

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

DeAndrea G. Benjamin, Circuit Court Judge

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Aug 14 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CURNEZ ELLERBEE,

APPELLANT

APPELLATE CASE NO. 2019-000910

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
 2018-GS-40-05439-05443
 2018-GS-40-05509-05513

3
 4 State of South Carolina,)
 5 Plaintiff,)
 6 vs.) TRANSCRIPT OF RECORD
 7 Curnez Ellerbee,)
 8 Defendant.)

9 February 11-12, 2019
 10 Columbia, South Carolina

11
 12
 13 B E F O R E:

14 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.
 15
 16

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 Official Court Reporter

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FEBRUARY 11, 2019

(WHEREUPON, the proceedings began at
11:50 a.m.)

THE COURT: Are there any motions from the
State?

MR. MYRICK: Nothing, Your Honor.

THE COURT: Do you want to call the case?

MR. MYRICK: Your Honor, this is the State vs.
Curnez Ellerbee, Indictments 2018-GS-40-05509
through 05513, Indictments 2018-GS-40-05439 through
05443. They are for tax evasion and failure to
file tax returns.

THE COURT: Can I have the indictments?

MR. MYRICK: I just spoke with the clerk's
person. I don't know what the story is, but they
will not give them to me. I've gone to the clerk's
office on numerous occasions to get indictments for
arraignments, and these sorts of things. They
won't give them to me. Maybe they will give them
to you.

THE CLERK: Ms. Sutton has gone for them.

THE COURT: Okay. All right. Thank you.
We'll go ahead.

Just to put on the record, we heard motions
last week in this case, and I have ruled on those

1 motions. I thought that was all, but if the
2 Defense has any other motions, I'll be glad to hear
3 from you.

4 MR. COMISH: We did them briefly. We need to
5 renew our objections for the record and renew all
6 motions, Brady, Riddle. And I believe Ms. Phillips
7 would like to supplement the record as to our
8 objections and motions from last week.

9 MS. PHILLIPS: Your Honor, I don't want to
10 take up much of your time, I just feel that the
11 record needs some facts to supplement the
12 underlying ruling and just would briefly ask you to
13 please consider that ruling in light of those
14 facts.

15 I handed up to you and provided a copy as well
16 to Mr. Myrick a memorialization of this motion --

17 THE COURT: Hold on one second. We've still
18 got jurors.

19 I'm sorry, ma'am. We are not ready for you
20 just yet.

21 (Pause.)

22 (WHEREUPON, Court's Exhibit No. 1 was
23 marked for identification only.)

24 (WHEREUPON, Court's Exhibit No. 2 was
25 marked for identification only.)

1 (WHEREUPON, Court's Exhibit No. 3 was
2 marked for identification only.)

3 (WHEREUPON, Court's Exhibit No. 4 was
4 marked for identification only.)

5 THE COURT: All right. Yes, ma'am?

6 MS. PHILLIPS: Yes, Your Honor. So I have
7 just spoken and investigated -- I've spoken to
8 Mr. Ellerbee and investigated his financial
9 circumstances, which I know were very much at issue
10 last Monday. And on reflection, I think it's
11 important to go into those a little bit.

12 His average monthly take-home income varies
13 hourly. He makes between \$1800 and \$2200 a month.
14 I have one pay stub and some of his bank statements
15 that can document that if you or Mr. Myrick would
16 like to see that.

17 But I just wanted to put on the record that
18 the issue last time -- the issue that we are
19 raising with respect to equal protection and due
20 process is that Mr. Ellerbee, in the most basic
21 terms, cannot pay restitution in advance. And
22 Mr. Myrick's offers to him, and our prior
23 understanding, not disputed last time, to other
24 Defendants in this circumstance, is that
25 Mr. Myrick's offers were the same to all those

1 similarly situated individuals, that if they could
2 pay up front, they could plea to a misdemeanor,
3 felonies would be dismissed, no objection to
4 probation, or recommendation of probation. If you
5 can't pay upfront, you have to plead to a felony.
6 You have to plead to -- or you don't have to, but
7 the offer is plead to a felony and plead to a
8 misdemeanor. Also, recommendation of probation and
9 paying restitution on probation, is my
10 understanding, or taking it to trial.

11 So I just created two graphics as attachments
12 to this, Attachment 1 and Attachment 2. Attachment
13 1 is just a visual of his offer as I understand it,
14 showing that the Verizon Defendants are similarly
15 situated. They both -- they all work at Verizon,
16 just like Curnez, or worked for Verizon at the time
17 that this came up. All have limited or no criminal
18 records, to our understanding, as Curnez does not
19 have a criminal record. And as I understand it,
20 all charged with felony tax evasion and failure to
21 file a return.

22 And that lays out the State's offer about able
23 to pay upfront and not able to pay upfront. And
24 the result is, if you're able to pay upfront, you
25 can walk away with this with no felony on your

1 record. If you can't pay upfront, you walk away
2 with a felony on your record either from trial or a
3 plea offer.

4 And I think this is a critical point because
5 we got into discussion last time of what's his
6 income, why can't he afford to pay this, and
7 whatnot. But, Your Honor, talking to him about a
8 specific breakdown of his expenses and how much
9 he's able to save each month, there is just no way
10 that he would be able to pay this upfront. His
11 expenses total -- between just covering basic
12 necessities, his rent, utilities, gas, electric,
13 groceries, meals, cell phone, car payments, gas,
14 his chronic condition from several back surgeries
15 that he's had and from diabetes, his expenses, I
16 estimate, total about \$1870 a month. And as I
17 said, his take-home varies between \$1800 and \$2200
18 per month. So he is very limited in his ability to
19 pay. We believe that he could pay on a payment
20 plan, but there's just no way he can pay \$13,000
21 upfront.

22 So in light of these facts, we're just asking
23 you to please reconsider your ruling on the equal
24 protection and due process issue, that the way
25 Mr. Myrick has structured the offers discriminates

1 against similarly situated individuals based on
2 ability to pay.

3 And as to the due process issue, there's a
4 fairness issue involved here in the sense that
5 people with money are able to essentially walk away
6 without a felony on their record and people without
7 money to pay this are unable to do that. And I
8 think that there's a lack of consideration of
9 individual circumstances in this offer structure in
10 that it doesn't take into account necessarily who
11 has kids, who has spouses with other substantial
12 sources of income. And I think it's important to
13 make an individualized determination as to his
14 specific financial circumstances.

15 Thank you.

16 THE COURT: All right, thank you.

17 Yes, sir, Mr. Myrick?

18 MR. MYRICK: Unless you have a specific
19 question or you're considering revisiting your
20 ruling from last week, the State doesn't have
21 anything.

22 THE COURT: All right. Based on the ruling
23 last week and, as stated, I think there's not a
24 constitutional right to a plea offer. The State
25 has a right to make an offer or not make an offer.

1 The State could have made an offer to the Defendant
2 or not made an offer to the Defendant. But the
3 Court does not get into, I think the motion was to
4 compel, the State could make a certain offer, and
5 the Court does not get into compelling plea offers.
6 That is outside -- my job is to make sure the
7 constitution is followed. And there is not a
8 constitutional right to a plea offer.

9 MS. PHILLIPS: Understood, Your Honor. And, I
10 apologize. It was my poor decision in wording to
11 phrase it that way on our motion list. I
12 propose -- what we're really asking -- we
13 understand he doesn't have a right to a plea offer.
14 We understand the Court -- understandably,
15 separation of powers has no role in whether a
16 prosecutor makes a plea offer or not. We
17 understand that. That was my poor choosing of
18 wording. Really, what we are seeking is a finding
19 that the manner in which Mr. Myrick approached his
20 plea offers discriminated on the grounds of equal
21 protection and was unfair due process.

22 My apologies for the confusion.

23 THE COURT: That's fine. All right. Well,
24 I'm going to deny the motion and deny the motion to
25 reconsider. I do not find that there is a

1 violation of equal protection. Everyone is
2 similarly situated. They all work for Verizon.
3 They were all given offers.

4 I did have one question. When were these
5 offers made? This is like a 5-year-old case.

6 MR. MYRICK: I would have to go back into my
7 correspondence with Mr. Comish, but I don't think
8 he would disagree if I said that I have been making
9 these offers for years.

10 During the pendency of State vs. Hughes,
11 because of the legal issues involved, we were
12 trying to do something to move the docket and give
13 all the similarly situated Defendants a chance to
14 get right and move on with their lives.

15 Evidently, the Public Defender would prefer to
16 have no offer, which is ludicrous to me. But
17 Mr. Comish will tell you, I relayed this offer to
18 him literally years ago.

19 MR. COMISH: My recollection is maybe 2016,
20 Your Honor.

21 THE COURT: I note that Ms. Phillips brought
22 up a payment plan. The offer was made in 2016,
23 maybe, and it's 2019. On my notes, for some reason
24 here I had that he had five years to pay it. And
25 he has not made any payments, is my understanding.

1 She mentioned a payment plan. Has he made any
2 payments towards --

3 MR. MYRICK: None, Your Honor. And some of
4 the similarly situated people, we've got a group
5 down in Charleston, their lawyers would call me and
6 say, Look, we don't have the money. My guy just
7 brought me \$200 today, he brought me \$200 four
8 weeks ago. Can you hold off calling the case? Can
9 you chill out? Can we just wait and see if he can
10 do it?

11 And in every instance, I'm like, You bet. No
12 problem. In fact, I've gone so far as to call the
13 Chief Administrative Judge's clerk and say, Can we
14 bump this off the docket until the next term to
15 give these people an opportunity?

16 The difference between Mr. Ellerbee's case and
17 those cases is there has never been any effort
18 whatsoever to move this thing forward.

19 THE COURT: All right. The Court finds
20 that -- will make a finding -- while I do not find
21 that there is any equal protection violation, that
22 the offers were made to similarly situated
23 employees of Verizon at or around about the same
24 time, that the Defendant in this case had the
25 opportunity to make payments or pay -- the question

1 was about a payment plan, and has not taken
2 advantage of that offer.

3 And for the reasons all stated last week and
4 again this week, the Court is not inclined to get
5 into the issue of plea offers because there is no
6 constitutional right to a plea offer.

7 So for those reasons, your motion is
8 respectfully denied.

9 All right.

10 MS. PHILLIPS: Thank you.

11 THE COURT: And any other motions?

12 MR. COMISH: Yes, ma'am, one more. Before we
13 start, I'd like to point out the awkward wording is
14 my fault, not Ms. Phillips.

15 THE COURT: That's fine.

16 MR. COMISH: Your Honor, if I may approach
17 with some authorities from my memo?

18 THE COURT: Yes, sir?

19 MR. COMISH: Yes, ma'am. May it please the
20 Court? I apologize for the timing of this motion.
21 We had intended to bring this on Monday. The case
22 was continued and that jury venire was dismissed,
23 so it was no longer appropriate last week. We're
24 bringing it this morning since I found out recently
25 that I believe or have reason to believe that the

1 Department of Revenue has initiated a new
2 investigation into whether the members of the jury
3 venire have filed tax returns.

4 And I can proceed with this however Your Honor
5 would like. I would like to call Mr. Andy
6 Blackwell to the stand to establish sort of a
7 factual basis of what I believe is going on here.
8 Or I can get into --

9 THE COURT: You need to go ahead and make the
10 motion, and then I'll decide if we need to hear any
11 testimony.

12 MR. COMISH: Yes, ma'am. My understanding
13 based on conversations with Mr. Myrick and
14 Mr. Wright, who is not here today, but was present
15 last week, is that Mr. Myrick has caused the jury
16 list to be investigated by someone in the
17 Department of Revenue who can look through their
18 tax payer database. I'm not sure of the name of
19 the database. And my understanding is that they
20 are specifically checking to see whether those
21 taxpayers have submitted income returns. And I
22 don't know whether they look past that into any
23 more information, I don't know how far back they
24 look, I don't know any of that.

25 Mr. Myrick stated that he wishes to strike for

1 cause those jurors who have not filed their taxes.
2 Obviously, we believe this is entirely
3 inappropriate. It's highly protected, highly
4 confidential information. And access to that
5 information is regulated by several statutes.

6 So we are here to apprise the Court of this
7 issue, the seriousness of the issue. I believe
8 this might actually be an entirely novel issue. I
9 spent -- once I found out they were actually doing
10 it, I kind of figured the Department of Revenue
11 would say no. I spent the entire week researching
12 the issue, could find no case on point. Could find
13 no news report of any state Department of Revenue
14 or the IRS investigating a jury panel. I found in
15 the federal law it is explicitly prohibited. The
16 only way that the federal prosecutors can get ahold
17 of the tax return is through a court order unless
18 it's subject to certain exceptions like a grand
19 jury investigation.

20 Mr. Myrick is not an employee of the
21 Department of Revenue, he's an employee of the
22 Attorney General's Office.

23 You can see what I handed up,
24 Section 12-58-110, Your Honor, first on my list.
25 This is the statute and the Taxpayers' Bill of

1 Rights governing what is an investigation and when
2 an investigation is appropriate. Subsection
3 (E)(1), investigation into any oral or written
4 inquiry directed to any person or organization or
5 governmental agency. This is clearly an
6 investigation under that rubric. Subsection (A)
7 requires that any investigation be limited to what
8 is within the department's responsibilities.

9 Mr. Myrick's mumbling, Isn't the department's
10 responsibility to enforce the law? That is
11 correct. His investigation of Mr. Ellerbee is
12 likely appropriate based on their internal policies
13 and procedures. However, the jury venire is not
14 suspected of a crime and he has initiated a
15 criminal investigation into over a hundred citizens
16 showing up to do their civic duty.

17 Since Mr. Myrick did bring up the department's
18 responsibilities, the next thing in there, 12-4-310
19 and 320 laid out the department's required and
20 permissive responsibilities. Nothing in there
21 about investigating a jury venire. Taxpayers' Bill
22 of Rights, guaranteed confidentiality. If he uses
23 this information, it will be public. It will
24 subject jurors the embarrassment of being dismissed
25 in front of their peers for reasons of limited

1 income. I see no way which this is proper. The
2 attorneys I spoke with about it were shocked. Some
3 of them, it took a day or two to sink in what the
4 department is actually doing here.

5 Your Honor, to take a step back, it's common
6 for everybody to do what they can to see who their
7 jury pool is going to be. The bar -- the rules
8 promulgated by the bar association, the American
9 Bar Association say, you know what, searching for
10 public information is largely okay. You know,
11 there is a long-standing fight about NCIC records
12 and whether the State has to turn those over. Your
13 Honor, those are all public records. Courts fall
14 on both sides of that issue, but the running theme
15 in the cases that I have found is that public
16 records are okay, private records are not. And
17 here we have among the most sensitive, highly
18 protected records, so highly protected that the
19 criminal statute actually calls them by name. It
20 is a criminal offense to access tax returns for any
21 improper -- or unlawful purpose. And that is S.C.
22 Code 8-15-725. And I cite that just to say how
23 sensitive these records are.

24 So, Your Honor, we're here sort of to have a
25 discussion with the Court because we don't know

1 what to do. This is entirely new to us. This is
2 entirely new to every attorney I talked to, and
3 searching by myself, by my clerks, and by others.

4 THE COURT: Did he share with you -- I'm
5 assuming he said he wants to strike them for cause?

6 MR. COMISH: Yes, ma'am. He did not share any
7 information with us. And I don't want that
8 information, I'm not entitled to have that
9 information. That information is strictly private
10 governed by the laws of our state. I don't know --

11 THE COURT: The content. I assume he can tell
12 you the names he's asking to strike for cause?
13 Even though I'll be glad to hear from him, but I'm
14 not sure that rises to the level of striking for
15 cause, but I'll be glad to hear from Mr. Myrick.

16 Any response?

17 MR. MYRICK: Mr. Comish got a couple of things
18 right. 12-54-240 says I can't disseminate taxpayer
19 information. I'm not.

20 Second, the Department of Revenue and the
21 Attorney General share a common goal of enforcing
22 the revenue laws. That's what we're doing. It's
23 not an unlawful purpose and, honestly, as an
24 editorial comment, I'm already -- we've only been
25 here for an hour, and I'm sick and tired of being

1 accused of unlawful and unethical conduct by the
2 PD's Office. I've had it up to here already.

3 But the good news is, Your Honor, I don't have
4 it. If you remember last year -- or last week
5 pretrial, you said you would ask a version of the
6 question we asked for. We're prepared to go
7 forward with that. So this information that Mr.
8 Comish is evidently so concerned about that he
9 wants me to be recused for, I don't have it.
10 Nobody in this courtroom has it. So this is moot.

11 THE COURT: I'm assuming you're not asking to
12 have anyone struck for cause? He said you may --

13 MR. MYRICK: No, ma'am, I'm not. He's
14 mistaken.

15 MR. COMISH: Your Honor, that conversation
16 took place in a room full of six people. My
17 co-counsel heard it. I spoke with Andy Blackwell
18 earlier this morning and asked if they were
19 conducting that investigation, and he confirmed to
20 me that they were.

21 MR. MYRICK: Put him on the stand.

22 THE COURT: I'll be glad to hear from him.
23 Who are we putting on the stand? I guess the
24 question, to understand the investigation, is he
25 looking into -- how is he looking at the jury? I

1 mean, the judicial process allows you to do what it
2 is that you can do. If you all went and put names
3 in a database of people on the jury in your office
4 that you may have access to that's someone else's,
5 how is that any different?

6 MR. COMISH: Well, first off, we did not --

7 THE COURT: Well, I'm not saying you did, but
8 I'm saying you could if you wanted to.

9 MR. COMISH: We could, Your Honor.

10 THE COURT: You could go in and see if anybody
11 that has been your client, you know, if you did
12 research on the jury. I mean, research -- doing
13 research on jurors is a part of what -- if you
14 wanted to go into your office and put names in and
15 see if somebody's mom that you previously
16 represented, you could do that. I mean, I don't
17 understand how that's any different. He can't get
18 into disseminating the information. Now, if you
19 want to ask him that -- you can ask him what he
20 did, but in terms of disseminating names or
21 information. But he said that they have not done
22 any investigation of jurors.

23 MR. COMISH: Your Honor, I'm just operating
24 based on what Mr. Myrick told us two weeks ago. I
25 don't have all the details here, so I'm in a little

1 bit sort of firing in the dark because I don't know
2 the specific details.

3 THE COURT: Well, we'll ask -- let you go
4 ahead and ask the questions.

5 All right.

6 (Witness approaches.)

7 THE BAILIFF: Place your left hand on the
8 Bible, and raise your right hand, please.

9 (Witness complies.)

10 THE CLERK: Do you solemnly swear or affirm
11 the testimony you are about to give in this case
12 will be the truth, the whole truth, and nothing but
13 the truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: Please be seated, and state your
16 name for the record.

17 (Witness seated.)

18 THE WITNESS: Special Agent Andy Blackwell.

19 MR. COMISH: May it please the Court, Your
20 Honor?

21 THE COURT: Yes, sir.

22 ANDY BLACKWELL,
23 after being duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. COMISH:

1 Q Good morning, Agent Blackwell.

2 A Good morning.

3 Q You work for the Department of Revenue?

4 A I do.

5 Q And what's the name of the department? Excuse me,
6 what is the name of your department again, I
7 forget?

8 A Special agent in criminal investigations.

9 Q Do you recall a discovery meeting last Tuesday? We
10 were all in the room?

11 A Are you talking about a couple weeks ago?

12 Q Excuse me, you're right, two weeks ago.

13 A I do.

14 Q Do you recall towards the end of that meeting
15 Mr. Myrick apprised us to the fact that he would be
16 looking into whether jurors filed their tax
17 returns?

18 A I don't recall him saying that, no.

19 Q No.

20 A I wasn't in the room the whole time.

21 Q Understood. You recall the conversation I had with
22 you immediately subsequent to the jury -- my words
23 are failing me -- qualifications?

24 A Yes, sir.

25 Q And I asked you if y'all are looking into the

1 jurors' tax returns?

2 A I don't know if those were your exact words, but,
3 yes, sir.

4 Q Something to that effect?

5 A Yes.

6 Q What was your response to that question?

7 A That we had the jury list and we were looking at
8 the jurors.

9 Q And what were you doing as I was asking you that
10 question? Were you taking a picture of the jury
11 list with your cell phone?

12 A I was.

13 Q And what was the purpose of taking those pictures?

14 A To send them to have the jurors checked to see if
15 they had filed tax returns.

16 Q And who is doing that examination of the jury?

17 A There's probably several people back at the office.

18 THE COURT REPORTER: I'm sorry, you need to
19 speak up.

20 A Several people at the office. I sent them to
21 another special agent at the office.

22 Q You had a special agent in the criminal division
23 investigating whether jurors --

24 A Not investigating, researching.

25 Q Researching?

1 A Correct.

2 Q Understood. And you directed this and you did this
3 at the direction of Mr. Allen Myrick?

4 A I did.

5 Q Thank you.

6 MR. COMISH: Beg the Court's indulgence.

7 (Pause.)

8 BY MR. COMISH:

9 Q Did you conduct a similar research project last
10 week or are you aware of one being conducted?

11 A Yes.

12 Q And who conducted that?

13 A Several people.

14 Q Do you recall the names?

15 A Special Agent Guetera, myself, we have an
16 administrative assistant, and I believe another
17 Special Agent Cornelius.

18 Q Got you. And are y'all -- what's the limits of
19 your research? Are you looking to see whether they
20 filed or --

21 A Correct.

22 Q -- are you looking at any other information?

23 A We're looking to see if returns have been filed.

24 Q And is it just for this year or is it a period of
25 time?

1 A It is whatever is in our system.

2 Q Whatsoever is in our system, so the entire -- and
3 I'm sorry, I'm asking --

4 A Our current system goes back to 2012, I do believe.

5 Q So this would include every filing for the past six
6 years?

7 A Correct.

8 Q And have you shared any of that information with
9 Mr. Myrick?

10 A Not to -- not on this panel.

11 Q Is that because you don't intend to or you just
12 haven't yet?

13 A Don't have it.

14 Q You don't have it?

15 A No.

16 Q The research is currently being done?

17 A I'm not at the office, but they may be doing it.

18 Q That's your understanding?

19 A Correct.

20 Q All right. Thank you.

21 MR. COMISH: No further questions, Your Honor.

22 THE COURT: Mr. Myrick?

23 **CROSS-EXAMINATION**

24 BY MR. MYRICK:

25 Q Do I have the information that is so concerning to

1 the Public Defender?

2 A You do not.

3 Q Do you have it?

4 A I do not.

5 Q Does anybody in this courtroom have it?

6 A We do not.

7 Q Thank you.

8 THE COURT: All right, sir, you may step down.

9 (Witness steps down.)

10 THE COURT: All right. Anything else?

11 MR. COMISH: Yes, Your Honor. May I continue
12 arguing the motion briefly?

13 THE COURT: Yes, briefly, but the jurors, as
14 you can tell, are anxious to get in here.

15 MR. COMISH: Yes, ma'am. Your Honor, I'd like
16 to point out that Mr. Blackwell confirms everything
17 that I told you. The statutory law, the case law,
18 it is 100 percent solid. The State cannot look at
19 private information. Your Honor, we can't either.
20 If anybody in our office does that, that's
21 unethical. We're not allowed to share anything
22 which we learn through our representation of our
23 clients. I personally never looked at our database
24 or caused it to be searched for the purpose of
25 investigating the jury venire. That's highly

1 problematic. The American Bar Association
2 promulgated rules saying that prosecutors can't
3 look at private information. They can't look at
4 any information that would cause embarrassment to a
5 juror. I can't imagine anything more embarrassing
6 than being struck simply because you don't make
7 enough money to file a tax return.

8 I would look through the remedies here, Your
9 Honor --

10 THE COURT: Well, let's back up. He doesn't
11 know, so he's going to be in the same position that
12 you and I and everybody else is other than the
13 question that I asked. He said that he does not
14 know. And they may have asked for it, but they
15 don't have it.

16 MR. COMISH: Well, they are getting it right
17 now, Your Honor.

18 THE COURT: We're getting ready to pick a jury
19 right now, so, I mean, I don't know who's going to
20 send what, but I'm ready to pick a jury.

21 MR. COMISH: Yes, ma'am.

22 THE COURT: They don't have it. I mean, if we
23 sit up here and talk for another two or three
24 hours, they may have it, but they don't have it.

25 MR. COMISH: Well, I mean, him being in

1 possession of it does not change the impropriety.
2 It also doesn't change the fact that our jurors
3 have had their privacy invaded. I point out that
4 the constitution explicitly protects the papers
5 from unreasonable intrusion. That is Article I,
6 Section 10.

7 I'd ask that Your Honor -- it sounds like Your
8 Honor is maybe thinking that Mr. Myrick does not
9 have it and will not have it, therefore -- is that
10 where Your Honor is going with your line of
11 questioning?

12 THE COURT: Well, based on the witness that
13 you just called to the stand, he said he doesn't
14 have any information on the jurors to strike anyone
15 regarding their not filing -- or he doesn't -- he
16 does not have it. I'm assuming -- we're getting
17 ready to get started in picking a jury --

18 MR. COMISH: Yes, ma'am.

19 THE COURT: -- he's not going to have it. And
20 if he gets -- and I've already ruled that even if
21 he did have it, that's not a strike for cause.
22 And, furthermore, once the jurors are seated,
23 they're seated. I mean, I am going to ask the
24 question that you all agreed. I reworded the
25 question. And we're going to go forward with the

1 trial in this case. But at this point, he says
2 it's not an investigation is what he testified. He
3 said they're doing research on the jurors.

4 MR. COMISH: Under the --

5 THE COURT: Furthermore, they argue that the
6 statute says for unlawful purposes. I don't know
7 what unlawful purposes you are referring to.

8 MR. COMISH: And I apologize, Your Honor.
9 There's two separate statutes. I'm certainly not
10 accusing anybody of any felonies, that's the
11 unlawful purposes of felonies section. I'm merely
12 pointing to the Taxpayers' Bill of Rights, which
13 has less pointed language and what it prohibits.

14 The Taxpayers' Bill of Rights allow
15 investigations -- and this is an investigation
16 under that statute because Mr. Myrick directed
17 special agents who then directed other folks to
18 inquire as to certain statuses within a database.
19 That's under the plain language of the statute.
20 However they wish to name it, it is an
21 investigation. It's an investigation by criminal
22 agents into the backgrounds of citizens whose only
23 exposure to this process is being called to serve
24 as a juror.

25 Whether or not Mr. Myrick gets that

1 information -- and, Your Honor, we have no way of
2 knowing it. He could have private information
3 about folks who are impaneled, he could get that
4 information after they've been impaneled. He can
5 use that information to make specific appeals to
6 those people. He can appeal to folks. He can make
7 specific arguments based on whether they have filed
8 taxes or whether they haven't filed taxes or their
9 particular history filing taxes. I don't know that
10 he's doing that, Your Honor. I can't tell because
11 he's basing that on information that it is not
12 lawful for me to have. And that is a significant
13 advantage that deprives us of our constitutional
14 right to fair play in a trial.

15 So I would ask if Your Honor is not going to
16 go with recusal, is not going to go with any
17 venire, I'd ask that Your Honor deprive Mr. Myrick
18 of his peremptory strikes because we cannot know if
19 he's using improper information to make those
20 strikes.

21 I'd also ask that Your Honor take the approach
22 used by the federal court and the Northern District
23 of California -- and I have that order here in this
24 packet, which states that the parties cannot
25 consent to no research, which we've obviously

1 crossed that bridge, then every method of research
2 that the parties use to investigate the venire be
3 published to the venire. I think that the jury has
4 a right to know what's happened to them.

5 I would obviously ask that Mr. Myrick be
6 recused is my primary solution, but failing that, I
7 believe Remedies 3 and 4 are the minimum of what's
8 appropriate in the situation, Your Honor.

9 THE COURT: Any response?

10 MR. MYRICK: There's no prejudice, there's no
11 remedy necessary to fix something that didn't
12 happen.

13 Unless Your Honor has specific questions, the
14 State would ask that you deny this motion and we
15 proceed.

16 THE COURT: All right. The Defendant's motion
17 is denied. Based on the testimony, they said there
18 is not an investigation of the jurors. There was
19 research done that was never received. Sworn
20 testimony of the witnesses that Mr. Myrick does not
21 have any more information regarding their tax
22 information than the Defense does. I'm assuming
23 Mr. Myrick, as an officer of the court, understands
24 and knows if he has information that he needs to
25 disclose that to the Court and potentially turn the

1 information over under seal, as we've done with
2 some other documents I think last week, to the
3 Defense.

4 But my understanding is that no one has any
5 tax information regarding the jurors. Is that
6 correct?

7 MR. MYRICK: Your Honor, you brought it up. I
8 was going to let it pass the first time, but I
9 think this is the third time this morning I've been
10 slandered by Mr. Comish. And I would like to be as
11 clear as I can. I am an officer of the court. I
12 don't have it. No one in this courtroom has it. I
13 don't know why he persists. And I don't know why
14 he felt it necessary to take that jibe saying, Oh,
15 well, he says he doesn't have it, but maybe you
16 should recuse him anyway. It's ludicrous, Your
17 Honor.

18 THE COURT: All right. I'm going to deny the
19 motion.

20 I'm going to ask the clerk to bring in the
21 jury panel. And I need the indictments and I need
22 the -- I need the indictments. Ma'am, can you show
23 them to them and make sure those are the amended
24 ones because there have been multiple indictments,
25 so I want to make sure we have the correct ones.

1 Mr. Comish, can you all take a look at the
2 indictments and make sure those are the correct
3 ones before I read them to the jury?

4 Anything else regarding the voir dire? Did
5 you all have any objection to the Defendant's voir
6 dire?

7 MR. MYRICK: May I see it, Your Honor?

8 (Pause.)

9 (WHEREUPON, the jury came into open
10 court at 12:29 p.m.)

11 THE BAILIFF: The jury is seated, Your Honor.

12 THE COURT: Thank you.

13 All right, hello again. As I told you, I am
14 assigned to a week of General Sessions Court here
15 in Richland County. And at this time, we are ready
16 to pick a jury in the case of the State of South
17 Carolina vs. Curnez Kenyatta Ellerbee.

18 I remind you, ladies and gentlemen of the
19 jury, that you are still under oath, the oath that
20 you took earlier, to answer questions truthfully.
21 I remind you that you are not to -- if you answer
22 any of the questions in the affirmative, I ask that
23 you stand. I will ask you the next question. It
24 will be similar to what we did earlier, but I will
25 ask you to stand, give me your juror number, and

1 then I will ask you the next question.

2 In picking a jury, it is the Court's
3 responsibility to make sure that you all can be
4 fair and impartial jurors to both the State and the
5 Defendant at bar, Mr. Ellerbee. I have, I think
6 it's ten indictments that I will go over with you
7 all. I want to first -- I have ten indictments,
8 State of South Carolina vs. Mr. Curnez Kenyatta
9 Ellerbee that are in my hand. I want to go ahead
10 and tell you, these indictments are in no way
11 are -- these indictments are the charging papers
12 that bring Mr. Ellerbee before the court. What I
13 read to you are allegations. It is for a jury of
14 12 to decide if the State meets their burden of
15 proof beyond a reasonable doubt.

16 Mr. Ellerbee has pled not guilty to the
17 charges. And until he is convicted by a jury, he
18 is innocent of these charges. The burden is upon
19 the State to prove him guilty beyond a reasonable
20 doubt. The burden is not upon Mr. Ellerbee. The
21 constitution does not require any citizen to prove
22 themselves innocent. It places the burden on the
23 State to prove him guilty beyond a reasonable
24 doubt. So, anything that I read to you in these
25 indictments are mere allegations. All right?

1 Ladies and gentlemen of the jury, I have ten
2 indictments here. The first one is Indictment
3 Number 2018-GS-40-5439. It is in the State of
4 South Carolina, County of Richland, Court of
5 General Sessions, State vs. Curnez Kenyatta
6 Ellerbee. The indictment reads that -- and the
7 indictment is for evasion of a tax or payment. It
8 reads that Curnez Kenyatta Ellerbee did, in
9 Richland County, on or about April 15, 2010,
10 willfully attempt in any manner to evade or defeat
11 a tax or property assessment imposed by a title
12 administered by the South Carolina Department of
13 Revenue or the payment of that tax or property
14 assessment, to wit, Curnez Kenyatta Ellerbee did
15 fail to file a South Carolina individual income tax
16 return, which he was required to do, having been
17 paid earnings of over \$40,000 in 2009, resulting in
18 a tax liability. And, further, Curnez Kenyatta
19 Ellerbee claimed to be exempt from withholding of
20 state income taxes by his employer during 2009,
21 and, by combination of these acts, insured that no
22 taxes were withheld or paid for that year. This is
23 in violation of South Carolina Code 12-54-44(B)(1),
24 as amended.

25 The next indictment is Indictment

1 2018-GS-40-5440, the State of South Carolina vs.
2 Curnez Kenyatta Ellerbee. And this is an
3 indictment for evasion of a tax or payment. It
4 reads that Curnez Kenyatta Ellerbee did, in
5 Richland County, on or about April 18, 2011,
6 willfully attempt in any manner to evade or defeat
7 a tax or property assessment imposed by a title
8 administered by the South Carolina Department of
9 Revenue or the payment of that tax or property
10 assessment, to wit, Curnez Kenyatta Ellerbee did
11 fail to file a South Carolina individual income tax
12 return, which he was required to do, having been
13 paid earnings of over \$50,000 in 2010, resulting in
14 a tax liability. And, further, Curnez Kenyatta
15 Ellerbee claimed to be exempt from withholding of
16 state income taxes by his employer during 2010,
17 and, by a combination of these acts, insured that
18 no taxes were withheld or paid for that year. This
19 is in violation of Section 12-54-55(B)(1), South
20 Carolina Code of Laws, as amended.

21 The next indictment reads, 2018-GS-40-5441,
22 State of South Carolina vs. Curnez Kenyatta
23 Ellerbee. This is an indictment for evasion of a
24 tax or payment. The allegations read that Curnez
25 Kenyatta Ellerbee did, in Richland County, on or

1 about April 18, 2012, willfully attempt in any
2 manner to evade or defeat a tax or property
3 assessment imposed by a title administered by the
4 South Carolina Department of Revenue or the payment
5 of that tax or property assessment, to wit, Curnez
6 Kenyatta Ellerbee did fail to file a South Carolina
7 individual income tax return, which he was required
8 to do, having been paid earnings of over \$50,000 in
9 2011, resulting in a tax liability. And, further,
10 Curnez Kenyatta Ellerbee made false statements
11 regarding the withholding of state income taxes by
12 his employer during 2011, and, by combination of
13 these acts, insured that the appropriate amount of
14 taxes were not withheld or paid for that year.
15 This is in violation of 12-54-44(B)(1) of the South
16 Carolina Code of Laws, as amended.

17 The next indictment reads, it reads that in
18 2018-GS-40-5442, State of South Carolina vs. Curnez
19 Kenyatta Ellerbee. And it is an indictment for
20 evasion of tax or payment. It reads that, Curnez
21 Kenyatta Ellerbee did, in Richland County, on or
22 about April 15, 2013, willfully attempt in any
23 manner to evade or defeat a tax or property
24 assessment imposed by a title administered by the
25 South Carolina Department of Revenue or the payment

1 of that tax or property assessment, to wit, Curnez
2 Kenyatta Ellerbee did fail to file a South Carolina
3 individual income tax return, which he was required
4 to do, having been paid earnings of over \$50,000 in
5 2012, resulting in a tax liability. And, further,
6 Curnez Kenyatta Ellerbee made false statements with
7 respect to withholding of state income taxes by his
8 employer during 2012, and, by combination of these
9 acts, insured that the proper amount of taxes were
10 not withheld or paid for that year. This is in
11 violation of 12-54-44(B)(1) South Carolina Code of
12 Laws, as amended.

13 And on Indictment Number 2018-GS-40-5443, it
14 reads, evasion of a tax or payment, that Curnez
15 Kenyatta Ellerbee did, in Richland County, on or
16 about April 15, 2009, willfully attempt in any
17 manner to evade or defeat a tax or property
18 assessment imposed by a title administered by the
19 South Carolina Department of Revenue or the payment
20 of that tax or property assessment, to wit, Curnez
21 Kenyatta Ellerbee did fail to file a South Carolina
22 individual income tax return, which he was required
23 to do so, having been paid earnings of over \$40,000
24 in 2008, resulting in a tax liability. And,
25 further, Curnez Kenyatta Ellerbee claimed to be

1 exempt from the penalty of state income tax by his
2 employer during 2008, and, by combination of these
3 acts, insured that no taxes were withheld or paid
4 for that year. This is in violation of
5 Section 12-54-44(B)(1), South Carolina Code of
6 Laws, as amended.

7 All right, ladies and gentlemen of the jury,
8 on Indictment 2018-GS-40-5509, this is an
9 indictment by the State of South Carolina vs.
10 Curnez Kenyatta Ellerbee for failure to file tax
11 returns. It reads that Curnez Kenyatta Ellerbee
12 did, in Richland County, on or about April 15,
13 2009, fail to file a South Carolina individual
14 income tax return, which he was required to do,
15 having been paid earnings in 2008 sufficient to
16 result in a filing requirement. This is in
17 violation of Section 12-54-44(B)(3) of South
18 Carolina Code of Laws, as amended.

19 On Indictment 2018-GS-40-5510, it is the State
20 of South Carolina vs. Curnez Kenyatta Ellerbee for
21 failure to file tax returns. The allegations read
22 that Curnez Kenyatta Ellerbee did, in Richland
23 County, on or about April 15, fail to file a South
24 Carolina individual income tax return, which he was
25 required to do, having been paid earnings in 2012

1 sufficient to result in a filing requirement. This
2 is in violation of Section 12-54-44(B)(3) of the
3 South Carolina Code of Laws, as amended.

4 And then on Indictment 2018-GS-40-5511, it
5 says failure to file tax returns. On
6 2018-GS-40-5511, the allegations are that Curnez
7 Kenyatta Ellerbee did, in Richland County, on or
8 about April 18, fail to file a South Carolina
9 individual income tax return, which he was required
10 to do, having been paid earnings in 2011 sufficient
11 to result in a filing requirement. This is in
12 violation of Section 12-54-44(B)(3) South Carolina
13 Code of laws, 1976, as amended.

14 In Indictment 2018-GS-45-5512, the State of
15 South Carolina vs. Curnez Kenyatta Ellerbee, said
16 indictment, the allegations are failure to file tax
17 returns, that Curnez Kenyatta Ellerbee did, in
18 Richland County, on or about April 18, 2011, fail
19 to file a South Carolina individual income tax
20 return, as he was required to do, having been paid
21 earnings in 2010 sufficient to result in a filing
22 requirement. This is in violation of Section
23 12-54-44(B)(3), South Carolina Code of Laws, 1976,
24 as amended.

25 And the last one is 2018-GS-40-5513, it is for

1 failure to file a tax return, State of South
2 Carolina vs. Curnez Kenyatta Ellerbee. It reads
3 that Mr. Curnez Kenyatta Ellerbee did, in Richland
4 County, on or about April 15, 2010, fail to file a
5 South Carolina individual income tax return, which
6 he was required to do so, having been paid earnings
7 in 2009 that were sufficient to result in a filing
8 requirement. This is in violation of
9 12-54-44(B)(3) South Carolina Code of Laws, 1976,
10 as amended.

11 Ladies and gentlemen of the jury, I remind you
12 that these are merely allegations, that the
13 Defendant in this case has pled not guilty to the
14 charges, and that the State has to prove him guilty
15 beyond a reasonable doubt.

16 Ladies and gentlemen of the jury, at this time
17 there are questions that I need to ask of you. I
18 remind you that you are still under oath from
19 earlier. If you answer any of these questions in
20 the affirmative, I will ask that you stand, state
21 your juror number, and your name if you cannot
22 remember your juror number.

23 The first question is, has anyone ever been
24 related by blood or marriage to the Defendant in
25 this case, Mr. Curnez Ellerbee?

1 Can Mr. Ellerbee please stand?

2 (Defendant complies.)

3 THE COURT: Thank you, Mr. Ellerbee. You may
4 be seated.

5 (Defendant is seated.)

6 THE COURT: All right. Has anyone been
7 related -- has ever been related by blood or
8 marriage to Mr. Ellerbee? If so, please stand.

9 (WHEREUPON, there was no response.)

10 THE COURT: Does anyone have a close personal
11 or social relationship with Mr. Ellerbee? If so,
12 please stand.

13 (WHEREUPON, there was no response.)

14 THE COURT: Does anyone have a business
15 relationship with Mr. Ellerbee? If so, please
16 stand.

17 (WHEREUPON, there was no response.)

18 THE COURT: All right. As you all have heard,
19 these indictments have been brought by the State of
20 South Carolina, and it has been referenced in them
21 the South Carolina Department of Revenue.

22 Is any member of the jury panel related by
23 blood or marriage to anyone who works at the South
24 Carolina Department of Revenue? If so, please
25 stand.

1 (WHEREUPON, there was no response.)

2 THE COURT: Does anyone have a close personal
3 or social relationship with anyone who works at the
4 South Carolina Department of Revenue?

5 (WHEREUPON, there was no response.)

6 THE COURT: All right, ladies and gentlemen of
7 the jury, the following is a list of potential
8 witnesses in this case.

9 If you're in the courtroom and your name is
10 called, I will ask that you please stand.

11 The first witness is Special Agent Matt
12 Wright, with the South Carolina Department of
13 Revenue.

14 Is he in the courtroom?

15 MR. MYRICK: No, ma'am, he's not.

16 THE COURT: Special Agent Andy Blackwell, with
17 the South Carolina Department of Revenue.

18 (Potential witness stands.)

19 THE COURT: Thank you.

20 (Potential witness seated.)

21 THE COURT: Special Agent Michael Ciuffreda,
22 with the South Carolina Department of Revenue.

23 (Potential witness stands.)

24 THE COURT: Thank you.

25 (Potential witness seated.)

1 THE COURT: Ms. Randee Gregory --
2 Investigator -- and I'm sorry, Ms. Randee Gregory,
3 and that Randee is spelled R-A-N-D-E-E, is with the
4 South Carolina Department of Revenue also.

5 Investigator Marshall Smith, with the South
6 Carolina Department of Revenue.

7 (Potential witness stands and seated.)

8 THE COURT: And Ms. Stacey Young, with Verizon
9 Corporation.

10 Ms. Kadenia, K-A-D-E-N-I-A, Javis, with Javis
11 Tax Service.

12 And CPA, Emily May, with the Hobbs Group.

13 The following is a list of potential witnesses
14 in this case. Has anyone ever been related by
15 blood or marriage to any of the people I just
16 listed or have had a close personal, social, or
17 business relationship with any of the people that I
18 just named? If so, please stand.

19 (WHEREUPON, there was no response.)

20 THE COURT: All right. The attorneys in this
21 case, representing the State of South Carolina is
22 Assistant Attorney General Allen Myrick.

23 (Mr. Myrick stands.)

24 THE COURT: And with the Department of Revenue
25 is Attorney Nikki Wooten.

1 (Ms. Wooten stands.)

2 THE COURT: Representing Mr. Ellerbee is
3 Mr. Jonathan Comish, Attorney Jonathan Comish,
4 Attorney Catherine Mubarak, and Attorney Alice
5 Phillips. And they are with the Richland County
6 Public Defender's Office.

7 (Attorneys stand.)

8 THE COURT: Has any member of the jury panel
9 ever been represented by any of the attorneys
10 involved in this case or by anyone in their office?

11 (WHEREUPON, there was no response.)

12 THE COURT: Has anyone ever been related by
13 blood or marriage to or have a close personal,
14 social, or business relationship with any of the
15 attorneys involved in the case? If so, please
16 stand.

17 Yes, ma'am?

18 POTENTIAL JUROR: I'm on a committee with
19 Jonathan Comish.

20 THE COURT: And, ma'am, your juror number?

21 POTENTIAL JUROR: 73.

22 THE COURT: Juror 73, the fact that you and
23 Mr. Comish serve on a committee together, would
24 that affect your ability to be fair and impartial
25 in this trial?

1 POTENTIAL JUROR: No, ma'am.

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

3 Yes, sir?

4 POTENTIAL JUROR: 246.

5 THE COURT: Yes, sir?

6 POTENTIAL JUROR: I know Catherine Mubarak.

7 THE COURT: All right. And the fact that you
8 know Ms. Mubarak, would that affect your ability to
9 be fair and impartial in this trial?

10 POTENTIAL JUROR: No.

11 THE COURT: All right. Thank you.

12 Anyone else?

13 (WHEREUPON, there was no response.)

14 THE COURT: Has any member of the jury panel
15 formed or expressed an opinion about any issue or
16 matter involved in this case?

17 (WHEREUPON, there was no response.)

18 THE COURT: Is any member of the jury panel
19 aware of any bias or prejudice towards either the
20 State or the Defendant in this case?

21 (WHEREUPON, there was no response.)

22 THE COURT: Does any member of the jury panel
23 associate with the Defendant in this case, either
24 at work or elsewhere in the community?

25 (WHEREUPON, there was no response.)

1 THE COURT: Does any member of the jury panel
2 hold political beliefs regarding the ability of the
3 State to assess taxes against income which would
4 preclude their ability to render an impartial
5 verdict in this case?

6 (WHEREUPON, there was no response.)

7 THE COURT: Has any member of the jury panel
8 ever been convicted of a crime of dishonesty?

9 (WHEREUPON, there was no response.)

10 THE COURT: Does any member of the jury panel
11 have an immediate family member who has been
12 convicted of a crime of dishonesty?

13 (WHEREUPON, there was no response.)

14 THE COURT: Is there any member of the jury
15 panel who has interacted with the Department of
16 Revenue or the IRS regarding failure to file a tax
17 return?

18 (WHEREUPON, there was no response.)

19 THE COURT: If there is -- I didn't say this
20 before, but, of course, if there is any juror who
21 does not wish to answer any questions in front of
22 the entire panel, I will give you an opportunity to
23 speak with me like you did earlier, okay?

24 Has any member of the jury panel read or seen
25 anything regarding the facts of this case on any

1 news media outlets, social medial posts, or any
2 other source?

3 (WHEREUPON, there was no response.)

4 THE COURT: Do any of you use a service or
5 employ a professional to assist you in your tax
6 preparation? Does anyone hire someone -- all
7 right, I'm going to have you please stand.

8 You hire someone or you employ someone to
9 assist you with your tax preparation?

10 (Potential jurors stand.)

11 THE COURT: All right. So, and we'll go
12 through -- and if you can let me know -- give me
13 your juror number and let me know who it is that
14 you hire or employ to handle your taxes.

15 All right, yes, ma'am?

16 POTENTIAL JUROR: You're talking about online
17 stuff?

18 THE COURT: Ma'am?

19 POTENTIAL JUROR: If I use H&R Block online,
20 would that count?

21 THE COURT: Yes, ma'am. What is your juror
22 number?

23 POTENTIAL JUROR: 171.

24 THE COURT: Juror 171, H&R Block. Okay.

25 Yes, ma'am, remain standing.

1 Yes, go ahead.

2 POTENTIAL JUROR: I'm 84. I use H&R directly,
3 person-to-person.

4 THE COURT: H&R Block. And you're 84?

5 POTENTIAL JUROR: Yes, ma'am.

6 THE COURT: All right.

7 Yes, sir?

8 POTENTIAL JUROR: 188.

9 THE COURT: Yes, sir?

10 POTENTIAL JUROR: Gregory Tax Service.

11 THE COURT: All right.

12 Yes, sir?

13 POTENTIAL JUROR: 300. I honestly don't know
14 the name. My wife handles that.

15 THE COURT: But you know you employ someone?

16 POTENTIAL JUROR: Up until this year, ma'am,
17 yes.

18 THE COURT: Yes, ma'am?

19 POTENTIAL JUROR: 149. She's a CPA, Jane
20 Roper.

21 THE COURT: Who?

22 POTENTIAL JUROR: Jane Roper.

23 THE COURT: You don't know who she's with or
24 she's by herself?

25 POTENTIAL JUROR: She's private.

1 THE COURT: All right.

2 Next, yes, sir?

3 POTENTIAL JUROR: 220, Tax Pro.

4 THE COURT: Tax Pro. All right.

5 Yes, sir?

6 POTENTIAL JUROR: 100. For my business, I'd
7 have to look it up because my partner brought me
8 out here to South Carolina, hired someone local.
9 It is on my phone if you want to know. And
10 personal, I am still using a CPA out of Colorado
11 because we've only been here two and a half years.

12 THE COURT: Okay.

13 Yes, sir?

14 POTENTIAL JUROR: 66, H&R Block.

15 THE COURT: All right.

16 POTENTIAL JUROR: 73, Sweyer & Associates.

17 THE COURT: All right.

18 POTENTIAL JUROR: 41, H&R Block.

19 THE COURT: Yes, ma'am? Next one?

20 POTENTIAL JUROR: 51, H&R.

21 THE COURT: Yes, sir?

22 POTENTIAL JUROR: 108. It's online. I think
23 the name of it is Intuit.

24 THE COURT: Intuit?

25 POTENTIAL JUROR: I believe.

1 THE COURT: All right.

2 POTENTIAL JUROR: 279, H&R Block.

3 THE COURT: Yes, sir?

4 POTENTIAL JUROR: 138, TurboTax.

5 THE COURT: Anybody on a row with you? No.

6 All right, yes, ma'am?

7 POTENTIAL JUROR: 232. Her name is Brandy

8 Brown.

9 THE COURT: Next to you?

10 POTENTIAL JUROR: 123. Denise Graham, CPA.

11 THE COURT: Who is it?

12 POTENTIAL JUROR: Denise Graham.

13 THE COURT: Is she with a group?

14 POTENTIAL JUROR: No, ma'am.

15 THE COURT: Yes, ma'am?

16 POTENTIAL JUROR: 176, H&R Block.

17 THE COURT: Right next to you?

18 POTENTIAL JUROR: 233, Liberty Tax Service.

19 THE COURT: Yes, ma'am?

20 POTENTIAL JUROR: 227, Ethel or Stroy Tax

21 Service.

22 THE COURT: Ethel or Stroy, okay.

23 Yes, ma'am?

24 POTENTIAL JUROR: 19, TurboTax.

25 POTENTIAL JUROR: 97, H&R Block.

1 THE COURT: All right. And on around, yes,
2 sir?

3 POTENTIAL JUROR: 165. I don't really know a
4 name but Johnny. I'd have to look in the phone
5 book.

6 THE COURT: Johnny, okay.
7 Yes, ma'am, in the green sweater?

8 POTENTIAL JUROR: 258. I believe the name is
9 Jackson Hewitt.

10 THE COURT: Jackson Hewitt.
11 Yes, sir?

12 POTENTIAL JUROR: 306, Ben Williams,
13 Abernathy.

14 THE COURT: Yes, sir?

15 POTENTIAL JUROR: 197, Tax Act.

16 THE COURT: What was it again?

17 POTENTIAL JUROR: Tax Act.

18 THE COURT: All right.

19 Ladies and gentlemen of the jury --

20 THE CLERK: Judge, there's another one.

21 THE COURT: Did I miss someone? Yes, sir.

22 POTENTIAL JUROR: I didn't stand. My wife did
23 it on TurboTax.

24 THE COURT: What's your number?

25 POTENTIAL JUROR: 105.

1 THE COURT: Yes, ma'am.

2 POTENTIAL JUROR: 168. I didn't know you were
3 including TurboTax. 168.

4 THE COURT: TurboTax.

5 And this young lady that stood?

6 POTENTIAL JUROR: 242, TurboTax.

7 THE COURT: All right. I saw somebody else
8 stand. Yes?

9 POTENTIAL JUROR: 147.

10 THE COURT: TurboTax.

11 POTENTIAL JUROR: 52, TurboTax.

12 THE COURT: 52, TurboTax.

13 POTENTIAL JUROR: 151.

14 POTENTIAL JUROR: 175.

15 THE COURT: Wait a second. 151, TurboTax.

16 Hold on, hold on, hold on.

17 Yes, ma'am?

18 POTENTIAL JUROR: 175, TurboTax.

19 THE COURT: 175, TurboTax.

20 Someone stood up over here?

21 POTENTIAL JUROR: 33, Turbo.

22 THE COURT: 33, TurboTax.

23 POTENTIAL JUROR: 121, Turbo.

24 THE COURT: 121, TurboTax.

25 Yes, sir?

1 POTENTIAL JUROR: Number 7, TurboTax.

2 THE COURT: Number 7, TurboTax.

3 Anyone else that I missed?

4 Oh, yes, sir?

5 POTENTIAL JUROR: 290, Tracy.

6 THE COURT: Tracy? Who is that?

7 POTENTIAL JUROR: Somebody I do taxes with.

8 THE COURT: All right. Everyone is still
9 standing. The fact that you all use a tax service
10 or employ a tax service to assist you in your tax
11 preparation, would that affect your ability to be
12 fair and impartial in this trial? If your answer
13 is no, you may take your seat. If your answer is
14 yes, I'll ask that you remain standing.

15 (WHEREUPON, all jurors are seated.)

16 THE COURT: All right. Madam Court Reporter,
17 let the record reflect that all of the jurors have
18 taken their seat.

19 Does anyone on the jury panel think that an
20 agent of the government is more believable than any
21 other witness? If so, please stand.

22 (WHEREUPON, there was no response.)

23 THE COURT: Has any member of the jury panel
24 been a victim of a financial crime?

25 (WHEREUPON, there was no response.)

1 THE COURT: Does anyone work now or if you
2 have ever worked for Verizon Wireless? Anyone ever
3 worked for Verizon Wireless or works now?

4 All right. Yes, ma'am?

5 POTENTIAL JUROR: It was like ten years ago.

6 THE COURT: What's your juror number?

7 POTENTIAL JUROR: 149.

8 THE COURT: And it was ten years ago. And
9 would that affect your ability to be fair and
10 impartial in this trial?

11 POTENTIAL JUROR: No.

12 THE COURT: All right. Yes, ma'am?

13 POTENTIAL JUROR: Juror Number 227. Five
14 years ago.

15 THE COURT: Five years ago. And, ma'am, would
16 that affect your ability to be fair and impartial
17 in this trial?

18 POTENTIAL JUROR: No.

19 THE COURT: All right. Thank you.
20 Yes, ma'am?

21 POTENTIAL JUROR: 123, 18 years ago.

22 THE COURT: And would that affect your ability
23 to be fair and impartial in this trial?

24 POTENTIAL JUROR: No, ma'am.

25 THE COURT: All right. And yes, sir?

1 POTENTIAL JUROR: 197. About six years ago.

2 THE COURT: Six years ago. Would that affect
3 your ability to be fair and impartial in this
4 trial?

5 POTENTIAL JUROR: I like Verizon.

6 THE COURT: All right. Would that affect --
7 but you've got to answer my question yes or no.
8 Would that affect your ability to be fair and
9 impartial in this trial?

10 POTENTIAL JUROR: It's possible.

11 THE COURT: All right, thank you. 197. You
12 may have a seat. Thank you.

13 Does anyone hold a degree in any subject
14 related to accounting or taxes?

15 (WHEREUPON, there was no response.)

16 THE COURT: Has anyone -- and, like I said,
17 there's some questions you may not want to answer
18 in front of the whole panel, the entire panel. Has
19 anyone ever been audited by the South Carolina
20 Department of Revenue or Internal Revenue Service?
21 If you do not wish to answer, you can come down and
22 speak with me privately.

23 Yes, sir?

24 POTENTIAL JUROR: Sixty-six.

25 THE COURT: Sixty-six. Was it the Department

1 of Revenue, South Carolina Department of Revenue,
2 or Internal Revenue Service?

3 POTENTIAL JUROR: I think South Carolina.

4 THE COURT: Do you remember when that was?

5 POTENTIAL JUROR: I say it happened twice
6 regularly where they audited.

7 THE COURT: Do you know how many years ago?

8 POTENTIAL JUROR: Maybe four years ago and
9 maybe two years ago.

10 THE COURT: All right. And, sir, the fact
11 that you have been audited by the Department of
12 Revenue and Internal Revenue -- the IRS, would that
13 affect your ability to be fair and impartial in
14 this trial?

15 POTENTIAL JUROR: No, ma'am.

16 THE COURT: Thank you.

17 Yes, ma'am?

18 POTENTIAL JUROR: Ninety-seven.

19 THE COURT: All right. Ma'am, was it
20 Department of Revenue or IRS?

21 POTENTIAL JUROR: IRS.

22 THE COURT: And do you remember when?

23 POTENTIAL JUROR: It was within the last ten
24 years.

25 THE COURT: And, ma'am, the fact that you have

1 been audited by the IRS, would that affect your
2 ability to be fair and impartial in this trial?

3 POTENTIAL JUROR: Potentially.

4 THE COURT: All right, thank you. And you are
5 juror?

6 POTENTIAL JUROR: Ninety-seven.

7 THE COURT: All right.

8 And, sir, your juror number?

9 POTENTIAL JUROR: 197.

10 THE COURT: And was it the IRS or the
11 Department of Revenue?

12 POTENTIAL JUROR: Both.

13 THE COURT: And do you remember when?

14 POTENTIAL JUROR: Like four years ago.

15 THE COURT: You said when?

16 POTENTIAL JUROR: Four or five years ago.

17 THE COURT: Four years ago. And would that
18 affect your ability to be fair and impartial in
19 this trial?

20 POTENTIAL JUROR: Yes.

21 THE COURT: All right, thank you.

22 Do you or any member of your family, including
23 your siblings, parents, children, or friends have
24 any legal training or education? If so, please
25 stand.

1 Yes, sir, your juror number?

2 POTENTIAL JUROR: Sixty-six.

3 THE COURT: Is it you or your family member?

4 THE DEFENDANT: I have a sister that's a
5 lawyer.

6 THE COURT: Is she a lawyer here in Columbia.

7 POTENTIAL JUROR: No, New Jersey.

8 THE COURT: And would that affect your ability
9 to be fair and impartial in this trial?

10 POTENTIAL JUROR: No.

11 THE COURT: Thank you.

12 Yes, ma'am?

13 POTENTIAL JUROR: 280.

14 THE COURT: Is it you or a family member?

15 POTENTIAL JUROR: My sister-in-law is a CPA
16 and an attorney.

17 THE COURT: And, ma'am, would that affect your
18 ability to be fair and impartial in this trial?

19 POTENTIAL JUROR: No, ma'am.

20 THE COURT: All right, thank you.

21 Yes, ma'am?

22 POTENTIAL JUROR: 168.

23 THE COURT: Yes, ma'am?

24 POTENTIAL JUROR: My brother-in-law is a
25 lawyer, and pretty much all the males on my

1 husband's side are lawyers.

2 THE COURT: Here in town?

3 POTENTIAL JUROR: One is in California and the
4 others are in Florida.

5 THE COURT: Ma'am, would that affect your
6 ability to be fair and impartial in this trial?

7 POTENTIAL JUROR: No.

8 THE COURT: Juror 288, you said your
9 sister-in-law is a CPA and an attorney?

10 POTENTIAL JUROR: Yes, ma'am.

11 THE COURT: Where does she -- is she here?

12 POTENTIAL JUROR: She practiced -- she was a
13 CPA here, and then she practices law in Myrtle
14 Beach now.

15 THE COURT: Do you know which law firm? If
16 you don't, it's okay.

17 POTENTIAL JUROR: It's a big one. They have
18 one here too. I'll let you know if I can come up
19 with it.

20 THE COURT: All right. And, ma'am, would that
21 affect your ability to be fair and impartial in
22 this trial?

23 POTENTIAL JUROR: No, ma'am.

24 THE COURT: Thank you.

25 Yes, ma'am, your juror number?

1 POTENTIAL JUROR: I have prior experience
2 working at the District Attorney's Office in
3 Augusta, Georgia, as well as a couple of private
4 law firms. And I have a brother who practices law
5 in Walterboro, South Carolina.

6 THE COURT: What's your number again?

7 POTENTIAL JUROR: 176.

8 THE COURT: And, ma'am, would any of that
9 affect your ability to be fair and impartial in
10 this trial?

11 POTENTIAL JUROR: No, ma'am.

12 THE COURT: All right. Thank you.

13 Yes, ma'am, in the purple?

14 POTENTIAL JUROR: Ninety-seven.

15 THE COURT: All right.

16 POTENTIAL JUROR: My brother-in-law is a
17 construction lawyer in Greenville. And I have my
18 master's degree training in environmental law.

19 THE COURT: And, ma'am, would any of that
20 affect your ability to be fair and impartial in
21 this trial?

22 POTENTIAL JUROR: No.

23 THE COURT: Thank you.

24 Yes, ma'am?

25 POTENTIAL JUROR: Fifty-two. My uncle and all

1 my cousins are lawyers in Alabama, Tennessee, and
2 Georgia.

3 THE COURT: And, ma'am, would that affect your
4 ability to be fair and impartial in this trial?

5 POTENTIAL JUROR: No, ma'am.

6 THE COURT: All right, thank you.

7 Do you work or have any family members,
8 including siblings, parents, children, or friends,
9 who work or ever have worked as an employee of the
10 South Carolina Department of Revenue or the
11 Internal Revenue Service? If so, please stand.

12 (WHEREUPON, there was no response.)

13 THE COURT: Do you have any members of your
14 family, including siblings, parents, children, or
15 friends, who have ever served as law enforcement
16 officers, which include not only police officers,
17 but also code enforcement officials, employees of a
18 Sheriff's Department, City Police Department, SLED,
19 South Carolina Law Enforcement Division, Military
20 Police, ICE, Border Patrol, the DEA, the ATF, and
21 any other law enforcement agency? If so, please
22 stand.

23 Yes, sir, your juror number?

24 POTENTIAL JUROR: 300.

25 THE COURT: Is it you or a family member?

1 POTENTIAL JUROR: Family member.

2 THE COURT: Which agency?

3 POTENTIAL JUROR: DEA.

4 THE COURT: And, sir, would that affect your
5 ability to be fair and impartial in this trial?

6 POTENTIAL JUROR: No, ma'am.

7 THE COURT: Thank you.

8 Yes, ma'am?

9 POTENTIAL JUROR: Sixty-two. My brother is a
10 U.S. Marshall.

11 THE COURT: And, ma'am, would that affect your
12 ability to be fair and impartial in this trial?

13 POTENTIAL JUROR: No, ma'am.

14 THE COURT: Thank you.

15 Yes, ma'am?

16 POTENTIAL JUROR: My stepfather-in-law works
17 for Richland County.

18 THE COURT: Sheriff's Department?

19 POTENTIAL JUROR: Yes.

20 THE COURT: What's your number?

21 POTENTIAL JUROR: 147.

22 THE COURT: 147. And would that affect your
23 ability to be fair and impartial in this trial?

24 POTENTIAL JUROR: No.

25 THE COURT: All right, thank you.

1 Yes, sir, in the green shirt?

2 POTENTIAL JUROR: 100. My sister was military
3 police. And, no, it would not affect me.

4 THE COURT: You said no, it would not affect
5 your ability to be fair and impartial in this
6 trial?

7 POTENTIAL JUROR: No.

8 THE COURT: Thank you.

9 Yes, sir?

10 POTENTIAL JUROR: I was a deputy sheriff from
11 '91 to '96.

12 THE COURT: What's your number?

13 POTENTIAL JUROR: 306.

14 THE COURT: And a deputy sheriff for which
15 department?

16 POTENTIAL JUROR: Wake County Sheriff's
17 Department.

18 THE COURT: And, sir, would that affect your
19 ability to be fair and impartial in this trial?

20 POTENTIAL JUROR: No, ma'am.

21 THE COURT: Yes, ma'am?

22 POTENTIAL JUROR: Number 55. My sister was a
23 detective and my brother-in-law was a police
24 officer.

25 THE COURT: Here in Columbia?

1 POTENTIAL JUROR: No, ma'am.

2 THE COURT: And, ma'am, would that affect your
3 ability to be fair and impartial in this trial?

4 POTENTIAL JUROR: No, ma'am.

5 THE COURT: Thank you.

6 Do you have any particular moral or religious
7 beliefs that would affect your ability to be
8 completely fair and impartial in this trial?

9 (WHEREUPON, there was no response.)

10 THE COURT: Ladies and gentlemen of the jury,
11 does any member of the jury panel know of any
12 reason whatsoever why he or she should not serve as
13 a juror in this case, with particular emphasis
14 being placed on your ability to be fair and
15 impartial to both the State and the Defendant? If
16 so, please stand.

17 (WHEREUPON, there was no response.)

18 THE COURT: All right. And I think you gave
19 me a reason earlier, is that correct? You are
20 juror number -- what's your number, ma'am?

21 POTENTIAL JUROR: Ninety-seven.

22 THE COURT: All right, thank you.

23 POTENTIAL JUROR: Can I tell you why? I --

24 THE COURT: Hold on, hold on, hold on. I'll
25 have you come down and tell me why. All right.

1 Is there any other jurors that wish to speak
2 with me privately -- or semi-privately because the
3 attorneys will be there.

4 All right, come on down.

5 THE BAILIFF: Ninety-seven.

6 (Potential juror approaches.)

7 THE COURT: You are Juror 97?

8 POTENTIAL JUROR: Ninety-seven. I didn't
9 really fit in any of the categories, but I'm
10 employed by the State of South Carolina in the
11 Department of Health and Environmental Control. I
12 just wanted that to be known.

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

15 POTENTIAL JUROR: Possibly.

16 THE COURT: Thank you.

17 (Potential juror returns.)

18 THE BAILIFF: Juror Number 197.

19 (Potential juror approaches.)

20 THE COURT: Yes. Move closer. She has to
21 take down what you're saying.

22 POTENTIAL JUROR: It is a total waste of time,
23 ten years' worth of taxes.

24 THE COURT: Hold on one second. Does that
25 affect your ability to be fair and impartial in

1 this trial?

2 POTENTIAL JUROR: Yes.

3 THE COURT: Go take your seat.

4 (Potential juror returns.)

5 THE COURT: All right, anyone else?

6 (WHEREUPON, the following takes place at
7 the bench.)

8 THE COURT: I have strikes for cause. 197 and
9 97 were the two that said they could not be fair
10 and impartial. Any other ones?

11 MR. MYRICK: Let me check.

12 MR. COMISH: Several worked at Verizon when
13 this happened. They might have some sort of
14 knowledge about friends or co-workers.

15 THE COURT: I can ask the question if
16 anyone -- I can call Verizon people up here and ask
17 them do they know anything about which ones --

18 MR. COMISH: Could we ask if they worked at
19 the Call Center?

20 THE COURT: I have 197, 149, ten years ago,
21 227, five years ago, 123, 18 years ago?

22 MR. COMISH: Who were the other two?

23 THE COURT: You want to call them up?

24 MR. COMISH: Yes.

25 THE COURT: I will just tell them Verizon

1 allegations arise out of who worked at Verizon.

2 THE COURT: Can I see Juror 149 and Juror 227?

3 (Potential Juror 227 approaches.)

4 THE COURT: 227. Some of the allegations --
5 you said you worked at Verizon like five years ago,
6 five or ten years ago?

7 POTENTIAL JUROR: Yes.

8 THE COURT: Some of the allegations involve
9 employment at Verizon. Would that affect your
10 ability to be fair and impartial in this trial?

11 POTENTIAL JUROR: No.

12 THE COURT: Did you work at the Call Center?

13 POTENTIAL JUROR: Yes.

14 THE COURT: Would that affect your ability to
15 be fair and impartial --

16 POTENTIAL JUROR: No.

17 THE COURT: -- in this trial?

18 POTENTIAL JUROR: No.

19 THE COURT: I think Mr. Ellerbee worked in
20 Call Center.

21 POTENTIAL JUROR: Uh-huh.

22 THE COURT: Would that affect your ability to
23 be fair and impartial in the trial of this case?

24 POTENTIAL JUROR: No.

25 (Potential juror returns.)

1 THE COURT: 149.

2 (Potential juror approaches.)

3 THE COURT: You worked at the Call Center?

4 POTENTIAL JUROR: Yes, in Greenville.

5 THE COURT: In Greenville. Would this affect
6 your ability to be fair to the Defendant in this
7 case that worked at, I think, in Columbia in the
8 Call Center? Would that affect your ability to be
9 fair and impartial in this trial?

10 POTENTIAL JUROR: No.

11 THE COURT: Thank you.

12 (Potential juror returns.)

13 (WHEREUPON, the following takes place at
14 the bench.)

15 THE COURT: All right. Anything else?

16 (WHEREUPON, there was no response.)

17 THE COURT: Take those two out. One
18 alternate. The strikes are five and five.

19 MR. COMISH: Yes, ma'am. Thank you.

20 (WHEREUPON, the bench conference was
21 concluded.)

22 THE COURT: All right, ladies and gentlemen of
23 the jury, when your name is called, you will come
24 up to the microphone and face the audience. If
25 you -- the clerk will ask the State how they wish

1 to proceed, and the State will say, Please strike
2 the juror or please seat the juror. If they say,
3 Strike the juror, you will go back into the
4 audience. If they say, Seat the juror, you will
5 remain standing there and then we will go to the
6 Defense. The Defense will say, Please strike or
7 Please seat. If they say strike, you will go back
8 into the audience. If they say seat, you will go
9 into the jury box. So please bring your belongings
10 with you.

11 Yes, ma'am, Madam Clerk, I turn it over to
12 you.

13 THE CLERK: Juror Number 242.

14 (Potential juror approaches.)

15 THE CLERK: What says the State?

16 THE COURT: I'm sorry, I was supposed to tell
17 them to state where they work and, if they are
18 married, where their spouse works.

19 POTENTIAL JUROR: I'm retired from
20 International Paper Company, and my husband is
21 retired from CSX Transportation.

22 THE CLERK: What says the State?

23 MR. MYRICK: Please present this juror.

24 THE CLERK: What says the Defense?

25 MR. COMISH: Please seat this juror.

1 THE CLERK: Please have a seat in the jury
2 box.

3 (Susan Sharp, a white female, was seated
4 on the jury.)

5 THE CLERK: Juror Number 52.

6 (Potential juror approaches.)

7 POTENTIAL JUROR: I'm an associate at Todd &
8 Moore Sporting Goods, and I'm single.

9 THE CLERK: What says the State?

10 MR. MYRICK: Please present the juror.

11 THE CLERK: What says the Defense?

12 MR. COMISH: Please strike the juror.

13 THE CLERK: Please return to the back of the
14 courtroom.

15 (Caitlin Cleveland, a white female, was
16 excused by the Defense.)

17 THE CLERK: Juror Number 33.

18 (Potential juror approaches.)

19 POTENTIAL JUROR: I'm a commercial contractor.
20 My wife is retired.

21 THE CLERK: What says the State?

22 MR. MYRICK: Please present the juror.

23 THE CLERK: What says the Defense?

24 MR. COMISH: Please seat this juror.

25 THE CLERK: Please have a seat in the jury

1 box.

2 (Edward Brown, a black male, was seated
3 on the jury)

4 THE CLERK: Juror Number 280.

5 (Potential juror approaches.)

6 POTENTIAL JUROR: I work for the Department of
7 Defense as a schoolteacher, and my husband works
8 for the City of Columbia.

9 THE CLERK: What says the State?

10 MR. MYRICK: Please present the juror.

11 THE CLERK: What says the Defense?

12 MR. COMISH: Please excuse this juror.

13 THE CLERK: Please return to the back of the
14 courtroom.

15 (Amy Watford, a white female, was
16 excused by the Defense.)

17 THE CLERK: Juror Number 220.

18 (Potential juror approaches.)

19 POTENTIAL JUROR: Muhammad Rafiq, a physician,
20 and my wife is a physician also.

21 THE CLERK: What says the State?

22 MR. MYRICK: Please present the juror.

23 THE CLERK: What says the Defense?

24 MR. COMISH: Please seat this juror.

25 THE CLERK: Please have a seat in the jury

1 box.

2 (Muhammad Rafiq, a white male, was
3 seated on the jury.)

4 THE CLERK: Juror Number 66.

5 (Potential juror approaches.)

6 POTENTIAL JUROR: I work for International
7 Paper. My wife is an ATM clerk.

8 THE CLERK: What says the State?

9 MR. MYRICK: Please excuse this juror.

10 THE CLERK: Please return to the back of the
11 courtroom.

12 (Bruce Davis, a black male, was excused
13 by the State.)

14 THE CLERK: Juror Number 188.

15 (Potential juror approaches.)

16 POTENTIAL JUROR: Jerry Melton. I'm a
17 teacher, and my wife is also in education.

18 THE CLERK: What says the State?

19 MR. MYRICK: Please present this juror.

20 THE CLERK: What says the Defense?

21 MR. COMISH: Please seat this juror.

22 THE CLERK: Please have a seat in the jury
23 box.

24 (Jerry Melton, a white male, was seated on the
25 jury.)

1 THE CLERK: Juror Number 233.

2 (Potential juror approaches.)

3 POTENTIAL JUROR: Sarellar Rowes, Department
4 of Motor Vehicles. My husband works at Cisco Food
5 Company.

6 THE CLERK: What says the State?

7 MR. MYRICK: Please present this juror.

8 THE CLERK: What says the Defense?

9 MR. COMISH: Please excuse this juror.

10 THE CLERK: Please return to the back of the
11 courtroom.

12 (Sarellar Rowes, a black female, was
13 excused by the Defense.)

14 THE CLERK: Juror Number 175.

15 (Potential juror approaches.)

16 POTENTIAL JUROR: I work for Wholesale & Moore
17 and my husband works for SCPRD.

18 THE CLERK: What says the State?

19 MR. MYRICK: Please present this juror.

20 THE CLERK: What says the Defense?

21 MR. COMISH: Please seat this juror.

22 THE CLERK: Please have a seat in the jury
23 box.

24 (Jessica Malovic, a white female, was
25 seated on the jury.)

1 THE CLERK: Juror Number 149.

2 (Potential juror approaches.)

3 POTENTIAL JUROR: 149. I am a realtor, and my
4 husband is a JRO instructor position one.

5 THE CLERK: What says the State?

6 MR. MYRICK: Please present this juror.

7 THE CLERK: What says the Defense?

8 MR. COMISH: Please seat this juror.

9 THE CLERK: Please have a seat in the jury
10 box.

11 (Kathy Johnson, a black female, was
12 seated on the jury.)

13 THE CLERK: Juror Number 100.

14 (Potential juror approaches.)

15 POTENTIAL JUROR: I run the anesthesia and do
16 pain also at Palmetto Surgery Center. And my wife
17 stays at home currently.

18 THE CLERK: What says the State?

19 MR. MYRICK: Please present the juror.

20 THE CLERK: What says the Defense?

21 MR. COMISH: Please seat this juror.

22 THE CLERK: Please have a seat in the jury
23 box.

24 (Matthew Furman, a white male, was
25 seated on the jury.)

1 THE CLERK: Juror Number 73.

2 (Potential juror approaches.)

3 POTENTIAL JUROR: I'm retired from USC. I own
4 a restaurant currently, and I'm divorced.

5 THE CLERK: What says the State?

6 MR. MYRICK: Please excuse this juror.

7 THE CLERK: Please return to the back of the
8 courtroom.

9 (Terry Davis, a white female, was
10 excused by the State.)

11 THE CLERK: Juror Number 112.

12 (Potential juror approaches.)

13 POTENTIAL JUROR: Customer service
14 representative.

15 THE CLERK: What says the State?

16 MR. MYRICK: Please present this juror.

17 THE CLERK: What says the Defense?

18 MR. COMISH: Please seat this juror.

19 THE CLERK: Please have a seat in the jury
20 box.

21 (Ty'quajah Gunter, a black female, was
22 seated on the jury.)

23 THE CLERK: Juror Number 290.

24 (Potential juror approaches.)

25 POTENTIAL JUROR: 290. I work for Osano.

1 THE CLERK: What says the State?

2 MR. MYRICK: Please excuse this juror.

3 THE CLERK: Please return to the back of the
4 courtroom.

5 (Willie Williams, a black male, was
6 excused by the State.)

7 THE CLERK: Juror Number 124.

8 (Potential juror approaches.)

9 POTENTIAL JUROR: Juror 124, Sam Head. I work
10 for the Department of Health and Human Services.
11 My wife is an elementary school teacher.

12 THE CLERK: What says the State?

13 MR. MYRICK: Please present this juror.

14 THE CLERK: What says the Defense?

15 MR. COMISH: Please seat this juror.

16 THE CLERK: Please have a seat in the jury
17 box.

18 (Samuel Head, a white male, was seated on the
19 jury.)

20 THE CLERK: Juror Number 300.

21 (Potential juror approaches.)

22 POTENTIAL JUROR: 300. I work for a
23 production company and also human resource officer
24 in South Carolina Army National Guard. My wife is
25 a professor and director for the state.

1 THE CLERK: What says the State?

2 MR. MYRICK: Please present this juror.

3 THE CLERK: What says the Defense?

4 MR. COMISH: Please excuse this juror.

5 THE CLERK: Please return to the back of the
6 courtroom.

7 (Joseph Zeek, a white male, was excused
8 by the Defense.)

9 THE CLERK: Juror Number 41.

10 (Potential juror approaches.)

11 POTENTIAL JUROR: Forty-one. I'm a technical
12 information specialist, and my husband is a nurse.

13 THE CLERK: What says the State?

14 MR. MYRICK: Please present this juror.

15 THE CLERK: What says the Defense?

16 MR. COMISH: Please seat this juror.

17 THE CLERK: Please have a seat in the jury
18 box.

19 (Sherry Canaan, a black female, was
20 seated on the jury.)

21 THE CLERK: Juror Number 84.

22 (Potential juror approaches.)

23 POTENTIAL JUROR: I'm 84. I'm Jean Dure. I
24 do plastic maintenance work.

25 THE CLERK: What says the State?

1 MR. MYRICK: Please excuse this juror.

2 THE CLERK: Please return to the back of the
3 courtroom.

4 (Jean Dure, a black male, was excused by
5 the State.)

6 THE CLERK: Juror Number 151.

7 (Potential juror approaches.)

8 POTENTIAL JUROR: 151, Jordan Jones, delivery
9 driver for FedEx.

10 THE CLERK: What says the State?

11 MR. MYRICK: Please present this juror.

12 THE CLERK: What says the Defense?

13 MR. COMISH: Please seat this juror.

14 THE CLERK: Please have a seat in the jury
15 box.

16 (Jordan Jones, a black male, was seated
17 on the jury.)

18 THE CLERK: Juror Number 171.

19 (Potential juror approaches.)

20 POTENTIAL JUROR: I'm a medical laboratory
21 scientist.

22 THE CLERK: What says the State?

23 MR. MYRICK: Please present this juror.

24 THE CLERK: What says the Defense?

25 MR. COMISH: Please seat this juror.

1 THE CLERK: Please have a seat in the jury
2 box.

3 (Amelia Macdonald, a white female, was
4 seated on the jury.)

5 THE CLERK: Juror Number 176.

6 (Potential juror approaches.)

7 THE COURT: Excuse me, what is your number?

8 POTENTIAL JUROR: 176.

9 THE COURT: Yes, ma'am. Let me see you.

10 Yes, sir?

11 MR. MYRICK: May I approach?

12 THE COURT: Can y'all approach, please?

13 (WHEREUPON, a bench conference was
14 held.)

15 POTENTIAL JUROR: I'm a realtor. I'm single.

16 THE CLERK: What says the State?

17 MR. MYRICK: Please present this juror.

18 THE CLERK: What says the Defense?

19 MR. COMISH: Please seat this juror.

20 THE CLERK: Please have a seat in the jury
21 box.

22 (Renee Maree, a black female, was seated
23 as the alternate.)

24 THE COURT: All right. Your last name is
25 Maree?

1 POTENTIAL JUROR: Yes.

2 THE COURT: All right. So you have been
3 selected as the alternate. That is what the
4 question was.

5 All right. Anything before I release the
6 remaining members of the jury panel? Any
7 objections or exceptions?

8 MR. MYRICK: Nothing from the State, Your
9 Honor.

10 THE COURT: From the Defense?

11 MR. COMISH: Nothing from us as far as jury
12 selection, Your Honor.

13 THE COURT: All right. Ladies and gentlemen
14 of the jury, at this time, for those of you who
15 were not selected, I am going to send you all back
16 downstairs for further instructions.

17 Thank you for your participation and
18 corporation this morning. I know it has been a
19 long day. It's after 1:00 o'clock. It has been a
20 long morning. I do want to thank you again for
21 fulfilling your civic duty and being here today.
22 We're going to send you back downstairs for further
23 instructions.

24 Thank you.

25 (WHEREUPON, the remainder of the panel

1 is excused at 1:33 p.m.)

2 THE COURT: Let me see the attorneys one
3 second.

4 (WHEREUPON, a bench conference was
5 held.)

6 THE COURT: All right. Ladies and gentlemen
7 of the jury, for those of you who were selected, I
8 am going to ask that you -- a couple of things.
9 We're going to take a lunch break, for one. A
10 couple things. I am going to ask that you keep
11 those badges on during your lunch break. That way,
12 if you're eating lunch in the proximity of the
13 courthouse, everyone will know that you are on the
14 jury and will not speak in your presence. There's
15 a chance you may see some of the attorneys or
16 parties involved in the case. You might even see
17 me at lunch somewhere around here. So we do not
18 want you to -- we do not want to discuss anything
19 about the case in your presence. So as long as you
20 have those white badges on, no one should speak
21 regarding the case in your presence. No one should
22 try to speak with you regarding the case. If they
23 do, please see me or say something to one of the
24 bailiffs and they will get the message to me.

25 You are not to do -- remember, you told me

1 that you can be fair and impartial jurors. And
2 part of being fair and impartial jurors is
3 listening to the entire case, hearing all of the
4 evidence, the arguments of the parties, and the
5 charge on the law by the Court, which means it is
6 improper for you to have any deliberations,
7 pre-deliberations before you're instructed to do
8 so. It is improper for you to do any research
9 regarding any issue that comes up in the case,
10 regarding any of the attorneys in the case,
11 regarding any of the parties in the case. That is
12 improper. As you know, you're not to do any
13 research on the internet. As you know, sometimes
14 things on the internet are not correct, and so,
15 therefore, we will give you -- you will be given
16 everything that you need for your consideration in
17 this courtroom either through the evidence
18 presented or witnesses on the stand. So you do not
19 need to go out to any news media outlets, internet,
20 or anything to try to obtain any information
21 regarding any issue in the case.

22 I will further instruct you that -- I'm not
23 saying that you cannot go on the internet, but you
24 can look up anything else that does not have to do
25 with this courtroom. You can go on your social

1 media, but please do not post anything about
2 serving on the jury. You can post about the
3 weather, about what you're going to buy for
4 Valentine's Day, or anything else, but nothing
5 about what's going on in the courtroom.

6 All right. We will -- the bailiffs will have
7 some instructions for you. I'll have you back in
8 about an hour, which is -- it is 1:38, and so we'll
9 have you back about 2:45. And you're going to
10 report back to the jury room. You will not report
11 downstairs. They will tell you you're going to
12 have to report back to the jury room.

13 So I will send you all out. Have a good
14 lunch. And we'll see you back about 2:45. All
15 right. Thank you.

16 Bailiffs, y'all don't hold them too long
17 because they only have an hour for lunch. Give
18 them instructions and let them go to lunch.

19 Thank you.

20 (WHEREUPON, the jury was excused for
21 lunch at 1:38 p.m.)

22 THE COURT: All right. We'll go ahead and
23 take our lunch break. When we come back, I'll
24 swear them in. If you can have witnesses lined up
25 to go until 5:00 o'clock, that would be great.

1 MR. MYRICK: Yes, ma'am.

2 THE COURT: All right, thank you. See you all
3 at quarter till.

4 And I'm assuming, I didn't ask, there's no
5 issue with remaining out on bond?

6 MR. MYRICK: No, ma'am.

7 THE COURT: Thank you.

8 (WHEREUPON, a lunch break was taken at
9 1:39 p.m.)

10 THE BAILIFF: The jurors are here.

11 THE COURT: You can bring them back in.

12 (WHEREUPON, the jury came into open
13 court at 2:50 p.m.)

14 THE BAILIFF: The jury is seated, Your Honor.

15 THE COURT: Ladies and gentlemen of the jury,
16 I hope that you had a good lunch. At this time, I
17 am going to ask the clerk to swear the jurors.

18 THE CLERK: Ladies and gentlemen of the jury,
19 please stand and raise your right hand to be sworn.

20 (Jury complies.)

21 THE CLERK: At the end of the statement I'm
22 about to give you, please respond by saying, I do.

23 Do you swear or affirm that you shall well and
24 truly try and true deliverance make between the
25 State of South Carolina and the Defendant at bar,

1 whom you shall have in charge, and a true verdict
2 give according to the law and evidence, so help you
3 God?

4 ALL: I do.

5 THE CLERK: You may be seated.

6 (Jury seated.)

7 THE COURT: Thank you, ladies and gentlemen of
8 the jury. What I will now say is intended to serve
9 as an introduction to the trial of this case.

10 These remarks are not a charge on the law in this
11 case. I will instruct you on the law applicable to
12 this case at the end of the trial before you retire
13 to consider your verdict. This is merely an
14 explanation of the procedure that we will follow in
15 the trial of this case so that you may better
16 understand what may be happening. You are not to
17 take any notes during the trial of this case.

18 Ladies and gentlemen of the jury, as I read to
19 you earlier, the Defendant in this case is charged
20 with five counts of failure to file tax returns and
21 five counts of evasion of a tax or payment.

22 As I explained to you earlier, the indictments
23 in this case is simply the charge by which the case
24 is brought into court. And it is not in any sense
25 evidence of any of the allegations it contains.

1 The Defendant in this case has pled not guilty
2 to these indictments. The State therefore has the
3 burden of proving each of the elements of the
4 indictment beyond a reasonable doubt. And it will
5 be your duty, ladies and gentlemen of the jury, to
6 decide if the State has met that burden.

7 Your purpose -- ladies and gentlemen of the
8 jury, you are the sole judges of the facts in this
9 case. In fact, any time I make any comment
10 regarding the facts, you must disregard it. You
11 are to determine the facts from the testimony you
12 hear and the other evidence introduced in court.
13 It is up to you to determine the emphasis which you
14 feel may properly be drawn from the evidence.

15 It is especially important that you perform
16 your duty of determining the facts diligently and
17 conscientiously because, ordinarily, there is no
18 way to correct an erroneous determination of the
19 facts by the jury.

20 On the other hand, and with equal emphasis,
21 the same law that makes you the judges of the facts
22 makes me the judge of the law. The law as given by
23 the Court is the only law you may consider. You
24 must accept and follow it even though you may
25 disagree with it. I cannot tell you what the facts

1 are and you cannot disagree with me about what the
2 law is or should be. Your job is to take the law
3 as I give it to you and apply it to the facts as
4 you find them from the testimony of the witnesses
5 and any other evidence that is introduced. After
6 doing that, you will render your verdict, a verdict
7 under the solemn oath that you just took as jurors.

8 Ladies and gentlemen of the jury, until I tell
9 you that you may begin your deliberations, you must
10 not discuss this case with anyone, including any
11 fellow jurors, friends, family members, anyone
12 involved in the case. The attorneys and the
13 parties in this case have been advised that they
14 are not to talk to you at all. So if you see
15 anyone involved in the case and they do not even
16 say hello, they are not being unfriendly or rude,
17 they are just following my instructions.

18 Ladies and gentlemen of the jury, you must
19 decide this case based solely on the evidence
20 presented here in the courtroom. That means during
21 the trial, you must not conduct any independent
22 research about this case, the facts of the case,
23 the evidence presented in the case, or the people
24 or organizations involved in any way in this case.

25 Please do not try to find out information from

1 any other source outside the courtroom. In other
2 words, you must not look at dictionaries or other
3 reference materials, such as internet, websites, or
4 blogs, or use any other electronic tools to get
5 information about the case or to help you decide
6 the case. You may not use computers, cell phones,
7 cell phones, smart phones, tablets, the internet,
8 or other tools of technology with communication
9 capabilities at any time while you're in the
10 courtroom or during your deliberations. During
11 your break for meals or overnight, if necessary,
12 you may use these devices, however, you must not
13 use the devices to communicate with anyone about
14 the case until the case is over. This means you
15 must not use phone calls, e-mails, text messages,
16 instant messages, Twitter, or any blog, chatroom or
17 website, including Facebook, Google Plus, MySpace,
18 and YouTube, or any social media websites to
19 send -- and that would be, these are the old ones,
20 that would include Twitter or Snapchat or
21 Instagram, any social media websites to send or
22 receive information about this case. This includes
23 information about a party, a witness, an attorney,
24 or a court officer, news accounts about the case,
25 research on any topic raised, any topics you may

1 think would be helpful in deciding the case, or any
2 testimony presented by any witness.

3 During the trial, please do not read, listen
4 to, or watch any news reports about the case. I
5 don't know if there are any, but if there are,
6 please do not. This includes anything that may be
7 in a newspaper, on the internet, radio, or
8 television. You must not consider anything you may
9 have read or heard about the case outside the
10 courtroom, whether before or during the trial.
11 Information on a TV and the radio, the internet, or
12 from other sources might be wrong or incomplete.
13 In our judicial system, it is important that you
14 are not influenced by anything or anyone outside of
15 this courtroom. If you become aware of another
16 juror's violation of these instructions, please
17 inform me or the bailiffs immediately.

18 It is important that you keep an open mind and
19 not decide any issue in the case until all of the
20 evidence has been presented, the parties have made
21 their closing arguments, and I have instructed you
22 as to the law in this case.

23 It is your responsibility to determine the
24 guilt or innocence of the Defendant, and your
25 verdict must be based solely on the evidence as it

1 is presented to you in this trial and on the law as
2 I instruct you during and at the close of the
3 trial.

4 In just a moment, the Solicitor will make what
5 is called an opening statement. And I said
6 Solicitor -- the Assistant Attorney General will
7 make what is called an opening statement. At that
8 time, he will explain to you the issues in the case
9 or at least what he believes are the issues or
10 thinks the issues are in this case. The attorney
11 for the Defendant may also make an opening
12 statement, although he is not required to do so.

13 What the attorneys tell you during their
14 opening statements is not evidence in this case.
15 It is only their contention as to what the issues
16 are. The evidence in this case will be presented
17 to you by the testimony of sworn witnesses from the
18 witness stand and/or by exhibits that may be
19 introduced into evidence.

20 From time to time during the trial, you may
21 hear one of the lawyers say something like, Your
22 Honor, I believe we have a question of law or a
23 matter of law to discuss with you, or, Your Honor,
24 may we approach the bench. Or sometimes I myself
25 might find it necessary to excuse you from the

1 courtroom for a short while so the attorneys and I
2 can discuss a matter of law.

3 The reason for this is because you are the
4 sole judges of the facts in this case. And
5 sometimes when I am discussing matters of law with
6 the attorneys, it may be necessary for me to make
7 some comment as to the facts in connection with
8 ruling whether or not a particular law applies.
9 I'm not supposed to tell you what I think the facts
10 are, so I will excuse you from the courtroom so
11 that you will not be influenced by anything that I
12 may say or do in ruling on a particular -- in
13 connection with the particular facts.

14 Ladies and gentlemen of the jury, you must
15 decide whether or not the testimony in this case of
16 a witness is believable. It will be my
17 responsibility to rule as a matter of law as to
18 whether certain testimony is admissible at all or
19 not. But once the testimony is admitted, whether
20 or not you believe it is solely for you to
21 determine.

22 In deciding whether to believe a witness, you
23 have the right to consider the interest of any
24 witness, the bias of any witness, the prejudice of
25 any witness, the opportunity for the witness to

1 have seen the matters and things about which the
2 witness may testify and the way the witness acts on
3 the witness stand. You have a right to consider
4 anything that is in the record that will help you
5 evaluate the testimony of the witnesses. That
6 means that it is your duty to pay close attention
7 to these witnesses, to observe the witnesses, to
8 listen to the witnesses, and to pay close attention
9 to the attorneys and the Court.

10 Please do not let your thoughts wander, but
11 give strict attention to the testimony in this case
12 so at the end of all of the testimony, after the
13 arguments of counsel, and the charge on the law,
14 you will be able -- you will be in a position to
15 apply the law to those facts and render a verdict.

16 In order to preserve everyone's rights, I will
17 give the parties an opportunity to object to
18 anything that I have said.

19 Any objections or exceptions from the State?

20 MR. MYRICK: No, ma'am.

21 THE COURT: Any from the Defense?

22 MR. COMISH: Nothing, Your Honor.

23 THE COURT: All right. Ladies and gentlemen
24 of the jury, please direct your attention to the
25 attorneys. First you will hear --

1 MR. COMISH: Your Honor, I have a brief matter
2 of law.

3 THE COURT: You can come up.

4 (WHEREUPON, a bench conference was held
5 in the presence of the jury but out of
6 the hearing of the jury.)

7 THE COURT: All right. First, you will hear
8 from Mr. Myrick?

9 MR. MYRICK: Yes, ma'am.

10 THE COURT: On behalf of the State.

11 Mr. Comish, are you opening?

12 MR. COMISH: Ms. Mubarak.

13 THE COURT: Ms. Mubarak will be opening on
14 behalf of the Defendant.

15 All right. Yes, sir?

16 MR. MYRICK: May it please the Court?

17 OPENING STATEMENT

18 MR. MYRICK: Good afternoon, y'all. I'm Allen
19 Myrick. I work for the State of South Carolina.
20 The Attorney General has asked me to come here and
21 present evidence to you about the case involving
22 Curnez Ellerbee. With me is Nikki Wooten. She's a
23 lawyer for the State of South Carolina. Andy
24 Blackwell, he's a police officer. And two other
25 police officers, Mike Ciuffreda and Marshall Smith.

1 The Defendant, I think I've got them right
2 here, has been charged with ten crimes. As the
3 judge told you, this is -- these pieces of paper
4 are called indictments. They are just a vehicle
5 for bringing somebody to court. You'll hear it
6 from the Defense, you'll hear it from the judge,
7 and you'll hear it from me, these do not mean
8 anything. That man right there is innocent. He's
9 innocent and he will remain innocent until enough
10 facts and evidence come from this witness stand to
11 persuade you at the end of the trial to convict
12 him. I don't get to convict anybody. I just
13 present evidence. What I say is not evidence.
14 What they say is not evidence. Further, the burden
15 is on the State of South Carolina, me, and those
16 folks right there and the witnesses you'll hear
17 from to convince you beyond a reasonable doubt.
18 The burden is entirely on the State of South
19 Carolina. I welcome that burden.

20 I know y'all are surprised to be here. It's a
21 tax case. Sorry it's not a little juicier. But
22 the Defendant was obligated to file tax returns and
23 pay taxes like everybody else for every year that
24 he made over a certain amount of income, 2008,
25 2009, 2010, 2011, and 2012. And when we're done,

1 I'm going to ask you to find him guilty.

2 Thank y'all.

3 MS. MUBARAK: May it please the Court?

4 THE COURT: Yes, ma'am.

5 OPENING STATEMENT

6 MS. MUBARAK: Good afternoon. Y'all were
7 called in for jury duty today. And I'm sure when
8 you got here, you thought, What kind of case will I
9 be serving on? Will it be a murder? Will it be an
10 armed robbery? And as Mr. Myrick said, you all got
11 excited to get stuck with a tax case. But when
12 you're called in today for jury duty, a lot of
13 times you're asked to make hard decisions in
14 complex cases. That's not what we're you to do
15 today. Today, you have a simple decision.

16 Mr. Ellerbee is charged with two separate
17 crimes. Although there's ten indictments, this
18 really boils down to two different crimes, five for
19 each crime. Failure to file tax returns and tax
20 evasion. Mr. Ellerbee is guilty of failure to file
21 his tax returns. Mr. Ellerbee is not guilty of tax
22 evasion.

23 As Mr. Myrick stated to you all, the
24 Government has the burden of proof in this case.
25 And in all criminal cases, that is beyond a

1 reasonable doubt. And he must prove each and every
2 element of the offense to you beyond a reasonable
3 doubt. Reasonable doubt would cause a reasonable
4 person to hesitate to act. Reasonable doubt is the
5 highest burden to carry in the judicial system, and
6 that's the burden in all criminal cases. It's a
7 safeguard that our constitution has put in place in
8 all criminals cases.

9 The Government must prove beyond a reasonable
10 doubt that Mr. Curnez Ellerbee willfully attempted
11 to evade his income taxes. Filling out employment
12 documents and tax documents is confusing. Taxes
13 are complicated. The tax code is not simple.
14 That's why many people like you use accountants and
15 tax preparers to help you do your tax documents
16 every year.

17 This is Curnez Ellerbee. Curnez has worked
18 for the past 18 years at the Verizon Call Center
19 over in Elgin, South Carolina. He works in
20 customer service and technical support. Curnez
21 went to community college and he has a
22 communications degree. Curnez does not have a
23 degree in accounting or anything financial services
24 related.

25 I went to the University of South Carolina for

1 my undergraduate degree. I have a degree in
2 accounting. A little bit after college, I worked
3 for PricewaterhouseCoopers, and then I worked for a
4 tax lobbying firm. I find our tax code
5 complicated. I think tax documents are confusing.
6 I think employment documents that you have to fill
7 out when you have a job relating to what tax status
8 you are and what you write in is complicated and
9 confusing. I use a CPA to do my taxes. I call
10 that CPA whenever I have to fill out any type of
11 tax documents because the tax system is complicated
12 and confusing. It doesn't make sense to most
13 people, which is why many people and like many of
14 you use tax preparers and tax systems for all tax
15 information.

16 But this case is not that complicated. Your
17 decision is easy. Find Curnez guilty of the crime
18 he committed, failure to file his tax returns. And
19 find him not guilty of tax evasion.

20 Thank you.

21 THE COURT: Thank you.

22 All right. Please call your first witness.

23 MR. MYRICK: Thank you, Your Honor.

24 Your Honor, the State calls Stacey Young.

25 MS. MUBARAK: Your Honor, I believe we have a

1 matter of law to take up with the Court.

2 THE COURT: All right. Ladies and gentlemen
3 of the jury, I am going to send you all out for a
4 brief moment, and we'll have you back in shortly.

5 Thank you.

6 (WHEREUPON, the jury retires to the jury
7 room at 3:11 p.m.)

8 THE COURT: All right. Mr. Comish, you had a
9 motion? You want to renew your motion?

10 MR. COMISH: Yes, ma'am, just renew all
11 objections and all motions. And to find out
12 whether Mr. Myrick has received any information as
13 a result of the Department of Revenue's
14 investigation or research project into the tax
15 returns involving the jury pool.

16 THE COURT: All motions are renewed.
17 Go ahead. Do you have them?

18 MR. MYRICK: No, Your Honor, I do not.

19 THE COURT: Thank you.

20 Motions are denied, respectfully denied for
21 the reasons stated earlier.

22 Thank you.

23 What's the matter of law regarding the
24 witness?

25 MS. MUBARAK: Your Honor, this is a witness --

1 we addressed part of these motions last week. And
2 we believe that the State will try to introduce
3 evidence through this witness that she is unable to
4 testify to. We would like to proffer her
5 testimony, I'm sorry. I think we had talked about
6 proffering testimony last week --

7 THE COURT: I know, but we could have done
8 that pretrial instead of waiting until we bring the
9 jury in and get ready to start the case.

10 But what are we proffering? I mean, what
11 evidence is she -- are you going to impeach her? I
12 mean, you can always impeach a witness. But is
13 there evidence -- I'm not quite sure what you're
14 asking.

15 MS. MUBARAK: Your Honor, I believe they're
16 going to use Ms. Young to get in certain exhibits
17 that she -- that we would object to her testifying
18 to, that we don't believe that she should -- that
19 they should be able to enter through her because
20 she's not the proper witness to enter through her.
21 The authentication issue --

22 THE COURT: I know, but I think you have to
23 make objections once they try to put the evidence
24 in. But --

25 MS. MUBARAK: I think it would be cleaner if

1 we proffer the testimony just like we discussed
2 doing last week.

3 THE COURT: Well, it would be cleaner if you
4 did it earlier before we sat the jury and got --
5 and bring them in here and send them right back
6 out. As I requested last week, if we needed to
7 take care of anything else pretrial that we could
8 have.

9 You can go ahead and call her and proffer her.
10 I'm not sure what -- go ahead and proffer her
11 testimony. I'm not -- when we usually proffer,
12 it's something specific that we're proffering the
13 testimony for, we're not just going to do her
14 entire testimony. What is it -- which documents
15 are you concerned about that he is trying to enter
16 that she cannot testify to?

17 MS. MUBARAK: Your Honor, we would be
18 concerned that she would be attempting to enter
19 these screenshots, which are State's Exhibit 1,
20 State's Exhibit 2, that she would attempt to enter
21 the W-2s, which would be State's Exhibit 3. I
22 think those are -- off the top of my head and what
23 I first see right here, those would be the
24 documents that I think she would be attempting
25 to -- they would be attempting to enter through

1 this witness that we object to coming in.

2 THE COURT: One, two, and three?

3 MS. MUBARAK: Yes, Your Honor.

4 THE COURT: And what's the objection, that
5 they can't authenticate it?

6 MS. MUBARAK: The no authentication issue,
7 yes, Your Honor. We would argue that she lacks
8 personal knowledge to testify to what is in those
9 documents, and would also be a confrontation clause
10 issue. And also a Best Evidence Rule issue, Your
11 Honor.

12 THE COURT: All right. She can take the
13 stand.

14 MR. MYRICK: May I be heard briefly, Your
15 Honor?

16 THE COURT: Yes.

17 MR. MYRICK: They're clutching at straws.
18 There's no Best Evidence issue anymore. Business
19 records are non-testimonial, so there's no
20 confrontation clause issue. They just don't want
21 the jury to hear them objecting to the facts coming
22 in. I'm confident I can lay a foundation, Your
23 Honor. We'd like to go ahead and proceed.

24 THE COURT: Go ahead -- they still have to
25 object in front of the jury to preserve the record.

1 You can go ahead and call and proffer the
2 testimony so we don't have to send the jury back
3 out again.

4 MR. MYRICK: You want me to give the long
5 version, Judge, or do you want me to cut right to
6 the --

7 THE COURT: Well, her objection is as to her
8 testifying to those three documents.

9 MR. MYRICK: Right, right, right.

10 THE COURT: But the proper way to do that in
11 the future is to allow her to take the stand, and
12 then if he can't -- when he tries to get the
13 document in through her, you make the objection
14 that he has not been able to authenticate the
15 document, or whatever the issue is. But since
16 we've already sent the jury out, we'll go ahead and
17 do that.

18 MS. MUBARAK: Yes, ma'am.

19 (Witness approaches.)

20 THE BAILIFF: Place your left hand on the
21 Bible, and raise your right hand, please.

22 (Witness complies.)

23 THE CLERK: Do you solemnly swear or affirm
24 the testimony you are about to give in this case
25 will be the truth, the whole truth, and nothing but

1 the truth, so help you God?

2 THE DEFENDANT: I do.

3 THE CLERK: Have a seat. State your full name
4 for the record.

5 (Witness seated.)

6 STACEY YOUNG,
7 after being duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MYRICK:

10 Q Ms. Young, how are you employed?

11 A I'm sorry?

12 Q How are you employed?

13 A I am employed by Verizon Wireless.

14 Q What's your job title?

15 A I am Senior Manager of HR, Human Resources.

16 Q You supervise everything HR related at the Call
17 Center?

18 A Yes, I do.

19 Q Are you a custodian of certain documents regarding
20 employees and their payroll records?

21 A Yes.

22 Q I'm going to hand you what's been marked as State's
23 1. It is one, two, three, four, five pages which
24 have been paper clipped together. Do you recognize
25 it?

1 A Yes.

2 Q What is it?

3 A It is the information that was sent to me from our
4 payroll department that states this is when he
5 changed his exemption for taxes.

6 Q And these are Verizon records of which you're the
7 custodian?

8 A Yes.

9 Q And those are exactly as you received them from
10 your colleagues in another part of Verizon?

11 A Yes.

12 Q Do you normally, as part of Verizon's normal and
13 ordinary course of business, do you normally keep
14 these sorts of records?

15 A No, I don't personally.

16 Q Does Verizon normally keep these sorts of records?

17 A Yes.

18 Q And are these accurate to the best of your
19 knowledge?

20 A Yes.

21 Q Look on the back of them. What do you see?

22 A My initials.

23 Q So how did your initials get there?

24 A Because I provided the information and we want to
25 make sure these were going to be the same accurate

1 records.

2 Q Are those the ones you gave me a week ago?

3 A Yes.

4 Q Same ones?

5 A Yes.

6 Q You got them from colleagues you trust at your
7 corporate headquarters?

8 A Yes.

9 Q Is that correct?

10 A Yes.

11 Q And they're accurate?

12 A Yes.

13 Q And they told you they were accurate?

14 A Yes.

15 Q And you believe they're accurate?

16 A Yes.

17 Q And you keep them for all your employees?

18 A Yes.

19 Q Thank you. Now, I'm going to show you what has
20 been marked as State's 3. Do you recognize these?

21 A Yes.

22 Q What are they?

23 A These are the W-2 forms that also were sent to me
24 by the payroll department.

25 Q Who are they for?

1 A They are for Curnez Ellerbee.

2 Q Just like the first batch?

3 A Yes.

4 Q Right? What years are they for?

5 A 2008, 2009, 2010, 2011, and 2012.

6 Q And you're an HR professional by trade?

7 A Yes.

8 Q And you know that you have to maintain those by
9 order of the federal government, correct?

10 A Yes.

11 Q And you maintain those in the normal and ordinary
12 course of business?

13 MS. MUBARAK: Objection. Leading, Your Honor.

14 MR. MYRICK: There's no jury here.

15 MS. MUBARAK: Well, the rules of evidence
16 still apply.

17 THE COURT: All right.

18 MR. MYRICK: I'm trying to move it along.

19 THE COURT: Objection is sustained. Please
20 rephrase the question.

21 BY MR. MYRICK:

22 Q Why do you have to maintain those?

23 A It is a business record to have employees file
24 their taxes at the end of the year.

25 Q And who requires you to maintain it?

1 A The government.

2 Q And were those maintained in the normal and
3 ordinary course of business?

4 A Yes.

5 Q And are you the appropriate person at Verizon's
6 Call Center in Richland County to maintain those
7 and produce those?

8 A I do not maintain them, but I can produce them
9 through the payroll department.

10 Q And you're confident in their accuracy?

11 A Yes.

12 Q Thank you. Now, I'm going to hand you what has
13 been marked as State's Number 2. It is a little
14 different, right?

15 A Uh-huh.

16 Q You know where that came from, right?

17 A Yes, I know where they came from.

18 Q And you know what it is, right?

19 A I've seen it before. I'm not familiar with the
20 actual forms, but, yes, these are --

21 Q What is it?

22 A These are when we have employees going into the
23 system in order to change their exemptions, this is
24 what payroll sees in the background.

25 Q And are those accurate copies?

1 A These are accurate copies.

2 Q They were provided by Verizon corporate to you?

3 MS. MUBARAK: Objection, Your Honor. Leading.

4 BY MR. MYRICK:

5 Q Who provided them?

6 A These were not provided to me.

7 Q Who were they provided to?

8 A They were provided to the investigator years ago.

9 Q From who?

10 A From our payroll corporate department.

11 Q Right.

12 MR. MYRICK: I think that's it, Judge. I
13 think the first two are clearly business records.
14 They're non-testimonial. I don't know what they're
15 talking about the Best Evidence Rule. These things
16 come in. We laid the proper foundation.

17 THE COURT: All right. Yes, ma'am?

18 CROSS-EXAMINATION

19 BY MS. MUBARAK:

20 Q Ms. Young, you stated you work in HR?

21 A Yes.

22 Q Now, the HR Department is separate from the payroll
23 department --

24 A Yes.

25 Q -- at Verizon? And HR has separate computer

1 program than payroll?

2 A Yes.

3 Q And you don't have access to payroll's computer
4 software?

5 A No, I do not.

6 Q And payroll doesn't have access to HR software?

7 A Correct.

8 Q Okay. So you cannot access those documents through
9 the HR software?

10 A I cannot.

11 Q And the document that Mr. Myrick showed you,
12 Court's Exhibit 1 -- or State's Exhibit 1, these
13 documents that Mr. Myrick showed you, they do not
14 come from the HR Department?

15 A No.

16 Q And you work in HR?

17 A Yes.

18 Q They come from payroll?

19 A Yes.

20 Q State's Exhibit 2 that Mr. Myrick showed you?

21 A Uh-huh.

22 Q These documents, they come from payroll, correct?

23 A Yes.

24 Q They do not come from HR?

25 A No.

1 Q State's Exhibit 3, these documents, they come from
2 payroll, they do not come from HR?

3 A Correct.

4 MS. MUBARAK: Just one moment, please.

5 (Pause.)

6 BY MS. MUBARAK:

7 Q Ms. Young, I'd like to ask you a couple of
8 questions about State's Exhibit 1 particularly.
9 Now, this document comes from payroll, correct?

10 A Correct.

11 Q Where you don't work, correct?

12 A Correct.

13 Q All right. You can't tell me what UI jurisdiction
14 in this document means, can you?

15 A I cannot.

16 Q You can't tell me what exempt from SUT in this
17 document means, can you?

18 A I cannot.

19 Q You can't tell me who typed the information in the
20 text box, can you?

21 A I cannot.

22 Q An employee like Mr. Ellerbee could not have typed
23 this information in the text box?

24 A No, he couldn't.

25 Q Okay. Moving on to State's Exhibit 3. You stated

1 this document comes from the payroll department?

2 A Correct.

3 Q Where you do not work?

4 A Correct.

5 Q It's a separate department?

6 A Correct.

7 Q Can you tell me where these documents appear to
8 come from? What's in that text box right there?

9 A Warren, New Jersey.

10 Q You don't work in Warren, New Jersey, do you?

11 A No, I don't.

12 Q Okay. Sorry to keep on coming back up here.

13 Co-counsel reminded me of a few things. Back in
14 State's Exhibit 1, you can't tell me which field
15 the payroll department can and cannot edit?

16 A I cannot.

17 Q So you can't tell me -- you have no personal
18 knowledge about how this document was created?

19 A I don't.

20 MS. MUBARAK: Thank you. I don't have any
21 further questions for this witness.

22 THE COURT: Redirect, Mr. Myrick?

23 REDIRECT EXAMINATION

24 BY MR. MYRICK:

25 Q But just to reiterate, State's Number 1 is a

1 Verizon document?

2 A Yes.

3 Q That you keep in the normal and ordinary course of
4 business?

5 A Yes.

6 Q And whether you understand it or not, you're
7 confident that it is accurate and is what it says
8 it is?

9 A Yes.

10 Q And State's Number 3 -- which are the W-2s, is that
11 correct?

12 A Yes.

13 Q It's a Verizon document?

14 MS. MUBARAK: Objection, Your Honor. He's
15 leading.

16 BY MR. MYRICK:

17 Q Is it a Verizon document?

18 A Yes, it is.

19 Q Whose document is it?

20 A Verizon.

21 Q Is it Captain Kangaroo's document? Whose is it?

22 A Verizon's document.

23 Q Is it accurate?

24 A Yes.

25 Q You're confident?

1 A Yes.

2 Q It was maintained in the normal and ordinary course
3 of business?

4 A Yes.

5 MR. MYRICK: Thank you.

6 THE COURT: All right, you may step down,
7 ma'am.

8 (Witness steps down.)

9 THE COURT: All right. I'll be glad to hear
10 from whoever.

11 Mr. Myrick, you want to respond? Whoever
12 wants to go first.

13 MR. MYRICK: It's clearly admissible, Your
14 Honor, under 803(6).

15 Thank you.

16 MS. MUBARAK: Your Honor, I believe Mr. Myrick
17 thinks it's admissible under the hearsay exception
18 to the business rule. However, this witness cannot
19 authenticate these documents. She cannot testify
20 how these documents are made. She works in the HR
21 Department. She testified that the HR Department
22 is completely separate than the payroll department.
23 She does not have access to the software that the
24 payroll department sees and uses. She is
25 unfamiliar with how these documents are created.

1 She received these documents from payroll. The
2 proper person to testify to get these documents in
3 will be a custodian from the payroll department.

4 Furthermore, there's a text box in the
5 documents that have been edited. Someone from
6 payroll -- we don't know who edited those
7 documents. She testified it couldn't have been
8 Mr. Ellerbee, but someone from payroll did it. We
9 don't know who edited those documents. We don't
10 have a custodian here. We don't have a proper
11 custodian to -- for it to go in. There would be a
12 proffer issue because -- a confrontation issue
13 because we cannot cross-examine whoever typed in
14 the information in those text boxes. This witness
15 lacks personal knowledge as to the documents.

16 And, furthermore, the documents don't satisfy
17 the Best Evidence Rule, which is South Carolina
18 Rules of Evidence 1002 that requires an original.
19 If they provided documents that were from the HR
20 computer system to show what they're trying to get
21 in, then that would be allowed. But these are
22 documents that are extrapolated information from
23 the HR program into the payroll program. That is
24 not admissible. They are using these documents,
25 Your Honor, to try to establish what is in

1 Mr. Ellerbee W-4s, and they do not have the W-4s.
2 The best evidence would be the W-4s, which should
3 be the only evidence that should be allowed to be
4 admitted.

5 THE COURT: Yes, sir?

6 MR. MYRICK: Is it my turn?

7 MS. MUBARAK: Yes, sir, it's your turn.

8 MR. MYRICK: Thank you, Judge. I haven't
9 looked at this rule in a long time. It's Rule of
10 Evidence 1003 that says duplicates are admissible
11 to the same extent as an original unless there is
12 some question of fact. There isn't any question of
13 fact.

14 Second, business records are non-testimonial.
15 I've got one case that I brought with me. It is
16 State vs. Trapp, 420 S.C. 217. There are plenty
17 more.

18 And, finally, the hearsay exception in
19 803(B)(6), what it says is custodian or other
20 qualified person. Ms. Young works there. She is
21 the head of HR. She has access to everything. And
22 she said these are the real thing. These are the
23 real thing.

24 Now, maybe Ms. Mubarak scored a point with,
25 Well, do you understand this? She doesn't have to.

1 All she has to say is these are real. They came
2 from my company. I can vouch for them. Which is
3 just what she said, and we can keep them like we
4 always do. They should come in, Your Honor.

5 MS. MUBARAK: Your Honor, just to reply to
6 Mr. Myrick. These are not duplicates and they
7 would not come in under Rule 1003 because the
8 duplicate would have to be same as the original.
9 And we're not arguing that this is the same as the
10 original. They're using this because they don't
11 have the W-4. If they had some other, like,
12 electronic version of the W-4, or something like
13 that, that would be admissible. Those are not a
14 W-4. And that is what Mr. Myrick is trying to
15 confuse the issue and say that they are.

16 And, furthermore, the witness testified that
17 she does work there, but she does not have access
18 to payroll. So she does not have access to these
19 documents. The only reason that she has seen them
20 is because of this litigation. She is unfamiliar
21 with the payroll system, unfamiliar with these
22 documents, and they are not -- we would argue they
23 are not admissible documents. And the Best
24 Evidence Rule applies.

25 THE COURT: All right. I've looked at 803(6),

1 901. 803(6), I think based on the testimony -- the
2 Court finds based on the testimony, under 803(6),
3 under the business record, they would come in.
4 Therefore, after looking at 803(6), I looked at
5 901(A) and (B)(1), testimony that a matter is what
6 it is claimed to be is testimony of a witness with
7 knowledge. She testified that she -- although she
8 may not completely understand the document, but she
9 testified that it was a document of Verizon and was
10 kept in the normal course of the business of
11 Verizon.

12 As to Rule 1001, I don't -- I guess I'm
13 confused because he's not -- are you entering it to
14 try to say it's a W-4? I don't have the document,
15 first of all. Are you entering it to say it's a
16 W-4 or is it the screenshot?

17 MR. MYRICK: It's a W-2.

18 THE COURT: Oh, W-2, I'm sorry. The W-2, or
19 is it the screenshot?

20 MS. MUBARAK: It is three separate documents,
21 Your Honor. One is a W-2. One is a screenshot
22 that is not a W-2 and not a W-4. And the other is
23 the same screenshot, but a smaller one.

24 THE COURT: And what's the objection, is that
25 it is a duplicate? I'm confused as to what the

1 objection is.

2 MS. MUBARAK: I'm sorry, Your Honor, which
3 document are you holding?

4 THE COURT: State's Exhibit Number 3, which is
5 the W-2.

6 MS. MUBARAK: Your Honor, he's trying to use
7 those to --

8 THE COURT: I said what's the objection?
9 Not -- under 1001, you had objection under
10 admissibility of duplicates.

11 MS. MUBARAK: The argument would still be
12 under the Best Evidence Rule for that, Your Honor,
13 that they would need to be admitting the W-4s, not
14 the W-2s. And they do not have W-4s to admit. And
15 they don't have the proper --

16 THE COURT: Did he file W-4s or did he file
17 W-2s? I'm completely confused as to what y'all are
18 saying. These are W-2s?

19 MS. MUBARAK: Correct. That's provided --
20 Go ahead, Mr. Myrick.

21 MR. MYRICK: Why don't we do them one at a
22 time, Judge? I don't understand why those aren't
23 admissible duplicates of W-2. In fact,
24 Mr. Ellerbee filed the same documents with the
25 Department of Revenue a month ago. So not only do

1 they come from Verizon, they came from him. What
2 is the objection to documents that he filed with
3 the Department of Revenue and Verizon has the
4 exact --

5 I don't understand what the objection is.
6 We've got it coming from three different sources.
7 Ms. Jarvis, who's here as a State's witness, can say
8 these are the documents. DOR people who received
9 the filing can say these are the W-2s, and Verizon
10 says these are the W-2s. There's no doubt that
11 they are what the State says they are and that
12 they're admissible.

13 So with respect to the document Your Honor has
14 in her hand, maybe they can articulate a valid
15 reason for keeping them out other than, We don't
16 like them.

17 THE COURT: I guess what I'm confused, what's
18 the W-4s? Who's talking about W-4s?

19 MR. MYRICK: They are.

20 THE COURT: The W-4 has been filed -- that's
21 what I'm confused about. These are W-2s?

22 MS. MUBARAK: Correct.

23 THE COURT: So what's the issue with the W-4?

24 MS. MUBARAK: Information that gets onto the
25 W-2 comes from the W-4s, and he is indicted for

1 falsifying the W-4s.

2 THE COURT: Is he indicted for the W-4s or the
3 --

4 MR. MYRICK: The W-2s that Your Honor has
5 evidence that nothing was withheld.

6 Now, if you remember back, Your Honor,
7 probably the very first job you ever got, you had a
8 paper W-4 where you go in and you filled it out.
9 And then they -- based on what you provided,
10 whether you're single, married, whether you had
11 zero kids, no kids, five kids, whatever, the
12 withholding from your check was calculated. That's
13 a W-4. The paper W-4 is almost extinct in modern
14 corporate America and they don't use paper W-4s at
15 Verizon. It's paperless for the most part.

16 What she's fussing about and complaining about
17 are these, which are screenshots as evidence in
18 State's 1. If you look at the first page, if I
19 might approach, Your Honor, of State's 1, you'll
20 see at the tippy top the name Curnez Ellerbee. Ms.
21 Young has said ad nauseam these came from Verizon,
22 I got them from my colleagues. They're accurate,
23 they're related to Curnez. And as Ms. Mubarak
24 pointed out, she can't explain them, that's fine,
25 we'll get to that later --

1 THE COURT: Well, that goes to the weight, I
2 think.

3 MR. MYRICK: We're just trying to get started
4 here, Judge. And they're perfectly admissible.

5 THE COURT: Well, she can testify to the
6 records. If she can't understand them and explain
7 them, then I guess that goes to -- you have a right
8 to cross-examine her. And that goes to the weight
9 of the evidence rather than the admissibility.

10 But he's saying there's not a paper W-4 that
11 you're asking for. So I'm not sure how the Best
12 Evidence Rule applies here if it's not evidence.

13 MR. COMISH: Then we don't have any evidence.
14 They're required to keep them for four years by
15 federal law, Your Honor.

16 THE COURT: They're saying that they don't do
17 them by paper, they do them in the computer.

18 MR. COMISH: They do electronic W-4s, which is
19 under a separate section of the IRS code.

20 MS. MUBARAK: Yes, Your Honor, and that is not
21 what that is.

22 MS. PHILLIPS: That is an output.

23 THE COURT: Okay, one person. I only need to
24 hear from one person. Whoever is going to make the
25 argument needs to make the argument.

1 MS. MUBARAK: Your Honor, that is not the
2 computer output, the electronic version of a W-4 of
3 the software system. They are confusing --

4 THE COURT: How do we know that's not the
5 output? Who says it's not the output?

6 MS. MUBARAK: The person from HR can get back
7 on the stand and she can testify that that is not
8 what is filled out by -- that is what I was asking
9 her questions for. Could Mr. Ellerbee have marked
10 these documents? She's saying that document right
11 there is filled out by someone in payroll. It is
12 not filled out by an employee. The employee
13 himself would have to fill out the W-4. Like, Your
14 Honor, when you get your W-4, you have to fill it
15 out yourself, whether it's on the computer or not.
16 That is not the electronic version of a W-4, which
17 is -- they're trying to back-door in this
18 information because they do not have a W-4. They
19 don't have the screenshot of the W-4. They don't
20 have an electronic version of the W-4. So this
21 information is a different computer system in the
22 payroll department. A W-4 would be done through
23 HR. This is through payroll. This is like a
24 payroll input sheet almost if you got it explained
25 to you.

1 THE COURT: All right. But you can ask her
2 did he -- just like you asked, you just asked did
3 he enter this. And then you can ask her where is
4 the document -- because she's HR and he's putting
5 her in as the records custodian. You can ask her
6 where is the document where he actually entered.

7 MS. MUBARAK: Yes, Your Honor. Moving past
8 authentication, the Best Evidence Rule still
9 applies and they should have to produce the W-4s or
10 the electronic printout of the W-4s or the
11 screenshot of that system.

12 THE COURT: But they're not trying --

13 Are you trying to introduce a W-4? That's
14 when you get into the Best Evidence Rule, not --
15 the best evidence -- this is a W-2. You can't
16 challenge the W-2 and say, Well, it's not a W-4, we
17 want a W-4, and so therefore under the Best
18 Evidence Rule it does not apply. If you're looking
19 at 1000, this is a question of whether or not this
20 document falls under the Best Evidence Rule. 1000.

21 We don't have the W-4, is that correct?

22 MR. COMISH: We're confusing everything, Your
23 Honor. We're not speaking to the W-2, we're
24 speaking to the other document.

25 MS. MUBARAK: The W-4, not the W-2.

1 MR. COMISH: Put the W-2 aside. We agree with
2 him on W-2, Your Honor. That one is the one we're
3 talking about, Your Honor.

4 THE COURT: State's Exhibit Number 1?

5 MS. MUBARAK: Your Honor, an employee filled
6 out the W-4. The company provides the W-2.

7 THE COURT: I got it.

8 MS. MUBARAK: Okay.

9 THE COURT: Initially you were talking
10 about -- the first thing you said was this document
11 was not pursuant -- to be excluded pursuant to the
12 Best Evidence Rule because it's not a W-4. I think
13 that's what -- I'm pretty sure that's what you
14 said. So now you're saying that State's Exhibit
15 Number 1 should be excluded because it is not the
16 W-4. But he's not --

17 Are you presenting it as a W-4?

18 MR. MYRICK: No, ma'am. I'm presenting it as
19 a Verizon business record so that the custodian can
20 discuss it to the best of her knowledge. And when
21 she doesn't have anything more to say about it,
22 I'll stop asking her questions. And then they can
23 ask all the questions they want.

24 THE COURT: You can ask her where is the W-4,
25 where is the screen for the W-4.

1 MR. MYRICK: Right.

2 THE COURT: What did he not -- I mean, I don't
3 know why you want to exclude this if this is the
4 one he didn't enter. If he didn't enter it, why
5 would you want to exclude it?

6 MR. COMISH: Well, Your Honor, the State's
7 entering that to prove the content of his W-4.
8 Because the only way they get the felony is through
9 proving intent. And the State's theory -- the
10 writing -- the text in one of those is claiming
11 exemption from withholding, right? That comes from
12 a W-4.

13 THE COURT: I understand.

14 MR. COMISH: So that's what implicates the
15 Best Evidence Rule. The other issue there is that
16 we have a confrontation clause issue because the
17 only thing on that document that relates back to
18 him claiming this on a W-4 is the text that was
19 entered by some unknown employee in payroll. We
20 have to be able to cross-examine that witness,
21 satisfy the constitutional requirements of the
22 confrontation clause.

23 So even if they get through authentication,
24 which Your Honor has already ruled on that, even if
25 they get through the Best Evidence Rule, which I

1 don't see that they have because they're still
2 offering that to prove the content of a different
3 indictment, which implicates the best evidence,
4 that's the only probative value of that document,
5 is that it tends to show the content of what is
6 purported to be Mr. Ellerbee's W-4, which we do not
7 have and have never had.

8 Even if they get through that, they cannot get
9 around the constitution. This is not the rules of
10 hearsay here. This is the constitution saying I
11 have a right to cross-examine the person who wrote
12 that, and we have absolutely no idea who that
13 person is. And that person's writing is how the
14 State gets to intent. Without that, the State
15 doesn't have a felony, and that's why have to do
16 that. And that's way we need that payroll employee
17 here to testify, and we don't have that person.

18 THE COURT: Yes, sir?

19 MR. MYRICK: The law is well settled, Your
20 Honor. Business records are non-testimonial. It
21 becomes testimonial if you prepared it with the
22 intention or at the direction of law enforcement
23 for use in court. It's not that. It is
24 non-testimonial. There is no constitutional
25 violation. And, of course, they remain free to ask

1 Ms. Young whatever they like. Nothing changes the
2 admissibility of it.

3 THE COURT: All right. I'm going to deny the
4 motion. But as to State's Exhibit 1, you need to
5 lay the proper foundation as to actually what this
6 document is. If it's not the W-4 -- you need to
7 lay the foundation as to what it is, because I have
8 not heard that he's trying to introduce it as a
9 W-4. That's my understanding.

10 MR. MYRICK: No, ma'am, I'm not.

11 THE COURT: All right. Let's bring the jury
12 in.

13 (WHEREUPON, the jury came into open
14 court at 3:47 p.m.)

15 THE BAILIFF: The jury is seated, Your Honor.

16 THE COURT: All right. Ladies and gentlemen
17 of the jury, at this time, I'm going to ask the
18 State to call their first witness.

19 MR. MYRICK: May it please the Court, Your
20 Honor? The State calls Stacey Young.

21 (Witness approaches.)

22 THE BAILIFF: Place your left hand on the
23 Bible, and raise your right hand, please.

24 (Witness complies.)

25 THE CLERK: Do you solemnly swear or affirm

1 the testimony you are about to give in this case
2 will be the truth, the whole truth, and nothing but
3 the truth, so help you God?

4 THE WITNESS: Yes, I do.

5 THE CLERK: Have a seat. State your full name
6 for the record.

7 (Witness seated.)

8 THE WITNESS: My name is Stacey Young.

9 STACEY YOUNG,
10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MYRICK:

13 Q Hey, Ms. Young.

14 A Hey.

15 Q Would you please introduce yourself to the jury?

16 A Sure. My name is Stacey Young. I'm the Senior
17 Manager of HR at Verizon Wireless.

18 Q At which location?

19 A At the Elgin, South Carolina, Call Center.

20 Q What's your title again?

21 A Senior Manager of Human Resources.

22 THE COURT REPORTER: I'm sorry, you need to
23 speak up.

24 A I'm sorry. Senior Manager of Human Resources.

25 Q What county is that in?

1 A Richland County.

2 Q How long have you worked there?

3 A I have been there, it will be 18 years in November.

4 Q Does one of your job duties consist of insuring the
5 maintenance and retention of certain employment
6 records?

7 A Yes.

8 Q I'm going to hand you something, Ms. Young. Would
9 you take a look at that? It is marked as State's
10 Number 3. Do you recognize that?

11 A Yes.

12 Q What is it?

13 A These are W-2 forms.

14 Q W-2s. What are W-2s?

15 A W-2s are used -- are distributed by our employer
16 for employees to file their state tax -- state and
17 federal taxes.

18 MS. MUBARAK: Objection, Your Honor. This
19 witness works in HR. I don't believe she's an
20 accountant that can testify what W-2s are and what
21 they mean for IRS purposes.

22 THE COURT: Objection is overruled.

23 BY MR. MYRICK:

24 Q Did you get through your answer, Ms. Young?

25 A I'm not sure.

1 Q Would you tell us again, please?

2 A Sure. W-2s are what employers give to their
3 employees in order for them to file their taxes.

4 Q Who all gets them?

5 A All employees.

6 Q Everybody who gets paid, right?

7 A Correct.

8 Q Whose are those?

9 A These are Curnez Ellerbee's.

10 Q For what years?

11 A 2008, 2009, 2010, 2011, and 2012.

12 Q Now, do you normally keep these?

13 A No, I do not.

14 Q Does Verizon normally keep these?

15 A Yes.

16 Q Why does Verizon keep these?

17 A For records. They are considered employees'
18 records.

19 Q And did these -- were they provided to you by an
20 internal --

21 MS. MUBARAK: Objection, Your Honor. Leading.

22 BY MR. MYRICK:

23 Q Who provided them to you?

24 A These were provided to me by the payroll department
25 and our legal team.

1 Q And you got them through a reliable source?

2 A Yes.

3 MS. MUBARAK: Objection, Your Honor. Leading.

4 BY MR. MYRICK:

5 Q What kind of source did you get them from?

6 THE COURT: Hold on one second. Please don't
7 lead.

8 Objection is sustained.

9 MR. MYRICK: That's fine, Your Honor. I'll
10 slow it down.

11 BY MR. MYRICK:

12 Q For which employees does Verizon keep W-2s?

13 A They keep them for all employees.

14 Q And is this part of the normal and ordinary course
15 of business?

16 A Yes.

17 Q And were these provided to you in the normal and
18 ordinary course of business --

19 MS. MUBARAK: Objection, Your Honor. Still
20 leading the witness.

21 THE COURT: Overruled.

22 MR. MYRICK: Thank you, Your Honor.

23 BY THE WITNESS:

24 A Yes, they were.

25 Q Are they accurate?

1 A Yes.

2 MR. MYRICK: Your Honor, the State moves to
3 enter what has been marked as State's Number 3 into
4 evidence.

5 THE COURT: All right.

6 MS. MUBARAK: Your Honor, I renew my previous
7 objection under 901(A), and I believe 1002, all
8 previous as stated earlier.

9 THE COURT: All right. The objection is
10 overruled and they will be entered over the
11 objection of Defense.

12 (WHEREUPON, State's Exhibit No. 3 was
13 marked for identification and received
14 into evidence.)

15 BY MR. MYRICK:

16 Q Ms. Young, in 2008, does this document say anything
17 about Mr. Ellerbe's income for that year?

18 A Yes, it does.

19 MS. MUBARAK: Objection, Your Honor. This
20 witness is not qualified as an expert to interpret
21 any information in the document.

22 MR. MYRICK: May I?

23 THE COURT: Let me see the document.

24 BY MR. MYRICK:

25 Q Ms. Young, what's the title for Box Number 1?

1 THE COURT: Let me see the document.

2 MR. MYRICK: It is my copy, Your Honor.

3 THE COURT: All right, the objection is
4 overruled.

5 BY MR. MYRICK:

6 Q Ms. Young?

7 A Yes.

8 Q If I may ask you again, what's the title for Box
9 Number 1?

10 A Wages, tips, and other compensation.

11 Q And what else is in that box?

12 A A dollar amount.

13 Q What does it say?

14 A \$43,887.08.

15 Q And what's the title of Box Number 16?

16 A Box 16 says state wages, tips, et cetera.

17 Q And is there a number in that box?

18 A Yes.

19 Q What's that number?

20 A \$43,887.08.

21 Q And what is the title of Box Number 17?

22 A State income tax.

23 Q Is there a dollar amount in there?

24 A No, it's not.

25 Q It's blank?

1 A Yes.

2 Q Ms. Young, if you would, what is the next page of
3 that packet that's been introduced as State's
4 Number 3?

5 A Year Number 2009.

6 Q And who is that for?

7 A Curnez Ellerbee.

8 Q What's the title of Box Number 1?

9 A Wages, tips, other compensation.

10 Q And is there a number in there?

11 A Yes.

12 Q What is it?

13 A \$48,686.22.

14 Q Okay. And for Box Number 16, what's that titled?

15 A State wages, tips, et cetera.

16 Q Is there a number in that box?

17 A Yes.

18 Q What's it titled?

19 A What's the title?

20 Q Oh, I'm sorry, what is it?

21 A \$48,686.22.

22 Q And Box Number 17, how is that titled?

23 A State income tax.

24 Q What's there?

25 A Nothing.

1 Q And would you kindly, Ms. Young, look at the next
2 page?

3 A Sure.

4 Q What is it?

5 A The year 2010.

6 Q And what's the title of Box 1?

7 A Wages, tips, and other compensation.

8 Q Is there a number in that box?

9 A Yes.

10 Q What is it?

11 A \$52,437.60.

12 Q And is there a Box 16?

13 A Yes.

14 Q What is that?

15 A State wages, tips, et cetera.

16 Q What's that number?

17 A \$52,437.60.

18 Q What's Box 17?

19 A State income tax.

20 Q What else is in that box?

21 A Nothing.

22 Q Would you look at the next page, please? What is
23 it?

24 A Year 2011.

25 Q And what's Box Number 1?

- 1 A Wages, tips, other compensation.
- 2 Q And this is 2011?
- 3 A Yes.
- 4 Q What's that number?
- 5 A \$57,725.22.
- 6 Q And is there a box that says state wages, tips?
- 7 A Yes.
- 8 Q Is there a number in that box?
- 9 A Sixteen.
- 10 Q Is there a dollar amount in that box?
- 11 A Yes.
- 12 Q What is it?
- 13 A \$57,725.22.
- 14 Q And what is Box 17?
- 15 A State income tax.
- 16 Q And what's there?
- 17 A A dollar amount.
- 18 Q What is it?
- 19 A \$150.
- 20 Q For the whole year?
- 21 A Yes.
- 22 Q What's the next page?
- 23 A 2012.
- 24 Q And is there a Box Number 1?
- 25 A Yes.

1 Q How is that titled?

2 A Wages, tips, and other compensation.

3 Q And what's that number?

4 A \$51,290.93.

5 Q And is there a Box 16?

6 A Yes.

7 Q What is it?

8 A States wages, tips, et cetera.

9 Q How much is that?

10 A \$51,290.93.

11 Q And is there a Box 17?

12 A Yes.

13 Q What is that?

14 A State income tax.

15 Q And how much is in there?

16 A \$227.

17 Q Thank you so much. May I have that?

18 A Uh-huh.

19 Q So you're in HR?

20 A Yes.

21 Q Do you know generally what these are?

22 A W-2s, yes.

23 Q Would you tell the jury?

24 A W-2s are statements of wages so that employees can
25 file their income tax.

1 Q Thank you. And typically what information is
2 included?

3 A Wages, 401(k) information, withholdings for the
4 year, and there's some type of identification
5 number where your social security number is also
6 listed.

7 Q Thank you, Ms. Young. I'm going to hand you what
8 has been marked as State's Number 1. And before we
9 get to it, I'd like to ask you about W-4s.

10 A Okay.

11 Q Do you know a little bit about W-4s by virtue of
12 your profession?

13 A Yes, I know general information about the form.

14 Q Would you tell the jury?

15 A Sure. W-4 forms are forms we provide to our
16 employees in order for them to decide what
17 exemptions they want to be withheld from state or
18 federal.

19 Q Now, how does an employee prepare their withholding
20 information?

21 A They --

22 Q At Verizon?

23 A They access our, what we call our internet site,
24 which is About You.

25 Q And how does About You work?

- 1 A About You, in order for you to log onto the system,
2 you have to identity yourself by using your user
3 name or password. Once you get to that particular
4 site of the W-4 site, then it has -- it's a screen
5 that shows, I guess, examples of what you would
6 need to file for your income tax. So it would have
7 whether you want to file exempt or non-exempt. And
8 then if you want to withhold state or federal
9 taxes, you would indicate a number, and any
10 additional dollar amount you want withheld.
- 11 Q So all your employees do this?
- 12 A Yes.
- 13 Q And is Verizon required to do this?
- 14 A Yes.
- 15 Q By who?
- 16 A By the government.
- 17 Q Okay. Now, I've handed you an exhibit. Was it
18 number --
- 19 A One.
- 20 Q Number 1. Do you recognize it?
- 21 A Yes.
- 22 Q In fact, would you look on the back of each page?
23 What, if anything, do you see there?
- 24 A My initials.
- 25 Q Okay. Where did those come from?

1 A When I provided this information to you, we -- I
2 initialed the back so that I would be sure this was
3 the copies I provided to you.

4 Q So those came from Verizon?

5 A Yes.

6 Q Were they kept in the normal and ordinary course of
7 business?

8 MS. MUBARAK: Objection. Leading, Your Honor.

9 THE COURT: Overruled.

10 BY THE WITNESS:

11 A Yes, they were.

12 Q Are they accurate?

13 A Yes.

14 Q Are you confident in that?

15 A Yes.

16 MR. MYRICK: I move to enter these, Your
17 Honor. I'm going to withdraw that and ask her a
18 couple more questions.

19 THE COURT: All right.

20 BY MR. MYRICK:

21 Q Would you describe them to the jury? What exactly
22 is that that I have handed you?

23 A So these are screenshots that were provided to me
24 that signify the dates in which he made a change to
25 any of his exemptions.

1 Q And they are from your colleagues within Verizon?

2 A Yes.

3 Q Who provided them to you in your normal work day?

4 A Yes.

5 Q Are there any paper W-4s at Verizon?

6 A No, we don't have paper.

7 Q Why not?

8 A Because it's all done electronically.

9 Q These were provided via a subpoena?

10 A Yes.

11 Q And they are the best records that Verizon has with
12 regard to withholding?

13 A Yes.

14 MR. MYRICK: Your Honor, I'd like to go ahead
15 and move to admit what has been identified as
16 State's Number 1 into evidence.

17 THE COURT: Any objection?

18 MS. MUBARAK: Yes, Your Honor. I'd like to
19 renew my previous objection.

20 THE COURT: All right. The objection is
21 overruled. It will be entered over the objection
22 of the Defense.

23 (WHEREUPON, State's Exhibit No. 1 was
24 marked for identification and received
25 into evidence.)

1 BY MR. MYRICK:

2 Q So, Ms. Young, would you like at the third page and
3 the fourth page and the fifth page. What does it
4 say in the dialogue box regarding withholdings?

5 A So the third page says claiming exemption from
6 withholding.

7 Q And does the fourth page say the same thing?

8 A Yes.

9 Q And does the fifth page say the same thing?

10 A Yes.

11 Q Now, how does that happen when an employee logs
12 onto About Me?

13 A About You.

14 Q About You. When an employee logs onto About You,
15 can you describe the process? Do you know the
16 process of how it works?

17 A Yes. When they log into About You, they have
18 boxes, again, for them to claim either exempt. And
19 if they choose not to, there is only boxes that
20 indicate for the employee to indicate a number.
21 And then at the bottom, if they want to withhold
22 any additional amount, they can put in a dollar
23 amount.

24 MR. MYRICK: Your Honor, if I can, I'm going
25 to roll this around so the jury can see it. I

1 showed it to Mr. Comish earlier and the other
2 lawyer.

3 BY MR. MYRICK:

4 Q So is this what you're looking at?

5 A Yes.

6 Q I don't like blue. And there's probably a faster
7 way to do this. But is this the fourth page, it
8 says claiming exception from withholding? Or is
9 that the third page?

10 A It's the third page.

11 MS. MUBARAK: Your Honor, I'd like to -- I
12 have an objection I'd like to make. If we can
13 approach the bench, please.

14 (WHEREUPON, a bench conference was held
15 in the presence of the jury but out of
16 the hearing of the jury.)

17 THE COURT: Can you turn the screen around?

18 MR. MYRICK: Yes, ma'am. I realize the nature
19 of the objection.

20 THE COURT: Ladies and gentlemen of the jury,
21 I'm going to send you all out for a brief moment as
22 I take up a matter of law.

23 Thank you.

24 (WHEREUPON, the jury retires to the jury
25 room at 4:06 p.m.)

1 THE COURT: Leave it.

2 MR. MYRICK: I will. I was just checking to
3 see. It's my title. I didn't realize the tool bar
4 was there. I'll hide it.

5 MS. MUBARAK: Your Honor, we'd like to object
6 to this document. Now the damage has already been
7 done. He has specifically stated when we were
8 objecting to the items earlier that he was not
9 using this as a W-4. He now has this labeled on
10 the screen as Verizon W-4. It has now been
11 published to the jury as a W-4. That goes directly
12 to intent to prove the felony. And we can't undo
13 what the jury has now seen. We would be asking for
14 a mistrial at this point.

15 MR. MYRICK: They didn't see it, Judge.

16 MS. MUBARAK: Your Honor, he had a jumbotron
17 on for at least five minutes. Not to mention, I
18 had to call co-counsel over. Attention has been
19 brought to the fact that this document has now been
20 published to the jury that we have been arguing
21 over. He can't undo this. It's on a jumbotron.
22 It's bigger than me.

23 THE COURT: Did you ask her a question about
24 the document?

25 MR. MYRICK: Well, I pulled it up and I

1 said -- I think Your Honor has the document.

2 THE COURT: I know. On the document, it
3 doesn't say it --

4 MR. MYRICK: It just says --

5 THE COURT: I understand.

6 MR. MYRICK: I don't know how to hide the tool
7 bar. But it's much ado about nothing. They were
8 focused on what the witness was saying. This
9 animated, over-the-top objection is meritless, Your
10 Honor.

11 THE COURT: What did she testify that the
12 document was?

13 MR. MYRICK: She said these were Verizon
14 records regarding withholding, which is exactly
15 correct.

16 MS. MUBARAK: Your Honor, he started out the
17 testimony asking her about W-4s. Then he handed
18 the document up to her, asked her what these were,
19 did these come from Verizon. He had her walk
20 though and explain the About You system and the
21 W-4s and then --

22 THE COURT: Well, we have the Senior Manager
23 of HR, so she can testify as to how you go about
24 entering -- employees go in and enter stuff in the
25 system. Don't put your hand up at me, Ms. Mubarak,

1 or we will have bigger issues than what you --

2 MS. MUBARAK: Sorry.

3 THE COURT: All right. I understand what
4 you're saying. The issue is that he has put the
5 Verizon W-4, it says in the tool bar. The exhibit
6 that went in does not say that. So the issue is
7 that you publish to the jury, because it's the tool
8 bar, the W-4 record is showing up under Adobe
9 Reader. And so it said Verizon W-4 records, so I'm
10 assuming that's how you saved the document?

11 MR. MYRICK: That's how I saved the document.
12 Your Honor, may I?

13 THE COURT: Yes.

14 MR. MYRICK: Ask them if they saw the title of
15 the PDF. And if anybody raises their hand and says
16 they did, we'll revisit the issue. Or you can give
17 them an instruction saying, If you inadvertently
18 saw the title --

19 THE COURT: Well, I can't ask them if they saw
20 the title. Then if they did or if they didn't, it
21 brings more attention to it.

22 MR. MYRICK: This request for a mistrial is
23 another transparent effort to derail a long --

24 THE COURT: I mean, even if I grant a mistrial
25 --

1 MR. MYRICK: -- delayed trial.

2 THE COURT: -- this isn't one of those small
3 town counties where we don't have another panel. I
4 could go downstairs and tell Mr. Truitt to pull
5 another panel and we could start tomorrow.

6 MR. MYRICK: We could do that.

7 THE COURT: I just have to determine if it
8 rises to the level of mistrial. And I'll be glad
9 to hear any arguments regarding that. But -- just
10 pick another jury tomorrow morning.

11 So, I'll be glad to hear your motion regarding
12 a mistrial. I don't know if the jurors saw it. I
13 don't know how much attention was brought to it. I
14 can give an instruction, curative instruction. I
15 can look -- I need to make a decision as to whether
16 or not how this rises to the level of a mistrial.
17 But we can keep -- I'll be glad to hear from you.
18 Is there a motion for a mistrial? I'll let you all
19 talk to -- speak with each other regarding it.
20 I'll be glad -- I'm going to take a break. We'll
21 take a 10-minute break and you can decide whether
22 or not you want to make a motion for a mistrial.

23 MS. MUBARAK: Yes, Your Honor.

24 MR. COMISH: Thank you, Your Honor.

25 THE COURT: All right.

1 You may step down. I'm sorry, ma'am.

2 (Witness steps down.)

3 (WHEREUPON, a short break was taken at
4 4:12 p.m.)

5 (WHEREUPON, the proceedings resumed at
6 4:35 p.m.)

7 THE COURT: All right. I'll be glad to hear
8 from anyone. Any motions?

9 MS. MUBARAK: Your Honor, the Defense will
10 make a motion for a mistrial in this case. That
11 document was put on that jumbotron. It was labeled
12 a W-4. That was the title of the document. That's
13 how the State titled it and presented it to the
14 jury. It was up on that screen for at least five
15 minutes. Then the jury stared at it for at least
16 five minutes. We had a discussion before the jury
17 came in, and the State specifically said that
18 documents were not W-4s, and we had this whole
19 argument back and forth about what the documents
20 were.

21 So it's a key piece of evidence that we were
22 arguing over. They are misrepresenting it as W-4s
23 to the jury when they put it up there on the
24 screen. And, you know, it's tainting the evidence
25 in the case. And it goes to intent. And that's

1 what this felony is about. And I don't think we
2 can undo what the jury saw. They stared at the
3 jumbotron for at least five minutes. And then when
4 the jury was leaving, they could sort of see us
5 arguing about something that was up on that screen.

6 THE COURT: All right. Yes, sir?

7 MR. MYRICK: Your Honor, I inadvertently named
8 that document something, and of course the tool bar
9 came up. It's not a W-4. The witness has said
10 it's not a W-4. I don't think the jury saw it. I
11 don't think there's any prejudice. I'm sure
12 there's a way to cure it other than a mistrial.
13 The jury was focused on the meat of the document
14 that the witness was testifying about, specifically
15 what was in the dialogue box. But, you know, if
16 the Court wants to pick another jury and start
17 again in the morning, that suits me fine. I think
18 it's totally unnecessary, Your Honor.

19 THE COURT: Based on the testimony of the
20 witness, the witness testified that the document
21 was not a W-4. The document that was entered into
22 evidence, I don't have it, is that Number 1 or 3?
23 So we'll have an accurate report, State's Exhibit
24 Number?

25 MR. MYRICK: One, Your Honor.

1 THE COURT: One. She testified specifically
2 that -- it's my understanding, it was not a W-4.
3 Mr. Myrick published the document on the screen.
4 The actual document itself does not say it's a W-4,
5 but apparently the tool bar which he saved it said
6 Verizon -- the tool bar above the document said, I
7 guess when he pulled it up, said Verizon W-4.

8 In considering a mistrial, the Court has to
9 determine whether or not a curative instruction
10 will cure, I guess in this case, the mistake on
11 part of the State in putting a document up with the
12 saved -- he saved it as W-4, although the witness
13 has testified that it is not a W-4. And there has
14 to be some manifest necessity to declare a
15 mistrial.

16 This Court does not find that this rises to
17 the level of a mistrial. I will give a curative
18 instruction to the jurors. I will instruct
19 Mr. Myrick not to publish it or anything else until
20 he, I won't say show it to the Court, but he needs
21 to make sure that the documents are exactly as the
22 document that is entered into evidence.

23 The instruction that I am going to give,
24 curative instruction to the jury, is to disregard
25 the document that was published. I am going to at

1 that time, not to give it any consideration, that
2 they are only to consider the document which is in
3 evidence and marked in evidence. I am going to ask
4 the State to refer to that evidence, the evidence
5 that is in the record.

6 And, Mr. Myrick, if you want to ask her
7 questions about the document, you need to ask her
8 questions about the document that is in evidence
9 until you -- at some point, if you can get that
10 where you saved it, I don't know how you're going
11 to correct that on the tool bar, if you're going to
12 get the tool bar down, or if you resave it or name
13 it as something, but at this point, you cannot show
14 it to the jury in that format.

15 MR. MYRICK: May I, Your Honor?

16 THE COURT: Yes.

17 MR. MYRICK: First of all, I apologize for the
18 oversight. It was totally inadvertent.

19 Two, we have renamed it. Now it will come up,
20 and whether or not the tool bar is there or not, it
21 will say State's Number 1. I trust that isn't
22 objectionable.

23 THE COURT: Well, they're requesting a
24 mistrial, so I'm going to deny the motion for
25 mistrial. I can look at it and see -- or they can

1 look at it and see if there's anything else on the
2 document that is not consistent with the document
3 that is State's Exhibit Number 1.

4 MR. MYRICK: I don't know if you can see it,
5 but it is now State's Number 1.

6 MS. MUBARAK: I can see it from here.

7 THE COURT: Is there anything there else on
8 there, though?

9 MR. MYRICK: No, ma'am.

10 THE COURT: Because you have this thing on the
11 side. Can you get that down where they are only
12 looking at the document? Scroll up. Scroll it up.
13 No, I can't see the whole document. I just want to
14 make sure there's nothing else on the document.

15 MR. MYRICK: And that's all we've got, Your
16 Honor, aside from these little tools on the side.
17 I don't know if anybody knows how to make it full
18 screen. I don't. But I don't think that is
19 prejudicial in any way with the tool bar.

20 THE COURT: Tool bar. As long as it doesn't
21 say W-4.

22 MR. MYRICK: Yes, ma'am, Your Honor. I
23 apologize.

24 THE COURT: All right, let's bring the jurors
25 back in.

1 MS. MUBARAK: Your Honor, just to preserve the
2 record, we are objecting to a curative instruction
3 and move for a mistrial.

4 THE COURT REPORTER: I'm sorry, I couldn't
5 hear you.

6 MS. MUBARAK: I said, to preserve the record
7 --

8 THE COURT: Hold on one second. The door is
9 open. Please close the door.

10 You have already moved, you don't have to move
11 again, but you are objecting to the curative
12 instruction. So I think that is preserved for the
13 record.

14 MS. MUBARAK: Okay, thank you.

15 And, sorry, we will try to talk louder.

16 THE COURT: So you can bring them in now.

17 (WHEREUPON, the jury came into open
18 court at 4:45 p.m.)

19 THE BAILIFF: The jury is seated, Your Honor.

20 THE COURT: Ladies and gentlemen of the jury,
21 they are was an objection made and the objection
22 was sustained. The document that was placed on the
23 screen was not the exact same document -- that was
24 published to you was not the document that is in
25 evidence. I'm going to ask that you disregard the

1 document that was previously published on the -- I
2 don't know if it's a jumbotron or what it's called,
3 but I'm going to ask that you only -- that the
4 State only refer to or publish the document that is
5 in evidence, which is State's Exhibit Number 1.

6 All right. So please disregard the previous
7 document that was -- I'm not sure how much of it
8 you saw, but the previous document that was posted
9 on the TV and disregard anything regarding that
10 document. And I'm going to ask the State to refer
11 to the document that is in evidence.

12 All right. You may continue.

13 MR. MYRICK: Thank you, Your Honor. May it
14 please the Court?

15 DIRECT EXAMINATION CONTINUES

16 BY MR. MYRICK:

17 Q Ms. Young, I'm trying to remember where we are. Do
18 you have a copy -- do you have State's Number 1?

19 A No, I don't.

20 THE COURT: Do you have a copy of it?

21 MR. MYRICK: Yes, ma'am, I do. I'm going to
22 hand this to the witness, if I may, Your Honor, and
23 track you down a copy.

24 May I approach, Your Honor?

25 THE COURT: Yes, sir.

1 MR. MYRICK: Your Honor, State's Number 1 is
2 in evidence, correct?

3 THE COURT: I'm not sure if he moved it in.
4 Did he move it in?

5 THE COURT REPORTER: He did.

6 THE COURT: One is in evidence over the
7 objection of the Defendant, yes.

8 BY MR. MYRICK:

9 Q So pardon me, Ms. Young, if we cover some ground
10 for a second time. But just to be clear, that
11 document you have in your hand, what is it?

12 A It is a screenshot of the elections, the effective
13 date of when Mr. Ellerbee made elections to his
14 W-4.

15 Q And it's in evidence. And your initials are on the
16 back of it, right?

17 A Yes.

18 Q Now, what system does Verizon use for its
19 employees?

20 A It's called About You for the W-4.

21 Q It's called About You?

22 A Uh-huh.

23 Q And how does it work?

24 A Employees use their user name and password to
25 access the W-4 site -- well, About You site, which

1 then takes them to the option to change their W-4.
2 And on that screen, it gives them the option to
3 choose what exemptions or allowances they want to
4 elect for their W-4.

5 Q And do y'all use paper W-4s?

6 A No, we do not.

7 Q Do you even remember using paper W-4s?

8 A Maybe 15 years ago, 10 or 15 years ago.

9 Q So those are the best records you have regarding
10 employee withholding?

11 A Yes.

12 Q On the third page of that, there's a dialogue box,
13 right?

14 A Correct.

15 Q In fact, on every page, there's a dialogue box, is
16 that right?

17 A Yes.

18 Q So the first page, does it say who this is for?

19 A Yes.

20 Q Who is it for?

21 A Curnez Ellerbee.

22 Q And does it indicate a special withholding tax
23 status?

24 A Yes. It says maintain taxable gross.

25 Q If you go down -- pardon me, I'm trying to learn

1 how to drive this mouse. If you go down to the
2 next page or flip to the next page, who is that
3 for?

4 A Curnez Ellerbee.

5 Q And does it have a special withholding tax status?

6 A Yes.

7 Q What does that say?

8 A Maintain taxable gross.

9 Q What about the third page?

10 A Yes.

11 Q Is there a dialogue box under it?

12 A Yes.

13 Q What does that say?

14 A Claiming exemption from withholding.

15 Q The one year holding there is identical to the one
16 on the screen, right?

17 A Yes.

18 Q And the next page is also about Mr. Ellerbee?

19 A Yes.

20 Q And it's dated 2011?

21 A 2011, yes.

22 Q And what does it say in the dialogue box?

23 A Claiming exemption from withholding.

24 Q And the next one is dated late in --

25 MS. MUBARAK: Objection, Your Honor. Leading

1 the witness.

2 BY MR. MYRICK:

3 Q When is it dated?

4 THE COURT: Okay, sustained. Please do not
5 lead the witness.

6 BY MR. MYRICK:

7 Q When is it dated?

8 A 12/29/2011.

9 Q And is there any dialogue in the two dialogue
10 boxes?

11 A Yes.

12 Q What does it say?

13 A Maintain taxable gross, and then claiming exemption
14 from withholding.

15 Q All right. Let me ask you now if I may, what do
16 you know about claiming exempt with respect -- not
17 just to Mr. Ellerbee -- what, if anything, do you
18 know about claiming exempt from withholding? Is
19 there a way to do that on My Verizon?

20 A About You? Yes.

21 Q About You.

22 A Yes. You would have to actually click the box that
23 says exemption from state or federal or both.

24 Q Then what happens?

25 A And then there is an additional pop-up box that

1 comes up that you have to certify additional
2 information and then --

3 Q What does -- do you know what the pop-up box says?

4 A Yes. So it says, I claim exemption --

5 MS. MUBARAK: Objection, Your Honor.

6 BY MR. MYRICK:

7 Q I'm sorry, Ms. Young, you can't read from it.

8 A Okay.

9 Q You can use whatever you brought with you to
10 refresh your memory.

11 A Okay. So it is --

12 THE COURT: The objection is sustained. Is
13 that your objection?

14 MS. MUBARAK: Yes, Your Honor.

15 THE COURT: Okay.

16 BY MR. MYRICK:

17 Q Ms. Young, so as not to draw an objection, whatever
18 you have in front of you, would you look at it,
19 read it to yourself, take as much time as you like.

20 MS. MUBARAK: Your Honor --

21 BY MR. MYRICK:

22 Q If your memory needs refreshing --

23 MS. MUBARAK: May we approach?

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

1 the hearing of the jury.)

2 BY MR. MYRICK:

3 Q So, Ms. Young, you're the Senior HR person at the
4 Call Center?

5 A Human Resources, yes.

6 Q I'm sorry, that's what I meant by HR. I didn't
7 mean to abbreviate. Are you familiar with the
8 About You system as it relates to withholding?

9 A Yes.

10 Q How familiar are you?

11 A I'm familiar in that we've used this system for
12 over ten years.

13 Q What, if any, training have you received on it?

14 A We went through training of how to navigate through
15 the system. It has been online training as well as
16 WebEx training.

17 Q So do you know what, if anything, happens if you
18 claim exempt?

19 A If you claim exempt through About You, then it is
20 processed as what you claim it to be through
21 payroll.

22 Q And what, if anything, happens when you claim
23 exempt?

24 A You have no withholding from either state or
25 federal or both.

1 Q And does the system interact with the person who --

2 A Yes.

3 Q -- is making such a claim? And can you describe
4 that for the jury if you know?

5 A Sure. Once you claim exempt by clicking on the box
6 that says exempt for either state or federal or
7 both, an additional pop-up box comes up and asks
8 you specific questions to make sure you are
9 eligible to continue the exemption status.

10 Q Do you know what those questions are?

11 A I don't know them verbatim.

12 Q Do you have a general idea of what those questions
13 are?

14 A They, in general, ask you if you are -- if you've
15 been qualified or have been able to file exempt
16 from the previous year as well as this year. So
17 it's pretty much giving you the option to say that
18 you are certified to claim exempt. I don't know
19 the verbatim of what it's saying.

20 Q Were you referring to something earlier that you
21 brought to court?

22 A Yes.

23 Q May I see it?

24 A Sure.

25 Q And what is this?

1 A It's a screenshot of what that pop-up box was.

2 Q And does this pop-up box apply to everyone at
3 Verizon who uses the About You system?

4 A It only applies to those that have clicked the
5 exemption box in order for you to have exemptions,
6 for your exemptions to be known.

7 Q And was this in effect in 2008?

8 A Yes.

9 Q And in 2009?

10 A Yes.

11 Q And in 2010?

12 A Yes.

13 Q And in 2011?

14 A (Nods affirmatively.)

15 Q In 2012 --

16 MS. MUBARAK: Objection, Your Honor. He's
17 still leading the witness. Would you please
18 instruct him?

19 BY MR. MYRICK:

20 Q What years --

21 THE COURT: Sustained.

22 Q -- were these in effect?

23 A Since 2008. So 2008, 2009, 2010, 2011, 2012, up
24 unto current.

25 Q And this piece of paper that you handed me, is it

1 accurate?

2 A Yes.

3 Q And you printed it yourself?

4 A Yes.

5 Q And it applies to all Verizon employees that use
6 About You?

7 A Yes.

8 MR. MYRICK: I'd like to get this marked, Your
9 Honor.

10 THE COURT: Do you have a copy for them?

11 MR. MYRICK: I'm going to show it to them,
12 Your Honor.

13 MS. MUBARAK: We're objecting.

14 MR. MYRICK: To it being marked?

15 MS. MUBARAK: Go ahead and mark it.

16 THE COURT: Go ahead. Continue on.

17 (WHEREUPON, State's Exhibit No. 10 was
18 marked for identification only.)

19 BY MR. MYRICK:

20 Q So just to make sure I understand, this document
21 marked as State's Number 10, you printed it out?

22 A Yes.

23 Q From Verizon HR records?

24 A Yes.

25 Q And it's accurate?

1 A Yes.

2 Q And this is what anyone would see who sought to
3 claim exempt?

4 A Yes.

5 Q And this particular screenshot --

6 MS. MUBARAK: Objection, Your Honor. He's
7 still continuing to lead the witness. Will you
8 instruct Mr. Myrick to abide by the Rules of
9 Evidence?

10 THE COURT: Is your objection leading?

11 MS. MUBARAK: Yes, Your Honor.

12 THE COURT: All right. No spoken objections,
13 just the objection.

14 Objection is sustained. Please do not lead.

15 MR. MYRICK: Yes, ma'am. If I may approach
16 briefly?

17 (WHEREUPON, a bench conference was held
18 in the presence of the jury but out of
19 the hearing of the jury.)

20 BY MR. MYRICK:

21 Q So, Ms. Young, will you tell me again what that is,
22 please?

23 A This is the screenshot of the pop-up message that
24 comes up if an employee claims exempt.

25 Q And who created that?

1 A Who created the screenshot?

2 Q Yes?

3 A I did.

4 Q Do you know who got it off the printer?

5 A I did.

6 Q Do you know if it's accurate?

7 A Yes.

8 MR. MYRICK: We move to enter it, Your Honor.

9 THE COURT: Any objection?

10 MS. MUBARAK: Objection, Your Honor. If
11 anything, I think it should be demonstrative
12 evidence.

13 THE COURT: Can I see the document, please?

14 MS. MUBARAK: We request a copy as well, Your
15 Honor.

16 MR. MYRICK: May I approach?

17 THE COURT: Yes, sir.

18 What's the objection, demonstrative?

19 MS. MUBARAK: Your Honor, I believe it should
20 be demonstrative, although this has not been
21 provided to us in discovery. They had access to
22 this.

23 THE COURT: Let me see y'all one second.

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

1 the hearing of the jury.)

2 THE COURT: The objection is sustained.

3 BY MR. MYRICK:

4 Q Ms. Young, I'm going to hand you what has been
5 marked for ID purposes as State's Number 10. I'm
6 going to ask you is this the document we've been
7 talking about?

8 A Yes.

9 Q All right. And is there a dialogue box there on
10 that document you printed?

11 A Yes.

12 Q Would you take a moment and look at it? Can you
13 read it? Is it legible?

14 A Yes.

15 Q Okay. Let me know when you've refreshed your
16 memory as to what is in that dialogue box and you
17 remember what it says.

18 A Okay.

19 MS. MUBARAK: Your Honor, I would also like to
20 object. I don't think this is proper under Rule
21 803(5). Objection.

22 THE COURT: Are you offering it under 803?

23 MR. MYRICK: No, ma'am. I'm not offering it
24 at all. I'm seeking to utilize Rule 612 under the
25 Rules of Evidence.

1 THE COURT: The objection is overruled subject
2 to Rule 612(1).

3 All right. Ask the question and lay the
4 foundation.

5 MR. MYRICK: I think I have, Your Honor.

6 BY MR. MYRICK:

7 Q Ms. Young, have you refreshed your memory?

8 A Yes.

9 Q Could you describe what, if anything, happens in
10 the About You system when an employee, any employee
11 claims exempt?

12 A Yes. If they claim exempt, an additional pop-up
13 message appears on the screen.

14 Q Do you know what it says?

15 A I can paraphrase it.

16 Q Would you tell the jury?

17 A Yes. It is -- you have to certify to two
18 questions, and it's saying that you have -- last
19 year, you were due a refund of state taxes and you
20 had no tax liability and that you would have that
21 same no tax liability for the current year.

22 Q Thank you. Please -- oh, one more thing. I'm
23 going to hand you what has been --

24 MR. MYRICK: May I, Your Honor?

25 THE COURT: Yes, sir.

1 MR. MYRICK: I'd like to approach the witness
2 and hand her what has been marked as State's Number
3 2 for ID purposes.

4 THE COURT: So is it --

5 MR. MYRICK: It is not in evidence.

6 THE COURT: Is that the same as --

7 MR. MYRICK: No, ma'am.

8 THE COURT: And she will need to mark them for
9 ID purposes.

10 (WHEREUPON, State's Exhibit No. 2 was
11 marked for identification only.)

12 THE COURT: Go ahead and lay the foundation.
13 Do they have a copy? Do they know what you're
14 talking about?

15 MR. MYRICK: Yes, ma'am, they know.

16 MS. MUBARAK: Yes, Your Honor.

17 BY MR. MYRICK:

18 Q Ms. Young, do you recognize that?

19 A Yes, I recognize it.

20 Q Could you tell the jury what it is, please?

21 A They are screenshots of W-2 -- W-4 elections.

22 Q Do you know where that came from?

23 A Payroll.

24 Q Whose payroll?

25 A Verizon's payroll.

1 Q How do you know that?

2 A Because this was part of the subpoenaed documents
3 that were received earlier, several years ago.

4 Q And you're personally familiar with that document?

5 A Yes.

6 Q And does that look like an identical copy of what
7 was provided by Verizon? Please take a minute and
8 review it.

9 A It does look like it, but I'm not familiar with
10 what's in it, but it does look like the screenshots
11 that were provided.

12 Q Thank you.

13 A Uh-huh.

14 Q Thank you so much, Ms. Young. Please answer any
15 questions that Mr. Ellerbee's lawyer might have.

16 THE COURT: Yes, ma'am?

17 MS. MUBARAK: Thank you, Your Honor. May it
18 please the Court?

19 **CROSS-EXAMINATION**

20 BY MS. MUBARAK:

21 Q Hey, Ms. Young. How you doing?

22 A Good. How are you?

23 Q Good.

24 MS. MUBARAK: Just a second, Your Honor. Let
25 me give Mr. Myrick his documents.

1 BY MS. MUBARAK:

2 Q Ms. Young, you work at Verizon Wireless?

3 A Correct.

4 Q And you've been there about 18 years?

5 A Yes.

6 Q And you work with Mr. Ellerbee at Verizon?

7 A Yes.

8 Q He's been there about the same amount of time as
9 you?

10 A Yes.

11 Q And you work in the HR Department?

12 A Yes.

13 Q HR is Human Resources?

14 A Correct.

15 Q And that is a separate and distinct department from
16 the payroll department?

17 A Correct.

18 Q Okay. And you have talked a little bit about the
19 computer system at Verizon. Human Resources has a
20 different computer program than the payroll
21 department, correct?

22 A Correct.

23 Q And you don't have access to the payroll
24 department?

25 A I do not.

1 Q And you're not familiar with the payroll
2 department's computer system?

3 A No.

4 Q And you're not familiar with the day-to-day
5 workings of the payroll department?

6 A Other than the pay stubs, that's the only thing I
7 have access to.

8 Q And all the documents that have been presented to
9 you so far from Mr. Myrick and the Government,
10 those do not come from the Human Resource
11 Department?

12 A Other than the one that I provided, correct.

13 Q The ones that came from the Government, though, do
14 they not?

15 A Right.

16 Q I would like to talk to you about some of the
17 documents. I might actually pull it back up on the
18 jumbotron. I have never used this thing before,
19 so.

20 THE COURT: Turn it around before you show it
21 to the jury.

22 MS. MUBARAK: I'm just pulling it back up.

23 THE COURT: Turn it around and make sure it's
24 the right one.

25 MS. MUBARAK: Absolutely. Of course.

1 All right. Well, you're the one that also
2 needs to be able to see it.

3 BY MS. MUBARAK:

4 Q All right. Ms. Young, this document came from the
5 payroll department?

6 A Yes. Through a subpoena, yes.

7 Q Yes, ma'am. And you don't know what UI
8 jurisdiction means, do you?

9 A No, I do not.

10 Q And you don't know what exempt from SUT means, do
11 you?

12 A No, I do not.

13 Q And there is text typed in this box, correct?

14 A Correct.

15 Q Now, an employee like Mr. Ellerbee who just works
16 at Verizon, but not in payroll, would he be able to
17 type this text into this box on this document?

18 A No, he would not.

19 Q Okay. And let me see what else I need to talk to
20 you about. Right here, this says -- what does this
21 say right here?

22 A Withholding allowances.

23 Q And what's the number next to that?

24 A Zero.

25 Q Okay.

1 MS. MUBARAK: Just one second, please.

2 (Pause.)

3 BY MS. MUBARAK:

4 Q Ms. Young, you don't know what most of the stuff in
5 this document means? You don't know what UI
6 jurisdiction means?

7 A No.

8 Q And exempt from jurisdiction? You don't know who
9 wrote claiming exemption from withholding?

10 A I do not.

11 Q Okay. Ms. Young, Verizon doesn't give its
12 employees tax advice when they fill out documents,
13 do they?

14 A No, they -- we don't.

15 Q And it doesn't give its employees instructions for
16 tax documents?

17 A We just have -- we refer them to seek additional
18 information from a tax preparer, or something like
19 that.

20 Q And it's your understanding that only someone in
21 the payroll department would have been able to type
22 --

23 MR. MYRICK: Leading. I object.

24 THE COURT: She's on cross.

25 MS. MUBARAK: We're allowed to lead.

1 THE COURT: Objection overruled.

2 BY MS. MUBARAK:

3 Q Ms. Young, these documents that the Government
4 produced and gave you -- I'm going to turn this
5 off -- they were not produced by Mr. Ellerbee?

6 A No, they weren't.

7 Q Okay. And around the same time as Mr. Ellerbee was
8 arrested, weren't at least 20 other employees at
9 Verizon arrested for the same tax evasion issue?

10 MR. MYRICK: I'm going to object.

11 THE WITNESS: They were arrested for --

12 MR. MYRICK: I'm going to object, Your Honor.

13 THE COURT: Hold on one second. Hold on one
14 second.

15 MS. MUBARAK: We can withdraw the question,
16 Your Honor.

17 THE COURT: What's the objection?

18 MR. MYRICK: Relevance.

19 MS. MUBARAK: We'll withdraw the question,
20 Your Honor.

21 THE COURT: Anything else from the Defense?

22 MS. MUBARAK: I'm sorry, Your Honor, just one
23 moment.

24 (Pause.)

25 BY MS. MUBARAK:

1 Q Last question, Ms. Young. Of the documents that we
2 showed you, that is not a W-4, correct?

3 A That is not a W-4.

4 Q Thank you, Ms. Young.

5 MS. MUBARAK: The Defense doesn't have any
6 further questions.

7 THE COURT: All right. Redirect? Yes, sir?

8 MR. MYRICK: Beg the Court's indulgence for a
9 moment, Your Honor.

10 (Pause.)

11 **REDIRECT EXAMINATION**

12 BY MR. MYRICK:

13 Q Ms. Young, I'd like to hand you State's Exhibit
14 Number 1. Whose document is that?

15 A Curnez Ellerbee.

16 Q Where did it come from?

17 A The payroll department.

18 Q Where?

19 A Verizon, I'm sorry.

20 Q And I'm going to hand you what is State's Number 3.

21 MS. MUBARAK: Objection, Your Honor. This has
22 already been asked and answered on direct.

23 THE COURT: Did you go into it on cross?

24 Objection overruled.

25 BY MR. MYRICK:

1 Q I'm sorry. You can answer the question.

2 A I can't remember what the question was.

3 Q That second document I handed you --

4 A Uh-huh.

5 Q -- where did that come from?

6 A Verizon.

7 Q Thank you.

8 MR. MYRICK: That's all, Your Honor.

9 THE COURT: All right, ma'am, you may step
10 down.

11 Any objection to this witness being excused?

12 MR. MYRICK: No, ma'am.

13 THE COURT: Ma'am, you're free to leave.
14 Thank you.

15 (Witness steps down and is excused.)

16 THE COURT: All right, ladies and gentlemen of
17 the jury, it is about 5:20, a little off, but it's
18 about 5:20, so we are going to go ahead and take
19 our evening break. Remember to not do any
20 independent research regarding this case. Do not
21 discuss the case with anyone. It is improper to
22 discuss it with your fellow jurors. It is also
23 improper for you to form any opinion in your mind
24 at this time until you have received all of the
25 evidence. You have sworn to be fair and impartial

1 to both sides, and the only way you can do that is
2 to receive all of the evidence, hear the arguments
3 of the parties, and receive the law by the Court.
4 Any pre-deliberations would not be fair to both
5 sides. So I ask that you leave, think about
6 something else other than what is going on here in
7 the courtroom.

8 I apologize for the heat. I have asked -- are
9 you all hot? Sort of a little warm? If it's a
10 little warm -- I've asked them to cool it off a
11 little bit in here because it is a little warm.
12 But we'll see you tomorrow morning at 9:30.
13 Remember, you're to come directly up here.
14 Whatever the bailiffs told you to be here, come
15 directly in that way.

16 All right. Have a wonderful evening.

17 (WHEREUPON, the jury is excused for the
18 day at 5:21 p.m.)

19 THE COURT: All right. So we need to put on
20 the record the Defendant's objection to -- I have a
21 note up here. I sustained an objection regarding
22 State's Exhibit -- you need to put an objection on
23 the record regarding State's Exhibit 10. And I
24 can't remember if you objected to State's Exhibit 2
25 also. And I say exhibit, State's 10 for ID

1 purposes and State's 2 for ID purposes. Those two
2 were not entered in evidence. There was an
3 objection made?

4 MS. MUBARAK: Yes, Your Honor.

5 THE COURT: I think there was an objection as
6 to State's 10 regarding -- well, the objection was
7 that it was for demonstrative purposes. I think
8 there was also an objection regarding just
9 receiving the document today, or something. We
10 need to put the objection on the record. We did a
11 sidebar. I think I sustained the objection and
12 marked it for ID purposes for the purpose of her
13 refreshing her memory. We need to put all that on
14 the record.

15 MS. MUBARAK: Do you need me to stand and do
16 that?

17 THE COURT: Yes, ma'am. Just to preserve the
18 record, you need to put the objection that was at
19 bar on the record.

20 MS. MUBARAK: Yes, Your Honor. I would like
21 to put the objection made at bar on the record. As
22 to State's 10 for ID purposes, the Court ruled for
23 ID purposes only, and also as to State's 10, I
24 don't know if we stated this at the bar, we also
25 object to hearsay. We objected to it, and then

1 they said Rule 612.

2 THE COURT: Yes.

3 MS. MUBARAK: That was just noting that for
4 the record.

5 THE COURT: And your objection is that it was
6 improper hearsay testimony under 803, is it (6)?

7 MS. MUBARAK: 803(5), Your Honor, improper
8 hearsay, and we're objecting to it under 612, which
9 is what they used.

10 THE COURT: And I allowed it under -- for ID
11 purposes under 612(1). So the objection was
12 sustained, I think, as to -- well, it was sustained
13 because there was some issue regarding it not being
14 turned over previously. And you said that you
15 thought the investigator had it even though the
16 witness testified they just received it today.

17 MS. MUBARAK: Yes, Your Honor. We believe
18 that based on that memo we received --

19 MR. COMISH: Your Honor recalls that
20 particular argument. There was a memo turned over
21 to us last -- or Sunday before last, and that memo
22 was by Investigator Matt Wright. He went and met
23 with Ms. Young and she produced some computer
24 printouts of the W-4 system. I'm trying to find
25 the memo right here.

1 MS. MUBARAK: I've got it right here. It was
2 marked as Court's Exhibit 1 last week, Your Honor.
3 I don't know if that's still part of the record.

4 MR. COMISH: Referring specifically to the
5 line she supplied, demonstrating extreme problems
6 an employee would encounter when it claimed to be
7 exempt from taxation. She supplied copies of those
8 screenshots, which are essentially identical, I
9 believe, to what she -- what the State used today.

10 Now, we had Mr. Wright on the stand last
11 Monday, and Mr. Wright told us that he took that
12 into his possession and gave it to the Attorney
13 General's Office sometime roughly five years ago.
14 So those have been in the State's custody and
15 control, those particular pictures now for about
16 five years, at least according to the State's own
17 investigator. And we're just being made aware of
18 them today when he handed them to the witness.

19 That was overstated. He did report to
20 Mr. Myrick the conversations he had with Ms.
21 Wright -- the conversations the investigators had
22 with Ms. Wright earlier in the week. They didn't
23 take it into their possession then -- excuse me,
24 Ms. Young -- it's been a long day, Your Honor. But
25 the first time it's been turned over to us by the

1 State was just now.

2 THE COURT: Yes, sir. Any response?

3 MR. MYRICK: Yes, ma'am.

4 THE COURT: We're referring to State's 10 for
5 ID purposes.

6 MR. MYRICK: State's 10. We used it for 612
7 to refresh her memory to make sure that her
8 testimony was as accurate as it could be. I have
9 never seen it before today. I don't have it.

10 What they mentioned about the interview from
11 several years ago, 2014, I wasn't even doing tax
12 cases then. As you know, I was at the State Grand
13 Jury. I have looked. I can't find anything about
14 screenshots from 2014 in a case involving another
15 Defendant. But she says there's a screenshot. I
16 don't have it. They are free to look into it. I
17 can't turn over what I don't have. I've never seen
18 that before today. She testified she printed it to
19 come to court. I don't know what else to say. But
20 I think it was properly used under Rule 612, which
21 is all I was asking her. I'm not seeking to admit
22 it any further. I just wanted the witness to be
23 able to testify accurately.

24 THE COURT: All right. I believe the witness
25 testified that she just gave the document, she just

1 printed the document in her preparation for her
2 coming. I don't even have the document.

3 MR. MYRICK: If I might approach, Your Honor?
4 This is State's 10 for ID purposes. That was used
5 under 612. I had never seen it before today. She
6 brought it to court with her. I told Mr. Comish
7 she was going to bring it to court with her. So
8 I'm perplexed as to what the big deal is.

9 THE COURT: So pursuant to 612(1), the witness
10 is allowed to use it to refresh her memory. I do
11 not find there is any violation under Brady. She
12 testified that she printed it and brought it, that
13 they did not have it.

14 For those reasons, I am overruling the
15 objection, but allowing it for purposes of ID --
16 for ID purposes under 612(1) to refresh her memory.

17 All right. Were there any other objections
18 that we need -- I'm without a law clerk, so I'm
19 going to try to keep up with all the objections.
20 If we need to put the objections on the record
21 during breaks, just remind me, I'll try to make a
22 point of stopping and saying, Are there any
23 objections that we did at the bar that need to be
24 placed on the record, so that we will have a proper
25 record.

1 All right. If not -- is there anything else
2 we need to take up? Do we need to proffer any
3 other witnesses?

4 MR. COMISH: I don't believe so, Your Honor.

5 THE COURT: All right.

6 MR. COMISH: I just want to renew all
7 objections and motions to maintain the record.

8 Also, I sent you and Mr. Myrick an e-mail
9 about Terry Davis, the member of the jury pool I'm
10 on a committee with. Is it okay if I contact her
11 tonight? We have a committee meeting on Wednesday?
12 She's not going to be on our jury.

13 THE COURT: No, she's not on our jury.

14 MR. COMISH: I just wanted to clear the air
15 about that.

16 THE COURT: That's fine. I appreciate it.
17 Anything else?

18 MR. MYRICK: Nothing from the State, Your
19 Honor.

20 THE COURT: All right. I will see you all at
21 9:30 in the morning.

22 MR. COMISH: Thank you, Your Honor.

23 MR. MYRICK: Thank you, Your Honor.

24 (WHEREUPON, court adjourned for the day
25 at 5:30 p.m.)

FEBRUARY 12, 2019

(WHEREUPON, the proceedings resumed at
9:39 a.m.)

THE COURT: Are we ready?

MR. MYRICK: The State is ready.

THE COURT: All right. Let's bring them in.

I'll remind you, please try not to -- on
direct examination, we do not lead; on
cross-examination, we can.

I remind you that speaking objections are
inappropriate. I just need to hear what the
objection is, and I'll ask the next question or
call you to the bench. Speaking commentary
regarding objections, I don't need to hear that.

All right. Let's go ahead and get started.

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

THE BAILIFF: The jury is present, Judge.

THE COURT: All right. Thank you.

Good morning, ladies and gentlemen of the
jury. I hope that you had a restful evening. At
this time, we are ready to continue with the
State's case.

I will ask the State to call their next
witness.

1 MR. MYRICK: Thank you, Your Honor. May it
2 please the Court? The State calls Ms. Kadenia
3 Javis.

4 (Witness approaches.)

5 THE CLERK: Place your left hand on the Bible
6 and raise your right hand.

7 (Witness complies.)

8 THE CLERK: Do you solemnly swear or affirm
9 that the testimony you are about to give in this
10 case will be the truth, the whole truth, nothing
11 but the truth, so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Please have a seat, and state your
14 full name for the record.

15 KADENIA JAVIS,
16 after being duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MYRICK:

19 Q Good morning.

20 A Good morning.

21 Q Would you introduce yourself to the jury, please?

22 A Good morning. I'm Kadenia Javis. I'm the CEO and
23 accountant at Javis Tax Service.

24 Q And what does Javis Tax Service do?

25 A Javis Tax Service prepares tax returns,

1 bookkeeping, accounting, and payroll for clients.

2 MR. MYRICK: Excuse me, Your Honor. I'd like
3 to approach the witness if I may, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. MYRICK:

6 Q Ms. Javis, I'm going to hand you what has been
7 identified as State's Number 6. Do you recognize
8 it?

9 A Yes, I do.

10 Q What is it?

11 A This is a South Carolina 1040 tax return for the
12 year 2009.

13 Q How do you recognize it?

14 A I recognize it because our office prepared it.

15 Q For who?

16 A For Mr. Curnez Ellerbee.

17 Q When did you do that?

18 A We processed them on November the 14th of 2018.

19 Q Okay. And that's what you prepared?

20 A Yes, it is.

21 MR. MYRICK: I'd like to continue to approach,
22 Your Honor?

23 BY MR. MYRICK:

24 Q Ms. Javis, I'm going to hand you what has been
25 identified as State's Number 7. Do you recognize

1 this?

2 A I do.

3 Q What is it?

4 A This is a 2010 South Carolina 1040 tax return that
5 was also processed on November 14th of 2018.

6 Q For who?

7 A For Mr. Curnez Ellerbee.

8 Q Who prepared it?

9 A My office.

10 Q And it's accurate?

11 A It is correct.

12 Q I'm going to hand you what has been identified as
13 State's Number 8. Do you recognize it?

14 A Yes, sir.

15 Q What is it?

16 A This is the 2011 South Carolina 1040 tax return
17 that was prepared on November 14th of 2018 as well.

18 Q By who?

19 A By my office.

20 Q For who?

21 A For Mr. Curnez Ellerbee.

22 Q And that's an accurate copy?

23 A Yes, sir, it is.

24 Q Ms. Javis, I'm going to hand you what has been
25 identified as State's Number 9.

1 A And this one is a 2012 South Carolina 1040 tax
2 return.

3 Q And who is it for?

4 A This is for Mr. Curnez Ellerbee.

5 Q And that's an accurate copy?

6 A Yes, sir, these are all the documents that were
7 given back to him as well.

8 Q And when did you prepare it?

9 A 2009 through '12 that you presented to me were all
10 done on November the 14th of 2018.

11 Q What did you do with them when you were done with
12 them?

13 A We normally electronically file, but the electronic
14 filing time was over, so at that time taxpayers
15 have to mail in their tax returns. My office has
16 the taxpayer sign the returns, we give them
17 envelopes, as well as we put postage on the
18 envelopes, and we tell them to stop by the post
19 office on their way leaving the Two Notch office.

20 MR. MYRICK: Your Honor, the State moves to
21 enter those four tax returns, '9, '10, '11, and '12
22 into evidence.

23 THE COURT: Any objection?

24 MS. MUBARAK: No objection.

25 THE COURT: Those will be entered without

1 objection.

2 MR. MYRICK: Thank you.

3 (WHEREUPON, State's Exhibit Nos. 6 - 9
4 were marked for identification and
5 received into evidence.)

6 BY MR. MYRICK:

7 Q May I see those, Ms. Javis? This one that is
8 marked as State's Number 6, how many pages is that?

9 A There's only two to the 2009 State S.C. 1040.

10 Q And with respect to State's 9, 8, and 7, are they
11 the same? How many pages?

12 A 2010 has three pages. Every year Congress meets,
13 tax laws change, so you may have additional pages.
14 2011 has three pages. And 2012 has three pages.

15 Q How long did it take your office to prepare those?

16 A Due to the fact that he has no itemization
17 scheduled, probably about 15, 20, minutes per
18 return.

19 Q Thank you. And let me ask you, what's your
20 profession?

21 A I'm a licensed and degreed accountant.

22 Q And what's your education?

23 A I have an undergraduate in accounting from
24 Limestone College and have a MBA from Strayer
25 University.

1 Q Thank you so much, Ms. Javis. Please answer any
2 questions Mr. Ellerbee's lawyers might have.

3 CROSS-EXAMINATION

4 BY MS. MUBARAK:

5 Q Hello, Ms. Javis.

6 A Good morning.

7 Q Just a few questions for you. You're a tax
8 preparer by trade?

9 A Correct.

10 Q And you prepared Mr. Ellerbee's taxes?

11 A Correct.

12 Q You prepared them in November 2018, as you
13 testified?

14 A Correct. November 14th of 2018.

15 Q All right. He has now filed returns from 2009?

16 A You're asking me?

17 Q Yes.

18 A Yes, he filed 2009 with my office.

19 Q And he's now filed 2010?

20 A Yes. He filed 2010.

21 Q He's filed 2011?

22 A Yes, he filed 2011.

23 Q And he has filed 2012?

24 A Yes, he filed 2012.

25 Q Are you aware of other instances of -- had

1 Mr. Ellerbee been in touch with your office, with
2 your practice before November 2018?

3 A Yes. He was a client in 2005, and then there was a
4 gap. He hadn't been back until 2018.

5 Q Okay. Are you aware of other instances of this
6 similar situation happening with other employees of
7 Verizon?

8 A I am aware via the news.

9 MR. MYRICK: Objection. Relevance.

10 THE COURT: Relevance. Let me see you.

11 MS. MUBARAK: Yes, Your Honor. I believe the
12 issue could have been with Verizon as well as --

13 THE COURT: Let me see you all at the bench.
14 (WHEREUPON, a bench conference was held
15 in the presence of the jury but out of
16 the hearing of the jury.)

17 THE COURT: Objection is overruled.

18 BY MS. MUBARAK:

19 Q My apologies. Do you have other clients who work
20 at Verizon?

21 A I do.

22 Q Okay. Did you have other clients who had similar
23 irregularities?

24 A We have.

25 Q Okay. Thank you.

1 MS. MUBARAK: Nothing further.

2 THE COURT: All right. Yes, sir?

3 MR. MYRICK: Nothing, Your Honor.

4 THE COURT: All right. You may step down,
5 ma'am.

6 Any objection to this witness being excused?

7 MR. MYRICK: No, ma'am, none at all.

8 THE COURT: Thank you. You're free to leave.
9 (Witness steps down and is excused.)

10 THE COURT: Call your next witness.

11 MR. MYRICK: If I may, Your Honor? The State
12 calls Andy Blackwell.

13 (Witness approaches.)

14 THE CLERK: Place your left hand on the Bible,
15 and raise your right hand, please.

16 (Witness complies.)

17 THE CLERK: Do you solemnly swear or affirm
18 the testimony you are about to give in this case
19 will be the truth, the whole truth, and nothing but
20 the truth, so help you God?

21 THE WITNESS: I do.

22 THE CLERK: Please have a seat. State your
23 full name for the record.

24 THE WITNESS: Special Agent Andy Blackwell.

25 ANDY BLACKWELL,

1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. MYRICK:

4 Q How are you employed?

5 A I'm employed as a law enforcement officer with the
6 Department of the South Carolina Department of
7 Revenue.

8 Q How long have you worked in law enforcement?

9 A Approximately 30 years.

10 Q Would you tell the jury briefly about your law
11 enforcement career?

12 A Over my 30 years, I've worked at police
13 departments, sheriff's departments. My last 12
14 years has been spent at the Department of Revenue
15 as a special agent criminal investigator.

16 Q Did you go to school?

17 A I did.

18 Q Do you have a degree?

19 A A couple.

20 Q What are they?

21 A I have an associate's in criminal justice, a
22 bachelor's in accounting, and also I attended the
23 FBI National Academy.

24 Q Have you had training in conducting financial and
25 tax investigation?

1 A I have.

2 Q Such as?

3 A I've had classes in accounting. I've had classes
4 in taxation and investigative classes and tax
5 classes.

6 Q Can you tell the jury how this case started?

7 A This case started based on information from some
8 previous cases. We had information that there was
9 employees or individuals at Verizon that were not
10 having withholdings taken out of their paychecks.

11 Q Where did they work?

12 A They work at Verizon.

13 Q Which location?

14 A In Richland County.

15 Q Which location?

16 A Richland County, the Call Center in Richland
17 County.

18 Q The Call Center. So what did you do first?

19 A In this case, what I did first is I checked to see
20 if Mr. Ellerbee had actual withholding taken out.

21 Q And what did you find?

22 A That he had no withholding in several years and
23 very little withholding in a couple of years.

24 Q And what did you do next?

25 A Next, I checked to see if Mr. Ellerbee had filed

1 individual income tax returns.

2 Q What did you find?

3 A I found that he had filed individual income tax
4 returns for 2005, 2006, and 2007, and he had not
5 filed any since then. To kind of put this in
6 perspective, this investigation began in 2013.

7 Q Okay. So I'm going to hand you what's been marked
8 as State's Exhibit Number 4.

9 MR. MYRICK: If I might approach, Your Honor?
10 I'm going to hand him what's been marked as State's
11 4.

12 BY MR. MYRICK:

13 Q What is that?

14 A This is a South Carolina 1040A, individual income
15 tax return for the year 2007.

16 Q And?

17 A It's for Mr. Curnez Ellerbee.

18 Q Where did that come from?

19 A It came from the records maintained at the
20 Department of Revenue.

21 Q What did you find out when you looked at it?

22 A Found out this year that Mr. Ellerbee had income
23 enough to file individual income tax return. Also,
24 that he had --

25 MR. COMISH: Objection, Your Honor.

1 THE COURT: What's your objection?

2 MR. COMISH: He hasn't been qualified as an
3 expert. He can't offer an opinion as to filing
4 requirements. We don't have those filings
5 requirements in evidence yet.

6 THE COURT REPORTER: I'm sorry, I couldn't
7 hear you.

8 MR. COMISH: Excuse me. We don't have those
9 filing requirements in evidence yet, so we don't
10 know what he's basing his opinion off of.

11 THE COURT: All right. Objection is
12 sustained.

13 MR. MYRICK: I got no problem. He was just
14 answering, just talking.

15 BY MR. MYRICK:

16 Q What do you have there?

17 A Like I said, this is a South Carolina 1040A. It's
18 a 2007 individual income tax return for Mr. Curnez
19 Ellerbee.

20 Q Where did it come from?

21 A It came from the South Carolina Department of
22 Revenue records.

23 Q Is it accurate?

24 A Yes, sir. It also has -- the other part of this,
25 is has a W-2 attached.

1 Q It does?

2 A Yes, it does.

3 Q For who?

4 A For Mr. Ellerbee for 2007.

5 Q What does it say?

6 A On this W-2, it says that there are gross wages of
7 \$41,501, and it also says that there is no state
8 income tax withheld. It's got his social security
9 number, it's got his social security wages, no
10 federal tax withheld. And it's got social security
11 taxes withheld.

12 Q But that's an accurate copy from DOR records?

13 A It is.

14 Q Regarding Mr. Ellerbee?

15 A It is.

16 MR. MYRICK: We would move to enter Number 6.

17 THE COURT: Any objection?

18 MR. COMISH: None, Your Honor.

19 THE COURT: All right. It will be entered
20 without objection.

21 BY MR. MYRICK:

22 Q My bad. Number 4?

23 A Number 4.

24 MR. MYRICK: Excuse me, Ms. Court Reporter.

25 THE COURT: Number 4? Let him know -- let him

1 see it to make sure that we are talking about the
2 same thing.

3 MR. COMISH: No objection to Exhibit Number 4,
4 Your Honor.

5 THE COURT: Thank you.

6 (WHEREUPON, State's Exhibit No. 4 was
7 marked for identification and received
8 into evidence.)

9 BY MR. MYRICK:

10 Q Thank you. Did you mention another year?

11 A Another year that he --

12 Q That he had filed?

13 A Yes, sir. And in our records, he had filed in 2005
14 and 2006.

15 Q And did you look at DOR records regarding 2005 and
16 '6?

17 A Yes, sir.

18 Q What did you find?

19 A That he had filed and he had not paid. And that
20 there were -- they were eventually paid by liens
21 and garnishments.

22 Q You worked on this case from the beginning?

23 A I did.

24 Q Did you get warrants for Mr. Ellerbee?

25 A I did.

1 Q Is he here?

2 A He is.

3 Q Where is he? Would you identify him, please?

4 A He is sitting at the end of the Defense table.

5 Q You were in a meeting a couple of weeks ago?

6 A I was. You're referring to the meeting with
7 yourself and the Defense?

8 Q Just were you in a meeting?

9 A Yes, sir.

10 Q Did you leave the meeting?

11 A I did.

12 Q And what did you do when you left the meeting?

13 A I left the meeting and I checked to see if
14 Mr. Ellerbee had filed his 2008, '9, '10, '11, and
15 12 individual tax returns.

16 Q So what did you find out with respect to 2008?

17 A That he had filed that -- no, he had not filed
18 2008. Still had not been filed. There was no
19 record of that return ever being filed with the
20 South Carolina Department of Revenue.

21 Q Ever?

22 A Ever.

23 Q What about '9?

24 A 2009 had been filed on November 17th without
25 payment.

1 Q What about '10?

2 A 2010 had also been filed on November 17th with a
3 tax liability and no payment.

4 Q And is that the 2010?

5 A Yes, sir. This is the one that was filed with the
6 South Carolina Department of Revenue for 2010.

7 Q Who signed it?

8 A It has two signatures. It has Mr. Ellerbee and
9 also has Ms. Javis.

10 Q I'm going to hand you what's been marked as State's
11 Number 9. It's in evidence. It's the 2012 return.
12 Who signed it?

13 A The 2012 return was also signed by Mr. Ellerbee and
14 Ms. Javis.

15 Q I'm going to hand you what's been marked as State's
16 Number 8. It's the 2011 return. Who signed it?

17 A It was signed by Mr. Ellerbee and Ms. Javis.

18 Q So the Defendant signed all those?

19 A He did.

20 Q Was there a tax fee?

21 A There was.

22 Q How much?

23 A For 2010, according to these returns, the tax due
24 was \$3,153.

25 Q What about the other years, was there a tax due for

1 each of those?

2 A There was. 2012, says there was a tax due of \$131.

3 Q What about the other years?

4 A The other year, 2000 -- excuse me, 2010. The first
5 one was 2011. 2010 says there was a tax due
6 \$2,716.

7 Q Okay. What about the final year that he filed
8 late?

9 A I don't have that return in front of me.

10 Q I'm sorry. I'm going to hand you what's been
11 marked as State's Number 6. It's the 2009 return.

12 A Tax due of \$3,330. All this is according to these
13 returns he submitted.

14 Q Do those numbers look good to you?

15 A They're close.

16 MR. COMISH: Objection, Your Honor. He's
17 asking a non-expert to give an opinion.

18 BY MR. MYRICK:

19 Q Do you disagree with those numbers?

20 THE COURT: Hold on one second.

21 The objection is sustained. Please rephrase
22 the question.

23 MR. MYRICK: I might take a different tact,
24 Your Honor.

25 BY MR. MYRICK:

1 Q Is there a balance due on each of those years?

2 A Yes, sir.

3 Q Did you review to see whether or not it had been
4 paid?

5 MR. COMISH: Objection. He's leading the
6 witness.

7 THE WITNESS: Yes, sir.

8 THE COURT: Hold on one second.

9 BY MR. MYRICK:

10 Q What did you do next?

11 A Once I got the returns, saw that there was a
12 balance due, and there -- there's indications on
13 these returns, it's an NP beside the balance due.
14 That is an internal thing at Department of Revenue.
15 It is for non-payment when the returns are
16 submitted. Also checked the system and saw that no
17 payments had been submitted with these returns.

18 Q Thank you so much. Please answer any questions his
19 lawyers may have.

20 THE COURT: All right. Yes, sir?

21 MR. COMISH: May it please the Court, Your
22 Honor?

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25 BY MR. COMISH:

1 Q Good morning, Investigator Blackwell.

2 A Good morning.

3 Q A couple of questions. You indicated in your
4 testimony that you investigated other Verizon
5 employees, is that accurate?

6 A Yes.

7 Q How many Verizon employees did you investigate out
8 of the Columbia Call Center?

9 A You talking over what period of time?

10 Q That's an excellent question. Let's -- how many
11 different investigations did you do in that Call
12 Center?

13 A Investigated approximately -- in my career,
14 approximately 25.

15 Q Twenty-five. And are you aware of any other
16 investigations at any other Verizon Call Centers
17 throughout the state?

18 A Yes.

19 Q Which Call Centers?

20 A I believe investigations have been in the
21 Charleston Call Center and the Greenville Call
22 Center.

23 Q And were you personally involved in any of those
24 investigations?

25 A Yes, I was.

1 Q And how many individuals were investigated in those
2 Call Centers? To your knowledge? I know some of
3 these were quite a long time ago.

4 MR. MYRICK: Objection, Your Honor.

5 THE COURT: What's the objection?

6 MR. MYRICK: Relevance. It has nothing to do
7 with this case.

8 THE COURT: Objection is sustained.

9 BY MR. COMISH:

10 Q You may answer the question, sir.

11 A I want to say that I remember maybe four in
12 Charleston, two in Greenville.

13 Q Individual -- I'm sorry?

14 A Individuals.

15 Q Individuals?

16 A Uh-huh.

17 Q That you personally identified, that you personally
18 investigated?

19 A I believe so.

20 Q Are you aware of any other individuals that you
21 didn't investigate personally?

22 A I don't keep up with everybody else's
23 investigations.

24 Q Got you.

25 MR. COMISH: Beg the Court's indulgence.

1 (Pause.)

2 BY MR. COMISH:

3 Q And to your knowledge, did the Department of
4 Revenue ever conduct an investigation into Verizon?

5 A Into Verizon?

6 Q The company?

7 A To my knowledge, there was no criminal
8 investigation involving Verizon.

9 Q Are you aware of any other investigation into
10 Verizon?

11 A From whom?

12 Q From anybody in the Department of Revenue?

13 A Not to my knowledge.

14 Q Thank you, Investigator.

15 MR. COMISH: No further questions.

16 THE COURT: Yes, sir?

17 REDIRECT EXAMINATION

18 BY MR. MYRICK:

19 Q So you were at Verizon on more than one occasion?

20 A Yes, sir.

21 MR. COMISH: Objection.

22 THE COURT: What's the objection?

23 MR. COMISH: He's leading the witness again.

24 MR. MYRICK: I'm trying to move it along.

25 It's admissible under the rules.

1 THE COURT: I know.

2 MR. MYRICK: I'd like to get out of here
3 before Easter.

4 MR. COMISH: Objection, Your Honor.

5 THE COURT: Objection is sustained. Just ask
6 the question as the rules provide.

7 BY MR. MYRICK:

8 Q What information, if any, did you find indicating
9 wrongdoing on behalf of Verizon?

10 A There was -- we found no wrongdoing on behalf of
11 Verizon, you know, when we had a number of -- do
12 you want me to --

13 Q Thank you.

14 THE COURT: All right. You may step down.
15 (Witness steps down.)

16 THE COURT: Call your next witness.

17 MR. MYRICK: Your Honor, the State calls
18 Marshall Smith. We'd like to tender him as an
19 expert.

20 THE COURT: You've got to lay the foundation.
21 (Witness approaches.)

22 THE CLERK: Place your left hand on the Bible,
23 and raise your right hand, please.

24 (Witness complies.)

25 THE CLERK: Do you solemnly swear or affirm

1 the testimony you are about to give in this case
2 will be the truth, the whole truth, and nothing but
3 the truth, so help you God?

4 THE WITNESS: Yes, ma'am.

5 THE CLERK: Please have a seat. State your
6 full name for the record.

7 THE WITNESS: I'm Marshall Smith.

8 MARSHALL SMITH,
9 after being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MYRICK:

12 Q How are you currently employed?

13 A I'm employed as a Special Agent with the Criminal
14 Investigations Department of the South Carolina
15 Department of Revenue.

16 Q Did you go to college?

17 A Yes, sir.

18 Q Did you get a degree?

19 A I got a degree, a bachelor's degree in accounting.

20 Q When was that?

21 A 1986 -- excuse me, 1983.

22 Q Have you had any post-grad education?

23 A Yes. I attended a program that was put on --
24 hosted by the Internal Revenue Service with New
25 York University School of Law. It was a class

1 in -- graduate tax classes.

2 Q How many hours?

3 A Twelve semester hours.

4 Q When you graduated, what was your first job?

5 A I worked for a regional CPA firm.

6 Q And what was your title?

7 A Staff accountant.

8 Q How long did you work as an accountant there?

9 A Approximately a year -- two years.

10 Q What was your next job?

11 A Then I transferred or got a new job with another
12 CPA firm here in Columbia.

13 Q How long did you work there?

14 A About -- slightly less than a year.

15 Q What was your next job?

16 A Then I got a job as a field auditor with the
17 South -- then South Carolina Tax Commission, now
18 it's the South Carolina Department of Revenue.

19 Q And what year was that?

20 A That was in 1986. Late 1986.

21 Q How long have you worked for the Department of
22 Revenue?

23 A I'm in my 33rd year.

24 Q So in 1986, what was your title?

25 A I was a field auditor.

1 Q And what did you do as field auditor?

2 A I conducted field audits of various tax types, to
3 include income tax.

4 Q And what else did you do?

5 A I conducted audits of various other tax types,
6 sales and use, state and gift before that law was
7 repealed, and employee withholding.

8 Q Did you teach any?

9 A Yes. Beginning in about 1990, I was tasked with
10 teaching various courses to internal employees.

11 Q Such as?

12 A Such as field auditors of various experience
13 levels.

14 Q What did you teach them?

15 A I taught them individual income tax.

16 Q And what else?

17 A Later, as years progressed, I began teaching
18 courses in corporate income tax, partnership.

19 Q Did you teach through Clemson?

20 A Yes. The Clemson -- annually, the Clemson
21 University Extension Service offers classes for tax
22 professionals, CPAs, enrolled agents, tax
23 preparers, and certified financial planners, and
24 some attorneys. And the classes begin in November
25 and extend through November. And they're intended

1 to be certified -- excuse me, continuing
2 professional education. And I was representing the
3 Department of Revenue in teaching some of the --
4 they call them workshops, but teaching the
5 professional -- continuing professional ed.

6 Q And how long did you do that job?

7 A It was approximately ten years or more.

8 Q Did you get a new job in 2008?

9 A In 2008, a position was created, a field training
10 coordinator, which I was given. And my job was --
11 I was responsible for coordinating, for developing
12 curriculum, and actually teaching various tax
13 classes and tax training for field auditors. And,
14 oftentimes, some of the in-office department staff
15 attended as well.

16 Q Did you prepare materials for this?

17 A I prepared curriculum and materials, yes, for the
18 classes.

19 Q Did it include state income tax?

20 A It included state income tax, yes.

21 Q And over the course of that job, how many people
22 did you train?

23 A I think it's fair to say hundreds. Well, a hundred
24 or more.

25 Q And you did that job for how long?

1 A From 2008 through 2000 -- late 2015.

2 Q Have you ever testified in General Sessions or
3 Circuit Court before?

4 A Yes, I have.

5 Q Have you ever been qualified as an expert witness
6 before?

7 A Yes, I have.

8 Q In what cases?

9 A State vs. Middleton, State vs. Crawford, State vs.
10 Covington, State vs. Hellams, and I believe -- I'm
11 sorry, I cannot recall. I think that's it.

12 Q Have you ever testified in Administrative Law
13 Court?

14 A I have, yes.

15 Q As an expert?

16 A Yes, sir.

17 Q How many times have you been qualified as an expert
18 in state taxation?

19 A Five, six times.

20 MR. MYRICK: Your Honor, we would proffer
21 Marshall Smith as an expert in state taxation.

22 THE COURT: All right. Any voir dire? Any
23 voir dire for this witness?

24 MR. COMISH: None, Your Honor.

25 THE COURT: All right. Any objection?

1 MR. COMISH: I don't believe I do.

2 THE COURT: So there is no objection?

3 MR. COMISH: No objection.

4 THE COURT: He will be qualified as an expert
5 in --

6 What did you qualify him in?

7 MR. MYRICK: State taxation.

8 THE COURT: All right, ladies and gentlemen of
9 the jury, normally a person cannot give opinion
10 testimony. Normally when a person testifies, they
11 must testify as to what they either saw, heard,
12 sensed by smell, or something of that nature.
13 However, there is an exception when someone is
14 qualified because of education or experience, they
15 are permitted to give their opinion in certain
16 areas if the Court qualifies them that way.

17 This witness will be qualified as an expert in
18 the area of state taxation to give opinion
19 testimony in that area. That does not mean that
20 you must accept the opinion, but it is evidence for
21 you to consider in any way you see fit and give it
22 the weight and credibility you believe is
23 appropriate.

24 Thank you. You may continue.

25 MR. MYRICK: Thank you, Your Honor.

1 BY MR. MYRICK:

2 Q Have you reviewed the evidence in this case?

3 A Yes, sir, I have.

4 Q Have you reviewed Mr. Ellerbee's W-2s?

5 A Yes, I have.

6 Q I'm going to hand you --

7 MR. MYRICK: If I might approach the witness,
8 Your Honor?

9 Q -- what has been marked as State's Number 3. Did
10 you look at the withholding amounts?

11 A Yes, sir.

12 Q On those W-2s?

13 A Yes, sir.

14 Q Before we talk specifically about those, maybe you
15 could tell the jury, what is withholding?

16 A Withholding not only required by law, but
17 withholding is considered an advance payment
18 towards your ultimate tax liability. It's required
19 of employees. Employers are required to withhold
20 an amount from their employees' wages and then
21 periodically as required by statute to pay over
22 those monies to, in this case, the state treasury
23 on behalf of the employee.

24 Q So did that happen in this case?

25 A Only for years '11 and '12.

1 Q How much was withheld in '11?

2 A With respect to 2011, \$150. With respect to 2012,
3 \$227.

4 Q Well, for '11, how much did Mr. Ellerbee earn?

5 A For 2011, his state taxable wages were \$57,725.

6 Q And the next year?

7 A With respect to 2012, his state taxable wages were
8 \$51,291.

9 Q How is withholding determined?

10 A Withholding is determined on a few different
11 criteria, all provided by the employee. It's based
12 on the employee's married or -- married status and
13 the number of exemptions that the employee is
14 entitled to claim on his income tax return. And
15 that information is supplied to the employer by way
16 of a form W-4 or some substitute means such as
17 that.

18 Q Who completes the W-4 or the substitute?

19 A The employee is required to complete the form W-4.

20 Q Not the employer?

21 A Not the employer.

22 Q Let's talk about filing requirements for income tax
23 returns. Can you tell the jury some general
24 information about what they are?

25 A A taxpayer must file -- is obligated to file an

1 income tax return if his gross income is at least
2 equal to the sum of the federal standard
3 deduction -- applicable federal standard deduction
4 given the employee or the taxpayer's filing status
5 and personal exemption.

6 MR. COMISH: Your Honor, may we approach
7 briefly?

8 THE COURT: Yes, sir.

9 (WHEREUPON, a bench conference was held
10 in the presence of the jury but out of
11 the hearing of the jury.)

12 BY MR. MYRICK:

13 Q Mr. Smith, you just mentioned a federal
14 requirement.

15 A Yes.

16 Q Have you been educated in the federal requirements
17 for filing in tax systems?

18 A Yes.

19 Q And training?

20 A Yes.

21 MR. MYRICK: Okay. Your Honor, we move that
22 he be also admitted as an expert in federal
23 taxation.

24 THE COURT: All right. Any objection?

25 MR. COMISH: None, Your Honor.

1 THE COURT: All right. Ladies and gentlemen
2 of the jury, he is also qualified to give opinion
3 testimony in the area of federal taxation.

4 You may continue.

5 MR. MYRICK: Thank you, Your Honor.

6 BY MR. MYRICK:

7 Q So in 2008, would you look at that W-2?

8 A Yes.

9 Q Was there a filing requirement?

10 A Yes.

11 Q In 2009, was there a filing requirement?

12 A Yes, sir.

13 Q In 2010, was there a filing requirement?

14 A Yes.

15 Q In 2011, was there a filing requirement?

16 A Yes.

17 Q In 2012, was there a filing requirement?

18 A Yes.

19 Q When is someone supposed to file their tax returns?

20 A Tax returns must be filed by -- excuse me, on or
21 before the 15th day of the fourth month following
22 the close of the tax year. Said another way,
23 April the 15th.

24 Q I'm going to hand you what is in evidence as
25 State's Number 6. What is that?

1 A This is the Defendant's 2009 form S.C. 1040.

2 Q When was it due?

3 A This return was due April 15, 2010.

4 Q When was it filed?

5 A It was filed November 16 -- it's signed by the
6 Defendant November 16 -- please excuse me. It was
7 filed November 17, 2018.

8 Q I'm going to hand you what's been marked as
9 Exhibit 7. What is it?

10 A This is the Defendant's 2010 form S.C. 1040.

11 Q When was it filed?

12 MR. COMISH: Objection, Your Honor. We've
13 already had that testified to twice. We don't need
14 it a third time.

15 THE COURT: Objection is overruled.

16 BY MR. MYRICK:

17 Q When was it filed?

18 A November of 2018.

19 Q Was it timely?

20 A No, sir.

21 Q I'm going to hand you the 2012 income tax return.
22 When was it filed?

23 A November of 2018.

24 Q Was it timely?

25 A No.

1 Q And the same with the '11 return?

2 A This too was filed November of 2018.

3 Q Was it timely?

4 A No.

5 Q Was there a tax due for each of those years?

6 MR. COMISH: Objection, Your Honor.

7 THE COURT: What's the objection?

8 MR. COMISH: He is eliciting the exact same
9 testimony the prior witness gave.

10 THE COURT: Objection is overruled.

11 BY THE WITNESS:

12 A Yes, there is a balance due on each of the returns.

13 Q Did you look for an '08 return? Did you see an '08
14 return?

15 A I do not find an '08 return, a 2008 tax return in
16 State's Exhibit 6, 7, 9, and 8.

17 Q Going back to withholding briefly, is there a
18 category of persons that are exempt from
19 withholding?

20 A There is a very limited category of persons that
21 are qualified as being exempt from employee
22 withholding.

23 Q And who would fit?

24 A Persons who attest to the fact that they did not
25 have a liability in the previous year and do not

1 reasonably expect to have a liability in the
2 current year.

3 Q Can a withholding requirement for a form W-4 be
4 satisfied electronically?

5 A Yes.

6 Q Have you seen this before?

7 A I have, yes.

8 Q I'm going to hand you what's been marked as State's
9 1. Have you seen that before?

10 A Yes, I have.

11 Q There's a box at the top, or near the top, maybe
12 the middle of the page. What is that?

13 A Special withholding tax status. In that field with
14 respect to this being submitted or the effective
15 date of 2/16/2009, the following text appears,
16 Maintain taxable gross.

17 Q What does that mean to you?

18 A That means that no withholding is --

19 MR. COMISH: Objection, Your Honor.

20 THE COURT: What's the objection?

21 MR. COMISH: He's not a Verizon employee.
22 He's not competent to offer an opinion as to
23 Verizon internal documents as it relates to the
24 payroll function. He's only an expert in the state
25 and federal tax law. We need someone from Verizon

1 to testify to what those mean in those particular
2 parlance used by the employees of Verizon.

3 THE COURT: All right. Objection is
4 sustained.

5 Can you rephrase the question?

6 MR. MYRICK: I'm going to try.

7 THE COURT: All right.

8 BY MR. MYRICK:

9 Q Are you familiar with third-party vendor software?

10 A I've seen examples of it many times over the years.

11 Q Have you learned about it?

12 A Yes.

13 Q How it works?

14 A Uh-huh. Yes.

15 Q You understand it?

16 A Yes, sir.

17 Q Do you have an opinion as to what maintain taxable
18 gross is based on your knowledge and understanding
19 of third-party W-4 vendor software?

20 MR. COMISH: Objection, Your Honor. He's not
21 an expert in that. He's not an expert in
22 third-party vendor software in general and
23 certainly not in the particular third-party vendor
24 software. We're not even sure this is third-party
25 vendor software. There is Verizon software.

1 THE COURT: Objection sustained.

2 BY MR. MYRICK:

3 Q What about claiming exempt? What does that have to
4 do with withholding?

5 A As the term suggests, the employee claims,
6 maintains, certifies, attests to the employer that
7 he is exempt from employee withholding. So in that
8 case, that would be zero withholding.

9 Q Isn't that what you see on the last three pages of
10 that piece of evidence?

11 A Yes.

12 Q Thank you. Please answer any questions Mr. Comish
13 has.

14 THE COURT: Yes, sir?

15 MR. COMISH: Thank you, Your Honor. May it
16 please the Court? May I approach the witness, Your
17 Honor?

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. COMISH:

21 Q Investigator Smith, I'm holding up what has been
22 marked as State's Exhibit Number 1. The very first
23 page of that, what does that text box say?

24 A Which text box?

25 Q Excuse me, the one that I'm pointing to right

1 there, sir?

2 A Tax marital status, single.

3 Q And that's the same text box that you referred to
4 in the last question the State asked you, is it
5 not?

6 A No.

7 Q It's not the exact same text box?

8 A It is the exact same text box, but there is a
9 different text.

10 Q Thank you, sir. There is a different text. I'm
11 handing you a different sheet. What does the text
12 box say on that sheet, sir?

13 A Tax marital status, single.

14 Q Thank you, sir. So you've been qualified as an
15 expert in South Carolina taxes and federal taxes,
16 correct?

17 A Uh-huh.

18 Q Let me ask you a simple question to start with.
19 How long is the South Carolina tax code? How many
20 pages is it?

21 A With respect to income tax, it's for approximately
22 100 pages.

23 Q And just the whole thing, do you know?

24 A The sum of Title 12, which is all taxation, state
25 taxation, is several hundred pages.

1 Q Several hundred pages. And you're aware of South
2 Carolina Code 12-8-520?

3 A Yes, sir.

4 Q Do you recall that code or do I need to refresh
5 your memory?

6 A I can paraphrase it.

7 Q Would you paraphrase that for me, please?

8 A 12-8-520 comes from Chapter 8, which is the
9 withholding provisions of Title 12 of South
10 Carolina Code, and it maintains that employers are
11 required to withhold income tax -- South Carolina
12 income tax from employees' wages for remuneration.

13 Q So the employer is required to withhold those
14 income taxes, specifically the employer, is that a
15 fair assessment?

16 A That's how the statute reads.

17 Q Thank you, sir. And are you aware of S.C. Code
18 12-8-2010?

19 A 2010?

20 Q Yes, sir.

21 A That one you'll have to show me.

22 Q Yes, sir, I'll hand that up to you to refresh your
23 recollection.

24 A Yes.

25 Q And could you paraphrase that in simple terms for

1 me?

2 A This is Section 12-8-2010. It comes again from the
3 withholding provisions of the South Carolina Code.
4 And it imposes upon a -- it designates liability of
5 a withholding agent. It imposes upon a withholding
6 agent then duty to remit taxes that have been
7 withheld.

8 Q What happens if they don't remit those taxes?

9 A They can be held personally liable under statute
10 that we call the responsible party.

11 Q And in this case, Verizon is the withholding agent,
12 is it not?

13 A In this case, it would appear that Verizon is the
14 withholding agent.

15 Q Thank you, sir. So in other words, Verizon itself
16 is potentially liable for these withholding errors?

17 A That statute maintains that Verizon in the incident
18 matter would be responsible for remitting any tax
19 that was withheld from the employee's wages.

20 Q And combining that with 2010, which you testified
21 said that the liability for the taxes might fall to
22 the withholding agent, correct?

23 A And that statute refers to monies that have been
24 withheld and that have not been remitted. And in
25 that instant matter, then, yes, Verizon would be

1 responsible for remitting the tax. And if they
2 failed to, then, yes --

3 Q I'm sorry, sir, let me stop right there. Could you
4 please read 2010, Subsection (A). And you know
5 what, I'll read that.

6 THE COURT: All right, we are going to ask
7 questions and let him finish answering, and then
8 move on to the next question.

9 MR. COMISH: Yes, ma'am.

10 THE COURT: Yes, sir.

11 BY MR. COMISH:

12 Q Please continue.

13 THE COURT: Did you finish?

14 THE WITNESS: I finished, uh-huh.

15 BY MR. COMISH:

16 Q 12-8-2010, Subsection (A), a withholding agent who
17 fails to withhold or pay the department amount
18 required by the statute is personally individually
19 liable for the amount of tax not withheld to pay.

20 Sir, in that -- in your opinion, that means
21 that they're responsible for taxes not withheld?

22 A That would mean -- yes, taxes not withheld contrary
23 to the employee's requirement -- W-4 information.

24 Q Contrary to the employee's W-4 information. That's
25 not in here, is it?

1 A It's not.

2 Q Thank you, sir. You're aware that taxpayers have
3 certain rights in the State of South Carolina?

4 A Yes.

5 Q Among those rights is a right to receive notice of
6 any tax deficiencies?

7 A Yes.

8 Q Thank you, sir. Were you personally involved in
9 this investigation?

10 A No, sir.

11 Q Okay. Have you reviewed the files of the
12 investigation?

13 A I have.

14 Q Amongst those files, did you see any notices of tax
15 deficiencies?

16 A I did not.

17 Q Thank you, sir.

18 MR. COMISH: I beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 (Pause.)

21 BY MR. COMISH:

22 Q One final set of questions, sir. You're familiar
23 with record-keeping requirements promulgated by the
24 Internal Revenue Service?

25 A Yes.

1 Q I'm referring here specifically to requirements
2 laid out in Publication 15 --

3 A Uh-huh.

4 Q -- of the Internal Revenue Service?

5 A (Nods affirmatively.)

6 Q How long do employers have to keep all tax records,
7 including W-4s?

8 A I can't tell you specifically. It's four -- at
9 least four years, I believe.

10 Q Yes, sir. Here. May I hand this to you? Sir, I
11 believe the number you're looking for is right
12 there.

13 A Reading from Page 6 of the publication referred to
14 or identified as Internal Revenue Publication
15 Number 15, it reads that -- under the heading of
16 record-keeping: Keep all records of employment
17 taxes for at least four years.

18 Q And that includes W-4s? If you would flip to the
19 next page.

20 A That's right. Reading now from Page 7 of the same
21 publication, one of the bullet points is, Copies of
22 employee's and recipient's income tax withholding
23 allowance certificate, parentheses, Forms W-4,
24 W-4P, W-4SP, W-4S and W-4vs.

25 Q Thank you, sir.

1 MR. COMISH: No further questions. Thank you.

2 THE COURT: Redirect?

3 MR. MYRICK: Thank you, Your Honor. It will
4 be brief, I think.

5 REDIRECT EXAMINATION

6 BY MR. MYRICK:

7 Q Mr. Smith, withholding amounts for all employees
8 everywhere are determined exactly how?

9 A The Department of Revenue publishes tables or for
10 those that use computer algorithms, algorithms that
11 calculate the estimated -- the withholding based on
12 --

13 MR. COMISH: Objection, Your Honor.

14 THE COURT: Specifically?

15 MR. COMISH: The scope of redirect is limited
16 to cross, and this is not anything we had in cross.

17 THE COURT: What was your question again?

18 MR. MYRICK: I think it is. He was asking all
19 about W-4s and withholding.

20 MR. COMISH: I didn't ask him about
21 record-keeping requirements per the employer.

22 MR. MYRICK: No, he asked him about 12-8-520.

23 THE COURT: Objection is overruled.

24 MR. MYRICK: Which is withholding.

25 MR. COMISH: Well, that was --

1 THE COURT: Objection is overruled.

2 BY MR. MYRICK:

3 Q I lost my place. Can I ask you something else?

4 Does an employer determine the withholding amount?

5 A No.

6 Q Who does?

7 A The Department of Revenue publishes tables based on
8 the number of the employee's filing status or
9 marital status and the number of exemptions they
10 claim. The tables dictate how much -- and, of
11 course, the frequency of the pay periods -- the
12 tables dictate how much should be withheld.

13 Q Do employers take their employees' word for it?

14 A Yes, except for certain circumstances.

15 Q Thank you.

16 THE COURT: All right, sir, you may step down.

17 MR. MYRICK: I'm sorry, Your Honor. May I ask
18 him one more question?

19 THE COURT: Yes, sir.

20 BY MR. MYRICK:

21 Q The Taxpayer Bill of Rights, that applies to civil
22 disputes?

23 A Yes.

24 Q Thank you.

25 THE COURT: All right, you may step down, sir.

1 (Witness steps down.)

2 THE COURT: All right. Call your next
3 witness.

4 MR. MYRICK: Your Honor, the State rests.

5 THE COURT: All right. Ladies and gentlemen
6 of the jury, there is a matter of law that I need
7 to take up outside of your presence. And so,
8 therefore, we will go ahead and take our morning
9 break.

10 Please remember the State has rested, but you
11 have not heard the arguments of the parties and
12 charge on the law. And so at this time it will be
13 improper for you to have any pre-deliberation. So
14 I will go ahead and send you back into the jury
15 room and we'll bring you back out in maybe about 10
16 or 15 minutes.

17 Okay, thank you.

18 (WHEREUPON, the jury retires to the jury
19 room at 10:44 a.m.)

20 THE COURT: I'll be glad to hear from anybody
21 on any motions.

22 MR. COMISH: Your Honor, the Defense has a
23 directed verdict motion. I apologize, I was not
24 expecting the State to rest so quickly. Can I run
25 to my office to get the paperwork for the directed

1 verdict motion?

2 THE COURT: Sure. I was going to take our
3 break after we heard the motion, but we'll do it in
4 the reverse. So we will take our break. Let's
5 take about five or ten minutes, and then come back
6 and I'll hear the motion.

7 MR. COMISH: Thank you, Your Honor.

8 (WHEREUPON, a recess was taken at 10:45
9 a.m.)

10 (WHEREUPON, the proceedings resumed at
11 11:06 a.m.)

12 THE COURT: I'll be glad to hear any motions
13 at this time.

14 Yes, sir?

15 MR. COMISH: May it please the Court, Your
16 Honor?

17 THE COURT: Yes, sir.

18 MR. COMISH: We have two motions. We are
19 going to sort of go through previous objections and
20 motions just to preserve the record, Your Honor.
21 And then we'll be going into an in-depth directed
22 verdict motion. So I'll do the housekeeping
23 motions first.

24 Your Honor, we're renewing all prior
25 objections and motions, including, but not limited

1 to, the equal protection and due process arguments
2 relating to the manner in which Mr. Myrick extended
3 plea offers. That was one of our pretrial motions.
4 The jury investigation irregularities conducted by
5 the agents of the Department of Revenue at the
6 direction of Mr. Myrick. And, Your Honor, I'm
7 sorry, did you want to pause and rule on these
8 individually or just want me to do them all at
9 once?

10 THE COURT: No, we're not going to reargue
11 them.

12 MR. COMISH: Of course, I was just listing
13 them, Your Honor.

14 THE COURT: And, really, you don't have to do
15 it. You just say I preserve all my previous
16 motions for the record. But go ahead and do it.

17 MR. COMISH: Yes. I'm almost done.

18 THE COURT: Yes.

19 MR. COMISH: Our Brady, Riddle, and Rule 5
20 concerns, our objections relating to the testimony
21 about the screenshots from Verizon, and our
22 mistrial request and belief that the curative
23 instruction was insufficient to cure the taint to
24 the jury by saying Mr. Myrick's misrepresentation
25 the way he believed that was unintentional of the

1 title of the document as a W-4. All those motions
2 and objections. That concludes my list, Your
3 Honor.

4 THE COURT: All right. Your objections are
5 noted for the record. The rulings remain the same.

6 MR. COMISH: Yes, ma'am. And if I may
7 approach, Your Honor?

8 THE COURT: Yes, sir.

9 MR. COMISH: Relevant case law and statutes as
10 relates to my directed verdict argument.

11 THE COURT: Yes, sir.

12 MR. COMISH: And, Your Honor, just a little
13 bit of history before I get into the motion as to
14 why this isn't your standard directed verdict
15 motion. And I will state it this way. I believe
16 Mr. Myrick probably already alluded to this, Your
17 Honor. All these charges came about in 2015. They
18 were charges from identically situated folks all
19 around the state, one of whom was represented and
20 still is by the Strom Law Firm. The Strom Law Firm
21 made a motion to dismiss the felony indictment in a
22 pretrial motion under statutory construction
23 grounds. The circuit court judge granted that
24 motion. The State appealed. And that appeal
25 process was about two years. About two years it

1 was held up in the Court of Appeals.

2 The Court of Appeals overruled the judge on
3 purely procedural grounds that a circuit court
4 judge has no authority to dismiss a facially valid
5 indictment prior to trial. So it didn't reach any
6 of the substantive issues in the arguments, a
7 narrow ruling on procedural grounds.

8 So here we are, Your Honor, rehashing the same
9 arguments that a circuit court judge has already
10 ruled on at what we believe, and I believe the
11 State will agree, is the proper procedural phase of
12 the trial.

13 With all that out of the way, let me get into
14 the meat of this. The issue here, Your Honor, is
15 that Mr. Curnez Ellerbee is charged with a felony,
16 tax evasion. The elements of those, according to
17 the State, are willfulness, tax deficiency, and
18 affirmative act to avoid that tax. We get those
19 elements from an old Supreme Court case that I have
20 handed up to Your Honor. I believe it is Spies, if
21 I'm not mistaken. Yes, ma'am. Sorry, I gave you
22 Sansone. It is on another -- a similar case. The
23 elements are laid out on Page 3 of that case. So
24 he's charged with felony tax evasion that a federal
25 court laid the elements out for relating to a very

1 similar federal statute.

2 He also charged Mr. Ellerbee with a
3 misdemeanor of tax evasion. That's laid out in
4 S.C. Code, and I forget the code number. That's
5 Subsection (3) of the code that deals with all
6 these tax crimes. So a felony is Subsection (A),
7 there's a misdemeanor in Subsection (3). There's
8 also a misdemeanor in Subsection (5) for filing a
9 false W-4.

10 And the State's argument is, essentially, that
11 misdemeanor plus misdemeanor equals a felony. You
12 don't file your taxes, you submit a false W-4, and
13 the State can charge you with a felony of tax
14 evasion.

15 And the State's going to say, Look, the
16 federal courts have ruled on this about similar
17 federal statutes. And that's true in the federal
18 world, but we're here in the state world. There's
19 been no state ruling on these statutes on how our
20 legislature intended them to be read. There's no
21 ruling on any of this by any courts. The statutes
22 are the same. There's no specific elements to the
23 felony charge. And what we have here is two
24 misdemeanors that specifically describe the State's
25 allegation. And you can see that in the felony

1 indictment, Your Honor, that the felony indictment,
2 specifically, he did not file, submitted a false
3 tax return.

4 The principles of statutory construction as
5 laid forth in federal and state cases, the basic
6 principle of statutory construction is that when
7 two statutes are in conflict, a specific statute
8 closely applicable to the substance of the
9 controversy at hand controls over a more
10 generalized provision.

11 In this case, felony, he evaded a tax.
12 Misdemeanor, he didn't file a tax return.
13 Misdemeanor, he submitted a false W-4.

14 So you can see that there's a conflict in that
15 the same behavior fits into the misdemeanors and it
16 fits into the felony. And those statutes have
17 different prescriptions as to what the result or
18 consequence of that behavior should be.

19 And this is very similar to, I believe,
20 Pressley vs. Tupperware, where there is an argument
21 over which statute of limitations. The same
22 situation fits under a 1-year statute of
23 limitations and a 3-year statute of limitations.
24 So it's very analogous to that civil case.

25 And what we have is an old statute saying do

1 one thing and very specific statutes that
2 specifically describe to a tee the allegations made
3 by the State saying do something different. So
4 there's a conflict between those statutes. When
5 that conflict arises, statutory construction says
6 go with the specific statutes.

7 Now, again, the State is going to make that
8 argument misdemeanor plus misdemeanor arises to the
9 felony. They're getting that argument from federal
10 case law about federal laws. That case law has
11 zero precedential value here.

12 The rule is from State vs. Morgan, the
13 legislature's intent should be ascertained
14 primarily from the plain language of the statute.
15 Plain language of this statute does not say
16 misdemeanor plus misdemeanor equals felony.

17 And I draw your attention, Your Honor, to a
18 similar statute, assault and battery in the first
19 degree. This is a statute where the State
20 specifically said a misdemeanor plus a misdemeanor
21 equals a felony. And I printed that out with the
22 elements for Your Honor.

23 An assault and battery in the first degree
24 occurs when a person unlawfully injures another
25 person. That's your assault and battery in the

1 third degree. That's a misdemeanor. And the act
2 occurred during the commission of a robbery,
3 burglary, kidnapping, or theft. That's your
4 misdemeanor.

5 And, Your Honor, we see these cases all the
6 time in our shoplifting cases. Like they brush
7 past the loss prevention officer and your simple
8 misdemeanor shoplifting through that assault and
9 battery in the third degree has turned into an
10 assault and battery in first degree.

11 You also see that in the strong arm robbery
12 statute, Your Honor. A theft accomplished by
13 force, a larceny, misdemeanor, plus assault and
14 battery in the third degree, misdemeanor equals a
15 felony.

16 So it's clear from the criminal code in our
17 state, Your Honor, that when the legislature
18 intends to combine misdemeanors to create a felony,
19 they explicitly say so.

20 Here in our tax code, they made a purposeful
21 election to not do that. And I would point Your
22 Honor also to dicta in one of these federal cases.

23 Also, in *Spies vs. U.S.* on Page 3, the
24 Government argues that this construction,
25 contending that the milder punishment of a

1 misdemeanor and the benefits of a short statute of
2 limitation should not be extended to violators of
3 income tax laws, such as political grafters,
4 gamblers, racketeers, and gangsters.

5 Federal prosecutors said, Hey, these charges
6 are really about big crimes. This isn't a big
7 crime. This isn't a big fish. This is a small
8 fry. The misdemeanors are appropriate. The case
9 law is with me on this. Any case law of any
10 precedential value agrees with me, as does a
11 circuit court judge confronted with substantially
12 identical facts.

13 For those reasons, Your Honor, I move that you
14 dismiss the felony and allow the misdemeanors to be
15 presented to the jury.

16 THE COURT: All right. Yes, sir? Go ahead.

17 MR. MYRICK: I'm puzzled, Your Honor. Has he
18 bifurcated his directed verdict motion, or is that
19 it? There's no element of your motion with respect
20 to the evidence thus far.

21 MR. COMISH: Excuse me, Your Honor, that is
22 correct. Also, the State never gave us W-4s, so
23 they're missing an essential element of their
24 charge, so you could also find --

25 MR. MYRICK: May I approach, Your Honor?

1 THE COURT: Hold on. Let him --

2 MR. COMISH: You asked me to speak, now I'm
3 speaking.

4 MR. MYRICK: I'm sorry.

5 MR. COMISH: But I thank you for reminding me
6 of that, Mr. Myrick. We still don't have the W-4s.
7 We have no specific evidence of intent. Nothing
8 produced by my client.

9 Through the State's testimony, we have
10 writings of other people purportedly based on
11 something my client said, but no evidence that that
12 was the case.

13 So, Your Honor, there's also a motion -- but,
14 again, I must thank Mr. Myrick reminding me of
15 it -- that the State is missing an element in its
16 indictment. And I would point you specifically to
17 the indictment saying that there's a W-4. We don't
18 have a W-4.

19 So regardless of my motion that's already been
20 ruled on by a circuit court judge saying they can't
21 proceed on a felony, they have failed to prove the
22 essential elements of the felony. So you have two
23 ways to rule in my favor on this, Your Honor. A
24 W-4 or a substitute W-4 form.

25 THE COURT: Yes, sir.

1 MR. MYRICK: May I approach, Your Honor? You
2 have probably got it up, but this way, you're
3 looking at the same piece as I.

4 That (B)(1) is how he's charged for tax
5 evasion. In the very first sentence, it says a
6 person who willfully attempts in any manner. So
7 what the statute is contemplating is that there's a
8 zillion different ways to engage in tax evasion.
9 You can file false returns, you could hide your
10 income. You could do a zillion things. So (B)(1),
11 which is evasion, which is the most serious tax
12 crime, contemplates a variety of ways someone could
13 break the law and engage in tax evasion.

14 In the Spies case, which Mr. Comish cited, and
15 which I think he handed up, on Page 367 of the
16 original opinion, it says: A felony may and
17 frequently does include lesser offenses in
18 combination either with each other or with other
19 elements. We think it clear that this felony may
20 include one or several of the other offenses
21 against the revenue office.

22 So you can combine them in very different ways
23 and still end up with evasion when what we started
24 off with was something entirely different.

25 I've got a case, Your Honor, State vs. Hall.

1 If I might approach, Your Honor. And State vs.
2 Hall says -- and this is from our courts. When a
3 single act combines the requisite ingredients of
4 two distinct offenses, the Defendant may be
5 severally indicted and punished for each.

6 And also we've got State vs. Grant, State vs.
7 Moyd, State vs. Steadman, and a number of important
8 cases that I have inadvertently dropped. But it's
9 evasion, Your Honor. It's evasion. It's clearly
10 evasion.

11 And with respect to my evasion indictments, as
12 Your Honor looks, they don't say anything about
13 W-4s. What they say is Curnez Ellerbee made false
14 statements with respect to the withholding of state
15 income tax.

16 So, having said all that, Your Honor, unless
17 you have a specific question, the charges are
18 appropriate. They're within the authority of the
19 Attorney General. Under U.S. Supreme Court law,
20 which I would like to point out briefly, if I may
21 approach one more time, Your Honor?

22 THE COURT: All right.

23 MR. MYRICK: This is the -- that's a federal
24 statute. If you look, all it does is mirror the
25 state statute. It is doggone close to being

1 verbatim. And we're not in federal court, nobody
2 is saying we are. But the federal courts have
3 looked at this identical statute and their
4 reasoning always comes out the same.

5 I've got a case, Your Honor. It's a Seventh
6 Circuit case. It is U.S. vs. Foster. And if I
7 might approach and hand it up, Your Honor. What
8 its says -- U.S. vs. Foster, 789 F.2d 457. We can
9 dig into the opinion, but I don't know if we need
10 to. If you look at the top headnote on the left it
11 says, Willfully attempting to evade and willfully
12 failing to file are separate offenses. And it's
13 hard to argue with the logic. You know, those bank
14 robbers last week rolled into the bank in Forest
15 Acres. And in the paper the next day -- they
16 caught the woman, they shot her and they caught
17 her. What she had done, and there's not a whole
18 lot of dispute, is she walked into a bank with a
19 gun. She was charged with possession of a stolen
20 weapon, you know, possession of a weapon during the
21 commission of a violent crime. And my guess is, if
22 she had been a felon, she also would have been
23 charged with a felon in possession of a weapon.
24 You know, one act can easily violate several
25 offenses. It's typical. We see it all the time.

1 I have got a host, Your Honor, of federal
2 cases out of the circuit court that say
3 universally -- and they are Copeland, King,
4 Williams, Connor, and Willis. And I have got
5 copies if you would like to see them. They all say
6 that what Mr. Ellerbee did, which is monkeying with
7 your withholding and then not filing so that you
8 never pay your taxes, constitutes evasion.

9 And the case I just handed you says, not only
10 does it constitute evasion, it doesn't matter that
11 it includes failure to file as an element of
12 evasion because they are two different crimes.

13 So unless Your Honor has any specific
14 questions, I think I covered it. Oh, one last
15 thing, Your Honor. I've heard this for years.
16 I've heard it out of the Strom Law Firm in the
17 Hughes case, and we just heard it from Mr. Comish,
18 that there is a conflict of laws. There's no
19 conflict.

20 And they cite two civil cases regarding the
21 statutes of limitations, where in the Pressley
22 case, in the Tupperware case, either a 6-year
23 statute of limitations applies or a 3-year applies.
24 Whichever one applies is dispositive, could the
25 case go forward or can it not go forward.

1 They are so far afield of the facts and
2 circumstances we have here. They are wholly
3 inapplicable. Their civil case is about statutes
4 of limitations. I don't know why they keep banging
5 this drum over and over again.

6 But we are ready to go forward. We think
7 these cases are proper. There is evidence for
8 every element of every charge.

9 Thank you, Your Honor.

10 THE COURT: All right. I have taken a look at
11 the statute. Based on what I have before me in
12 considering the Defendant's argument regarding if
13 the two offenses are separate, this Court finds
14 that the willfully attempting to -- the indictment
15 for willfully attempting to evade income taxes and
16 willfully -- failure to file income tax returns are
17 separate offenses as outlined in the statute. For
18 those reasons, I am going to respectfully deny
19 the -- I say evasion of tax, evasion of tax or tax
20 evasion and failure to file tax returns are
21 separate. For those reasons, I am going to
22 respectfully deny the Defendant's motion as to that
23 argument.

24 As stated, the federal courts have been pretty
25 clear that they are two separate offenses. We are

1 not in federal court, I understand. And state
2 court is pretty much silent on that issue, or did
3 not discuss that issue in State vs. Hughes. But
4 based on my reading of the statute, this Court does
5 find that they are separate offenses. And for that
6 reason, the motion is denied.

7 As to the issue as to sufficient facts to go
8 before the jury, the motion for directed verdict,
9 this Court finds that there is testimony in the
10 record that creates a question of fact regarding
11 the tax evasion question. There's testimony from
12 particularly Investigator Marshall Smith, witness
13 Kadenia Jarvis, and also testimony of Senior HR
14 Manager from Verizon, Stacey Young, which rises to
15 the level of -- for sufficient evidence in the
16 record to send the case to the jury for the jury to
17 decide the issue of fact as to whether or not the
18 Defendant willfully evaded individual income tax --
19 or individual state income tax.

20 All right? All right. So I am putting all
21 this up.

22 All right, now we are at the point in the
23 trial where at this time I need to go over Mr.
24 Ellerbee's rights with him regarding testifying and
25 presenting any evidence. So if could you ask him

1 to please stand.

2 And, Madam Clerk, if you can swear him in.

3 (Defendant stands.)

4 THE CLERK: Raise your right hand.

5 (Defendant complies.)

6 THE CLERK: Do you swear or affirm that the
7 testimony you're about to give is the truth, the
8 whole truth, and nothing but the truth, so help you
9 God?

10 THE DEFENDANT: Yes.

11 THE COURT: You can remain standing,
12 Mr. Ellerbee.

13 At this time we are at the point in this case
14 where you have heard the State has rested. At this
15 time I am going to explain to you certain of your
16 rights. If you do not understand anything I say,
17 please let me know. If you want me to explain
18 anything in more detail, please let me know. Do
19 you understand, sir?

20 THE DEFENDANT: Yes.

21 THE COURT: We have reached the stage of the
22 trial where you may present your defense. You have
23 the right to claim protections given to you by the
24 Fifth Amendment to the Constitution of the United
25 States. This amendment states in part: No person

1 shall be compelled in any criminal case to be a
2 witness against himself. This means that you
3 cannot be required to testify in this case. You
4 have the right to testify on your own behalf;
5 however, no one can make you testify. This is a
6 personal right, and no one can waive the right
7 except for you.

8 If you decide to testify, you will be subject
9 to the same rules that govern other witnesses and
10 you may be examined and cross-examined on any
11 relevant issue in this case.

12 In addition, if you have any convictions
13 involving dishonesty or false statements or for
14 crimes punishable by imprisonment for more than one
15 year and this Court determines that the probative
16 value of admitting this evidence outweighs its
17 prejudicial effect to you, the Attorney General
18 will be able to introduce your record to attack
19 your credibility.

20 If you decide to testify, the decision on your
21 part must be free and voluntarily and intelligently
22 made with the knowledge of the protections given to
23 you by the Fifth Amendment and the consequences of
24 your decision to testify.

25 If you decide not to testify, I will instruct

1 the jurors that they cannot give the fact that you
2 did not testify any consideration whatsoever and
3 that there is to be absolutely no prejudice to you
4 because you did not testify. It is left entirely
5 up to you whether or not you testify. You may talk
6 with your attorney, your family, your friends, or
7 anyone else, but the final decision will be left
8 entirely up to you.

9 Do you understand what I just explained to
10 you, sir?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And do you have any questions
13 about what I have explained to you?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: Have you discussed with your
16 lawyers whether you should or should not testify,
17 or do you need time to discuss that with your
18 attorneys?

19 THE DEFENDANT: I do not want to testify.

20 THE COURT: All right. Do y'all need time to
21 talk to him about it? I mean, now that I've given
22 him his rights?

23 MR. COMISH: We don't need any extra time,
24 Your Honor.

25 THE COURT: All right. And does he wish to

1 testify or not?

2 MR. COMISH: He does not, Your Honor.

3 THE COURT: All right. Thank you, sir. I
4 will instruct the jurors that they cannot hold that
5 fact against you.

6 Thank you. You may be seated.

7 (Defendant seated.)

8 THE COURT: All right. He is not testifying.
9 Do you -- just from a scheduling standpoint, do you
10 all have any other witnesses you wish to call?

11 MR. COMISH: We do not, Your Honor.

12 THE COURT: All right. All right. So --
13 they're going to be mad, we have left them back
14 there. We are going to have to send them out
15 for -- I will have to send them out. So I'm trying
16 to think of the best way to do this. It's 11:35.
17 I can send the jurors to lunch. I have not
18 received any proposed requests to charge from you
19 all. And my law clerk, I thought she was working
20 on one, but.

21 So I can -- do you all have any requests to
22 charge? I'm just trying to think how long is it
23 going to take us to get the jury charge, do the
24 standard language and quoting the statutes?

25 MR. MYRICK: Everything is standard, but you

1 know what's not in the statute? May I approach?

2 THE COURT: Yes.

3 MR. MYRICK: What's not in the statute is
4 willfulness. And we've got a bunch of South
5 Carolina cases that address it. There's a
6 willfulness requirement in both the failure to file
7 charge and the evasion charge. And the reason
8 is -- you know, everyone is presumed to know the
9 law, in most instances. Tax is different. Tax is
10 different. You are not presumed to know it. So it
11 increases the burden on the State to prove
12 willfulness, which is the intentional violation of
13 known legal duty. That's why we went in 2005, '6,
14 and '7, right? It's only relevant as to
15 willfulness.

16 So you will find language in there for both
17 the substantive tax crimes, which includes
18 willfulness. And we think it's appropriate.
19 Everything else is straight out of the bench book,
20 Judge. But there is no bench book charges on tax
21 crimes. We had to draft it.

22 THE COURT: Y'all can take a look at that.
23 Are y'all objecting to willfulness?

24 MR. COMISH: We already have the language of
25 intent in there. I don't think that we need an

1 extended discussion on willfulness. It's already
2 an element of that. Yes, there's a definition of
3 the word willfully. I don't think that we -- we're
4 just objecting to all of that.

5 THE COURT: So you don't want the definition
6 of willfulness?

7 MS. MUBARAK: I think we need time to look
8 over this, Judge.

9 THE COURT: Okay. I'm just asking. I just
10 asked that. I think you all need to look over
11 that.

12 But -- and then is there a charge in there --
13 did you put in there the portion you just stated
14 that normally there is a presumption, but the tax
15 code is --

16 MR. MYRICK: No, ma'am, I didn't. And that
17 whole concept comes from the U.S. Supreme Court in
18 Cheek vs. United States. I didn't put it in there,
19 but I think the willfulness charge is important for
20 two reasons. One, it's right. It's a proper
21 statement of the law. And the willfulness language
22 comes from South Carolina, right? State vs. Sowell
23 is the first case that pops into mind. I'm sure
24 you remember it. It was a State Grand Jury case.
25 And I've got some more cases here.

1 But, third, if you don't charge the jury
2 properly, what's going to happen with this case?
3 It's going to come back.

4 So the State would like a proper charge. We
5 think willfulness is proper. And I've got some
6 cases here, the Pomponio case. And I've got some
7 federal cases. I'll have to dig them out, Your
8 Honor. But I'm confident it's appropriate. If you
9 want the cases, I'll try to find them in this pile
10 of papers. But I can't imagine that they would
11 want to lessen the burden on the jury by not
12 including the element of willfulness, which is
13 harder for us to make. I mean, you sounded
14 puzzled. I'm still puzzled.

15 MS. MUBARAK: Right. And I haven't had a
16 chance to look through this. I was looking at some
17 of the language, and it's saying like the
18 Government need only prove to you beyond a
19 reasonable doubt. I mean, we need to look at the
20 language in there.

21 THE COURT: Well, some of this is coming from
22 the desk book.

23 MS. MUBARAK: Right.

24 THE COURT: My concern is just a question --
25 So what I'm going to do is bring them back in and

1 maybe send them out, have them back -- I'll
2 probably have you all back at 1:30. I may have
3 them back at 2:00. Why don't we do this? I'll
4 have them come back at 2:00 o'clock. If you all
5 can take -- we'll take a short break, look at the
6 jury charges. And then I'll have you all come
7 back -- I forgot, I have a doctor's appointment at
8 1:00 o'clock. Look at the jury charges and maybe
9 come back about ten after. That's about 30 minutes
10 from now. In about 30 minutes from now. And then
11 we will go over the jury charges, break closer to
12 1:00, and then come back and be ready to start at
13 2:00 o'clock.

14 MR. MYRICK: Yes, ma'am.

15 THE COURT: All right. Thank you.

16 Let me bring them in.

17 And I am going to let you -- I will ask you --
18 let you rest on the record in front of the jury.

19 MR. COMISH: Yes, ma'am.

20 (WHEREUPON, the jury came into open
21 court at 11:43 a.m.)

22 THE BAILIFF: The jury is seated, Your Honor.

23 THE COURT: All right. Ladies and gentlemen
24 of the jury, I apologize. Oh, we are waiting on
25 one more?

1 (Pause.)

2 THE COURT: All right. Ladies and gentlemen
3 of the jury, as you heard, the State has rested.
4 At this time -- I told you on Monday that the
5 burden is upon the State to prove the Defendant
6 guilty beyond a reasonable doubt, but we do give
7 the Defense an opportunity, if he wishes, to
8 present any evidence. Although he does not have
9 to, this would be the time to do so.

10 Mr. Comish, does the Defense wish to present
11 any evidence?

12 MR. COMISH: We do not, Your Honor.

13 THE COURT: All right. Thank you.

14 All right, ladies and gentlemen of the jury, I
15 will explain that further to you during the jury
16 charge, but, as I stated earlier, they do not have
17 to present any evidence, the Defendant does not
18 have to testify. There is no constitutional right,
19 as I stated on yesterday, to prove yourself
20 innocent. The burden is upon the State to prove
21 the Defendant guilty beyond a reasonable doubt.

22 With that being said, the State has rested,
23 the Defendant has rested, and now we are ready for
24 closing arguments and the charge on the law. That
25 is going to take a little bit longer. And there

1 are some matters of law that I need to take up
2 outside of your presence. And rather than keep you
3 back in the jury room for a significant amount of
4 time, I am going to send you all out for lunch and
5 have you back in the jury room at 2:00 o'clock.
6 And then we will be ready for closing arguments and
7 the charge on the law. So that's a little more --
8 it's about two hours and 15 minutes, but by the
9 time you get to your car, it's about two hours.
10 And that's just an attempt to not having you
11 sitting back in the jury room any longer.

12 So have a wonderful lunch. Remember, you have
13 not received the law. Please do not the discuss
14 case. Remember to keep your badges on if you're
15 eating in the area.

16 We will see you back at 2:00 o'clock. Thank
17 you.

18 And one quick thing -- where is my list? Hold
19 on one second. Juror Number 124, I'm going to ask
20 that you serve as our foreperson. And so when you
21 come back in the courtroom, where this young lady
22 is sitting is where you will sit. And then I will
23 give you further instructions during the jury
24 charge and after you complete the jury charge as to
25 your responsibilities.

1 THE FOREMAN: Yes, ma'am.

2 THE COURT: All right. Thank you so much.

3 (WHEREUPON, the jury is excused for
4 lunch at 11:47 a.m.)

5 THE COURT: Can you e-mail me a copy of this
6 jury charge, and also --

7 MR. MYRICK: Yes, ma'am, I can.

8 THE COURT: Because I think you may have cut
9 and pasted some things. Because one thing, it says
10 there are three indictments -- that he failed to
11 file --

12 MR. MYRICK: I bet I gave you the wrong draft,
13 Your Honor.

14 THE COURT: For three years.

15 MR. MYRICK: I can e-mail it to you.

16 THE COURT: For three years.

17 MR. MYRICK: It should be five. I have an
18 amended one on my desktop.

19 THE COURT: In looking at adding -- the normal
20 stuff is fine. I'll look at the intent, the
21 evasion. And then if you all can -- I'll just meet
22 you all back in here in about 30 minutes.

23 MR. MYRICK: If I may, Your Honor?

24 THE COURT: About 15 minutes. Yes, sir?

25 MR. MYRICK: That willful language is from

1 State vs. Sowell, which is 370 S.C. 330, and State
2 vs. Girard --

3 THE COURT: 370 S.C. --

4 MR. MYRICK: 330. And State vs. Girard, which
5 is 390 S.C. 146. And it mirrors the federal
6 language.

7 THE COURT: All right. I'll see you all in
8 about 30 minutes.

9 (WHEREUPON, a break was taken at 11:49
10 a.m.)

11 (WHEREUPON, the proceedings resumed at
12 12:31 p.m.)

13 THE COURT: What you sent me is incorrect. It
14 still has the dates are -- it says three
15 indictments, but if you sent it to me in a Word
16 document, I can change it.

17 MR. MYRICK: You should have it, Judge.
18 Honestly, I thought they were going to put up an
19 accountant. I planned on having these things ready
20 for you first thing in the morning.

21 THE COURT: They thought you were going to put
22 up more witnesses.

23 MR. MYRICK: I could not tell you where my
24 most recent version of it is because we can't get
25 on our servers remotely from this courtroom. I

1 think if we go outside, we can connect. But you
2 should have an e-mail. I sent it to --

3 THE COURT: I just need it so I can make
4 changes to it.

5 MR. MYRICK: Yes, ma'am. I think I sent it to
6 you. I know I sent it to Chelsea.

7 THE COURT: She's not here, so.

8 MR. MYRICK: Do you have an e-mail from me?

9 THE COURT: I got an e-mail from you, but it's
10 the same one. It's the same one and it's not in a
11 -- it's in a read only mode, so I can't make
12 corrections to it.

13 MR. MYRICK: My joke, and it's not funny and
14 everybody is tired of hearing it at work, is that
15 our stuff is so secure, we can't even look at it
16 half the time. And I have problems editing my own
17 documents. But I can do one thing right now. And
18 I know this is probably out of turn, but I think
19 it's time, Judge, that might simplify everything.
20 There's a failure to file charge from Page 19 to
21 23.

22 THE COURT: What are you --

23 MR. MYRICK: I'm going to dismiss the failure
24 to file charges. We're just going to send the
25 evasion charges to the jury. I'm moving to dismiss

1 them now.

2 THE COURT: Okay.

3 MR. COMISH: Your Honor, this is the first
4 we're hearing of dismissing the misdemeanors.

5 THE COURT: Y'all admitted to them, so I guess
6 he's dismissing them because y'all admitted to
7 them. I don't know.

8 MR. COMISH: This is --

9 THE COURT: But I can't -- I mean, he can
10 dismiss the charges if he wants to. He can dismiss
11 all of them if he wants to. I can't do anything
12 about it. He can dismiss a charge. I'm not sure
13 what you want. You want it to go back? I mean --

14 MR. COMISH: We had a certain defense --

15 THE COURT: I mean, I don't know how he's
16 going to explain that to the jury. I will have to
17 explain to the jury that the State has dismissed
18 the charge of failure to file, but --

19 MR. MYRICK: If I may, Your Honor?

20 THE COURT: I've never had the Defense object
21 to somebody dismissing a charge.

22 MR. COMISH: I haven't made an objection, Your
23 Honor, it's just sort of --

24 THE COURT: I'm confused. I'm puzzled too.
25 After we sat here and had all these arguments,

1 but --

2 MR. MYRICK: If I may, Your Honor, they are
3 5509, 10, 11, 12, and 13. And the State has said
4 all along that this was tax evasion. We'd like the
5 evasion indictments to go to the jury.

6 THE COURT: So which cases are you dismissing?

7 MR. MYRICK: For failure to file. They are
8 2018-GS-40-5509, 05510, 05511, 05512, and 5513.
9 And that covers what was Pages 19 through 23 of the
10 proposed charge.

11 THE COURT: No, it doesn't. Because 19 is
12 talking about second element of tax evasion.

13 MR. MYRICK: Yes, ma'am.

14 THE COURT: We have got different pages?

15 MR. MYRICK: I have a different version. I
16 gave you the one that I picked up. I can get you
17 an accurate --

18 MR. COMISH: This is turning into a giant
19 mess. Maybe we need to take a recess while they
20 figure out what they want to charge and what their
21 jury charges --

22 THE COURT: Well, he said -- he's already put
23 on the record he was dismissing failure to file.

24 MR. COMISH: We all clearly have different
25 versions of the State's jury charges. We don't

1 even have an electronic copy. I don't know if
2 we're looking at the same copy. I just --

3 THE COURT: The electronic one, I was going to
4 try to clean it up, but it's in a read only mode
5 and so I can't make any changes to it. So before
6 we get into this, let's be very clear. So these
7 are dismissed?

8 MR. MYRICK: Poof.

9 THE COURT: All right. And that is --

10 Madam Clerk, have you got that? That is 5509,
11 5510, 5511, 5512, and 5513.

12 So the only -- so there will be five verdict
13 forms going to the jury on 5440, 5441, 5442, 5443,
14 and 5439?

15 MR. MYRICK: Yes, ma'am.

16 THE COURT: And I haven't done the verdict
17 forms. I guess on each one of them, we'll do them
18 as tax evasion, and then I can put the year in
19 there. Because the jury is not going to know based
20 on indictment number which one it is. So I'll fix
21 that. I'll take care of the verdict form.

22 MR. COMISH: Yes, ma'am.

23 THE COURT: So let's just talk about the jury
24 charge and then maybe -- I'm supposed to go to a
25 doctor's appointment at 1:00. I'm not going to go.

1 Let's just talk about the verdict form and then
2 I'll try to clean it up and get something back.
3 And we will come back in maybe an hour or so. And
4 that will give Mr. Myrick an opportunity maybe to
5 go e-mail us a copy in Word. If I can just hear
6 what the objections are to the jury charge, if
7 there are any objections.

8 MR. COMISH: Well --

9 THE COURT: Well, it's a whole lot of stuff in
10 there that doesn't belong.

11 MR. COMISH: Right, so that's the problem. We
12 did have a list of objections, but now I'm not
13 quite sure based on the version that I have and the
14 version that you have what pages that we find
15 objectionable and what language is still in there.

16 THE COURT: Well, let me start with the ones
17 that I corrected. Maybe this will help. I'll
18 start. This might be a starting place.

19 So we need to change on Page 3 -- I don't know
20 if that's the page you have. Does it say general
21 charge?

22 MR. COMISH: Yes, ma'am.

23 THE COURT: Indictment is not evidence?

24 MR. COMISH: I see that.

25 THE COURT: The indictment charges the

1 Defendant with -- I will have to change that --
2 with five counts of a willful attempt to avoid or
3 defeat state income tax.

4 MR. MYRICK: Period.

5 THE COURT: Five years is what you have. So
6 that should correct that, right? Let me know if
7 there's any objection.

8 Then we go to multiple charges. And then I
9 assume -- he has three. I assume I just need to
10 change that to say multiple charges. Indictment
11 Number 1, willful attempt to avoid or defeat state
12 income tax. Indictment 2, willful attempt to avoid
13 or defeat state income tax. Indictment 3, willful
14 attempt to avoid or defeat state income tax. And
15 Number 4 and 5 will say the same thing. So we'll
16 take out the failure to file tax return language.

17 And then I will go to presumption of
18 innocence. I'm assuming -- that's the standard
19 language. We'll leave that the same. Reasonable
20 doubt is the standard language. Direct and
21 circumstantial evidence is the standard language.
22 Credibility of witnesses, all of that is standard.
23 Character and reputation.

24 MR. COMISH: Out.

25 THE COURT: He did not -- there was no

1 anything --

2 MR. COMISH: We didn't put anything in, Your
3 Honor.

4 THE COURT: So we'll take that out. I have an
5 X.

6 MR. COMISH: And our says copy of charge in
7 the jury room. I don't know if yours does.

8 THE COURT: Well, you know what, it does. And
9 I have been sending a copy of the charge back into
10 the jury room. I know Judge Newman does it and
11 several of the other judges do it. So I'm going to
12 send a copy, but I usually put that at the end of
13 the jury charge.

14 MR. COMISH: And we would object to sending a
15 copy back there, Your Honor. They can send
16 questions if they have them.

17 THE COURT: All right. Well, I'll make that
18 decision as to whether or not. I think it's
19 discretionary upon the Court as to send them back.
20 You will find that's becoming more and more of a
21 practice --

22 MR. COMISH: Yes, ma'am.

23 THE COURT: -- of the Court. But let me think
24 about it, but I will put a question mark behind it.
25 If we send the charge back, that is the charge that

1 we have to send back. We have to send a charge --
2 you have to give a charge to go with the charge.

3 MR. COMISH: Yes, ma'am.

4 THE COURT: Expert witnesses. Intent is -- we
5 pulled that from the desk book. Statement of the
6 Defendant. He did not give any statements that I
7 recall.

8 MR. MYRICK: No, ma'am, it comes out.

9 MR. COMISH: Your Honor, for the intent on
10 Page -- do you have criminal intent can arise from
11 action or failure to act on Page 14?

12 THE COURT: Uh-huh.

13 MR. COMISH: It may arise from negligence,
14 recklessness. I mean, those aren't elements of
15 mens rea for these charges. These are all willful
16 acts. So we're going to object to that language.

17 THE COURT: Which, the negligence and
18 reckless?

19 MR. COMISH: Criminal intent can arise from
20 action or failure to act, may arise from
21 negligence, recklessness, or indifference to be or
22 consequences that can be considered by the law to
23 be equivalent to criminal intent. None of that
24 applies to the mens rea in this case, so we're
25 going to object to that, those five lines.

1 THE COURT: Are you objecting to criminal
2 intent can arise from action or a failure to act or
3 just may arise --

4 MR. COMISH: Well, in this case, the elements
5 require more than just an action, they require a
6 willful action. So I'm objecting to that too,
7 because I think the standard that the State has to
8 meet is actually higher than he did or did not act,
9 it is that he acted and intended the consequences
10 of the act. I mean, they're putting all that into
11 willfulness, and we have confusing and
12 contradictory language here, so I just ask that
13 that all be removed.

14 THE COURT: What's the State's position? I
15 think -- well, this is an accurate statement of the
16 law.

17 MR. MYRICK: Yes, ma'am.

18 THE COURT: As to intent. I'll be glad to
19 hear from you, Mr. Myrick.

20 MR. MYRICK: Your Honor, this is an accurate
21 statement of law. That's direct from the bench
22 book. We go on the evasion charge to state what
23 willfulness is. And it's a high standard, but we
24 think it's covered in the evasion charge. But
25 aside from that, however you want to handle it is

1 fine with us.

2 THE COURT: I'll take the sentence out about
3 negligence, recklessness, but, I mean, it's all an
4 accurate statement of the law as to what criminal
5 intent is described as by the case law. But the
6 negligence, recklessness, and stuff like that goes
7 to issues in those cases where you have got a
8 reckless driving, or something like that. So I
9 will take that portion out, but I will leave in
10 criminal intent can arise from action or failure to
11 act.

12 All right, your objection is noted for the
13 record.

14 MR. COMISH: Thank you, Your Honor.

15 THE COURT: And the Defendant did not give a
16 statement, if I'm correct?

17 MR. COMISH: No, ma'am.

18 THE COURT: So I have struck through Page 16,
19 17.

20 All right. Next is -- I'm on Page 18. I
21 don't know what yours is.

22 MR. COMISH: I apologize, Your Honor. You
23 said you struck through 16, 17, and 18?

24 THE COURT: The first part -- I struck through
25 the whole thing about statement of the Defendant.

1 MR. COMISH: Okay. We don't have that. Yes,
2 we don't have that.

3 MR. MYRICK: I'm sorry, Judge, there's two
4 different versions floating around. I just pulled
5 the stuff out.

6 THE COURT: So he had trouble with statement
7 of Defendant, 15, 16, 17, and 18.

8 MR. MYRICK: And that comes out.

9 THE COURT: And that comes out.

10 MR. COMISH: So are you at attempted evasion
11 now, Your Honor?

12 THE COURT: Yes.

13 MR. COMISH: Okay.

14 THE COURT: All right. We're on the same
15 section. Any objection to attempted evasion?

16 MR. COMISH: And just to make sure we're
17 looking at the same language, and I'm just going to
18 read it to you very briefly just to make sure we're
19 looking at the same language. In order to meet
20 burden of proof --

21 THE COURT REPORTER: I can't hear him.

22 THE COURT: That's what I have. She can't
23 understand you.

24 MR. COMISH: Okay, sorry.

25 THE COURT: That's what I have. We're talking

1 about the same one. Number One, income tax was
2 due. Number Two, the Defendant attempted to evade.

3 MR. COMISH: And, Your Honor, on that section,
4 we request that you change the language that the
5 Government need only prove beyond a reasonable
6 doubt to must prove beyond a reasonable doubt.
7 Keep that language consistent throughout the jury
8 charge.

9 THE COURT: Where?

10 MR. COMISH: I see it as the third line from
11 the bottom on that paragraph to establish the
12 second element of tax evasion.

13 THE COURT: To establish the first?

14 MR. COMISH: Nine lines from what you just
15 read. Assuming Your Honor has the same language in
16 there as we have in ours. Your Honor, may I
17 approach?

18 THE COURT: To establish the second element of
19 tax evasion, the State must prove that the
20 Defendant engaged in an affirmative act. Is that
21 where you are?

22 MR. COMISH: Yes, ma'am, that's where I'm at.

23 THE COURT: Okay. Mine says must.

24 MR. COMISH: Yours says must.

25 THE COURT: I just read it, to establish the

1 second element of tax evasion, the State must --

2 MR. COMISH: Yes, ma'am. Further down, it
3 says the Government need only prove beyond a
4 reasonable doubt. May I approach, Your Honor?

5 THE COURT: I see, the Government must only
6 prove beyond a reasonable doubt.

7 MR. COMISH: I would just say must -- scratch
8 out need not and put must, and that keeps the
9 language consistent.

10 THE COURT: I've got it. All right. Only
11 prove beyond a reasonable doubt that the Defendant
12 took a single affirmative act. That is, that the
13 Defendant performed some conduct, the likely effect
14 of which would be to mislead or conceal. We're on
15 the same page?

16 MR. COMISH: Yes, ma'am.

17 THE COURT: Okay.

18 MR. COMISH: Scratch out need and put must.

19 THE COURT: I've got it.

20 MR. COMISH: Thank you, Your Honor.

21 THE COURT: All right.

22 MR. COMISH: We're taking out everything -- I
23 don't think we had any other issues with the rest
24 of that section until the failure to file, which is
25 all gone.

1 THE COURT: So we take all the failure to file
2 out.

3 MR. COMISH: Yes, ma'am.

4 THE COURT: It has been dismissed. I think
5 all of that is the same language. All right.
6 Reliance on return preparer. Do y'all have that?

7 MR. MYRICK: That should come out.

8 THE COURT: I already took that out. And then
9 at the end, I won't use the language that says
10 there are many possible verdicts which you may find
11 in the case. The only two verdicts, guilty or not
12 guilty. Am I right?

13 MR. MYRICK: You're right.

14 THE COURT: I just don't want to confuse the
15 jury. There are only two verdicts -- I mean --
16 yes, they can only have guilty or not guilty.

17 MR. MYRICK: That's right.

18 THE COURT: As to each indictment. So I will
19 change that. And I don't know about all of that
20 discharging the jury, and stuff like that. We
21 don't -- I don't tell them all of that, so I can
22 take that out. Chapter 11, discharge of duties.

23 All right. Anything else that you see come
24 out, go in? Anything else missing?

25 MR. COMISH: I don't believe so, but I would

1 like to take a look at what Your Honor comes up
2 with just to make sure everybody is on the exact
3 same page.

4 THE COURT: So what I will do, what I
5 normally -- my practice is to do, but my law clerk
6 is not here, is to once he sends me the Word
7 version -- or I can just type it up myself -- once
8 he sends me the Word version, I will e-mail it. I
9 am pretty sure -- send me the Word version, copy
10 them, and then I can -- then I'll e-mail you back
11 what I have. All right?

12 MR. MYRICK: And just so I'm clear, Your
13 Honor, it's dbenjaminj@sccourts.org?

14 THE COURT: You sent it to me, but it is just
15 what you sent me -- you used the right e-mail, but
16 what you sent me, I couldn't -- it's in a read only
17 mode, so if you can send it in Word where I can
18 edit it, that would be great.

19 And as to the verdict form, I'll do five
20 different verdict forms with the number. And what
21 I will do is just -- it will say, We find on
22 indictment evasion of a tax or payment. So the
23 jury is clear which -- because they all are evasion
24 of a tax or payment, I'll put in parentheses behind
25 that 2013, 2011, 2012, -- because they have to

1 consider them each individually. They may find
2 that he did in one year and didn't in one year.
3 They may find he didn't at all. I mean, so I just
4 have to put each year in there, because the
5 indictment numbers aren't going to tell them which
6 one it is.

7 All right?

8 MR. MYRICK: Yes, ma'am. Thank you.

9 THE COURT: Yes, sir?

10 MR. COMISH: Your Honor, we have our jury
11 charge. This is my copy, Your Honor. We are going
12 to obviously e-mail these to you and the State.
13 This is very brief, so I'll read them.

14 THE COURT: Yes.

15 MR. COMISH: Charge One, willfulness defined.
16 The element of willfulness means a voluntary,
17 conscious, and intentional act with specific intent
18 to do what the law forbids. State vs. Girard and
19 State vs. Sowell, which --

20 THE COURT: Is that not in there already?

21 MR. COMISH: I don't believe so.

22 THE COURT: I think it is.

23 MR. COMISH: Is it?

24 THE COURT: If it's not in there, it's pretty
25 darn close to what it says, but let's see.

1 MR. COMISH: I believe this is a nice,
2 concise, simple, easily understandable definition.
3 I don't see it specifically laid out in my copy.
4 It might have been -- yep. It's a separate charge.
5 I believe that the State included a definition of
6 the word willfully in their charge on the tax
7 evasion statute.

8 THE COURT: They did.

9 MR. COMISH: So I think it would just be like
10 a separate charge to highlight that, Your Honor. I
11 think it is a clear and concise definition. I
12 don't know whether the State would object to that.

13 THE COURT: I mean, I will put it in at the
14 end, but I don't have a -- if it's an accurate
15 statement of the law, I don't mind adding it in,
16 but I think it is pretty -- it says kind of the
17 same thing, but I'll add it in. I can add it in as
18 the definition of willfulness under the evasion,
19 after the tax evasion.

20 MR. COMISH: And our other charge is regarding
21 Taxpayers' Bill of Rights. And our request is, I
22 find that you consider what implication, if any,
23 is created by S.C. Code 12-58-60, which states the
24 Department of Revenue shall publish brief but
25 comprehensive statements in simple and

1 non-technical language, which explains procedures,
2 remedies, and the rights and obligations of the
3 department and the taxpayers. And, as appropriate,
4 the statements must be provided with the initial
5 notice of audit, the notice of proposed additional
6 taxes, any subsequent notice of tax due, or any
7 other substantive notices. Additionally, the
8 department shall include the statement in the tax
9 booklets which are mailed annually to individuals
10 and corporations. As Your Honor recalls, the
11 testimony about the Taxpayers' Bill of Rights.

12 THE COURT: But isn't that the civil Bill of
13 Rights?

14 MR. MYRICK: It is.

15 THE COURT: What's the code again, 12?

16 MR. COMISH: 58-60, Your Honor.

17 THE COURT: 12-58-60.

18 Yes, sir, I will be glad to hear from you.

19 MR. MYRICK: Your Honor, if you look at
20 12-58-30, what it says is: The department shall
21 establish the position of Taxpayers' Rights
22 Advocate. And that person is responsible for
23 facilitating resolution of taxpayer complaints and
24 problems. It's clearly civil. So the taxpayer
25 calls and says, Oh, man, you filed this lien

1 against me, or, Oh, you know, I've got this problem
2 going on with my withholding. There's somebody
3 there to help them. What it doesn't do is create a
4 whole new set of rights for Mr. Ellerbee, who is a
5 criminal defendant. I don't think the Taxpayer
6 Rights Advocate is supposed to come here and help
7 someone who's been charged with a crime. All of
8 this --

9 MR. COMISH: I'm not referring to that statute
10 at all, we're referring to Subsection 60, which is
11 a completely different statute, which has nothing
12 to do with Taxpayers' Advocate. So he's clearly
13 mischaracterizing my argument here. I would ask
14 that he stick to the issue at hand.

15 THE COURT: So 60 just says the department
16 shall publish brief but comprehensive statements in
17 simple and non-technical language, which explained
18 procedures, relief, and the rights, and obligations
19 of the department and taxpayers. As appropriate,
20 statements must be provided to taxpayers with
21 initial notice of audit, the notice of proposed
22 additional taxes, any subsequent notice of taxes
23 due, or subsequent notices. Additionally, the
24 department shall include statements in the tax
25 booklets which are mailed annually to individuals

1 and corporations.

2 I'm not sure how that applies here. I mean --

3 MR. COMISH: Your Honor, Mr. Ellerbee didn't
4 get notice from Agent Ciuffreda, and I don't know
5 whether that came out at trial. It did not come
6 out at trial. But he was entitled to notice of his
7 taxes, any deficiencies that the Government knew
8 about, which they clearly did, since they were able
9 to calculate his liability to the penny. He didn't
10 get that. So I think the jury is entitled to know
11 that the Government did not comply with its own
12 requirements. And if you look at how the
13 Department of Revenue publishes those requirements
14 on its website, which I had Mr. Marshall read,
15 there's nothing in there saying this is purely a
16 civil situation. They are saying, You have a right
17 to know this stuff. And I elicited testimony,
18 which was not objected to, that he did not receive
19 any notices.

20 If Mr. Myrick had an issue with this, I think
21 that the proper time would have been to object to
22 me asking that question, which he did not. So I
23 think it is appropriate --

24 THE COURT: Well, I understand what your
25 argument is, but I don't know if you're looking at

1 the right statute. 12-58-60 is more kind of
2 like --

3 MR. COMISH: Did I miss it?

4 THE COURT: You're saying that the notice --
5 because you did ask was he put on notice that these
6 were due. And somebody answered the question. Who
7 answered --

8 MR. COMISH: Mr. Marshall Smith, Your Honor.

9 THE COURT: Yeah, I think you asked was notice
10 sent. And I can't remember how he answered the
11 question, no, yes. I can have Debbie go back and
12 look at it. There is a statute that says all
13 deficiency notices and all tax due notices are
14 required to contain a description of the basis for
15 an identification of the amount of taxes due,
16 interest, and penalty.

17 Yes, sir?

18 MR. MYRICK: Thank you, Judge.

19 THE COURT: I don't know. I don't think 60
20 applies. That's the one that says that they have
21 to include --

22 MR. MYRICK: Well, Chapter 58, all of it, and
23 no one's talking about Section 30, is all part of
24 the Taxpayers' Bill of Rights with regard to
25 taxpayers who have complaints and problems, release

1 of liens or levies that are done by the department.
2 What it doesn't do is create a whole new set of
3 substantive rights of criminal defendants. It's
4 civil in nature and application. That's what it
5 was intended to be.

6 And, finally, Your Honor -- nevermind, I won't
7 get into it. But it's civil. It doesn't belong in
8 a charge on the law.

9 MR. COMISH: Your Honor, this potentially goes
10 to willfulness. He had a right to know about
11 deficiencies, and that right was not complied with.
12 If he doesn't like the way that we phrase it, we
13 can take the policies straight from the Department
14 of Revenue's website. You have the right to
15 receive notices with descriptions of the basis for
16 an identification of any tax notice or penalties
17 due. I'd be happy with that too. But he has a
18 right. There's testimony that that right was not
19 complied with. I think that goes straight to the
20 elements of the crime that we've been arguing about
21 for days. There's nothing on here that says this
22 is purely civil and it doesn't apply in any other
23 context. Mr. Myrick is sort of putting those words
24 in the mouth of our legislature. It's here. It's
25 public. It's on the website. It's in the record.

1 I think it's appropriate.

2 MR. MYRICK: May I be heard briefly, Your
3 Honor?

4 THE COURT: Yes.

5 MR. MYRICK: Marshall Smith testified as an
6 expert. I don't think he ever said -- and we have
7 the court reporter to back me up -- he never said
8 that this wasn't complied with. He said, Yes, this
9 is a policy. There's no evidence in the record
10 that the thing applies or that nobody contacted
11 Mr. Ellerbee to try and find out what was going on.
12 There's nothing in the record that would justify
13 this, even if it applied, which it doesn't.

14 MR. COMISH: Again, Your Honor, the testimony
15 was, to his knowledge, there were never any notices
16 sent. That's also on the record. I think that we
17 have the --

18 THE COURT: Was there testimony that no
19 notices were sent? I think the question -- y'all
20 may have asked the question, nobody ever followed
21 up on it. I thought -- well, let's stop. And we
22 have to be quiet and ask the court reporter to go
23 back and look at it.

24 (Pause.)

25 (WHEREUPON, court reporter read back

1 requested portion.)

2 THE COURT: All right. Any response?

3 MR. MYRICK: Only this, that on redirect I
4 said, That applies to civil, doesn't it? And he
5 said, Yes. And he's the expert.

6 THE COURT: All right, well, y'all can --
7 that's for -- y'all can make that for argument
8 purposes.

9 I can -- you are asking for -- I just want to
10 make sure I'm clear as to what y'all are asking to
11 be charged. You are asking for 28-58-60 or
12 28-58-70?

13 MR. COMISH: And I think, Your Honor, we might
14 have given you the wrong one. I think Your Honor
15 might be right, that 70 is the more appropriate
16 one.

17 THE COURT: All right. And all I'm going to
18 read is under Section -- I'm just going to say
19 Section 28-58-70 of the South Carolina Code of Laws
20 annotated reads: All deficiency notices and all
21 tax due notices are required to obtain a
22 description of the basis for and identification of
23 tax due, interest, and penalty. And that's what it
24 says.

25 All right. I'll add that in somewhere, but I

1 will add it in.

2 All right. Anything else? So I will add that
3 statute. I don't have the proposed jury charges
4 you have. I need to see it. But I think it is
5 pretty much covered. I will see if there's any
6 wording that needs to be added when it gets into
7 willfulness. I'll take a look at that.

8 Anything else?

9 MR. COMISH: Well, Your Honor, we do have the
10 matter of Mr. Myrick dismissing these charges after
11 we've been in trial for two days that we need to
12 take up. We do have an issue with it, Your Honor.

13 THE COURT: What's the issue?

14 MR. COMISH: Well, Your Honor, Mr. Myrick
15 knows that we have been expecting the misdemeanor.
16 He indicted the misdemeanor not three months ago.
17 Our communications, he indicated that he was ready
18 to go forward on the misdemeanor, such that we
19 relied on that charge. He called the case for a
20 misdemeanor. Twice, in fact. And I don't think
21 anything changed in regard to that misdemeanor
22 between this week and last week. He let us open on
23 the misdemeanor charge saying, Hey, convict our
24 client of this misdemeanor. He's now putting our
25 credibility at risk in front of the jury for his

1 own strategic purposes. Everything that we said in
2 opening argument was true based on our
3 understanding of how it happened. Convict him of
4 this misdemeanor -- we didn't say misdemeanor, but
5 I'm just saying convict him of this tax failure to
6 file charge, right?

7 THE COURT: So you don't want him to dismiss
8 the charge?

9 MR. COMISH: No, ma'am. This is
10 unprecedented.

11 THE COURT: I understand that. I understand
12 it is, but I think we're going to get back to this
13 same issue as to -- which is interesting, the case
14 about the -- we talked about indictments and the
15 State has a right to charge what they're going to
16 charge. I agree that it is awkward, at an awkward
17 time, but if he doesn't want to go forward on the
18 charges, I'm not sure if I can make him go forward.

19 MR. COMISH: And that's not -- we're not
20 asking --

21 THE COURT: We've been saying through this
22 whole thing, I can't make him give you the plea
23 offer you want. I can't make him -- if he wants to
24 dismiss the charges, it's his charges to dismiss.

25 I have just got to figure out how we're going

1 to explain that to the jury that he's not going
2 forward on -- I'm not going to say I dismissed
3 them. I will have to explain to the jury that the
4 State has decided to dismiss the charges for
5 failure to file and is therefore only going forward
6 on the evasion of tax. But I will put it on him
7 that he called it and that he dismissed it.

8 MR. COMISH: And I understand, Your Honor.
9 One, we're not asking you to force him to reinstate
10 the charges. Obviously you can't do that. What
11 we're asking for is we -- Ms. Mubarak stood in
12 front of the jury and said, He's guilty of this,
13 which is a separate criminal offense. And it's one
14 half of the felony that he's now -- the only
15 remaining charges are felony. He's doing this for
16 a strategic purpose to draw out a particular
17 strategy of ours to say, Convict on the
18 misdemeanor, but acquit on the felony.

19 Now, we're on the record telling the jury to
20 go ahead and convict on half that felony charge,
21 that there's no more misdemeanor charges, no more
22 failure to file. This is a strategic attempt on
23 him to undermine the effort that we put in in
24 communicating with the jury. I don't think that
25 he's allowed to do that at this late stage. I

1 think that a mistrial is appropriate, at the very
2 least, because we prepped this for months on this.
3 We communicated these going forward.

4 Your Honor, I mean, it's just act after act
5 after act by Mr. Myrick has been just absolutely
6 unprecedented. You heard him on the record minutes
7 ago say, Our records are so secret, we can't even
8 access them. And you heard the investigator on the
9 stand say, Oh, yeah, I'm just accessing these
10 records. I've looked at their tax returns. We did
11 it last week. We're doing it this week. And I'm
12 kind of -- the built-up frustration is coming out.
13 They left a prejudicial renaming of the crucial
14 piece of evidence on the jumbotron for the jury to
15 see. It's act after act after act that I have
16 never seen before, that no one in my office has
17 ever seen before.

18 And it's frankly mind-blowing, that we feel a
19 mistrial would be appropriate given the cumulative
20 effect of the State's negligence and/or affirmative
21 actions in this case. We need the ability to argue
22 to the jury -- if you're not granting a mistrial,
23 which I really hope you will given how much
24 Mr. Myrick has done in this trial, we need to be
25 able to argue to the jury what he did. We, at

1 the -- we need to be able to regain some of our
2 credibility that we lost because of his actions.
3 We need time to research this, Your Honor.

4 THE COURT: How are you losing your
5 credibility when -- if anything, he might be losing
6 his credibility because the jury is wondering why
7 are you dismissing the charge -- and I think I do
8 have to let them know that he dismissed it -- why
9 is he dismissing a charge that she has acknowledged
10 that her client was guilty of?

11 MR. COMISH: Well, it's also an issue of trial
12 strategy, Your Honor.

13 THE COURT: I was -- but --

14 MR. COMISH: Had we known -- and I apologize,
15 Your Honor. Had we known he was just proceeding on
16 the felonies, we might not have given up on that.
17 We might have crossed those witnesses differently
18 about the tax returns.

19 THE COURT: Well, you -- you might not have
20 given up on what?

21 MR. COMISH: On the issue of failure to file,
22 which is now the only felony. If that was the only
23 charge, our strategy may very well have been
24 completely different.

25 THE COURT: We -- I think this case is

1 clearly -- she admitted that -- Ms. Mubarak
2 admitted that he was guilty to the failure to file,
3 and that is all that he was guilty to. And you
4 all -- the whole case has been, not about the
5 failure to file, but about the evasion. So I don't
6 understand your argument.

7 MR. COMISH: The argument is that the only
8 reason we were consenting to the misdemeanor is it
9 allows the jury to convict him of one thing and we
10 can argue to the other thing. That's been our
11 trial strategy from Day One on this.

12 Mr. Myrick has never given us any indication
13 that -- in fact, he affirmatively said, I'm moving
14 forward on these charges, to us, to you, to the
15 jury, several times, including last week when he
16 got a continuance because of his last minute giving
17 us of evidence that's been in their possession for
18 five years. The material impacts our strategy.
19 It's potentially a due process violation. It's a
20 prejudicial impact of --

21 THE COURT: What is the due process and what
22 is prejudicial?

23 MR. COMISH: Your Honor, this is so --

24 THE COURT: No, what's prejudicial and what's
25 due process violation? You're saying due process

1 and prejudicial. I have to know what is the
2 prejudicial -- what's prejudice about him
3 dismissing charges against your client?

4 MR. COMISH: At this stage, after we've been
5 in trial. I'm entitled to fundamental fairness in
6 my preparation of the case. I believe that comes
7 from the Fourteenth Amendment. There's an
8 extremely long line of cases, and I've given you
9 some language of that in my previous motions that
10 are relative to his behavior. I can't prepare a
11 case if I do not know what charges I'm proceeding
12 on. I cannot do it.

13 If I had known that we were only proceeding on
14 the felonies, my strategy would have been
15 different. The State cannot be allowed to trick us
16 into choosing the wrong trial strategy because
17 they're just going to dismiss the charges at the
18 last minute.

19 And we're having trouble -- we're having
20 trouble specifically articulating this because it's
21 never been done before. No one in my office has
22 ever heard of this. Your Honor has been on the
23 bench as well and never heard of this. I think we
24 probably need some time to actually construct a
25 compelling argument about why this is other than

1 how in the world is this a fair thing for the State
2 to do immediately prior to closing arguments?
3 That's the sentiment that's encapsulated by the
4 Fourteenth Amendment by fundamental fairness. I
5 request if Your Honor is not inclined to grant my
6 motion for a mistrial right now, I request some
7 time so that we can arguments to deal with the
8 second wholly unprecedented action done by that man
9 sitting right there in this 2-day trial.

10 THE COURT: All right. Yes, sir?

11 MR. COMISH: Yes, ma'am.

12 THE COURT: All right. Yes, sir, Mr. Myrick?
13 Any response?

14 MR. MYRICK: Only this, Your Honor. I don't
15 have any improper motive. The five failure to
16 files were indicted because we didn't know based on
17 the history of this type of case if we were going
18 to make it through the directed verdict stage, but
19 the State has always maintained that the serious
20 conduct is really the evasion, and that's what we
21 want to go forward on. There is no -- we're not
22 trying to be, you know, essentially, really clever.
23 It's not a matter of strategy. I just want an
24 answer from the jury as to whether or not they
25 think this is evasion, whether they agree.

1 And, actually, Your Honor, in numerous
2 instances, the prosecutor gets to the end of his
3 case and is like, Well, we didn't get this out of
4 the witness that we thought we would, or, This
5 piece of evidence didn't come in, so they dismiss
6 one or two charges before it goes to the jury. It
7 happens all the time.

8 Thank you.

9 MR. COMISH: Is Mr. Myrick's position that
10 he's missing essential elements to prove failure to
11 file a tax return?

12 THE COURT: I don't know what his position is,
13 but it is 1:20. The jury is planning to be back
14 here at 2:00 o'clock. I do not find that this case
15 is -- there is any manifest necessity for a
16 mistrial in a case where he has dismissed charges
17 against your client. I can ask him to not dismiss
18 them, but I don't think I can make him go forward
19 with charges that he wishes to dismiss them. I
20 don't know whether or not he thinks they are going
21 to be able to prove them or not prove them. But at
22 this point in time, I am going to deny the motion
23 again for a mistrial.

24 We will start with closing arguments at
25 2:00 o'clock, a charge on the law. I will give you

1 all a chance to collect your thoughts, grab a coke
2 or something to drink or something to eat. I have
3 the jury coming back at 2:00. I'll have the jury
4 charge printed, the verdict form printed. I'll
5 have them sitting on the desk, y'all can take a
6 look at them. Come back at 2:00 and we probably
7 won't start back until about 2:15.

8 MR. COMISH: Might I request a little more
9 time to completely rewrite my closing argument?
10 This goes -- my cross would have changed, our
11 opening would have changed, closing would have
12 changed, everything would have changed if he had
13 not dismissed those at the very last minute.

14 THE COURT: Mr. Comish, your whole case has
15 been about the tax evasion. Your cross wasn't
16 about the -- because you admitted to doing -- that
17 your client did not file tax returns. You didn't
18 ever discuss -- I don't recall you discussing
19 filing a tax return with the witnesses on the
20 stand. Your whole case has been about the tax
21 evasion. You have been put on notice through the
22 indictment of the charges.

23 And while it is not routine for a Solicitor to
24 dismiss charges, I can't say absolutely if it's
25 been done before or not. I don't know, because

1 they have dismissed charges before going to the
2 jury. But you have been put on notice. You have
3 had the opportunity to cross-examine the witnesses.
4 You have -- so the whole case -- even from the
5 opening statement has been -- the question has been
6 about the tax evasion and not about the failure to
7 file. She acknowledged that he did not file the
8 taxes, that he was guilty of not filing the taxes.
9 Everything that we've talked about for the last day
10 and a half has been about the tax evasion. Did he
11 or did he not put something in the W-4? What does
12 the W-4 look like? And how did he file it? And
13 the questions that you asked of the tax preparer.
14 But the whole case has been about the evasion, not
15 about the failure to file.

16 So I'm going to deny -- respectfully deny the
17 motion. You can -- I'm going to give you until
18 about 2:15, and then we will start shortly
19 thereafter.

20 I will try to get the jury charge and the
21 verdict forms and put them on the desk so you all
22 can take a look at them. I'm not going to send the
23 jury charge back in the jury room because I don't
24 have time to check through it for grammatical
25 errors other than things that I may catch. So I

1 usually make sure it's clean, clean before I send
2 it back in the jury room, so I'm not going to send
3 that. I am going to add the statute that you have
4 requested. And I will take a look at the
5 definition of willfulness that you also have
6 requested and place it in the order -- I mean, in
7 the charge if it's not already in.

8 All right. So if you get me a copy of that,
9 I'll look at it. But other than that, we will
10 proceed with closing arguments this afternoon.

11 All right. Thank you.

12 So I'll see you all back -- I told the jurors
13 2:00, so I'll see you all about 2:15 ready to go.
14 I will get those jury charges. I'll try to e-mail
15 them to you if I can get them done. I've just got
16 to get in my office and get them done. All right.

17 MR. MYRICK: Thank you, Your Honor.

18 (WHEREUPON, a lunch break was taken at
19 1:25 p.m.)

20 (WHEREUPON, the proceedings resumed at
21 2:19 p.m.)

22 THE COURT: We are ready to bring the jury in.
23 I did not have failure to testify. I added that.
24 That was the only thing I added that I did not
25 discuss. Here's the verdict form that I did.

1 Y'all can take a look at that. And I did them all
2 on one, actually. Give them a copy, one for you,
3 one of them. Y'all can keep a copy. I printed
4 extra.

5 And just so we're clear, there's no opening on
6 the law, you have to open in full. They did not
7 put up any evidence, so they get the last word.

8 MR. MYRICK: Yes, Your Honor.

9 THE COURT: Anything else?

10 MS. PHILLIPS: Yes, Your Honor.

11 THE COURT: Yes, ma'am?

12 MS. PHILLIPS: Respectfully, I know that you
13 have already denied our motion for a mistrial on
14 the matter that was just discussed prior to
15 discussing jury charges. For the record, we just
16 wanted to clarify what we believe the issues are
17 and how we are prejudiced, because --

18 THE COURT: We can do that after we -- I've
19 already denied the motion. I'll allow you to put
20 all your motions back on after -- the jury is
21 sitting in the back of the room -- back in the jury
22 room. So you will be able to put -- I think you
23 have made a motion for mistrial. I have already
24 ruled on it. And so I think you're fine. After
25 the jury goes back out, I'll let you renew all your

1 motions, put anything you want to put on the
2 record.

3 MS. PHILLIPS: Your Honor, I do respect that.
4 Mainly, it's a matter of supplementing the record
5 with facts of why I believe it was prejudicial
6 beyond repair and the prejudice could not have been
7 removed in any way other than a mistrial. Putting
8 the facts on the record and why precisely we
9 believe this is problematic in terms of policies,
10 in terms of law, in terms of due process. If you
11 would please hear me out.

12 THE COURT: Go ahead, but we need -- the jury
13 has been sitting back there for 20 minutes.

14 MS. PHILLIPS: I understand.

15 THE COURT: I will give you an opportunity to
16 put all your motions on after the jury charge and
17 we send them back to begin deliberating, but you
18 can go ahead.

19 MS. PHILLIPS: I'll be really quick. Just,
20 Your Honor, we believe that going forward -- that
21 the two primary ways that we were prejudiced was
22 first in the admission of evidence during the
23 State's case of the five separate charges that no
24 longer exist. And, second, in our credibility
25 in crafting our defense and presenting to the jury

1 the way we did.

2 The first matter of the admission of evidence
3 during the State's case, we recognize, as you
4 stated, that many of our questions went to tax
5 evasion, but going forward on the failure to file
6 from the beginning allowed the State to present
7 evidence as to Mr. Ellerbee's failure to file
8 throughout the case.

9 Some or much of that evidence is now
10 irrelevant to the question of whether he attempted
11 to evade taxes. And the evidence that was admitted
12 as to the now dismissed misdemeanor that does not
13 also go to tax evasion would then amount to
14 improper propensity evidence.

15 And I believe this sets up a bad policy
16 precedent going forward where the State could
17 essentially stand by the defects in any case. The
18 State could charge a Defendant with any number of
19 charges seeking to get in problematic propensity
20 evidence or irrelevant evidence and then just
21 dismiss the superfluous charges after the
22 conclusion of their case.

23 And then, you know, who knows what comes in
24 through that method. It undermines the policies
25 against propensity evidence, against irrelevant

1 evidence.

2 And then, second, as to the credibility issue,
3 we owned the misdemeanor in our opening to
4 establish our credibility. We framed it as an
5 admission that our client had done something wrong
6 in the area of his taxes. Just not all of the bad
7 conduct that the State was accusing him of. We
8 would have only framed our opening --

9 THE COURT: So what prevents you from
10 continuing to do that?

11 MS. PHILLIPS: I'm sorry?

12 THE COURT: What prevents you from continuing
13 to argue that? That he -- that that is the only
14 thing that he has done wrong? The fact that they
15 dismissed the charges doesn't prevent Mr. Comish
16 from standing up there and saying, We still contend
17 that our client -- the only thing he did wrong
18 was -- the only thing he did wrong was not file his
19 taxes, and they dismissed those charges for reasons
20 we don't know. I mean, what prevents him from
21 saying that?

22 MS. PHILLIPS: Well, Your Honor, I think we
23 could do that, but I think it wouldn't change the
24 fact that the jury has already heard our opening.

25 THE COURT: Okay.

1 MS. PHILLIPS: Where we are admitting to
2 wrongdoing. And I think it makes us look frankly
3 stupid in the jury's mind that we're saying our
4 client did something wrong. If it's done -- just
5 like dismissed -- I mean, for us, it's not the fact
6 of the dismissal that is itself prejudicial, it's
7 the timing of this dismissal.

8 And I just wanted to also share some due
9 process language that in State vs. Hornsby, the
10 Supreme Court stated that a denial of due process
11 occurs when a Defendant in a criminal trial is
12 denied the fundamental fairness essential to the
13 concept of justice. And we believe that --

14 THE COURT: So it's unfair for him to dismiss
15 the charges?

16 MS. PHILLIPS: Not that he dismissed the
17 charges, but the timing of the dismissal, because
18 it allowed him to get into a lot of issues that had
19 it just been tax evasion from the beginning, he
20 might not have been eliciting or might not have
21 been permissible to elicit. And it also --

22 THE COURT: Which issues did he get into that
23 did not -- you're saying it's not relevant to --
24 which issues did he get into that are not relevant
25 to the tax evasion that are relevant to -- because

1 you have got to remember that your co-counsel
2 argued during directed verdict that the charges
3 were all encompassed in one, that they were all the
4 same elements. You recall that, don't you?

5 MS. PHILLIPS: I do recall that argument, Your
6 Honor. I would say that --

7 THE COURT: I think his argument was that the
8 elements in the statute were the same as far as
9 that, and that your client should only have been
10 charged with one -- I don't think he said one or
11 the other, but one of the charges. And in that
12 position, it was just the failure to file. His
13 position, We should only be charged with failure to
14 file because the elements were the same. Right? I
15 think that's what he argued. I know you didn't
16 argue. You can continue on.

17 MS. PHILLIPS: Yes, Your Honor. I think in
18 terms of just the elements of the statute, the
19 misdemeanor statute is the one that's a lot more
20 specific. The felony statute is the one that's a
21 lot more broad.

22 I mean, I think that we could make an argument
23 that a lot of the information about failure to
24 file, about timing of failing to file, amounts that
25 were -- or, sorry, timing of failing to file and

1 what he did and did not file and when, that
2 information, I would contend, might be kept out in
3 an evasion case only.

4 THE COURT: Okay. All right. Yes, ma'am, you
5 can continue.

6 MS. PHILLIPS: So I just -- I believe it sets
7 a dangerous precedent going forward in terms of
8 allowing the State to get in improper propensity or
9 irrelevant evidence when they're allowed to employ
10 this strategy. I think it's an unfair strategy.
11 As I said, it's not the fact of the dismissal, it's
12 the timing of the dismissal. It denies
13 Mr. Ellerbee the opportunity to present an
14 effective defense in terms of preparing strategy,
15 and it is damaging to our credibility. Like, we
16 wouldn't admit that he did anything wrong in this
17 area of taxes if we had known that those were going
18 to be dismissed. We would have gone right to the
19 heart of the issue of the evasion question and
20 perhaps other directions that we haven't considered
21 in the last hour that this has been an issue for
22 us.

23 THE COURT: All right. Thank you.

24 Yes, sir?

25 MR. MYRICK: Briefly, Your Honor. The true

1 bills, 2018, they all say, to wit, Curnez Ellerbee
2 did fail to file a South Carolina individual income
3 tax return. Every single one of them alleges the
4 failure to file as part of the scheme to evade.
5 She's incorrect.

6 Thank you.

7 THE COURT: All right. The motion for
8 mistrial is denied. However, we still -- we have
9 to deal with the issue of the charges being
10 dismissed. And I'm trying to figure out the best
11 way to do it.

12 My thought is that we'll bring the jury back
13 in, I'll tell them we're ready for closing
14 arguments and charge on the law. And at that time,
15 I'm assuming that Mr. --

16 I think you need to dismiss the -- because
17 they were presented to the jury, you need to
18 dismiss them in the presence of the jury.
19 Dismissing them for the Court --

20 MR. MYRICK: No problem, Your Honor. Where
21 are the original true bills?

22 THE COURT: They were up here. I don't know
23 what happened to them after you dismissed them.

24 MR. MYRICK: I'll do it on the record in front
25 of the jury as soon as they walk back in. If the

1 clerk will allow me, I'll just read from these
2 copies.

3 THE COURT: All right. And no explanation as
4 to why. You can't explain why, you just dismissed
5 them.

6 MR. MYRICK: I can argue about it, can't I?

7 THE COURT: You are going to argue about what?

8 MR. MYRICK: Can I argue?

9 THE COURT: What's your argument about why you
10 dismissed them?

11 MR. MYRICK: Well, nevermind, I'll just
12 dismiss them. I'm fine with that.

13 THE COURT: So you need to just state the
14 State wishes to dismiss the following indictments
15 for, and proceed on the remaining indictments.

16 MR. MYRICK: Yes, ma'am.

17 THE COURT: But, I mean, I don't know what
18 your reasoning or rationale is for dismissing them,
19 so I don't -- I would want to hear that before you
20 argue that before the jury. I don't know the
21 rationale of dismissing the charges --

22 MR. MYRICK: These charges are encompassed in
23 the other charges, and we don't see any need to go
24 forward on all ten and overly complicate the
25 matter. We will go forward on five. Because as I

1 just pointed out, Your Honor, these true bills of
2 tax evasion, they all say, to wit, Curnez Ellerbee
3 did fail to file a South Carolina individual income
4 tax return. They all say that as part of the
5 scheme to evade. So I think the context in these
6 is covered by these.

7 THE COURT: I understand what you're saying,
8 but I'm not going to let you get up there and get
9 into a legal explanation as to why you presented
10 them and then dismissed them. So you just need to
11 say they're being dismissed, the State decided to
12 proceed on the others ones, and that's it, even in
13 closing argument.

14 MR. MYRICK: Yes, ma'am, I understand.

15 THE COURT: All right. Anything else?

16 MR. MYRICK: Nothing from the State, Your
17 Honor.

18 THE COURT: Yes, ma'am?

19 MS. MUBARAK: Yes, Your Honor, relating to the
20 jury charges on willfulness -- well, I guess it's
21 under the attempt of evasion section in the
22 language that talks about willfulness.

23 The statute, I'm going to read, Person who
24 willfully attempts in any manner to evade or defeat
25 a tax or property assessment. There's no, like,

1 language that exactly specifies what that is. And
2 yet the State charges they submitted at the end
3 here have information about single affirmative act,
4 that he performed some conduct, likely effect that
5 would mislead or conceal. We object to that
6 information and that being in there.

7 And towards the end of it, in short, the
8 Government must prove beyond a reasonable doubt the
9 Defendant specifically intended to defeat or evade
10 the payment of income tax. The Defendant knew it
11 was his duty to pay.

12 And I believe earlier they specified that if
13 the -- like, higher knowledge bar affects tax law.
14 And the case law requires affirmative acts for this
15 allegation. And the stuff in here indicates --

16 THE COURT: Which case law are you referring
17 to?

18 MR. COMISH: Your Honor, I will step in
19 briefly. The federal case law that I handed up, it
20 is either State vs. Spies or Sansone that says that
21 the felony is a willful commission where the
22 misdemeanors can be a willful omission. And I'm
23 paraphrasing there. I don't have the case law --

24 THE COURT: I don't have the case law.

25 MR. COMISH: I don't have it. It's one of

1 those two cases. I recall that language. I don't
2 recall specifically what it says, but I do recall
3 that distinction being important.

4 THE COURT: What is the name of the case
5 again?

6 MR. COMISH: Spies, S-P-I-E-S, I believe was
7 the case. Either that or Sansone, S-A-N-S-O-N-E.

8 THE COURT: I will be glad to hear from the
9 State.

10 I don't have that case, but I had it. I don't
11 know where it is.

12 MR. MYRICK: I've got a copy, Your Honor.
13 May I approach?

14 THE COURT: Yes, sir.

15 MR. MYRICK: It's Spies vs. United States.
16 And, Your Honor, I've read your charge that you
17 provided. It is an accurate statement of the law
18 under Spies and other subsequent cases. I don't
19 know what they're hung up on exactly, but your
20 charge is a correct statement of the law.

21 And the State is ready to proceed.

22 MR. COMISH: Your Honor, I think that this is
23 my fault. I was misreading the charges. And I
24 think we're going to withdraw that.

25 Your Honor, it's our mistake due to all the

1 different jury instructions. We're referring
2 specifically to that clause on Page 16, the
3 specific intent to fail to do something the law
4 requires to be done.

5 THE COURT: So that's what your objection is
6 to?

7 MR. COMISH: Yes, ma'am. And I don't have the
8 case in front of me, but I believe Spies says a
9 felony requires a willful commission rather than a
10 willful omission.

11 MR. MYRICK: Your Honor, that's direct
12 language from State vs. Girard.

13 THE COURT: Do you have a copy of the case?
14 Do you have a copy of Spies?

15 MR. COMISH: It's in my office, Your Honor.
16 I'll have someone bring that up.

17 THE COURT: Because I'm looking for the
18 language that you just cited, but I can't find it.

19 MR. COMISH: I could be confusing it with
20 Sansone because it is --

21 THE COURT: It could be my eyes because it's
22 hard to read this small, so that's why I was
23 looking for it.

24 MR. COMISH: Yes, ma'am.

25 THE COURT: Okay.

1 Do you have a copy of the case you cited?

2 MR. MYRICK: I'm sorry, Your Honor?

3 THE COURT: Do you have a copy of the case
4 that you cited?

5 MR. MYRICK: Girard and Sowell?

6 THE COURT: Yes.

7 MR. MYRICK: I will give you mine, Your Honor.

8 THE COURT: If you can give me the cite, I can
9 pull it up.

10 MR. MYRICK: 390 S.C. 146.

11 THE COURT: 390 S.C. 146.

12 MR. MYRICK: Yes, ma'am. And State vs.
13 Sowell, 370 S.C. 330.

14 THE COURT: 370 S.C. 330.

15 MR. MYRICK: And 390 S.C. 146.

16 MR. COMISH: Your Honor, it appears to be my
17 mistake. I believe the commission versus omission
18 language is in Sansone. It is 380 U.S. 351.

19 THE COURT: Yes, because I'm looking at the
20 Spies case, and basically it says that you have to
21 have language in there, voluntary and purposefully,
22 which is in the jury charge. But -- and it
23 distinguishes it from -- it's basically saying that
24 you can accidentally fail to file, but you can't
25 accidentally evade, is what Spies says.

1 Now, I haven't read the other cases. Y'all
2 are throwing cases out. I'm looking at Girard.

3 MS. MUBARAK: And, Your Honor, we read the
4 cases that Mr. Myrick gave us, and the willfulness
5 definition that the Defense presented to the jury,
6 I don't think we clearly asked you. Their
7 willfulness definition seems to be very long and
8 adds more into it than what those cases say, in our
9 opinion. So that's the reason that we offered a
10 concise definition of willfulness based on what we
11 thought the case law said.

12 THE COURT: Well, I did not get it. I think I
13 instructed you all to present the language to me,
14 and no one presented it to me, and so I went on the
15 language that I had. If it was different, I said I
16 would use it, but it was not presented to me.

17 MS. MUBARAK: I apologize, Your Honor, I
18 thought we gave you a copy.

19 THE COURT: No, ma'am. You only had one copy.
20 No one gave me a copy.

21 (Copy handed up.)

22 THE COURT: Voluntary, intentional.

23 Let me get this right, you don't want the
24 language that says, An act is done knowingly if it
25 is done purposefully and deliberately and not

1 because of a mistake. You don't want that
2 language? Accident or any other innocent reason?

3 MS. MUBARAK: No.

4 THE COURT: In short, the Government must
5 prove beyond a reasonable doubt the Defendant
6 specifically intended to defeat or evade the
7 payment of income tax that the Defendant knew was
8 his duty to pay. You don't want that language?

9 MS. MUBARAK: No, Your Honor. We just wanted
10 to substitute in the language about the word
11 willfully where -- we want it to stop -- on
12 Page 16, we either want it to stop at, Where
13 willfully means a voluntary, intentional, violation
14 of known legal duty, in other words, act or failure
15 to act, willfully done. It's done voluntary,
16 intentionally, and with specific intent to do
17 something unlawful. But we don't want the language
18 that says specific intent to fail to do something
19 the law requires be done. That is to say, with the
20 purpose either to disobey or disregard the law.
21 And that goes back to the language Mr. Comish was
22 talking about, about how a tax law rises to the
23 higher level or a known duty.

24 And then the very end of it, it just -- where
25 it says the Defendant knew it was his duty to pay,

1 if we could somehow rephrase that language.

2 THE COURT: This is what I'm going to do. I
3 am going to charge -- you all can make any
4 objections. I have added your second charge in
5 there, even though this was not -- I added the
6 second charge that I thought you all wanted
7 regarding notice, that they had to put him on
8 notice. I added that in there. Is that the charge
9 you want? The charge here --

10 MR. COMISH: That's prior to our agreement.

11 THE COURT: All right. I will note your
12 objection for the record. I'm going to charge the
13 jury.

14 Mr. Myrick, you are going to dismiss the
15 charges, you are going to dismiss them on the
16 record in front of the jury. You are not allowed
17 to explain why. And we will go into closing. As I
18 stated, close in full. They get the last argument.
19 And then I'll charge the jury.

20 All right. Yes, ma'am? And I will make the
21 jury charges a Court Exhibit so you all will be
22 able to -- they will be in the record for purposes
23 of your objection.

24 You can bring them in.

25 (WHEREUPON, the jury came into open

1 court at 2:50 p.m.)

2 THE BAILIFF: The jury is present, Your Honor.

3 THE COURT: Thank you.

4 All right, ladies and gentlemen of the jury, I
5 apologize again for the delay, but we are ready for
6 closing arguments and the charge on the law at this
7 time. You will first hear from the State, and then
8 you will hear from the Defense.

9 Thank you.

10 Yes, sir?

11 MR. MYRICK: Your Honor, I have a motion
12 first.

13 THE COURT: Yes, sir?

14 MR. MYRICK: Your Honor, the State is going to
15 go ahead and move to dismiss 2018-GS-40-05513,
16 05511, 05510, 05512, and 05509. Those are failure
17 to file charges.

18 THE COURT: All right.

19 Ladies and gentlemen of the jury, the State is
20 dismissing the charges for failure to file, and I
21 am assuming proceeding on the charges -- the other
22 indictments?

23 MR. MYRICK: Yes, ma'am.

24 THE COURT: All right. Ladies and gentlemen,
25 please pay close attention to the attorneys in

1 their closing arguments.

2 Yes, sir, Mr. Myrick?

3 MR. MYRICK: Thank you, Your Honor. If it
4 please the Court?

5 CLOSING ARGUMENT

6 MR. MYRICK: Thank y'all.

7 So what we've seen so far is that
8 Mr. Ellerbee's 2009 tax return was filed in 2018.
9 This isn't the State saying it, this is
10 Mr. Ellerbee saying it through his preparer.

11 He also says that there's a balance due of
12 \$3,330. So in that year, he got paid \$48,686 in
13 wages. And for state income tax, well, it's blank.

14 So for 2010 -- and, again, this would be
15 Mr. Ellerbee's document. He signed it. He paid
16 Ms. Jarvis to prepare it. His balance due is
17 \$2,716. And on this copy, you can see a little
18 cursive handwriting, NP, no payment.

19 I wonder how much he made in 2010? According
20 to his W-2s, in 2010 he made \$52,437 with no state
21 withholding.

22 2011, his income taxes, his return was filed
23 in 2018. He signed it. Balance due \$3,153. So
24 how much did he make that year? Let's see. In
25 2011, he made \$57,725 under wages, tips, and other

1 compensation. And for state income tax, which you
2 will see in the jury room if you care to look, Box
3 Number 17, state income tax, nothing, zero.

4 And in 2012, which you heard from Marshall
5 Smith was due in April of 2013, but was filed by
6 Mr. Ellerbee in 2018. It was signed by him. He
7 had a balance due as well.

8 And what do we make of all this? What do we
9 make of all this? Well, maybe he didn't know.
10 Maybe he didn't know that he was supposed to file.
11 But he knew in 2007 that he was supposed to file
12 because, again, there's that income tax return
13 signed by Mr. Ellerbee, so he knew he had to file.

14 And you heard from Andy Blackwell that he had
15 filed in 2005, '6, and '7, but that he hadn't paid.
16 And what Special Agent Blackwell testified to is
17 that the tax was satisfied via wage garnishments
18 and liens.

19 Now, if you go to get your paycheck twice a
20 month or once a week, or however they pay it, and
21 all of a sudden it's not what it's supposed to be,
22 you probably ought to ask. Where did a big chunk
23 of my paycheck go? And no one can know what's in
24 Mr. Ellerbee's mind. They can't. But the judge is
25 going to tell you about circumstantial evidence.

1 That's things that you can infer from the
2 circumstances.

3 So if all of a sudden the government is
4 garnishing your wages, shouldn't you ought to know?
5 But I submit to you that Mr. Ellerbee didn't have
6 anything taken out of his check because he didn't
7 want it taken out. But when he filed 2007, all of
8 a sudden, he got garnished. Well, that wasn't a
9 very good plan, was it?

10 So he made it better come 2009. This was due
11 in April of 2010. It was filed eight years later.
12 Same with all these, except -- except for 2008.
13 It's never been filed. It's never been filed.

14 Now, Marshall Smith, who works for the
15 Department of Revenue and has worked there for 30
16 years, said from the stand his filing
17 requirement -- and Mr. Ellerbee admits that. He
18 said there was a tax due here based on this amount
19 of wages. And Mr. Ellerbee acknowledges that.

20 What else did Marshall say? Well, he said it
21 is the employee's responsibility to get their
22 withholding right. Now, why is that? Who knows
23 better than Mr. Ellerbee whether he's married or
24 single or whether he has one kid or two kids? Who
25 knows better than the taxpayer what's going on? I

1 submit to you that anybody who had an intention to
2 abide by the law would have seen these W-2s in 2008
3 and been like, Oh, no. Again in 2009, '10, '11.
4 You know why he didn't fix it? He didn't want to.
5 He had no intention.

6 And what the judge is going to tell you is
7 along with what Stacey Young told you. I'm sorry,
8 let me back up. What Stacey Young said is, We have
9 a computer program, About You, About You, and that
10 all Verizon employers have their own log-in ID and
11 they have got their own password. And you log in.
12 And we know that in 2009 there was a special
13 withholding tax status. And we know --

14 MR. COMISH: Objection, Your Honor.

15 THE COURT: Yes, sir?

16 MR. COMISH: He never had a witness that was
17 competent to testify to that.

18 MR. MYRICK: I'm reading from the evidence,
19 Your Honor. They can read it themselves back in
20 the jury room.

21 THE COURT: All right. But you can't if the
22 witness -- sustained. Continue on. You cannot
23 interpret it for them if the witness did not
24 testify to it.

25 MR. MYRICK: I think we had a witness say

1 this, Your Honor. I don't know if there's going to
2 be an objection.

3 THE COURT: You can show it to him.

4 (Pause.)

5 MR. MYRICK: We know that in 2011, these
6 Verizon documents, which were brought to court and
7 printed out by Stacey Young, who said these are the
8 real thing. This is the real thing. I brought
9 this. I'm sure it's right. That's why my initials
10 are on it. It says, Claiming exemption from
11 withholding. Claiming exemption from withholding.
12 Claiming exemption from withholding.

13 And we also know from her testimony that if
14 you claim exemption, you get a pop-up box saying, I
15 certify that I qualify for this. And you can't
16 proceed until you answer the questions in the
17 pop-up box.

18 Finally, Marshall said that -- I'm sorry, Andy
19 Blackwell said, during his investigation, he didn't
20 find any wrongdoing by Verizon. So where is the
21 wrongdoing?

22 MR. COMISH: Objection. That was not the
23 testimony.

24 MR. MYRICK: Yes, it was.

25 THE COURT: Hold on one second. Let me see

1 y'all one second.

2 (WHEREUPON, a bench conference was held
3 in the presence of the jury but out of
4 the hearing of the jury.)

5 THE COURT: All right. Ladies and gentlemen
6 of the jury, I'm going to send you all out for a
7 short second while we take up a matter of law.

8 Thank you.

9 (WHEREUPON, the jury retires to the jury
10 room at 3:04 p.m.)

11 THE COURT: What's the objection?

12 MR. COMISH: The objection is, Your Honor,
13 according to my recollection, I asked the
14 investigator whether there was any investigation
15 into Verizon, and his answer was in the negative.

16 THE COURT: Uh-huh.

17 And your response, Mr. Myrick?

18 MR. MYRICK: Ma'am?

19 THE COURT: His objection is that he asked if
20 there was any wrongdoing on Verizon. And at the
21 bench you said that you asked on redirect if there
22 was any wrongdoing, but I think what you were
23 trying to say is there was no wrongdoing by
24 Verizon, that the officer testified to that. Is
25 that correct?

1 MR. MYRICK: Yes, ma'am, that's essentially
2 correct. We just disagree. But, luckily, we have
3 a court reporter who will tell us who said what.

4 THE COURT: So we are going to be quiet --
5 what was the witness's name again? Do you know
6 which witness?

7 MR. MYRICK: Blackwell.

8 THE COURT: So it will be his redirect. We
9 all agree that Mr. Comish asked the question, I
10 recall, Was there an investigation into Verizon,
11 and he said no. I don't think anyone disputes
12 that. So the only dispute is as to the redirect.

13 MR. MYRICK: I'm sorry, Your Honor?

14 THE COURT: We don't dispute -- she can't as
15 long as we are talking.

16 I'm just trying to be clear. Are you
17 disputing that he asked if there was any
18 investigation and he said no, into Verizon? Do you
19 dispute that? Because I need to have her look it
20 up if you dispute it.

21 MR. MYRICK: I want to see it all, Your Honor.
22 But I don't recall a specific answer. I was
23 getting ready for my redirect.

24 (WHEREUPON, the court reporter reads
25 back requested portion.)

1 THE COURT: All right. So the objection is
2 overruled. You can go back and ask your question,
3 but he needs to frame it in the terms of, I asked
4 the investigator was there any wrongdoing --
5 whatever the question was that you asked. You can
6 say what he asked and what he said. Y'all can come
7 back and say what you asked and what he said. All
8 of that's in evidence. So as long as it's in
9 evidence, he can argue it. That's why we call it
10 argument.

11 MR. MYRICK: Your Honor, may I ask the court
12 reporter to re-read my question and Blackwell's
13 answer, please, from redirect?

14 (WHEREUPON, the court reporter read back
15 requested portion.)

16 THE COURT: So it appears we have a note from
17 the jury.

18 The fine people of Jury Room 2B would like to
19 request additional snacks. You don't have to mark
20 that.

21 Can you grab some snacks, please? The jurors
22 want snacks. Thank you.

23 But we are going to bring them back in, then
24 they can get their snacks. They probably think
25 they're going to be back there for a minute.

1 All right. We're all clear. We're going to
2 continue on.

3 MR. MYRICK: So I'm going to say that Agent
4 Blackwell said, We found no wrongdoing on behalf of
5 Verizon, to the question I asked him, right?

6 THE COURT: If it's in evidence.

7 MR. MYRICK: Thank you, Your Honor.

8 THE COURT: And they can come back and say
9 what he said.

10 MR. MYRICK: Make sure.

11 (WHEREUPON, the jury came into open
12 court at 3:12 p.m.)

13 THE BAILIFF: The jury is seated, Your Honor.

14 THE COURT: All right. Ladies and gentlemen
15 of the jury, I got your note and they are -- the
16 bailiff went to get more snacks, so he is working
17 on that so when you get back into the jury room you
18 will have snacks.

19 We will continue with the closing argument of
20 Mr. Myrick.

21 Yes, sir?

22 MR. MYRICK: Thank you, Your Honor.

23 CLOSING ARGUMENT CONTINUES

24 MR. MYRICK: So I asked Special Agent
25 Blackwell, What information, if any, did you find

1 indicating wrongdoing on behalf of Verizon? And he
2 said, There was -- we found no wrongdoing on behalf
3 of Verizon.

4 Now, the judge is going to talk to you. She's
5 going to charge you on the law. And if there's
6 anything I say that conflicts with anything she
7 says, ignore me, listen to her. But what I think
8 she's going to tell you is that for an act of tax
9 evasion, you need three things. You need a tax
10 that is due and owing. And you need an affirmative
11 act. You need willfulness. So was it willful when
12 he knew that he was getting garnished for what he
13 did in '5, '6 and '7? Did he know then? You bet.
14 You bet he knew. So he knew when he got his W-2 in
15 2008 with no withholding that he ought to be
16 filing. He had been filing before. He knew
17 absolutely. Did he know that he owed tax? Well,
18 yeah, he had already been garnished once when he
19 filed this thing owing \$1900 in 2007. And it
20 happened the previous two years too. And
21 especially, you bet he knew, when you get your W-2s
22 at the end of the year and there's no withholding
23 and you made, you know, anywhere between \$40- and
24 \$50,000.

25 So was it willful? Was it on purpose? You

1 bet it was. Did he owe? You get he did. Was
2 there an affirmative act? I submit to you there
3 ain't no accident there was no withholding taken
4 out of his check for five years. It was because of
5 this, not Verizon. He logged on. He orchestrated
6 it. And when he figured out that if he filed
7 you're going to get garnished, he stopped doing
8 that.

9 Now, if you leave your withholding like it's
10 supposed to be, you won't have a problem. He made
11 doggone sure the government did not get his
12 hands -- its hands on any of his money.

13 And, finally, in South Carolina, there's a
14 Taxpayer Bill of Rights. You heard Marshall Smith,
15 who's worked for DOR for 30 years, testify that
16 that was something that existed in the civil realm
17 to protect taxpayers civilly. We're in criminal
18 court.

19 I'm asking you to find Mr. Ellerbee guilty of
20 tax evasion.

21 Thank y'all.

22 THE COURT: Yes, sir?

23 MR. COMISH: May it please the Court, Your
24 Honor?

25 CLOSING ARGUMENT

1 MR. COMISH: I'm going to go just a little
2 more slowly, a little bit more thoroughly than
3 Mr. Myrick. I'm not going to be as polished as
4 him. I don't quite have his experience.

5 Let me talk about one thing first. In
6 opening, my co-counsel, Ms. Mubarak, got in front
7 of you and said, Listen, Curnez might be guilty of
8 failure to file. We said, You know what, you can
9 go ahead and convict him for that. It turns out,
10 we were wrong. I hadn't been doing this as much as
11 Mr. Myrick, for as long as he has.

12 You just heard from Mr. Myrick himself, Your
13 Honor, I'm dismissing these charges. He's
14 dismissing these charges after our entire trial,
15 all the evidence that he hand-put in already in
16 place. And after all that, he made the decision,
17 You know what, I can't proceed on these charges,
18 I'm going to get rid of them.

19 The reason the Government dismissed those
20 charges is they don't think they can prove them.
21 Can't prove those charges. They want to focus your
22 attention on what matters. And he just did. He
23 stood up there and he said, Listen, there's a tax
24 liability. We can't dispute that. Mr. Ellerbee,
25 he owes money. And he said, Listen, there's

1 willfulness. And he had everything around
2 willfulness except obviously willfulness itself.

3 And he also said, There's a third thing we
4 have to prove. We have to prove that Mr. Ellerbee
5 committed an affirmative act. And we haven't
6 agreed, us and the Government, on much in this
7 trial. Y'all have seen it. We have disagreed on
8 just about everything. But one thing that we
9 absolutely agree on is that there has to be an
10 affirmative act. He has to do something in order
11 for you to find him guilty.

12 And Mr. Myrick pointed your attention when he
13 said that to what the Government wants you to
14 believe is Mr. Ellerbee's affirmative act, this
15 Verizon paperwork.

16 The Government wants you to believe that this
17 paperwork produced by Verizon proves that
18 Mr. Ellerbee committed an affirmative act. And
19 they told you, Without this, we can't convict.
20 This case goes away. And you can see it in the
21 indictments, the language of the indictment itself.

22 THE COURT: Right here. You wanted these?

23 MR. COMISH: Yes, ma'am. All right, those
24 were the dismissed ones.

25 And I hold here the indictments that y'all

1 will be looking at, and they're all essentially the
2 same. But you can see here, to wit, Curnez
3 Kenyatta Ellerbee did fail to file a South Carolina
4 individual tax return. Doesn't matter. He told
5 you it doesn't matter for an affirmative act.
6 Having been paid earnings of over \$40,000 in 2009
7 invoking a tax liability. And, further, Curnez
8 Kenyatta Ellerbee claimed to be exempt from
9 withholding on state income taxes by employer
10 during 2009.

11 That's the State's case, that Curnez Ellerbee
12 filed a false or misleading W-4. That's the key to
13 the entire case. Without that, you have no choice,
14 you have to find him not guilty.

15 So let's talk about the one thing that you're
16 missing, which is the W-4. And the State -- he's
17 been doing this a while. He has a lot of tricks up
18 his sleeve. He has a lot up his sleeve. He has
19 everything but the W-4 up his sleeve.

20 And he says, Listen, I don't have the W-4, but
21 what I have is this, this Verizon form. And this
22 Verizon form, you guys will get to look at this
23 when you go to the jury room. And just now, the
24 Government called your attention to things on here.
25 I was curious what they called your attention to

1 and what they didn't. They said, Aha, here's these
2 three words, Maintain Taxable Gross. We don't know
3 what that means. I don't know why they're saying,
4 Aha. The State could not explain to you.

5 And then he said, No matter. Aha -- a second
6 aha -- claiming exemption from withholding. Right
7 here.

8 Let's think about what we know about that.
9 One, Curnez Ellerbee did not write that. Two, we
10 don't know who wrote it. The State called Stacey
11 Young -- and I thought this was curious, right?
12 Everything that we have, these are all payroll
13 documents. These are produced by payroll. They're
14 in the payroll system. HR employees do not have
15 access to these documents. And there must be
16 something I'm missing because I haven't been doing
17 this as long as Mr. Myrick, but why didn't the
18 Government just call an employee from payroll who
19 knows what the heck is going on in these things?

20 Because you heard the witness, she said, I
21 don't know who wrote it. And I said, Okay, okay.
22 Well, what does this mean? I don't know. What
23 does this mean? I don't know. What does this
24 mean? I don't know. Must have been someone from
25 payroll who wrote that. Okay. Well, who? Who

1 wrote it? I don't know. What were they looking at
2 when they wrote it? Who knows? We have no
3 testimony about that. And this is a payroll
4 employee that's doing data entry. How many
5 thousands of these does that employee do every day,
6 every week? How much attention does that employee
7 pay to this paperwork that's flying across his or
8 her desk? You know, I wish we knew, but we don't.

9 And another thing that's been bugging me is
10 you have five of these. You have one for every
11 year. And they're saying, Look, this proves that
12 Curnez did something. But what they didn't tell
13 you is, look at 2009. The State is saying he
14 claimed that he wasn't exempt from withholding in
15 2009. But if you look at the text box on that
16 year, like he wants you to do on other years, what
17 does that text box say? I said, Aha, it must say
18 exempt from withholding. No. No. It says,
19 single. Their proof that he told Verizon, No, give
20 me all my money, their proof that he said that is
21 the word single. I'm no expert in this, that's not
22 my job, but I can't for the life of me figure out
23 how from this one word, single, right next to the
24 tax marital status box, they impute all this.

25 Look at 2010, same thing. Ask yourself, Did

1 the State explain to you why they submit five
2 different forms, some of which say one thing, some
3 of which say another thing? And the State is
4 saying, Eh, don't worry about that. They all mean
5 the same thing.

6 My question is, Why don't we have the W-4s?
7 We know from the State's own witness that Verizon,
8 and any employer really, is required by federal law
9 to maintain W-4s for a period of four years. They
10 have to. We know that this investigation began
11 2013, 2014. That means that Verizon had to have
12 these W-4s. And you heard Mr. Myrick say, Oh, no
13 wrongdoing on Verizon. What that means to me is,
14 Okay, well, y'all don't think they violated federal
15 law. So the W-4s were there from what the witness
16 said and from what Mr. Myrick has told you another
17 witness said. No wrongdoing. In my mind, from
18 such a competent and experienced investigator, that
19 means, Okay, well, they must have the W-4s, because
20 otherwise there would be wrongdoing.

21 We know that Verizon had to have them. The
22 problem, ladies and gentlemen, is that you don't
23 have them. You are the ones who are supposed to
24 judge Mr. Ellerbee on the content of those
25 documents. And the State made a decision to not

1 produce those documents for you. The State made a
2 decision to give you this, to give you a payroll
3 Verizon output form and to put a witness on this
4 witness stand from the wrong department. A witness
5 who cannot explain to you what this
6 incomprehensible payroll output gibberish means.

7 Sometimes it's hard for us to say what a
8 reasonable doubt is. In this case, it's easy.
9 Reasonable doubt is what the State told you they
10 needed to prove. We have to prove an affirmative
11 act. Reasonable doubt was right here in the
12 State's only evidence that there was an affirmative
13 act. The only thing that they submitted in
14 evidence which they claim can show an affirmative
15 act, this thing that Mr. Ellerbee never touched.
16 We don't know who touched it. We don't know where
17 it came from. It's not my department. It's
18 oppressive for me as a Defense attorney to be able
19 to point to one thing right here and say, This is
20 reasonable doubt.

21 And there's a few other things that I need to
22 draw your attention to before I be quiet and let
23 you go on about your deliberations. I found it
24 curious that the Government didn't want you to know
25 that there's other employees at Verizon who are in

1 the exact same hot water. You heard the
2 objections. Huh-uh, jury can't know that.

3 Now, why is that? I mean, you heard their own
4 investigator say, Yeah, I've investigated dozens of
5 these cases at Verizon. I've investigated them all
6 across the state, Charleston, Greenville, Columbia.
7 Why doesn't the State want you to know that? And
8 doesn't that send up a red flag? This thing is so
9 widespread that dozens of folks are caught up in
10 it. Shouldn't that tip you off that maybe
11 something is wrong?

12 We know by state law that Verizon is required
13 to withhold this money. The statute is plain as
14 day. Mr. Marshall Smith got on the stand and said,
15 Yep, Verizon is required to withhold this money.
16 And not only that, there's another statute. And
17 there was a little bit of hemming and hawing before
18 I got the truth out of him. That statute says that
19 if they don't withhold the money, they're liable
20 for it. Why is it the State isn't investigating
21 Verizon?

22 Now, you heard Mr. Myrick say, Well, the
23 investigator told me they had no indication of
24 wrongdoing. You heard that from his mouth. But if
25 you recall what I asked the investigator

1 immediately before that -- and there was a little
2 hemming and hawing there too -- they never found
3 any wrongdoing because they never looked for it. I
4 said, Did you investigate Verizon? And he said,
5 No, sir, there was no criminal investigation. That
6 wasn't what I asked, was it? I asked if there was
7 any investigation. A little bit of back and forth,
8 and finally got the investigator to admit that, to
9 his knowledge, this experienced investigator, who's
10 been with the Department of Revenue for over a
11 decade, he has no knowledge of anyone in his
12 department looking into Verizon.

13 Maybe -- maybe they're trying to hide this
14 because the issue is not with Curnez. It's not
15 with that single man sitting right there, that
16 single, innocent man. The issue maybe is with
17 Verizon. These documents that Verizon produced
18 don't make any sense. They say two different
19 things, even though the State says, Ah, they say
20 one thing.

21 The craziest thing of all is this. We know
22 the Government could have just called someone from
23 payroll. The Government could have cleared all
24 this up if they wanted to. Call someone from the
25 right department. The Government could have gone

1 and gotten those W-4s, which Verizon was required
2 by law to keep. The Government didn't do that
3 either.

4 And I submit to you maybe -- maybe the State
5 didn't do what it told you it was supposed to do,
6 or told you it had to do, because the State knows
7 those W-4s, maybe they don't say what the State
8 thinks they said, maybe they say something else.
9 And that's the problem here. Without those
10 statements, you can can't avoid the reasonable
11 doubt. Without the W-4s that the Government's
12 been talking about, without the W-4s that the
13 Government put in its own indictments, you cannot
14 convict.

15 And I'm going to get boring here for just a
16 minute, and then I'll get hopefully slightly more
17 interesting, and then I'll be done.

18 Let me take a second to talk to you about
19 reasonable doubt. It's kind of the thing that
20 everybody talks about, but no one really knows what
21 it means. It's hard to really nail it down. And
22 one thing I'm proud of is that in South Carolina, I
23 think that we've come across a common sense
24 solution. And here's the law on reasonable doubt.

25 Reasonable doubt in the State of South

1 Carolina, where we are, and in a criminal court,
2 where we are, is defined as a doubt that would make
3 a reasonable person hesitate to act. That's it.
4 If you hesitate to act, even for a moment, that is
5 reasonable doubt. And what that means for you as
6 jurors is your most important obligation is, if
7 there is reasonable doubt, to find Mr. Ellerbee not
8 guilty.

9 So let me pose you a series of questions.
10 Don't answer them. These are rhetorical.
11 Mr. Ellerbee didn't write this. Does that make you
12 hesitate to act? We don't know who wrote this.
13 Does that make you hesitate to act? We don't even
14 know what this means. Does that make you hesitate
15 to act? If it does, not guilty.

16 We don't have the W-4s. Does the absence of
17 that absolutely critical piece of evidence make you
18 hesitate to act? If it does, not guilty.

19 We don't have the employees from payroll who
20 could have explained all this and cleared it all
21 up. Does the fact that the State didn't call that
22 crucial witness cause you to hesitate to act? If
23 it does, that's a reasonable doubt and you must
24 acquit.

25 Now, I submit to you, the jury, that all of

1 this, all of this taken together, what the State
2 told you it needed and what the State failed to
3 provide to you, what the State tried to pass off as
4 to what it was supposed to give you, take that
5 individually, take it all together, and I submit to
6 you that if that causes you -- or it should cause
7 you to hesitate. And I pray that you feel that
8 hesitation and find Mr. Ellerbee not guilty.

9 Thank you.

10 JURY CHARGE

11 THE COURT: All right. Ladies and gentlemen
12 of the jury, I remind you that during this trial,
13 you and I have certain duties to perform. As the
14 trial judge, it is my responsibility to preside
15 over the trial of this case. And I also have the
16 duty to rule on the admissibility of evidence
17 offered during this trial.

18 You are to consider only the competent
19 evidence before you. If there was any testimony
20 ordered stricken from the record in this case
21 during this trial, you must disregard that
22 testimony. You are to consider only the testimony
23 which has been presented from the witness stand,
24 any exhibits which have been made a part of the
25 record in the case, and any stipulations of

1 counsel.

2 I have the additional duty to charge you the
3 law applicable to this case. As the presiding
4 judge, I am the sole judge of the law of this case,
5 and it is your duty as jurors to accept and apply
6 the law as I now state it to you.

7 If you have any idea as to what the law is or
8 what the law ought to be and it does not agree with
9 what I tell you -- I now tell you the law is, you
10 must abandon this idea because you are sworn to
11 accept the law and apply the law exactly as I state
12 it to you.

13 In every case tried in this court before a
14 jury, the jury becomes the sole and exclusive judge
15 of the facts in a case. A trial judge cannot
16 comment on, state, or make any statements to a
17 trial jury about the facts in a case.

18 Since you, the jury, are the sole judges of
19 the facts in this case, you are not to infer from
20 what I have said during the progress of this trial
21 that I have -- during the process of this trial in
22 ruling upon the admissibility of evidence, or
23 otherwise, or anything that I say now during the
24 course of this instruction to you, that I have any
25 opinion about the facts in this case. The law does

1 not allow me to have an opinion about the facts in
2 the case. This is a matter solely for you, the
3 jury, to determine. As jurors, it is your duty to
4 determine the effect, the value, weight, and
5 evidence presented during this trial.

6 Ladies and gentlemen of the jury, the
7 indictments, as I explained to you on Monday -- the
8 indictments charge the Defendant with five counts
9 of a willful attempt to avoid or defeat state
10 income tax. I remind you, as I told you on Monday,
11 that the fact that the Defendant was arrested,
12 charged, and indicted in this case is not evidence
13 in this case and cannot be considered by you as
14 evidence of guilt in this case, nor does it create
15 any presumption or inference of guilt. The
16 documents are simply the formal written instruments
17 which contain the charges made against the
18 Defendant in this case. It is the formal
19 document -- they are the formal documents by which
20 the case is brought into this court.

21 All right. I usually hold them in my hand.
22 These are the formal documents by which the case is
23 brought into court. As I stated before, this in no
24 way is any evidence of the Defendant's guilt in
25 this case.

1 The indictments in this case are the charges
2 of -- it is five indictments. Indictment Number 1
3 is for willful attempt to avoid or defeat state
4 income tax. And Indictment 2 is for willful
5 attempt to avoid or defeat state income tax. And
6 Indictment 3 is willful attempt to avoid or defeat
7 state income tax. And Indictment 4 is willful
8 intent to avoid or defeat income tax. And the
9 fifth indictment is for willful attempt to avoid or
10 defeat income tax.

11 Each indictment charges a separate and -- it
12 is separate. Each indictment should be decided
13 separately on the evidence and the law applicable
14 to it uninfluenced by your decision as to any other
15 indictment. The Defendant may be convicted or
16 acquitted on any or all of the offenses charged.
17 You will be asked to write a separate verdict of
18 guilty or not guilty for each indictment.

19 And I will go over the verdict form with you
20 at the end, Mr. Foreman.

21 Ladies and gentlemen of the jury, the
22 Defendant in this case has pled not guilty to these
23 indictments. And that plea puts the burden on the
24 State to prove the Defendant guilty. A person
25 charged with committing a criminal offense in the

1 State of South Carolina is never required to prove
2 himself innocent. I charge you that it is an
3 important rule of the law that a Defendant in a
4 criminal case, no matter what the seriousness of
5 the charge may be, will always be presumed to be
6 innocent of the crime for which the indictment was
7 issued unless guilt has been proven by evidence
8 satisfying you of that guilt beyond a reasonable
9 doubt.

10 This presumption of innocence does not end
11 when you begin your deliberations, but it
12 accompanies the Defendant throughout the trial
13 until you reach a verdict of guilt based on
14 evidence satisfying you of that guilt beyond a
15 reasonable doubt.

16 The presumption of innocence is like a robe of
17 righteousness placed about the shoulders of the
18 Defendant, which remains with the Defendant until
19 it has been stripped from the Defendant by evidence
20 satisfying you of the Defendant's guilt beyond a
21 reasonable doubt.

22 The presumption of innocence is not mere legal
23 theory. It is not just a legal phrase. It is a
24 substantial right to which every Defendant is
25 entitled unless you, the jury, are satisfied from

1 the evidence of the Defendant's guilt beyond a
2 reasonable doubt.

3 What is a reasonable doubt? The State has the
4 burden of proving the Defendant guilty beyond a
5 reasonable doubt. Some of you may have served as
6 jurors in civil cases where you were told that it
7 is only necessary to prove that a fact is more
8 likely true than not true, such as by the greater
9 weight or preponderance of the evidence.

10 In criminal cases, the State's proof must be
11 more powerful than that. It must be beyond a
12 reasonable doubt. Proof beyond a reasonable doubt
13 is proof that leaves you firmly convinced of the
14 Defendant's guilt. There are very few things in
15 this world that we know with absolute certainty.
16 And in criminal cases, the law does not require
17 proof that overcomes every possible doubt.

18 If, based on your consideration of the
19 evidence, you are firmly convinced that the
20 Defendant is guilty of the crime charged, you must
21 find the Defendant guilty.

22 If, on the other hand, you think there is a
23 real possibility that the Defendant is not guilty,
24 you must give the Defendant the benefit of the
25 doubt and find him not guilty.

1 Ladies and gentlemen of the jury, there are
2 two types of evidence which are generally presented
3 during a trial: Direct evidence and circumstantial
4 evidence.

5 Direct evidence is the testimony of a person
6 who claims to have actual knowledge of a fact, such
7 as an eyewitness. It is evidence which immediately
8 establishes the main fact to be proved.

9 Circumstantial evidence is proof of a chain of
10 facts and circumstances indicating the existence of
11 a fact. It is evidence which immediately
12 establishes collateral facts from which the main
13 fact may be inferred. Circumstantial evidence is
14 based on inference and not on personal knowledge or
15 observation.

16 The law makes absolutely no distinction
17 between the weight or value to be given to either
18 direct or circumstantial evidence, nor is a greater
19 degree of certainty required of circumstantial
20 evidence than of direct evidence. You should weigh
21 all of the evidence in the case. After weighing
22 all of the evidence, if you are not convinced of
23 the guilt of the Defendant beyond a reasonable
24 doubt, you must find the Defendant not guilty.

25 Necessarily, you must determine the

1 credibility of witnesses who have testified in this
2 case. Credibility simply means believability. It
3 becomes your duty as jurors to analyze and to
4 evaluate the evidence and determine which evidence
5 convinces you of its truth.

6 In determining the believability of witnesses
7 who have testified in this case, you may believe
8 one witness over several witnesses or several
9 witnesses over one witness. You may believe a part
10 of the testimony of a witness and reject the
11 remaining part of the testimony of that same
12 witness. You may believe the testimony of a
13 witness in its entirety or reject the testimony of
14 the witness in its entirety. You may consider
15 whether any witness has exhibited to you any
16 interest, bias, prejudice, or other motive in this
17 case. You may also consider the appearance and
18 manner of the witness while on the witness stand.

19 Ladies and gentlemen of the jury, we had
20 testimony from an expert witness. As I told you, I
21 think that was earlier today or yesterday, the
22 Rules of Evidence ordinarily do not permit
23 witnesses to testify to opinions or conclusions.
24 An exception to this rule exists for witnesses we
25 call expert witnesses. A witness who, by education

1 and experience, has become expert in some art,
2 science, profession, or calling may state an
3 opinion as to the relevant and material matter in
4 which the witness claims to be an expert and may
5 also state the reasons for the opinion.

6 You should consider any expert opinion
7 received in evidence in this case and, like any
8 other evidence, give it the weight you think it
9 deserves. If you decide that the opinion of an
10 expert witness is not based on sufficient education
11 and experience or if you conclude that the reasons
12 given in support of the opinion are not sound or
13 that the opinion is outweighed by other evidence,
14 you may disregard the opinion entirely. An expert
15 witness's testimony is to be given no greater
16 weight than that of other witnesses simply because
17 the witness is an expert. Further, you are not
18 required to accept an expert's opinion even though
19 it is not contradicted.

20 Next, ladies and gentlemen of the jury, we
21 will talk about intent. In order to establish
22 criminal liability, criminal intent is required.
23 Criminal intent must be proven by the State beyond
24 a reasonable doubt. Criminal intent is always a
25 matter that must be determined by the jury from the

1 circumstances surrounding the situation. There is
2 no way to prove intent to a mathematical certainty.
3 There is no way medical science can dissect a
4 person's brain and determine what the person had in
5 mind, so the law says that criminal intent may be
6 inferred from the circumstances shown to have
7 existed.

8 This is how you make a determination of
9 whether or not the element required intent --
10 requiring intent was present. It is not necessary
11 to establish intent by direct and positive
12 evidence, but intent may be established by
13 inference in the same way as any other fact by
14 taking into consideration the acts of the parties
15 and all the facts and circumstances of the case.
16 Criminal intent is a mental state, a conscious
17 wrongdoing. Criminal intent can arise from action
18 or failure to act.

19 Ladies and gentlemen of the jury, as I have
20 told you, the Defendant in this case is charged in
21 the indictment with attempt -- with tax evasion.
22 In order to meet the burden of proof for the crime
23 of willfully attempting to evade or defeat a tax as
24 charged in the indictment, the Government must
25 prove the following three essential elements beyond

1 a reasonable doubt. One, that income tax was due
2 and owing from the Defendant. Two, that the
3 Defendant attempted to evade or defeat the tax.
4 Three, in attempting to evade or defeat the tax,
5 the Defendant acted willfully.

6 To satisfy the first element requiring that
7 income tax was due and owing from the Defendant,
8 the Government must prove beyond a reasonable doubt
9 that the Defendant had some income tax due for the
10 year of each indictment. However, the Government
11 is not required to prove the precise amount of tax
12 alleged in the indictment, nor the precise amount
13 of tax owed.

14 To establish the second element of tax
15 evasion, the State must prove that the Defendant
16 engaged in an affirmative act. An affirmative
17 willful attempt at tax evasion may be inferred from
18 concealments of assets, covering up sources of
19 income, or making any substantial misstatement of
20 fact in an effort to evade or avoid paying the
21 necessary tax. To satisfy this element, the
22 Government must prove beyond a reasonable doubt
23 that the Defendant took a single affirmative act,
24 that is, that the Defendant performed some conduct,
25 the likely effect which would be to mislead or

1 conceal. This element requires more than passive
2 neglect of a statutory duty.

3 To establish the third element of tax evasion,
4 the Government must prove willfulness. To find the
5 Defendant guilty of violating Section
6 12-54-44(B)(1), you must not only find that he did
7 the acts complained of and of which he stands
8 charged, but you must also find that the acts were
9 done willfully by him.

10 The word willfully means a voluntary,
11 intentional violation of a known legal duty. In
12 other words, an act or a failure to act is
13 willfully done if it is done voluntarily and
14 intentionally and with the specific intent to do
15 something the law forbids or with the specific
16 intent to fail to do something the law requires to
17 be done. That is to say, the purpose either to
18 disobey or to disregard the law.

19 Act is done knowingly if it is done
20 purposefully and deliberately and not because of a
21 mistake or accident or negligence or any other
22 innocent reason.

23 In short, the Government must prove beyond a
24 reasonable doubt that the Defendant specifically
25 intended to defeat or evade the payment of income

1 tax that the Defendant knew it was his duty to pay.
2 Whether or not the Defendant acted knowingly and
3 willfully is a question of fact to be determined by
4 you based on all the evidence in this case. You
5 may consider the Defendant's general education --
6 educational background and experience when
7 determining his ability to form a willful intent.

8 Ladies and gentlemen of the jury, Section
9 12-58-70 of the South Carolina Code of Law says
10 that: All deficiency notices and all tax due
11 notices are required to contain a description of
12 the basis for an identification of amount of tax
13 due, interest, and penalty.

14 Ladies and gentlemen of the jury, I told you
15 earlier and I instruct you and emphasize the fact
16 that the Defendant -- the State has the burden of
17 proof in this case. The Defendant in this case did
18 not testify, and it is not a factor to be
19 considered by you in any way in your deliberation
20 and in your consideration of the question of guilt
21 or innocence of the Defendant. It must not be
22 considered by you in any manner whatsoever. A
23 Defendant has a constitutional right to remain
24 silent. And the assertion of this right must not
25 be considered by you in your deliberations. I

1 repeat, under the oath that you took, you are not
2 to draw -- you're to draw no conclusion whatsoever
3 from the fact that the Defendant in this case did
4 not testify. The fact that the Defendant did not
5 testify should not even be discussed in the jury
6 room. The burden of proof, as I have stated to
7 you, is on the State. The Defendant is not
8 required to prove himself innocent. The burden of
9 proof remains on the State to prove guilt beyond a
10 reasonable doubt.

11 Ladies and gentlemen of the jury, the State
12 and the Defendant are entitled to the individual
13 opinions of each juror on the issues of fact in
14 this case. It is the duty of each of you to
15 consider and weigh all of the evidence in the case
16 and from such evidence to determine, if you can,
17 the question of the guilt or innocence of the
18 Defendant.

19 There is nothing peculiarly different in the
20 way a jury should consider the evidence in a
21 criminal case from that in which all reasonable
22 persons treat any question, depending upon evidence
23 presented to them. You are expected to use your
24 good sense, consider the evidence in the case for
25 only those purposes for which it has been admitted,

1 and give it a reasonable and fair construction in
2 the light of your common knowledge of the natural
3 tendencies and inclinations of human beings.

4 If the accused be proved guilty beyond a
5 reasonable doubt, say so. If not so proved guilty,
6 say so.

7 Your verdict in this case will be one of two
8 forms. If, from the evidence and the law, you find
9 that the Defendant is not guilty, you will circle
10 not guilty on the verdict form that I will give you
11 and the foreman will sign his name. If, on the
12 other hand, you find that the Defendant is guilty
13 based upon the evidence and the law which you have
14 heard, you will circle guilty on the verdict form
15 and the foreman will sign his name.

16 Your verdict must be unanimous. It must be
17 guilty or not guilty. The law requires that the
18 jury's verdict be unanimous, which means that all
19 jurors must agree. The only two forms of the
20 verdict are guilty or not guilty.

21 Mr. Foreman, once the jury reaches a verdict
22 of not guilty or guilty, circle the verdict on the
23 face of the verdict form and sign under the verdict
24 to signify that you have circled -- what you have
25 circled is the verdict of all jurors. Then you

1 will notify us that you have reached a verdict by
2 knocking on the door.

3 Will you hand this to the forearm?

4 All right, Mr. Foreman, that is the verdict
5 form. And it reads: The State of South Carolina,
6 County of Richland, State of South Carolina vs.
7 Curnez Ellerbee, Defendant. In the Court of
8 General Sessions of the Fifth Judicial Circuit,
9 Indictment Numbers 2018-GS-40-5439,
10 2018-GS-40-5440, 2018-GS-40-5441, 2018-GS-40-5442,
11 2018-GS-40-5443. Please circle the appropriate
12 verdict below and follow the accompanying
13 instructions carefully.

14 Number One says: As to the indictment
15 alleging tax evasion, that's the year 2009, We, the
16 jury, unanimously find the Defendant, you will
17 circle guilty or not guilty.

18 As to the indictment alleging tax evasion in
19 2010, We, the jury, unanimously find the Defendant
20 guilty or not guilty.

21 As to the indictment alleging tax evasion in
22 2011, We, the jury, unanimously find the Defendant
23 guilty or not guilty.

24 As to the indictment alleging tax evasion in
25 2012, We, the jury, unanimously find the Defendant

1 guilty or not guilty.

2 As to the indictment alleging tax evasion in
3 2013, We, the jury, unanimously find the Defendant
4 guilty or not guilty.

5 Once you have reached your unanimous verdict,
6 Mr. Foreman, you will sign and date the jury
7 verdict form and then you will knock on the door
8 and inform the bailiffs that you have reached a
9 verdict.

10 I am going to send you back to the jury room.
11 You can leave that verdict form right there. Just
12 leave it up there. The State and the Defense
13 will -- we will gather the exhibits and we will
14 send those back into the jury room. But you cannot
15 begin your deliberations until you receive the
16 verdict form and the exhibits and the instruction
17 from the bailiff to begin your deliberations.

18 All right. So don't begin deliberating.

19 Let me ask this question because I know it's
20 3:58. Just so -- does anyone have like childcare
21 issues? Is there anyone that has childcare issues
22 or anything this evening?

23 Yes, ma'am?

24 JUROR: I have to pick my daughter up by 6:00.

25 THE COURT: Okay. All right. I just wanted

1 to make a note of any schedule conflicts.

2 All right. I will send you all back in the
3 jury room and we will be with you shortly.

4 (WHEREUPON, the jury retires to the jury
5 room at 3:58 p.m.)

6 THE COURT: If you can bring the alternate
7 out.

8 (WHEREUPON, Court's Exhibit No. 5 was
9 marked for identification only.)

10 (Alternate juror enters the courtroom.)

11 THE COURT: Is it Ms. Maree?

12 ALTERNATE JUROR: Yes, ma'am.

13 THE COURT: You were selected as our alternate
14 and, as you can see, all the jurors are still here,
15 came back this morning. So therefore we can only
16 have 12 jurors in there deliberating, so therefore
17 we no longer need your services.

18 ALTERNATE JUROR: Okay.

19 THE COURT: But I do want to thank you for
20 your patience the last two days and your
21 cooperation and participation over the last two
22 days.

23 And it is my understanding I am dismissing you
24 for the week, so you do not have to come back.
25 Thank you again for your services.

1 ALTERNATE JUROR: Thank you.

2 THE COURT: And if she needs to grab you some
3 snacks since you were expecting it. Grab her a
4 snack on the way out.

5 Thank you.

6 (Alternate juror excused.)

7 MR. COMISH: Your Honor, might we ask the
8 juror if we can speak with her -- nevermind. I
9 just didn't want to bother her if she didn't want
10 to be bothered. But she's gone, so.

11 THE COURT: So what I would like -- any
12 objections or exceptions? I know the general
13 objections to the jury charge, but I'd like to go
14 ahead -- I'll give you an opportunity to put those
15 on the record, but I'd like to go ahead and send
16 the exhibits back so they can begin deliberations.

17 MR. COMISH: Yes, ma'am.

18 THE COURT: And I'll make a note that one
19 juror has to pick a child up by 6:00 o'clock. I
20 did not ask that earlier. And so I'll probably
21 stop them at 5:30 if they have not reached -- of
22 course, I'm not going to tell them that, but I'll
23 stop them at 5:30 and then we'll have to bring them
24 back in the morning. Because I don't want them to
25 have the 6:00 o'clock time and then complain they

1 have to stop at that time. So we'll stop them at
2 5:30 and bring them back in the morning so she can
3 get her child.

4 Any objections or exceptions before they begin
5 deliberations?

6 MR. MYRICK: Your Honor, nothing with respect
7 to the charge. Do you typically send copies of the
8 indictments back?

9 THE COURT: No, sir.

10 MR. MYRICK: What you said with respect to
11 5442 is that on or about April 15th, 2013. It was
12 tax year 2012.

13 THE COURT: Where did I say that?

14 MR. MYRICK: Well, you referenced the actual
15 date that the attempt was complete, which is filing
16 date, but the whole trial was about the tax years,
17 which is further down on the indictment. So tax
18 year 2011, the attempt of evasion occurred in April
19 of 2012. I don't know if they need any
20 clarification or not.

21 THE COURT: You mean when I did the verdict
22 form?

23 MR. MYRICK: Yes, ma'am.

24 THE COURT: I'm confused as to what you're
25 saying. That's why I asked y'all to look at the

1 verdict form. You mean when I went through the
2 verdict form?

3 MR. MYRICK: Yes, ma'am.

4 THE COURT: So the verdict form, its says
5 2009, on or about 2013, 2012, 2011, and 2010.
6 That's what I put in here.

7 MR. MYRICK: I don't think it will be a
8 problem at all if you send the indictments back.

9 THE COURT: I'm not sending the indictments
10 back.

11 MR. MYRICK: Okay. There was testimony that
12 April was the filing date, April of the following
13 year, so we'll let them figure it out. I'll
14 withdraw it.

15 THE COURT: I put the years in -- you're
16 alleging that April of 2009 is when he willfully
17 attempted to evade?

18 MR. MYRICK: Yes, ma'am, that's the filing
19 date, but if go down further, it says it refers to
20 tax year '08, for example, which is the year he
21 didn't file it. I just don't want them confused.

22 THE COURT: I know, but the way it reads: As
23 to the indictment alleging tax evasion in 2010.

24 MR. MYRICK: Okay. I just wanted to bring it
25 up. I thought it might be confusing.

1 THE COURT: The act of the evasion, not the
2 year that he --

3 MR. MYRICK: Right. I hope they get that. If
4 they have a question, we'll wait and see. I'll
5 withdraw it, Your Honor.

6 THE COURT: Well, the indictment is not -- the
7 indictment is -- it says that he did, in Richland
8 County, on or about April 15, 2009?

9 MR. MYRICK: Right, which is tax date for the
10 previous year.

11 THE COURT: Yes.

12 MR. MYRICK: I hope they get it. Fingers
13 crossed. We have no objection to the charge.
14 We're ready. The evidence is right there if the
15 Defense wants to look at it.

16 THE COURT: All right. Your turn.

17 MR. COMISH: If Your Honor is ready to move
18 on?

19 THE COURT: Sir?

20 MR. COMISH: If Your Honor is ready to move
21 on?

22 THE COURT: Yes.

23 MR. COMISH: Whatever that issue was.

24 I think we're ready to go ahead and send the
25 exhibits back and then we'll take up the other

1 matters once the jury begins.

2 (WHEREUPON, the jury was instructed to
3 begin deliberations at 4:06 p.m.)

4 THE COURT: So they have it. And we'll go
5 until about 5:30 since we have a juror that has
6 childcare issues. And then if they don't have a
7 verdict by then, we'll start back in the morning.

8 Anything else from the State?

9 MR. MYRICK: No, ma'am.

10 THE COURT: All right. Yes, sir?

11 MR. COMISH: Yes, ma'am. Just for the
12 purposes of making the record, our objection on
13 Page 16 in the second paragraph, six lines down:
14 With the specific intent to do something the law
15 forbids or the specific intent to fail to do
16 something the law requires be done. That is to
17 say, for the purpose to either disobey or disregard
18 the law.

19 Our objection is because the federal case --

20 THE COURT: You need to read the whole
21 sentence.

22 MR. COMISH: Excuse me?

23 THE COURT: Read the entire sentence.

24 MR. COMISH: Yes, ma'am.

25 THE COURT: It says, The word willfully means

1 a voluntary intentional violation of a known legal
2 duty. In other words, an act or a failure to act
3 is willfully done if it is done voluntarily and
4 intentionally and with the specific intent to do
5 something the law forbids.

6 MR. COMISH: Thank you, Your Honor. In my DV
7 motion, I believe part of Your Honor's finding is
8 that our statutes are substantially similar to the
9 federal ones. And the Supreme Court precedent
10 regarding those federal statutes is persuasive to
11 Your Honor regarding disposal of these.

12 I would point out to Your Honor, I apologize
13 for holding on my phone, State vs. Sansone.

14 THE COURT: Make sure you cite the case for
15 the record.

16 MR. COMISH: 380 U.S. 351. I'll read from
17 that section: The difference between a mere
18 willful failure to pay a tax or perform other
19 enumerated actions when due under 7203, which is
20 one of the misdemeanor statutes, and a willful
21 attempt to evade or defeat taxes under
22 Subsection 7201, which is the identical federal
23 felony, is that the latter felony involves some
24 willful commission in addition to the willful
25 omission that make up the list of misdemeanors.

1 So our objection, Your Honor, is that
2 distinction between -- it's just an omission, a
3 misdemeanor. If it's a commission, that's what
4 rises from level of misdemeanor to a felony, at
5 least as I read that line. So that was the basis
6 of our objection to the sort of language on
7 Page 16, which you and I just read related to
8 failure to act or omissions.

9 Thank you for letting me put that on the
10 record.

11 THE COURT: Yes, sir.

12 Anything else? Anything in response, Mr.
13 Myrick?

14 MR. MYRICK: No, ma'am. We believe the charge
15 was an accurate statement of law.

16 THE COURT: All right.

17 Yes, sir?

18 MR. COMISH: Yes, ma'am. At this point, we'd
19 like to renew all previous motions and objections,
20 including our -- I'll be extremely brief --
21 mistrial motions, our Brady motions, our equal
22 protection motions, and our due process motions,
23 and our objections. And I believe that covers
24 everything, Your Honor.

25 THE COURT: All right. Anything else? Your

1 objection is noted for the record, and I believe
2 your -- all your motions have been stated for the
3 record and restated for the record and are
4 preserved.

5 MR. COMISH: I apologize, Your Honor, I forgot
6 to say my directed verdict motion.

7 THE COURT: Yes.

8 MR. COMISH: Thank you.

9 THE COURT: Thank you.

10 All right. So we will be in recess until we
11 hear back from the jury or until it is 5:30. But
12 I -- this case will be in recess. I have a plea
13 that I need to.

14 (WHEREUPON, court was in recess awaiting
15 a verdict at 4:12 p.m.)

16 (WHEREUPON, the proceedings resumed at
17 5:25 p.m.)

18 THE COURT: All right. They said they have
19 reached a verdict.

20 Anything else before we bring the jury in?
21 Anything before I bring them in?

22 MR. MYRICK: No, ma'am.

23 THE COURT: All right. Bring them on in.

24 (WHEREUPON, the jury came into open
25 court at 5:25 p.m.)

1 THE BAILIFF: The jury is seated, Judge.

2 THE COURT: All right. Mr. Foreman, it's my
3 understanding that you all have reached a verdict?

4 THE FOREMAN: Yes, ma'am.

5 THE COURT: If you can hand that verdict form
6 to the bailiff.

7 And is your verdict unanimous?

8 THE FOREMAN: Yes, ma'am.

9 THE COURT: All right. I'm going to ask the
10 clerk to publish the verdict.

11 THE CLERK: State of South Carolina vs. Curnez
12 Ellerbee, Indictment Numbers 2018-GS-40-5439, 5440,
13 5441, 5442, and 5443.

14 As to the indictment alleging tax evasion
15 2009: We, the jury, unanimously find the Defendant
16 not guilty.

17 As to the indictment alleging tax evasion
18 2010: We, the jury, unanimously find the Defendant
19 not guilty.

20 As to the indictment alleging tax evasion
21 2011: We, the jury, unanimously find the Defendant
22 not guilty.

23 As to the indictment alleging tax evasion
24 2012: We, the jury, unanimously find the Defendant
25 guilty.

1 As to the indictment alleging tax evasion
2 2013: We, the jury, unanimously find the Defendant
3 not guilty.

4 These are signed Foreperson, Juror Number 124,
5 February 12th, 2019.

6 Mr. Foreman, are these your verdicts and the
7 verdicts of the entire jury?

8 THE FOREMAN: Yes, ma'am.

9 THE COURT: Anything else from the jurors
10 before I release them?

11 MR. COMISH: Yes, ma'am. We'd like a polling
12 of the jury, please.

13 THE COURT: Yes, ma'am. By number.

14 THE CLERK: Ladies and gentlemen of the jury,
15 I'm going to ask you two questions regarding your
16 verdict. If you'll answer yes or no to both
17 questions.

18 Juror Number 124, were these your verdicts?

19 JUROR: Yes, ma'am.

20 THE CLERK: Are they still your verdicts?

21 JUROR: Yes, ma'am.

22 THE CLERK: Juror Number 242, were these your
23 verdicts?

24 JUROR: Yes, ma'am.

25 THE CLERK: Are they still your verdicts?

1 JUROR: Yes, ma'am.

2 THE CLERK: Juror Number 33, were these your
3 verdicts?

4 JUROR: Yes, ma'am.

5 THE CLERK: Are they still your verdicts?

6 JUROR: Yes, ma'am.

7 THE CLERK: Juror Number 220, were these your
8 verdicts?

9 JUROR: Yes, ma'am.

10 THE CLERK: Are they still your verdicts?

11 JUROR: Yes, ma'am.

12 THE CLERK: Juror Number 188, were these your
13 verdicts?

14 JUROR: Yes, ma'am.

15 THE CLERK: Are they still your verdicts?

16 JUROR: Yes, ma'am.

17 THE CLERK: Juror Number 175, were these your
18 verdicts?

19 JUROR: Yes, ma'am.

20 THE CLERK: Are they still your verdicts?

21 JUROR: Yes, ma'am.

22 THE CLERK: Juror Number 149, were these your
23 verdicts?

24 JUROR: Yes, ma'am.

25 THE CLERK: Are they still your verdicts?

1 JUROR: Yes, ma'am.

2 THE CLERK: Juror Number 100, were these your
3 verdicts?

4 JUROR: Yes, ma'am.

5 THE COURT: And are they still your verdicts?

6 JUROR: Yes, ma'am.

7 THE CLERK: Juror Number 112, were these your
8 verdicts?

9 JUROR: Yes, ma'am.

10 THE CLERK: Are they still your verdicts?

11 JUROR: Yes, ma'am.

12 THE CLERK: Juror Number 41, were these your
13 verdicts?

14 JUROR: Yes, ma'am.

15 THE CLERK: Are they still your verdicts?

16 JUROR: Yes, ma'am.

17 THE CLERK: Juror Number 151, were these your
18 verdicts?

19 JUROR: Yes, ma'am.

20 THE CLERK: Are they still your verdicts?

21 JUROR: Yes, ma'am.

22 THE CLERK: Juror Number 171, were these your
23 verdicts?

24 JUROR: Yes, ma'am.

25 THE CLERK: Are they still your verdicts?

1 JUROR: Yes, ma'am.

2 THE CLERK: The jury has been polled, Your
3 Honor.

4 THE COURT: All right. Thank you.

5 Ladies and gentlemen of the jury, I do want to
6 thank you for your service here this week for the
7 last two days. I know that it takes a lot for you
8 to leave your jobs, your families to come here, but
9 as you can see, there are matters that arise that
10 the parties cannot resolve, and that is when, under
11 our constitution, we turn to 12 citizens like you
12 every week all around -- in the state and all
13 around the country.

14 So I do want to thank you for fulfilling your
15 civic duty. Thank you for being here. And I
16 believe you are being released.

17 They are being released?

18 You are being released for the week. So,
19 thank you again. She'll have -- if anyone needs a
20 work excuse, she'll have some documentation for you
21 in the jury room.

22 You are free to discuss the case with anyone.
23 You are free -- someone may call you -- the lawyers
24 may call and ask you questions about their
25 performance, and you are free to talk to them if

1 you wish to. If you do not wish to talk to them,
2 you do not have to.

3 But, once again, thank you for your service.
4 And they'll grab those badges from you.

5 Have a wonderful week. Thank you.

6 (WHEREUPON, the jury is excused at 5:30
7 p.m.)

8 THE COURT: All right. Anything? Any
9 motions? I'm sure you all want to renew your
10 motions. I'll be glad to hear any motions.

11 Anything from the State?

12 MR. MYRICK: No, ma'am.

13 THE COURT: Anything from the Defense?

14 MR. COMISH: Yes, ma'am. We'd like to move
15 for a new trial. There is one guilty verdict in
16 there, right?

17 THE COURT: Yes.

18 MR. COMISH: Okay. And renew all other
19 motions and objections, Your Honor.

20 THE COURT: All right. I will let you
21 supplement because obviously you have not -- I'll
22 give you all an opportunity. He's making a motion
23 for a new trial. And it's 5:30. I'll give you an
24 opportunity to supplement your argument in writing.

25 MR. COMISH: Yes, ma'am.

1 THE COURT: And then give you an opportunity
2 to provide a response.

3 All right. And are you asking to do
4 sentencing today or?

5 MR. MYRICK: I don't see why not, Your Honor.

6 THE COURT: All right. I'll handle that
7 today, but I still will consider the motions, and
8 whichever way I decide on the motions, we'll have
9 to -- we can handle it at that point. Do you have
10 a sentence sheet?

11 MR. MYRICK: I do. The practice in some
12 circuits, Your Honor, is even if convicted they ask
13 for the Defendant to sign it and his or her
14 lawyers.

15 THE COURT: They don't do that here.

16 Yes, sir, I'll be glad to hear from you, then
17 I'll hear from Mr. Comish.

18 Anything you want to say, I'll be glad to hear
19 from the State.

20 MR. MYRICK: Your Honor, you heard the facts.
21 You know them as well as anybody does at this time.
22 The jury found him guilty. That's all.

23 THE COURT: Is there restitution you were
24 asking for? I thought there was some restitution.

25 MR. MYRICK: Yes, ma'am, the restitution is

1 only based on the one conviction. And that is 441
2 in tax year 2012.

3 THE COURT: It was for -- no, it was for 2012,
4 so I assume it would be -- the act that you're
5 alleging is April 18, 2012, and the tax year for
6 2011.

7 MR. MYRICK: It's \$3,000 in restitution, Your
8 Honor. And we may file a motion down the road
9 under the statute for some of the cost of
10 prosecution. I'm going to discuss it tonight. I
11 think we have ten days. It's in the statute, I
12 don't know if we are going to ask for it or not.

13 THE COURT: So that's for year 2011, right?

14 MR. MYRICK: I haven't seen the verdict sheet
15 yet, Your Honor.

16 THE COURT: Who has that?

17 MR. MYRICK: Alleging tax evasion 2012, which
18 is tax year 2011.

19 THE COURT: Yes.

20 MR. MYRICK: And that's what I gave you, it's
21 \$3,000 restitution.

22 THE COURT: I just wanted to make sure because
23 earlier you were -- I know you said you were a
24 little confused about the years and the tax years.

25 Yes, sir, Mr. Comish? You have to bring your

1 client up with you.

2 MR. COMISH: Yes, ma'am.

3 (Approaches.)

4 THE COURT: All right. I'll be glad to hear
5 from you, Mr. Comish.

6 MR. COMISH: May it please the Court, Your
7 Honor? We're simply asking that you sentence
8 Mr. Ellerbee the way that the other folks in his
9 situation have been sentenced, those who have
10 entered guilty pleas to one felony charge, which is
11 what he was found guilty of. So we'd ask that you
12 put him on probation. I'd ask that you consider a
13 PTUP provision when he pays that restitution. And
14 if you're inclined to go along with that sentence,
15 I think that's all we need to say.

16 However, Ms. Phillips has prepared an
17 extensive mitigation package should you wish to
18 hear it.

19 THE COURT: No, sir. The only problem is
20 probation is not here. So I have got to figure
21 out -- does he just have to come back in the
22 morning and meet with them?

23 THE CLERK: Yes.

24 SENTENCING

25 THE COURT: On Indictment 2018-GS-40-5541,

1 sir, you'll be sentenced to the State Department of
2 Corrections for three years. The sentence is
3 suspended with probation for five years.
4 Restitution in the amount of \$3,000 is ordered.
5 And probation may terminate upon payment of
6 restitution.

7 And I think, I would have to look, but y'all
8 can look, I'll put the \$500, he has to pay \$500 for
9 his court-appointed attorneys. I don't know, we
10 usually do that in guilty pleas. I'm assuming it
11 still applies here.

12 All right. I think that was everything you
13 asked for.

14 MR. COMISH: Yes, ma'am. Thank you.

15 THE COURT: And then, of course, for the
16 record, you're asking for that on the sentence, but
17 also your motion for the new trial is preserved.

18 MR. COMISH: Thank you, Your Honor.

19 THE COURT: All right, thank you.

20 MS. MUBARAK: Thank you.

21 MR. COMISH: We just need to figure out when
22 he needs to show to get to probation.

23 THE CLERK: I'll let them know that you'll be
24 here at 9:30.

25 THE COURT: Here you go. And then you'll

1 probably need to hold onto that to give to -- I
2 want to say Amanda, but it's not Amanda. Who's --

3 THE CLERK: Kevin. I texted Amanda to tell
4 Kevin to be here at 9:30.

5 THE COURT: Okay. All right, sounds good.
6 Thank you.

7 Good luck to you, sir.

8 MR. MYRICK: Thank you, Your Honor. Ten days
9 on the motions?

10 THE COURT: Ten days and five days to respond.
11 (WHEREUPON, the trial adjourned at 5:39
12 p.m.)

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(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 11th and 12th day of February, 2019.

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

October 29, 2019

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
 2018-GS-40-05441

3
 4 State of South Carolina,)
 5 Plaintiff,)
 6 vs.) TRANSCRIPT OF RECORD
 7 Curnez Ellerbee,)
 8 Defendant.)

9 March 11, 2019
 10 Columbia, South Carolina

11
 12
 13 B E F O R E:

14 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.
 15
 16

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

18 W. ALLEN MYRICK, JR., ASSISTANT ATTORNEY GENERAL
 Attorney for the Plaintiff

19 JONATHAN S. COMISH, ASSISTANT PUBLIC DEFENDER
 20 Attorney for the Defendant
 21
 22
 23
 24

25 DEBORAH M. McCURDY, RPR
 Official Court Reporter

I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

1 MARCH 11, 2019

2 MR. MYRICK: Curnez Ellerbee,
3 2018-GS-40-05441. This is a Defense motion for a
4 new trial.

5 THE COURT: Yes, sir?

6 MR. COMISH: May it please the Court, Your
7 Honor?

8 Before we get started, I didn't feel the need
9 for oral arguments on this one, so I don't know
10 what Your Honor's position is on that, but I am
11 happy to go forward with a brief summation of our
12 position.

13 THE COURT: I will be honest with you, you all
14 filed this last week, a week or two ago, I didn't
15 count on it being on the motions roster, so I have
16 not had a chance to read and digest all of this,
17 but I will be glad to hear your oral arguments, and
18 then I will get you all a decision later.

19 MR. COMISH: Okay, I will keep it, in that
20 case, Your Honor, very brief.

21 The reason that we are requesting a new trial
22 is there was a host of issues in the trial: The DV
23 motion; the mislabeling of the evidence in front of
24 the jury, which we think was entirely a mistake on
25 their part, there was no intention there, but,

1 nevertheless, the jury did see that mislabeled; and
2 issues with authentication and the Best Evidence
3 Rule with Stacy Young. But we feel like the
4 primary factor would be the State's dismissal of
5 the misdemeanor charge immediately prior to closing
6 arguments, Your Honor.

7 And the reason we feel that that requires a
8 new trial is, from Day One, our trial strategy was
9 to concede the misdemeanors and hopefully avoid a
10 conviction on the felonies. Mr. Myrick was well
11 aware of this. At plea negotiations, we told him
12 our role in this is for our client to get a
13 misdemeanor, not a felony. That is what our client
14 wanted, he did not want a felony conviction.

15 And because our goal was to hopefully shoot
16 for the misdemeanors and get acquittals for the
17 felonies, our entire trial structure and our entire
18 trial strategy was about maximizing in our minds
19 and our professional judgment the likelihood that
20 we would avoid a felony conviction.

21 The decision we made in that respect is to
22 concede the misdemeanors and to present to the jury
23 a consistent and coherent presentation that Curnez
24 is guilty of this, and not guilty of this.

25 In Ms. Mubarak's opening statement, she asked

1 that the jury convict him of the misdemeanors. She
2 avowed that he was guilty. Throughout the State's
3 presentation of the case, we made strategic
4 decisions about what to and not to challenge. For
5 instance, the State did not enter evidence of his
6 failure to file through the proper witness, even
7 though she was there, Ms. Randee Gregory. He
8 didn't enter it through a custodian of records,
9 even though he should have, since that was related
10 to the DOR's database.

11 We made the decision not to object to it
12 because we wanted to appear consistent in front of
13 the jury and that we are not hiding anything. And
14 we did that solely because we anticipated arguing
15 in closing that he was guilty of the misdemeanors
16 and not guilty of the felonies.

17 And, Your Honor, you saw that it was a
18 struggle for us to maintain a coherent thread when
19 the rug had been yanked out from under us at the
20 last minute.

21 So our contention is that, you know, the State
22 has a duty of fair play. The State can't use
23 charging documents as play things in strategic
24 attempts to manipulate the Defense strategy.

25 Now, according to my recollection -- and this

1 might not be totally accurate -- Mr. Myrick stated
2 reasons for dismissing the misdemeanors is that he
3 had realized that there was no need to charge them
4 as the felony sort of encompassed all of that
5 behavior contemplated by the misdemeanor.

6 I believe I am paraphrasing there, but yet
7 that is the, you know, the essential point that he
8 made. And I find that to be sort of a little hard
9 to believe because of the fact that he dealt with
10 so many of these cases, that Mr. Ellerbee was
11 initially indicted only with the felony charges,
12 and only recently, I believe last October, indicted
13 with the felonies and the misdemeanors, that the
14 State had argued this case all the way up to the
15 Court of Appeals and the Supreme Court -- I think
16 it did, right? Supreme Court or the Court of
17 Appeals?

18 MR. MYRICK: Court of Appeals.

19 MR. COMISH: Court of Appeals. All the way up
20 to the Court of Appeals about what these charges
21 are, what behaviors they contemplate, and how they
22 interrelate.

23 So I think that the evidence suggests to us
24 that this was a strategic attempt to manipulate our
25 trial strategy and subvert our expectations.

1 I think this is supported by the jury's
2 verdict. As Your Honor recalls, we submitted five
3 charges to the jury on the felony counts of tax
4 evasion. The jury returned a guilty verdict on
5 only one out of those five charges, which is kind
6 of a bewildering verdict since the charges are
7 identical. They only vary by -- the evidence
8 submitted for each charge is identical, so there is
9 no factual basis for the jury to have found him
10 guilty of one rather than the other. The only
11 thing that we can circle back to is, you know, he
12 told the jury that Mr. Ellerbee was guilty in our
13 opening statements, and the jury could not forget
14 that.

15 So what we are asking Your Honor to do is,
16 let's fix this. Let's go to trial on that one
17 warrant. And then let's have a fair trial where
18 the Defense is allowed to appropriately plan for
19 trial and plan for the charges with which it would
20 be faced at trial.

21 And this isn't an argument about Mr. Myrick's
22 discretion as a prosecutor. He clearly can dismiss
23 anything that he wants for whatever reason he wants
24 at whatever time he wants. But, certain decisions
25 of timing come with consequences. If you want to

1 dismiss a misdemeanor before opening, okay, that is
2 fine. That still allows us to protect
3 Mr. Ellerbee's rights. He does it after we have
4 been litigating this for a day, after we had said
5 things that we can't unsay, that is not right.
6 That subverts Mr. Ellerbee's constitutional rights
7 and makes us unable to protect those rights.

8 And there is a solution in front of us that
9 allows us to restore his rights too, which is a new
10 trial on that one indictment.

11 So I think that is sort of a summation of
12 where we are at here with this request for a new
13 trial, Your Honor.

14 THE COURT: All right. Thank you.

15 Yes, sir?

16 MR. MYRICK: Your Honor, Mr. Ellerbee's case
17 got called because it was just about the oldest
18 case on my docket, and it needed to be moved. I
19 have no ill-will towards Mr. Ellerbee and I have no
20 intention of making an example of him. I was
21 trying to move an old case.

22 If you know the history of State v. Hughes,
23 what happened was, we ended up with nothing. And I
24 told Bakari Sellers in this courthouse, I am like,
25 Bakari, you know, you could have been smarter about

1 it, you should have made your motion at the DV
2 stage.

3 And Bakari was like, You know what? We will
4 do that next time.

5 And, sure enough, the Strom Law Firm was in
6 here on Monday morning to help them with their
7 strategy.

8 So we went forward on the five felonies and
9 the five misdemeanors, because I never know going
10 forward what is going to happen at the DV stage,
11 and I didn't want to leave the taxpayers unlooked
12 out for if we got a DV.

13 And I told Ms. Mubarak on Day One, I said,
14 Once we have this DV motion, I am going to dismiss
15 these five. I can't help it that their strategy
16 didn't work out for them. If they wanted to plead
17 their guy guilty, they had ample opportunity to do
18 that before the trial. They had years to do it if
19 they wanted to plead him guilty. She didn't have
20 to plead him guilty in front of the jury, but she
21 decided to. It is not my problem.

22 So, finally, the Defense knows that juries
23 compromise. They compromise all the time on all
24 sorts of things. We see it in the verdict. Their
25 only beef is they wanted the jury to compromise on

1 a misdemeanor, instead they compromised on a
2 felony.

3 I think you have got all the authority. The
4 State had no improper motivation, because the
5 evidence was admissible, it came in, the jury saw
6 it, they deliberated, they voted, and they found
7 him guilty. We think the motion for a new trial
8 should be denied.

9 THE COURT: All right.

10 MR. COMISH: This is the first I'm hearing of
11 Mr. Myrick telling Ms. Mubarak that he intended to
12 dismiss the misdemeanors. He never told us that.
13 I don't know if Ms. Mubarak wishes to address the
14 Court about it.

15 MS. MUBARAK: I have nothing to add.

16 MR. COMISH: This is news to us that he ever
17 communicated with anybody on our team.

18 MR. MYRICK: I'm an officer of the court. I
19 have got another officer of the court right there
20 who heard it. And I have got a sworn law
21 enforcement officer with 30 years' of experience
22 who heard it, and I can get him over here too.

23 MS. MUBARAK: If Mr. Myrick made some offhand
24 comment to me that he intended to dismiss five
25 charges halfway through the trial, then it was just

1 talk that he was making that -- I don't know why I
2 would take it seriously that he would be
3 dismissing -- that he would start a trial with ten
4 counts and dismiss five of them halfway through a
5 trial. That doesn't even make sense to me. I
6 don't -- if he said it, I don't remember it. That
7 is all I have to add.

8 THE COURT: All right.

9 MR. MYRICK: Thank you, Your Honor.

10 THE COURT: I will get something back to you.

11 MR. COMISH: Thank you, Your Honor.

12 (WHEREUPON, the hearing adjourned at
13 11:23 a.m.)

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25 (END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

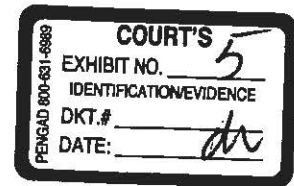
I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 11th day of March, 2019.

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

July 1, 2019

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter



DUTIES OF JURY AND TRIAL JUDGE

I REMIND YOU THAT, DURING THIS TRIAL, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE, AND I ALSO HAVE THE DUTY TO RULE ON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE YOU. IF THERE WAS ANY TESTIMONY ORDERED STRICKEN FROM THE RECORD IN THIS CASE DURING THIS TRIAL, YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND, ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD IN THIS CASE, AND ANY STIPULATIONS OF COUNSEL.

I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW APPLICABLE TO THIS CASE. AS THE PRESIDING JUDGE, I

AM THE SOLE JUDGE OF THE LAW OF THIS CASE, AND IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU. IF YOU ALREADY HAVE ANY IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW OUGHT TO BE AND IT DOES NOT AGREE WITH WHAT I NOW TELL YOU THE LAW IS, YOU MUST ABANDON THIS IDEA BECAUSE YOU ARE SWORN TO ACCEPT THE LAW AND APPLY THE LAW EXACTLY AS I STATE IT TO YOU.

IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS IN A CASE. A TRIAL JUDGE CANNOT INTIMATE, STATE, COMMENT ON, OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A CASE. SINCE YOU, THE JURY, ARE THE SOLE JUDGE OF THE FACTS IN THIS CASE, YOU ARE NOT TO INFER FROM WHAT I HAVE SAID DURING THE PROGRESS OF THIS TRIAL IN RULING UPON THE ADMISSIBILITY OF EVIDENCE, OR OTHERWISE, OR ANYTHING THAT I SAY NOW DURING THE COURSE OF THIS

INSTRUCTION TO YOU, THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS IN THIS CASE. THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE. AS JURORS, IT IS YOUR DUTY TO DETERMINE THE EFFECT, VALUE, WEIGHT, AND TRUTH OF THE EVIDENCE PRESENTED DURING THIS TRIAL.

GENERAL CHARGE

CHARGE, ARREST, INDICTMENT NOT EVIDENCE

THE INDICTMENTS CHARGE THE DEFENDANT WITH 5 COUNTS OF A WILLFUL ATTEMPT TO AVOID OR DEFEAT STATE INCOME TAX. I REMIND YOU THAT THE FACT THE DEFENDANT WAS ARRESTED, CHARGED AND INDICTED IN THIS CASE, IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT. THIS DOCUMENT IS SIMPLY THE FORMAL WRITTEN

INSTRUMENT WHICH CONTAINS THE CHARGE(S) MADE AGAINST THE DEFENDANT. IT IS THE FORMAL DOCUMENT BY WHICH THIS CASE IS BROUGHT INTO THIS COURT.

MULTIPLE CHARGES

THE INDICTMENTS IN THIS CASE ALLEGE SEVERAL DIFFERENT OFFENSES AGAINST THE DEFENDANT. THE CHARGES ARE:

INDICTMENT NO. 1: WILLFUL ATTEMPT TO AVOID OR DEFEAT STATE INCOME TAX.

INDICTMENT NO. 2: WILLFUL ATTEMPT TO AVOID OR DEFEAT STATE INCOME TAX.

INDICTMENT NO. 3: WILLFUL ATTEMPT TO AVOID OR DEFEAT STATE INCOME TAX.

INDICTMENT NO. 4: WILLFUL ATTEMPT TO AVOID OR DEFEAT STATE INCOME TAX.

INDICTMENT NO. 5: WILLFUL ATTEMPT TO AVOID OR DEFEAT STATE INCOME TAX.

EACH INDICTMENT CHARGES A SEPARATE AND DISTINCT OFFENSE. YOU MUST DECIDE EACH INDICTMENT SEPARATELY ON THE EVIDENCE AND THE LAW APPLICABLE TO IT, UNINFLUENCED BY YOUR DECISION AS TO ANY OTHER INDICTMENT. THE DEFENDANT MAY BE CONVICTED OR ACQUITTED ON ANY OR ALL OF THE OFFENSES CHARGED. YOU WILL BE ASKED TO WRITE A SEPARATE VERDICT OF GUILTY OR NOT GUILTY FOR EACH INDICTMENT.

PRESUMPTION OF INNOCENCE

THE DEFENDANT HAS PLED NOT GUILTY TO THIS INDICTMENT, AND THAT PLEA PUTS THE BURDEN ON THE STATE TO PROVE THE DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT.

I CHARGE YOU THAT IT IS AN IMPORTANT RULE OF THE

LAW THAT THE DEFENDANT IN A CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT. THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL

THEORY. IT IS NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

REASONABLE DOUBT CHARGE

THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES, WHERE YOU WERE TOLD THAT IT IS ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY TRUE THAN NOT TRUE, SUCH AS BY THE GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE. IN CRIMINAL CASES, THE STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE DOUBT.

PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE VERY FEW THINGS IN THIS WORLD THAT

WE KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND THE DEFENDANT GUILTY. IF ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY, YOU MUST GIVE THE DEFENDANT THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL - DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY

ESTABLISHES THE MAIN FACT TO BE PROVED.

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION.

THE LAW MAKES ABSOLUTELY 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 CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THE CASE. AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT NOT GUILTY.

CREDIBILITY OF WITNESSES

NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE.

CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS TRUTH.

IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED TO YOU ANY INTEREST, BIAS, PREJUDICE, OR OTHER MOTIVE IN THIS CASE. YOU MAY

ALSO CONSIDER THE APPEARANCE AND MANNER OF A WITNESS WHILE ON THE WITNESS STAND.

EXPERT WITNESSES

THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS. AN EXCEPTION TO THIS RULE EXISTS FOR WITNESSES WE CALL “EXPERT WITNESSES”. A WITNESS WHO, BY EDUCATION AND EXPERIENCE, HAS BECOME EXPERT IN SOME ART, SCIENCE, PROFESSION, OR CALLING, MAY STATE AN OPINION AS TO RELEVANT AND MATERIAL MATTER, IN WHICH THE WITNESS CLAIMS TO BE AN EXPERT, AND MAY ALSO STATE THE REASONS FOR THE OPINION.

YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED IN EVIDENCE IN THIS CASE AND, LIKE ANY OTHER EVIDENCE, GIVE IT THE WEIGHT YOU THINK IT DESERVES. IF YOU DECIDE THAT THE OPINION OF AN EXPERT WITNESS IS NOT BASED ON SUFFICIENT EDUCATION AND

EXPERIENCE, OR IF YOU CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION ARE NOT SOUND, OR THAT THE OPINION IS OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD THE OPINION ENTIRELY.

AN EXPERT WITNESS' TESTIMONY IS TO BE GIVEN NO GREATER WEIGHT THAN THAT OF OTHER WITNESSES SIMPLY BECAUSE THE WITNESS IS AN EXPERT. FURTHER, YOU ARE NOT REQUIRED TO ACCEPT AN EXPERT'S OPINION, EVEN THOUGH IT IS NOT CONTRADICTED.

INTENT

IN ORDER TO ESTABLISH CRIMINAL LIABILITY, CRIMINAL INTENT IS REQUIRED. CRIMINAL INTENT MUST BE PROVEN BY THE STATE BEYOND A REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING THE SITUATION. 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 THE PERSON HAD IN MIND, SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED FROM THE CIRCUMSTANCES SHOWN TO HAVE EXISTED. THIS IS HOW YOU MAKE A DETERMINATION OF WHETHER OR NOT THE ELEMENT REQUIRING INTENT WAS PRESENT. IT IS NOT NECESSARY TO ESTABLISH INTENT BY DIRECT AND POSITIVE EVIDENCE, BUT INTENT MAY BE ESTABLISHED BY INFERENCE IN THE SAME WAY AS ANY OTHER FACT BY TAKING INTO CONSIDERATION THE ACTS OF THE PARTIES AND ALL THE FACTS AND CIRCUMSTANCES OF THE CASE.

CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS WRONGDOING.

CRIMINAL INTENT CAN ARISE FROM ACTION OR A FAILURE TO ACT.

ATTEMPTED EVASION

(ELEMENTS OF A VIOLATION OF 12-54-44(B)(1))

IN ORDER TO MEET THE BURDEN OF PROOF FOR THE CRIME OF WILLFULLY ATTEMPTING TO EVADE OR DEFEAT A TAX AS CHARGED IN THE INDICTMENT, THE GOVERNMENT MUST PROVE THE FOLLOWING THREE (3) ESSENTIAL ELEMENTS BEYOND A REASONABLE DOUBT:

1. INCOME TAX WAS DUE AND OWING FROM THE DEFENDANT;
2. THE DEFENDANT ATTEMPTED TO EVADE OR DEFEAT THIS TAX;
3. IN ATTEMPTING TO EVADE OR DEFEAT THE TAX, THE DEFENDANT ACTED WILLFULLY.

TO SATISFY THE FIRST ELEMENT REQUIRING THAT INCOME TAX WAS DUE AND OWING FROM THE DEFENDANT, THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT HAS SOME INCOME TAX DUE FOR THE YEAR OF EACH INDICTMENT. HOWEVER, THE

GOVERNMENT IS NOT REQUIRED TO PROVE THE PRECISE AMOUNT OF TAX ALLEGED IN THE INDICTMENT, NOR THE PRECISE AMOUNT OF TAX OWED.

TO ESTABLISH THE SECOND ELEMENT OF TAX EVASION, THE STATE MUST PROVE THAT THE DEFENDANT ENGAGED IN AN AFFIRMATIVE ACT. AN AFFIRMATIVE WILLFUL ATTEMPT AT TAX EVASION MAY BE INFERRED FROM CONCEALMENT OF ASSETS, COVERING UP SOURCES OF INCOME, OR FROM MAKING ANY SUBSTANTIAL MISTATEMENT OF FACT IN AN EFFORT TO EVADE, OR AVOID PAYING THE NECESSARY TAX. TO SATISFY THIS ELEMENT, THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT TOOK A SINGLE AFFIRMATIVE ACT, THAT IS, THAT THE DEFENDANT PERFORMED SOME CONDUCT, THE LIKELY EFFECT OF WHICH WOULD BE TO MISLEAD OR CONCEAL. THIS ELEMENT REQUIRES MORE THAN PASSIVE NEGLECT OF A STATUTORY DUTY.

TO ESTABLISH THE THIRD ELEMENT OF TAX EVASION, THE GOVERNMENT MUST PROVE WILLFULNESS. TO FIND THE DEFENDANT GUILTY OF VIOLATING SECTION 12-54-44(B)(1), YOU MUST NOT ONLY FIND THAT HE DID THE ACTS COMPLAINED OF AND OF WHICH HE STANDS CHARGED, BUT YOU MUST ALSO FIND THAT THE ACTS WERE DONE WILLFULLY BY HIM.

THE WORD “WILLFULLY” MEANS A VOLUNTARY, INTENTIONAL VIOLATION OF A KNOWN LEGAL DUTY. IN OTHER WORDS, AN ACT OR A FAILURE TO ACT IS “WILLFULLY” DONE IF IT IS DONE VOLUNTARILY AND INTENTIONALLY, AND WITH THE SPECIFIC INTENT TO DO SOMETHING THE LAW FORBIDS, OR WITH THE SPECIFIC INTENT TO FAIL TO DO SOMETHING TO LAW REQUIRES TO BE DONE; THAT IS TO SAY, WITH A PURPOSE EITHER TO DISOBEY OR TO DISREGARD THE LAW. AN ACT IS DONE KNOWINGLY IF IT IS DONE PURPOSEFULLY AND DELIBERATELY AND NOT BECAUSE OF MISTAKE, ACCIDENT,

NEGLIGENCE, OR ANY OTHER INNOCENT REASON. IN SHORT, THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT SPECIFICALLY INTENDED TO DEFEAT OR EVADE THE PAYMENT OF INCOME TAX THAT THE DEFENDANT KNEW IT WAS HIS DUTY TO PAY.

WHETHER OR NOT THE DEFENDANT ACTED KNOWINGLY AND WILLFULLY IS A QUESTION OF FACT TO BE DETERMINED BY YOU BASED ON ALL THE EVIDENCE IN THIS CASE. YOU MAY CONSIDER THE DEFENDANT'S GENERAL EDUCATIONAL BACKGROUND AND EXPERIENCE WHEN DETERMINING HIS ABILITY TO FORM A WILLFUL INTENT.

SECTION 12-58-70. Deficiency and tax due notices; contents.

All deficiency notices and all tax due notices are required to contain a description of the basis for and identification of amounts of tax due,

interest, and penalty.

FAILURE OF DEFENDANT TO TESTIFY

I INSTRUCT YOU AND EMPHASIZE THAT THE FACT THE DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATION AND IN YOUR CONSIDERATION ON THE QUESTION OF THE GUILT OR THE INNOCENCE OF THE DEFENDANT. IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER. A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE ASSERTION OF THIS RIGHT MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS. I REPEAT, UNDER YOUR OATH, YOU ARE TO DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT TESTIFY. THE FACT THAT THIS DEFENDANT DID NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM. THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS ON THE STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS [HER] INNOCENCE. THE

BURDEN OF PROOF REMAINS ON THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT.

INDIVIDUAL OPINION OF EACH JUROR

THE STATE AND THE DEFENDANT ARE ENTITLED TO THE INDIVIDUAL OPINION OF EACH JUROR ON THE ISSUES OF FACT IN THIS CASE. IT IS THE DUTY OF EACH OF YOU TO CONSIDER AND WEIGH ALL THE EVIDENCE IN THE CASE AND, FROM SUCH EVIDENCE TO DETERMINE, IF YOU CAN, THE QUESTION OF THE GUILT OR INNOCENCE OF THE DEFENDANT.

USE COMMON SENSE

THERE IS NOTHING PERCULIARLY DIFFERENT IN THE WAY A JURY SHOULD CONSIDER THE EVIDENCE IN A CRIMINAL CASE, FROM THAT IN WHICH ALL REASONABLE PERSONS TREAT ANY QUESTION DEPENDING UPON EVIDENCE PRESENTED TO THEM. YOU ARE EXPECTED TO USE YOUR GOOD SENSE, CONSIDER THE EVIDENCE IN THE CASE FOR ONLY THOSE PURPOSES FOR WHICH IT HAS BEEN ADMITTED,

AND GIVE IT A REASONABLE AND FAIR CONSTRUCTION, IN THE LIGHT OF YOUR COMMON KNOWLEDGE OF THE NATURAL TENDENCIES AND INCLINATIONS OF HUMAN BEINGS.

IF GUILTY SAY SO-IF NOT SAY SO

IF THE ACCUSED BE PROVED GUILTY BEYOND A REASONABLE DOUBT, SAY SO. IF NOT SO PROVED GUILTY SAY SO.

FORM OF VERDICT

YOUR VERDICT IN THIS CASE WILL BE ONE OF TWO FORMS. IF, FROM THE EVIDENCE AND THE LAW, YOU FIND THAT THE DEFENDANT IS NOT GUILTY, YOU WILL CIRCLE "NOT GUILTY" ON THE VERDICT FORM I WILL GIVE YOU AND THE FOREMAN WILL SIGN HIS NAME. IF, ON THE OTHER HAND, YOU FIND THAT THE DEFENDANT IS GUILTY, BASED UPON THE EVIDENCE AND THE LAW WHICH YOU HAVE HEARD, YOU WILL CIRCLE "GUILTY" ON THE VERDICT FORM AND THE FOREMAN WILL SIGN HIS NAME. YOUR VERDICT MUST BE

UNANIMOUS. IT MUST BE GUILTY OR NOT GUILTY.

UNANIMOUS VERDICT

THE LAW REQUIRES THAT A JURY VERDICT BE UNANIMOUS, WHICH MEANS THAT ALL THE JURORS MUST AGREE. THE ONLY TWO FORMS OF THE VERDICT ARE GUILTY OR NOT GUILTY. MR. FOREMAN, ONCE THE JURY REACHES A VERDICT OF NOT GUILTY OR GUILTY, CIRCLE THE VERDICT ON THE FACE OF THE VERDICT FORM AND SIGN UNDER THE VERDICT TO SIGNIFY THAT WHAT YOU HAVE CIRCLED IS THE VERDICT OF ALL THE JURORS. THEN NOTIFY US THAT YOU HAVE REACHED A VERDICT BY KNOCKING ON THE DOOR.

Dismiss Alternate

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

The State of South Carolina

vs.

Curnez Ellerbee,

Defendants.

) IN THE COURT OF GENERAL
) SESSIONS OF THE FIFTH JUDICIAL
) CIRCUIT

) Indictment No.: 2018-GS-40-05541

ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL

RICH AND COUNTY
 FILED
 2019 MAY 22 PM 2:24
 NDANT'S
 TRIAL
 S.S. & EC.

This matter came before The Honorable DeAndrea Gist Benjamin on February 1st 2019. Present at the hearing were Allen Myrick and Nicole Wooten for the state and Jonathan Comish, Catherine Mubarak and Alice Phillips for the defense.

For the reasons set forth below, Defendant's motion for new trial is **DENIED**.

FACTUAL BACKGROUND

Curnez Ellerbee was charged with five counts of Tax Evasion and five counts of failure to file Tax Returns. On February 11, 2019, Special Assistant Attorney General Allen Myrick called the case of Curnez Ellerbee to trial for the state. Mr. Myrick elected to proceed at trial on all ten indictments.

In the defense's opening statement, Counsel for the defendant told the jury that Mr. Ellerbee was guilty of failing to file tax returns. Defense counsel asked the jury to find Mr. Ellerbee guilty of the five misdemeanor failure to file charges. Defense expressed to the jury that Mr. Ellerbee did not intend to commit tax evasion and asked the jury to find him not guilty on those charges. The defense later explained it was their trial strategy to build credibility and trust with the jury by conceding guilt to the five misdemeanor failure to file charges.

RECEIVED

MAY 30 2019

SC Court of Appeals

The state admitted evidence of Mr. Ellerbee's failure to file taxes through S.C. Department of Revenue investigators, including evidence that S.C. Department of Revenue had no record of Mr. Ellerbee filing returns for the years for which he was indicted.

During the course of the trial, Mr. Myrick called several witnesses for the state including Verizon Human Resources employee, Stacy Young, S.C. Department of Revenue investigators Andy Blackwell and Marshall Smith, and Mr. Ellerbee's tax preparer, Ms. Kadenia Williams-Jarvis. At the conclusion of the state's case and after the defense indicated it would not put up a case, Mr. Myrick announced his intention to dismiss the five misdemeanor failure to file charges. Mr. Myrick expressed that he was principally concerned with attaining a guilty verdict on the tax evasion charges and that he was dismissing the misdemeanor failure to file charges as an exercise of his prosecutorial authority. The defense argued the timing of Mr. Myrick's decision implicated Mr. Ellerbee's constitutional rights to due process and a fair trial.

Mr. Myrick presented a motion to dismiss before the court, the five misdemeanor failure to file charges were dismissed. The state rested and the defense decided not to present a case. The jury acquitted Mr. Ellerbee on four of the five felony tax evasion charges and found Mr. Ellerbee guilty of one. The defense requested a new trial on the single felony tax evasion charge.

LEGAL ANALYSIS

I. The Defense argued the state improperly dismissed the five misdemeanor failure to file charges after presenting their case to the jury at trial, thereby depriving Mr. Ellerbee of his constitutional right to fair trial and due process.

In South Carolina, the solicitor is charged with the responsibility of prosecuting criminal charges, including procurement of the proper indictment from the grand jury. S.C. Const. art. V, § 24; S.C. Code Ann. §§ 1-7-320 (1986), 14-9-210 (1977). "In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute,

and what charge to file or bring before a grand jury, generally rests entirely in his discretion.” United States v. Goodwin, 457 U.S. 368 (1982). “A prosecutor should remain free before trial to exercise the broad discretion entrusted to him to determine the extent of the societal interest in prosecution.” State v. Dawkins, 297 S.C. 386, 377 S.E.2d 298 (1989) (There was no vindictiveness where prosecutor filed additional charges which more specifically detailed the criminal behavior after the defendant complained the original indictment lacked specificity). Mr. Myrick had prosecutorial authority to indict Mr. Ellerbee as he deemed appropriate and present evidence to the jury that proved Mr. Ellerbee’s guilt. Mr. Myrick had full discretion to indict Mr. Ellerbee on the five misdemeanor failure to file charges as well as the five felony tax evasion charges based upon on the fact that Mr. Ellerbee willingly and knowingly did not file his taxes during the five years in which he was indicted. There is no case law that makes the state responsible for the defense’s trial strategy and the arguments the defense chooses to make before the jury. Mr. Myrick was well within the rim of his prosecutorial discretion in making a motion to dismiss charges that he deemed were unwarranted at or near the conclusion of trial.

II. The defense argues canons of statutory construction dictate that the state should have charged Mr. Ellerbee with two complimentary misdemeanors for each tax year, rather than a felony.

The defense argued Mr. Ellerbee was prejudiced by the State’s decision to charge him with a felony rather than the appropriate misdemeanors. “The Difference between the misdemeanor offense of willful failure to pay taxes when due and felony offense of willful attempt to evade or defeat taxes is that the felony offense involves some commission in addition to willful omission.” 26 U.S.C.A. (I.R.C.1954) §§ 7201, 7203. Evidence presented by the state demonstrated there was some commission in addition to willful omission, evident by the allegations of the state that Mr. Ellerbee submitted a false W-4 withholding document.

This Court has long recognized that when an act violates more than one criminal statute, the Government may prosecute under either so long as it does not discriminate against any class of defendants.

United States v. Batchelder, 442 U.S. 114 (1979). More importantly, there is no appreciable difference between the discretion a prosecutor exercises when deciding whether to charge under one of two statutes with different elements and the discretion he exercises when choosing one of two statutes with identical elements." Id. In the former situation, once he determines that the proof will support conviction under either statute, his decision is indistinguishable from the one he faces in the latter context. Id. The prosecutor may be influenced by the penalties available upon conviction, but this fact, standing alone, does not give rise to a violation of the Equal Protection or Due Process Clause. Id. Just as a defendant has no constitutional right to elect which of two applicable federal statutes shall be the basis of his indictment and prosecution neither is he entitled to choose the penalty scheme under which he will be sentenced. Id. Mr. Ellerbee admitted he failed to file his taxes during the five year period for which he was indicted. Due to his failure to pay his taxes, the submittal of a false W4 withholding document, and the close resemblance of the misdemeanor charge of failure to file and the felony charge of tax evasion, Mr. Myrick had the discretion to prosecute under either statute. Based on the evidence admitted during trial the state was well within their prosecutorial discretion to determine which charge(s) were more appropriate to pursue. No discrimination was shown by Mr. Myrick exercising his discretion. Mr. Myrick considered both the financial aspect of securing the \$13,000 the state sought in restitution, as well as, deterring future tax evasion cases in determining which of the two charges to pursue. Although, it was the defense's strategy to admit guilt to the misdemeanor charges, no evidence presented during trial indicated Mr. Ellerbee's constitutional rights were violated.

III. The Defense argues the state violated Mr. Ellerbee's constitutional rights to Equal protection and Due process by extending plea offers to similarly situated defendants in a manner that discriminated based upon inability to pay.

Mr. Ellerbee was one of several dozen Verizon Wireless employees across the state that the SC Dept. of Revenue investigated and arrested for felony tax evasion and misdemeanor failure to file tax

returns from 2008 to 2012. It was uncontested that Mr. Ellerbee and his fellow Verizon employees were similarly situated, worked for the same employer, many of whom had no criminal record and faced the same charge(s). There was no factual dispute regarding the terms of the plea offers Mr. Myrick extended to Mr. Ellerbee or any of the other defendants deriving from SC Dept. of Revenue's investigation. The fact that identically situated individuals received the same plea offers is evidence that there were no violation of equal protection or due process rights. Prior to the case going to trial, the state alleged on several occasions that Mr. Ellerbee owed approximately \$13,000 in restitution. The defense contended that Mr. Ellerbee could not afford to pay the alleged restitution in his case. Mr. Ellerbee elected to go to trial rather than accepting either of the pleas offers available to him.

V. The defense argues Mr. Myrick's tiered plea offers discriminated against similarly situated defendants based on ability to pay, thereby violating both the equal protection and due clauses of the 14th amendment of the U.S. Constitution.

The defense quoted Griffin v. Illinois as the framework for their constitutional argument, where the Court declared, "There can be no equal justice where the kind of trial a man gets depends on the money he has." Griffin v. Illinois, 351 U.S. 12, 19 (1956). "In criminal trials, a state can no more discriminate on account of poverty than on account of religion, race, or color." Id. "Both equal protection and due process emphasize the central aim of the judicial system that all people charged with a crime must stand on an equality before the bar of justice." Id.

The defense alleged Mr. Ellerbee did not have the right to a plea offer, but he did have the right to be treated equally to the similarity situated individuals who had the resources to pay restitution in advance. The type of trial Mr. Ellerbee received did not depend on his financial resources. Mr. Ellerbee was afforded the same rights as all other similarly situated individuals employed by Verizon wireless, who made the same or similar salary and faced the same charge(s). The defense contended Mr. Ellerbee did not have the funds to pay the restitution the state alleged he owed and thus the defense decided to take the case to trial.

The trial record reflects no indication that Mr. Ellerbee was discriminated against in any way. In fact, Mr. Ellerbee was given a fair trial amongst his peers to decide his guilt. Despite the fact that Mr. Ellerbee made close to \$50,000, during the years in which he was indicted, is still employed by Verizon and making the same salary or more, well beyond the federal poverty guidelines, Mr. Ellerbee was provided adequate representation from Richland County's Public Defender's office. Where he received assistance from not one, but three capable public defenders who worked collectively to try his case. At the conclusion of trial, the jury found Mr. Ellerbee guilty of only one of the five felony tax evasion charges he faced.

CONCLUSION

Based upon the foregoing arguments, case law and statutes cited herein, this court finds the state did not violate Mr. Ellerbee's statutory and constitutional rights. Therefore, defense's motion for new trial is denied.

IT IS SO ORDERED the Defendant's motion for new trial is denied.



The Honorable DeAndrea Gist Benjamin
Presiding Judge

May 22, 2019
Columbia, South Carolina

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury

Defendant

I, _____
hereby appear in my own proper person
and plead guilty to the within indictment or
to _____

Defendant

Witness:

C.C.C. Pls. And G.S.

SCANNED

Docket Number 2018-GS-40- 125441

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER 2018 Term

THE STATE

v.

Curnez Kenyatta Ellerbee

DEFENDANT

Indictment for:

Tax Evasion

SC Code: §12-54-44(B)(1)
CDR Code: 2757

WITNESSES

S/A Andy Blackwell,
SC Dept. of Revenue

ARREST WARRANT NUMBER

ACTION OF GRAND JURY

DP18519

TRUE BILL

Foreperson of Grand Jury

NOV 06 2018

Date:

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND) IN THE COURT OF GENERAL SESSIONS

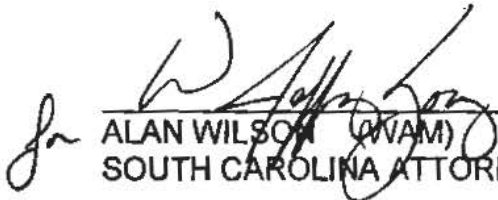
INDICTMENT

At a Court of General Sessions, convened on Nov. 6, 2018 the Grand Jurors of Richland County present upon their oath:

EVASION OF A TAX OR PAYMENT

That Curnez Kenyatta Ellerbee did, in Richland County, on or about April 18, 2012, willfully attempt in any manner to evade or defeat a tax or property assessment imposed by a title administered by the S.C. Department of Revenue or the payment of that tax or property assessment. To wit: Curnez Kenyatta Ellerbee did fail to file a South Carolina Individual income tax return, which he was required to do, having been paid earnings of over \$50,000 in 2011, resulting in a tax liability and further: Curnez Kenyatta Ellerbee made false statements regarding the withholding of state income taxes by his employer during 2011 and, by combination of these acts, ensured that the appropriate amount of taxes were not withheld or paid for that year, this in violation of Section 12-54-44(B)(1), S.C. Code of Laws, 1976, as amended.

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


 ALAN WILSON (WAM)
 SOUTH CAROLINA ATTORNEY GENERAL

416
STATE OF SOUTH CAROLINACOUNTY OF Richland
STATE VS.
Curnez Ellerbee

AKA:

Race: BLACK Sex: M Age: 43

DOB: [REDACTED] SS#: [REDACTED]

Address: Zimacrest Rd. Apt. [REDACTED]

City, State, Zip: Columbia SC 29210

DL#: SC [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Tax / Failure to pay taxes, file a return and keep records

in violation of § 12-54-0044(B)(3) of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

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:

Solicitor AG SC Bar# 14710 Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 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 5months/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:☐ 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 SCDOC.☐ 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 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☒ Ordered PTUP payment of restit
Total: \$ 3000 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
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS4005441

A/W#: DPI8588

Date of Offense: 4/15/2010

S.C. Code § : 12-54-0044(B)(1)

CDR Code #: 2759 2757

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 12-54-0044(B)(3) of the S.C. Code of Laws, bearing CDR Code # 2759 2757

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

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.

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Solicitor AG SC Bar# 14710 Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 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 5months/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:☐ 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 SCDOC.☐ 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 (Domestic
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Total: \$ 3000 plus 20% fee: \$ _____

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§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (04/2018)

Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____☒ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2181

Sentence Date: 2-12-19

SCANNED

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

Respectfully Submitted,

s/ Joanna K. Delany
Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 14th day of August, 2020.

RECEIVED

Aug 14 2020

SC Court of Appeals