendant's attorney specifically requested to know if there were any deals, promises, et cetera, made to any witnesses, and I had also requested that in my Rule 5, which is Court's Exhibit 2. And the Supreme Court remanded the case to see if it would have a material effect on the outcome because they said that it should have been disclosed.

There's a South Carolina case, State versus Hinson, 293 South Carolina 406. The facts are a little bit distinguishable from this. Moments after that defendant was convicted, the prosecutor in open court said we are not going to pros -- or proceed with prosecution against this testifying witness, and the Supreme Court -- the South Carolina Supreme Court reversed for a new trial. And Justice Finney in dissent said that this conviction

should have been reversed because it fell short of the high standards of justice mandated by the South Carolina system of jurisprudence.

There is another case, State versus Cain, 297 SC 497. In this one, the South Carolina Supreme Court said there was no evidence that the solicitor had an undisclosed deal and even if there were it was immaterial since the physical evidence, lab tests, bodies, crime scene and pathologist's testimony was sufficient to convict the defendant in that case. And I would distinguish this from the case we have at hand in that there was no physical evidence or anything other than testimonial evidence.

There's a case out of the Fifth Circuit, Tassin versus Cain, 517 F.3d 770, which basically says that the State arose to conclude there was no duty to disclose absent a firm promise of leniency. And understanding that there may be a benefit received was significant to trigger the Brady case, even if it's not a firm promise. And I would argue that Evans in this case, Mr. Evans, expected to get favorable treatment by testifying regardless of whether there was a firm promise.

There's a Fourth Circuit case, Boone versus Paderick, 541 F.2d 447, and that case specifically says tentativeness as far as whether or not the witness

testifying gets a deal may increase relevancy of that testimony because the promise to recommend leniency with nothing more may be interpreted by the person receiving the promise as contingent upon the quality of the evidence produced. The more uncertain the agreement the greater that incentive to make testimony pleasing to the one who made the promise.

And I have given a copy of this to the Court, as well as the solicitor's office, some of the recorded phone calls of Mr. Evans from jail, and that's also attached to the motion. During several of those phone calls, Mr. Evans before he testified at trial said he was definitely -- it was definitely gonna be a nonviolent, he was definitely gonna have a nonviolent conviction and he's not looking at thirteen years anymore. These are just some of the things he said. I'm not gonna go through every single one, Judge, because they are attached, but just for record purposes the ones that I found most pertinent. The file numbers that I provided, the first one ends in E7499, the second file number ends in 0C24E, the third file number ends in FA248, the fourth ends in 94BBD, the fifth ends in 1008 and the sixth ends in D8FBA and the seventh one ends in 8B129, and I call the Court's attention to those.

THE COURT: All right. I missed the first one.

MS. MERRILL: The first one ends in E7499.

THE COURT: Okay.

MS. MERRILL: And in some of them the beginning numbers were the same and that's why I chose to just do the last end ones.

Regarding a potential Brady violation, in that the offer to Mr. Evans was never provided to Brown prior to trial that he had an offer of -- or a negotiation, but basically it came down to thirteen years and then he decided to testify, that was not revealed to Mr. Brown before trial, and I would say that's significant impeachment evidence in a case where you mainly have testimonial evidence and that's about it and impeachment evidence is basically the same. The court has -- there's no distinction between impeachment evidence and exculpatory evidence under Brady, it's treated the same. And evidence -- a Brady claim is complete if one can show the evidence -- if the impeachment evidence was in the possession or known to the prosecution, it was suppressed by the prosecution and material to guilt or punishment, and evidence is material if reasonable probability the result would have been different and reasonable probability is probability sufficient to undermine confidence in the outcome. So Mr. Brown doesn't have to show it would definitely be a different result, but does that bring into

question the outcome of the case. And -- and this is -- the Brady violation can occur whether the State intentionally withheld or inadvertently just didn't reveal this and ruled that the prosecution may hide and defendant must seek is not tenable in a system constitutionally bound to accord defendant's due process, and that's Banks versus Dretke, 124 Supreme Court 1256. That's a U.S. Supreme Court case.

And the materiality of evidence not disclosed pursuant to Brady must be considered collectively and not just item by item, and that's in Kyles versus Whitley, which is another U.S. Supreme Court case. And had the jury been apprised of the true facts, the discussion of eighteen years, then down to thirteen, then possibly evidence believing he was getting a better deal as long as he testified, the jury may well have concluded that Evans fabricated his testimony to curry favor with the State. I'd also argue that this information could have been material to punishment because I could have argued at the sentencing phase that the State had offered thirteen years to the one who had admitted going and getting the gun and bringing the gun to the scene of the crime. And Brady was actually a case in which a new trial was granted because the information was material to punishment and not guilt. By this information not being

revealed, it also violated the confrontation clause, Mr. Brown's Sixth Amendment right to a meaningful cross-examination. We could have explored further about the offer and all those things, but I had no reason to doubt the State when they said there was no offer. But I also didn't know that there had been an offer, whether there was one on the table or not, so I could have explored that further.

There's also -- one last concern is Mr. Evans in one of the recorded phone calls discusses talking about having contact with the victim's father and paying him money and that was also not known before trial and that could have been something I could have explored further with Mr. Evans.

Your Honor, if you'll give me one minute, please.

(Pause in the proceedings.)

MS. MERRILL: Your Honor, I spoke with Mr. Brown briefly. He wanted me to share with the Court some information, but it deals more with the facts and so I told him that really wasn't the purpose of this hearing, but that that could be dealt with at the appellate court level.

THE COURT: Okay.

MS. MERRILL: And, Your Honor, I'm happy to answer any questions the Court may have.