STATE OF SOUTH CAROLINA
In The Supreme Court

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2017-000826
Lower Court No. 2016-CP-23-3282

Christopher Eric Russell, ...Respondent,

v.

State of South Carolina, ...Petitioner.

APPENDIX

ALAN WILSON
Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General
SC Bar No. 79054
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEY FOR PETITIONER

WANDA H. CARTER
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29201
(803) 734-1330

ATTORNEY FOR RESPONDENT

INDEX

INDEX i

TRIAL TRANSCRIPT 1

FINAL BRIEF OF APPELLANT 515

FINAL BRIEF OF RESPONDENT 553

S. C. COURT OF APPEALS OPINION 609

REMITTITUR 612

ORDER DENYING PETITION FOR WRIT OF CERTIORARI 614

PCR APPLICATION 616

RETURN 623

PCR HEARING TRANSCRIPT 630

ORDER GRANTING POST-CONVICTION RELIEF IN PART AND DENYING POST-CONICTION RELIEF IN PART 702

RESPONDENT'S MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e) 713

ORDER DENYING RESPONDENT'S MOTION TO ALTER OR AMEND 718

RESPONDENT'S MOTION FOR RELIEF PURSUANT TO RULE 60(B)(1), SCRCP 719

ORDER DENYING STATE'S RULE 60(B)(1) MOTION FOR RELIEF 732

CLERK'S RECORDS 734

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS RECORDS 750

STATE OF SOUTH CAROLINA	
COUNTY OF GREENVILLE	COURT OF COMMON PLEAS 2011-GS-23-01118; 01122-01124
STATE OF SOUTH CAROLINA PLAINTIFF	
vs.	TRANSCRIPT OF RECORD
CHRISTOPHER E. RUSSELL DEFENDANT	

ORIGINAL

February 13, 2013,
Greenville, South Carolina

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH, Judge; and a jury..

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

MARK MOYER, ESQ.
Attorney for the State

SUSANNAH ROSS, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

INDEX OF WITNESSES

JEFFERY LYLES

Direct By Mr. Moyer 79

Cross By Ms. Ross 109

Redirect By Mr. Moyer 110

ELAINE LYLES

Direct By Mr. Moyer 111

Cross By Ms. Ross 140

Redirect By Mr. Moyer 145

Recross By Ms. Ross 147

Redirect By Mr. Moyer 148

DANIELLE DURHAM

Direct By Mr. Moyer 153

JIMMY MCDANIEL

Direct By Mr. Moyer 167

Cross By Ms. Ross 177

BRYAN LEPPARD

Direct By Mr. Moyer 186

Cross By Ms. Ross 199

WALTER BOWERS

Direct By Mr. Moyer 201

RICHARD MCGRUDER

Direct By Mr. Moyer 206

IONA OOTEN

Direct By Mr. Moyer 212

Cross By Ms. Ross 221

JONATHAN HAMILTON

Direct By Mr. Moyer 225

Cross By Ms. Ross 233

CHRISTOPHER GARY

Direct By Mr. Moyer 234

Cross By Ms. Ross 241

DAVE WEINER

Direct By Mr. Moyer 242

Cross By Ms. Ross 258

CHRIS HAMMETT

Direct By Mr. Moyer 262

Cross By Ms. Ross 274

JINNY MORAN

Direct By Mr. Moyer 277

Cross By Ms. Ross 280

Redirect By Mr. Moyer 285

Recross By Ms. Ross 289

ANTONIAS WILLIAMS

Direct By Mr. Moyer 291

Cross By Ms. Ross 321

Redirect By Mr. Moyer 341

Recross By Ms. Ross 344

CHRISTOPHER RUSSELL

Examination By The Court 346

ANTHONY LOUNDS

Direct By Ms. Ross 354

Cross By Mr. Moyer 359

Redirect By Ms. Ross 366

ELEANOR RUSSELL

Direct By Ms. Ross 367

Cross By Mr. Moyer 370

Redirect By Ms. Ross 386

RUBY WILLETT

Direct By Ms. Ross 389

Redirect By Ms. Ross 402

ALLEN SMITH

Direct Mr. Moyer 421

Cross By Ms. Ross: 423

DAVID WEINER

Direct By Mr. Moyer 429

ALLEN SMITH

Direct By Mr. Moyer 432

Cross By Ms. Ross 434

DANA LEWIS

Direct By Mr. Moyer 435

Opening Statement by Mr. Moyer 67

Opening Statement by Ms. Ross 76

Closing Statement by Ms. Ross 445

Closing Statement by Mr. Moyer 454

Jury Charge 476

Verdict 507

Sentencing 513

Certificate of Reporter 514

State's Exhibits

1	Photograph	9	99
2	Photograph	9	99
3	Photograph	9	99
4	Photograph	9	99
5	Photograph	9	99
6	Photograph	9	99
7	Photograph	9	101
8	Photograph	9	101
9	Photograph	9	101
10	Photograph	9	101
11	Photograph	9	101
12	Photograph	9	101
13	Photograph	9	101

14	Photograph	9	101
15	Photograph	9	135
16	Photograph	9	135
17	Photograph	9	135
18	Photograph	9	135
19	Photograph	9	135
20	Photograph	9	210
21	Photograph	9	210
22	Photograph	9	210
23	Photograph	9	
24	Photograph	9	
25	Photograph	9	
26	Photograph	9	
27	Photograph	9	227
28	Photograph	9	250
29	Photograph	9	250
30		9	250

	Photograph		
31	Photograph	9	250
32	Photograph	9	250
33	Photograph	9	250
34	Map	139	140
35	Map	139	140
36	Gun	214	218
37	Zip Ties & Mask	219	219
38	Fingerprint Card	231	238
39	Flashlight, Miscellaneous Items	246	248
40	Blue Bag	252	253
41	Cell Phone	253	254
42	Cell Phone		253
43	Cell Phone Records	266	269
	DEFENSE EXHIBITS		
1	Mug Shot	281	283
2	Inmate Property Record	283	284

COURT'S EXHIBITS

1	Note from Jury	54	54
2	Note from Jury	54	54
3	Antonias Williams' Criminal Record	325	325
5333	Antonias Williams' Criminal Record	333	
4	Defense's Motions	439	439
5	Defendant's Request to Charge	440	440
6	Question from the Jury	505	505
7	LWOP Notice	513	513

(WHEREUPON, State's Exhibits Nos. 1-33 were marked for identification only.)

THE COURT: Can I see the attorneys?

(WHEREUPON, a bench conference was held.)

THE COURT: Solicitor, you want to call the case.

MR. MOYER: Your Honor, this is the case of The State vs. Christopher Russell, Indictment number 2012-GS-23-118 for conspiracy, 1122 for kidnapping, 1123 for armed robbery and 1124 for burglary, first degree.

THE COURT: Now, I'm advised that there is a motion from the Defendant, is that correct, Counsel?

MS. ROSS: Yes, sir, Your Honor. This is Susannah Ross on behalf of Christopher Russell, who does have a motion to make in this case. And would like to be heard at this time.

THE COURT: All right, Mr. Russell, I'll be glad to hear from you.

MR. RUSSELL: Yes, Your Honor. I filed a motion to dismissal of counsel.

THE COURT: I can't hear you.

MR. RUSSELL: I had filed a motion for dismissal of counsel. I had put in my PCR for ineffective assistance from the last trial we went in. Very displeased, first of all.

THE COURT: All right, well state your grounds.

MR. RUSSELL: Sir?

THE COURT: State your basis. I understand what the relief it is you're seeking but you haven't told me anything about why.

MR. RUSSELL: We had went to trial in the past which resulted with me being incarcerated. And it was a lot of errors. And I filed a PCR for ineffective assistance with the court.

THE COURT: What's the status of that PCR now?

MS. ROSS: It's pending as far as I know, Judge. I haven't gotten notice of it. And generally with PCRs,

once the application is put in, I don't get notice of it until it's scheduled for a hearing. Usually about a year later. That does bring up an issue. I will just relay for the record, Mr. Russell was acquitted October 29th, 2009 with some charges that he pled to for time served. These are all additional charges. We went to trial on December 7th, 2011. He was found guilty for failure to stop for blue light, resisting arrest with assault. One count. One failure to stop was not guilty. So that was that point. I can hand you up a motion that I have a copy of that was the one that Mr. Russell filed.

THE COURT: Have you seen it?

MS. ROSS: The Solicitor does have a copy.

MR. MOYER: Is that the one you gave me a copy of?

MS. ROSS: Yeah.

This does not mean the PCR. And I'll just let you rule on that. Certainly, that does bring up some issues if he has a pending allegation of ineffective assistance.

THE COURT: Mr. Russell, with regard to the particular charges in this case, other than the existing PCR, what basis do you have for your motion?

MR. RUSSELL: The last trial I went in I was misled to plead guilty to 10 years. The charge didn't

carry but five years. So I had to go to trial to get the five years. I could have pled guilty but I was told it was going to be a 10 year plea for a charge that didn't carry nothing but five years. So I was really misled.

THE COURT: What did you plead to?

MR. RUSSELL: Five years. Zero to five.

THE COURT: For what?

MR. RUSSELL: For failure to stop for blue light. I'm just saying, Your Honor, I pled -- I went to trial on that but I pled to resisting arrest. And I want to say, what was it? I forgot. I pled guilty to resisting arrest and it was other charge before, prior to that before I went to trial. But when I went to trial on failure to stop for blue light, they was telling me to plead to 10 years. But the charge don't carry nothing but zero to five. I got it right here.

THE COURT: Ms. Ross, as far as the charges that are currently before the Court, do you feel like you're adequately prepared to go forward?

MS. ROSS: I do. There were two resisting arrests, that was the issue. He pled to one and one went to trial. Resisting arrest with assault.

THE COURT: Let me ask you this, any reason why with the pending PCR, would that effect your ability to fairly and accurately represent this gentleman at that

point?

MS. ROSS: Judge, since -- just the knowledge of it certainly doesn't make me anymore excited about the case, knowing that he's alleged ineffective assistance of counsel. This case has been on the docket many times before. I made efforts to prepare to try this case.

THE COURT: It's been on the docket before?

MS. ROSS: Yes, sir.

THE COURT: Has he ever raised this issue before today?

MS. ROSS: He attempted to raise it, yes, when it was on the docket last time.

MR. MOYER: Yes, he did. This is the first time we've actually gotten before a Judge, Your Honor. On the prior previous occasions, had people sick, had a death, just various things that had this case continued. But Ms. Ross gave me this motion, I guess, last month when it was on the docket. But this is the first time it's been heard.

THE COURT: All right.

Mr. Russell, anything particular in your motion about the facts or the charges in this case? I understand your basis before the prior representation but as to the charges today, what -- do you have any grounds that you would be moving for a continuance on to relieve your

counsel on?

MR. RUSSELL: I'm making the motion because I'm very displeased what has been taken place so far. I don't feel like I want to go to trial with Ms. Ross. Because I done been misled one time in the trial before. And I don't want to go to a trial right here with this magnitude. This is my liberty. This is a life sentence. And I don't think she can represent me ineffective like she did in the past. I don't think she can represent me now, that's what I'm staying.

THE COURT: I think I understand what you're saying. I think you're saying because you were unhappy with the results before, you're going to be unhappy with the results this time.

MR. RUSSELL: Yes, sir.

THE COURT: Now, has she reviewed the discovery in this matter with you?

MR. RUSSELL: I'm in prison.

THE COURT: Sir?

MR. RUSSELL: I said, No.

THE COURT: Is your allegation she's not reviewed any of the State's discovery with you in this case?

MR. RUSSELL: I mean, we talked about the latest -- we talked about what I'm in prison for now. Now

these charges right here that's coming up now, we ain't just touched base on this right here. Because, you know, what I'm saying--

THE COURT: I'm not sure I understand what you mean, We just touched base.

MR. RUSSELL: We have a really discussed these charges right here. Really just focus on what I'm in this prison for now, the failure to stop for blue light and stuff. We ain't really had time to prepare because I'm in SCDC. She hadn't visited me or nothing.

THE COURT: Ms. Ross, you said that you prepared for this matter on several occasions, previously?

MS. ROSS: Yes.

THE COURT: Have you reviewed the State's discovery with Mr. Russell?

MS. ROSS: I believe I have. Frankly, because the case has been pending for -- trying to find the date, at least two, two and a half years that I've had this opened, there was a large amount of discovery. I discussed that discovery with my client. I know we got some new discovery which are phone records that are extensive. I've talked to my client about them briefly at the jail downstairs in the holding cell. So, I believe I've gone over the discovery in this case. But there's probably parts that I've missed. I got some new discovery

last week that I still haven't reviewed with him. But that was about three pages of just a supplemental incident report.

THE COURT: Well, normally, Ms. Ross, I'm not inclined to grant these motions because they're generally interposed as a tactic to delay. Ms. Ross, if I give you some additional time to review these documents with Mr. Russell, would that be sufficient? I mean, you say it's three pages?

MS. ROSS: Yes.

MR. MOYER: Judge, I can explain what that is, if it please the Court.

MS. ROSS: Yeah.

THE COURT: Go ahead.

MR. MOYER: The only thing, it's just a supplemental report that was done by an officer who went back and analyzed what we're going to contend is this Defendant's cell phone. This was done two years ago, initially, by a different officer. The officer who analyzed the phone two years ago was unavailable right now for the trial. So we had another officer analyze it. So there's no new information that's been gleaned from this, the officer just wrote a little report saying, I got the phone out of property and evidence and analyzed it. The records are the same as what was produced a year and a

half ago or so. So, I just want to make sure the record is clear that it's not like the defense has been given any new -- relating of new information.

THE COURT: Do you disagree with that, Ms. Ross?

MS. ROSS: No.

THE COURT: All right. I'm going to deny the motion to relieve Ms. Ross as counsel. Unless there's a basis behind it that I have not heard.

Ms. Ross, I'll be glad to hear from either one you. Right now he says I don't think she did a great job before. He didn't say anything about this case or these cases. You say you've gone over the discovery with him except for the fact of this three-page report, which confirms the prior evaluation which yielded no new information. If there's something you would like for me to consider either Ms. Ross or Mr. Russell, I'll be glad to entertain it. But as of right now, I just haven't found sufficient grounds to relieve you as counsel in this matter.

MS. ROSS: Well, Judge, the only thing I would add is it's certainly more difficult to defend somewhat uncooperative Defendant who doesn't want to work with me on things. And certainly, in the past few months Mr. Russell has been uncooperative. Other than that, I have discovery, I viewed it, I'm prepared for the trial.

Certainly a filing of ineffective assistance maybe explain some of that uncooperativeness but that does -- is something to consider here. Beyond that, I have nothing further to say.

THE COURT: All right, let me see the attorneys in my chambers, please.

(WHEREUPON, a in-chambers, off-the-record conference was held.)

THE COURT: All right, back on the record. I've asked Ms. Ross and the Solicitor's Office to come speak with me and give me more particularized information about the procedural history of this case. What I'm informed, and I want to put the substance of our meeting on the record so it's all clear and the sunshine's on it.

So Ms. Ross, counsel, if you have anything you want to add or take aware or clarify from what I put on the record, it's certainly time to do so.

But, essentially, this matter has been on the docket several times. This would be the fifth time it's been on the docket. There has been various reasons asserted why the case cannot go forward at this point or at those points. Mr. Russell had not necessarily filed his motion to relief counsel in this many matter. Which is dated November 2012. As we sit here today, he hasn't given my anything particularized as to this case except

for the fact that he wasn't happy with the outcome of the prior cases. I deem that to be insufficient. Ms. Ross advised that she's ready to proceed.

Now, Ms. Ross, from the Defendant's standpoint, anything about our meeting that you would like to place on the record that I did not cover?

MS. ROSS: No, Your Honor.

THE COURT: From the State's perspective?

MR. MOYER: No, Your Honor.

THE COURT: Okay, I'm going to deny the motion, I'm going to go forward with the trial of the case. I think it's high time, this matter has been pending over two years, apparently it's time for this matter to go forward.

Now, from that standpoint of fairness, Mr. Russell needs to be dressed in his suit. How long will that take to happen?

MS. ROSS: Ten or 15 minutes, which shouldn't take long.

THE COURT: Okay. So if we break until 12:15, would that give you sufficient time to get him properly dressed for this jury?

MS. ROSS: It should.

THE COURT: Any reason why that shouldn't happen?

MR. MOYER: Fine with the State.

THE COURT: All right, we'll break until 12:15, then select the jury in this matter. All right, recess until 12:15.

(WHEREUPON, a short break was taken.)

THE COURT: State ready to proceed?

MR. MOYER: We're ready, Your Honor.

THE COURT: Defense ready to proceed?

MS. ROSS: Yes, Your Honor.

THE COURT: As far as strikes goes, the Defendant has 10, State has five. One alternate. The State would get one and Defendant would have two. Do y'all disagree with that?

MR. MOYER: Do not, Your Honor.

MS. ROSS: No, Your Honor.

THE COURT: Would you bring the jury panel, up?

THE CLERK: Certainly.

(WHEREUPON, the jury venire came into open court at approximately 12:20 p.m.)

Mr. Bailiff, all accounted for?

THE BAILIFF: (The Bailiff nods.)

THE COURT: Very good.

Mr. Moyer, would the State call its first case?

MR. MOYER: Yes, Your Honor, may it please the Court. The State is calling the case of the State of

South Carolina vs. Christopher Eric Russell. Indictment number 2011-GS-23-1122 for kidnapping. Indictment number 2011-GS-23-1123 for armed robbery. Indictment number 2011-GS-23-1118, for conspiracy. And Indictment number 2011-GS-23-1124 for burglary, first degree.

THE COURT: Would you pass those Indictments forward, please?

All right, very well. Ladies and gentlemen, can everybody hear me okay? Very good. First, let me tell you, the fact that Mr. Russell has been indicted and arrested and charged is not evidence of his guilt, nor does it raise any inference of his guilt. It's simply the mechanism by which the State of South Carolina who brings somebody before a jury such as the one to be picked for determination of guilt or innocence. And I will tell that to the jury again. With that being said, I remind you that you're still under oath. And I have several more particularized questions that I need to ask. The difference now will be that if you need to respond, I'm not going to give you an opportunity at the end to come forward. I'm going to ask that you stand up where you are, identify yourself by jury number. You don't have to give us your name, just give us your jury number and give us the response. Is everybody clear? Very good.

Now, has anyone ever been related by blood or

marriage to Jeffrey Lyles, Elaine Lyles or Christopher Russell? If so, would you please stand?

There was no response.

Has anyone ever had a close, personal or social relationship with Jeffrey Lyles, Elaine Lyles or Eric -- excuse me, Christopher Eric Russell? If so, would you, please, stand?

There was no response.

Very good. Ladies and gentlemen, the following has 23 names or 22 names -- 21. I'm going to ask that you listen to the entire list. If you don't hear it, raise your hand. But this is a list of potential witnesses who may testify during the course of this trial. The first is Danielle Durham, Eleador [sic] Russell, Antonias Williams, Ruby Willett, Jimmy McDaniel, Anthony Lounds, Bryan Leppard, Greenville County Sheriff's Office, Shannon McMakin, Greenville County Sheriff's Office, William Brewer, Greenville County Sheriff's Office, Richard McGruder, Greenville County Sheriff's Office, Walter Bowers, Greenville County Sheriff's Office, Mason Hubber, Greenville County Sheriff's Office, Ramon Rivera, Greenville County Sheriff's Office, Tim Fuller, Greenville County Sheriff's Office, Dave Weiner, Greenville County Sheriff's Office, Michael Rainey, Greenville County Sheriff's Office, Chris Hammett, Greenville County

Sheriff's Office, Jon Hamilton, Greenville County Department of Public Safety, Iona Ooten, Greenville County Department of Public Safety, Christopher Gary, Greenville County Department of Public Safety, Jinny Moran, Greenville County Department of Public Satisfy.

First, did everyone hear those names? Or should I ask that anyone not hear those names?

There was no response.

All right, Ms. Ross, did I mispronounce any names from Defendant's witnesses?

MS. ROSS: I think it was Eleanor Russell and Ruby Willett.

THE COURT: Eleanor?

MS. ROSS: Eleanor.

THE COURT: Okay, very good. Eleanor Russell, I think I pronounced it, Eleador. It's Eleanor Russell.

MS. ROSS: Correct.

THE COURT: Okay, Mr. Moyer.

MR. MOYER: Yes, sir, Your Honor. Mason Hubber and Dave Weiner. Both with the Greenville County Sheriff's Office.

THE COURT: Okay, did everyone get those corrections? Has anyone ever been related by blood or marriage to any of the potential witnesses that I've just read to you? If so, would you, please, stand?

There was no response.

Has anyone ever had a close, personal or social relationship with any of the potential witnesses I've just read to you? If so, would you, please, stand?

THE COURT: Okay, sir, your jury number only.

PROSPECTIVE JUROR: 110.

THE COURT: Okay, which witness?

PROSPECTIVE JUROR: Iona Ooten, she goes to my church.

THE COURT: Other than going to your church, do you socialize with her?

PROSPECTIVE JUROR: Yes, family get togethers, randomly. But mainly just with church on Sundays and Wednesdays.

THE COURT: How long have you guys been going to church together?

PROSPECTIVE JUROR: I would say for a few months, I don't know the exact timeframe.

THE COURT: Would the fact that you go to church and have an occasional outing this potential witness, would that effect your ability to give this Defendant and the state a fair and impartial trail?

PROSPECTIVE JUROR: I don't believe so, sir.

THE COURT: You're going to have to be a little bit more firm than that?

PROSPECTIVE JUROR: I don't think so, sir.
THE COURT: Well let's be a little more firm than that.
PROSPECTIVE JUROR: No.
THE COURT: All right. Just want to make sure. It's your statement under oath that you can be fair and impartial to this Defendant and to the State?
PROSPECTIVE JUROR: Yes, sir.
THE COURT: Any additional voir dire of this potential juror from the Defense?
MS. ROSS: No, Your Honor.
THE COURT: From the State?
MR. MOYER: No, Your Honor.
THE COURT: Thank you, sir.
Anyone else?
Yes, ma'am.
PROSPECTIVE JUROR: Um --
THE COURT: What's your juror number.
PROSPECTIVE JUROR: Number 70 [sic].
THE COURT: Number 7 [sic]? Okay, which witness was it?
PROSPECTIVE JUROR: Ramon Rivera.
THE COURT: Okay. And how do you know Ramon Rivera?
PROSPECTIVE JUROR: He's my kids family member.

THE COURT: He's your?

PROSPECTIVE JUROR: My kids family member, a cousin.

THE COURT: He's a cousin of your children?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. And how distant of a cousin is he?

PROSPECTIVE JUROR: Father side. Father family.

THE COURT: Okay. Are they first cousins, second cousins, do you know?

PROSPECTIVE JUROR: I believe his second cousin.

THE COURT: Second cousins. Do they see each other often.

PROSPECTIVE JUROR: No, sir.

THE COURT: How about at all?

PROSPECTIVE JUROR: They see like just sometimes during the year.

THE COURT: Okay, would that fact that this witness or potential witness is related to your children, to your husband side, effect your ability to listen to the evidence in this case and to be fair and impartial to both Mr. Russell as well as to the State?

PROSPECTIVE JUROR: No, sir.

THE COURT: Okay. Any additional voir dire from Ms. Ross?

MS. ROSS: I would just only ask, you said it was your son's family member?

PROSPECTIVE JUROR: Yes.

MS. ROSS: He's a cousin?

PROSPECTIVE JUROR: Yes.

MS. ROSS: Okay, nothing further.

THE COURT: Mr. Moyer?

MR. MOYER: (Mr. Moyer shook his head.)

THE COURT: Okay, thank you, ma'am.

Anyone else?

All right, Ms. Ross, would you introduce yourself and your client, please, ma'am?

MS. ROSS: Thank you, Judge.

I'm Susannah Ross. This is my client, Christopher Russell.

THE COURT: Thank you.

Mr. Moyer.

MR. MOYER: Thank you, Your Honor, may it please the Court.

My name is Mark Moyer, I work for the 13th Circuit Solicitor's Office. This is Paula Carpenter, she's a legal investigator with our office. Seated next to her is Sergeant Dave Weiner, he's with the Greenville County Sheriff's Office.

THE COURT: Has any member of the jury panel

ever been represented by either of the attorneys here in the courtroom or any members of the Solicitor's Office or Public Defender's Office? If so, would, please, stand?

There was no response.

Has any member of the jury panel ever been represented by blood or marriage to either of these attorneys or any members of their firm? If so, would you, please, stand?

There was no response.

Has anybody member of the jury panel have a close personal or social relationship with either of these attorneys or any members of their firm? If so, would you, please, stand.

There was no response.

Has any member of the jury panel formed or expressed an opinion about any issue in the case or matter in the case of The State vs. Christopher Russell? If so, would you, please, stand.

There was no response.

Is any member of the jury panel aware of any facts surrounding the case of The State vs. Christopher Eric Russell. If so, would you, please, stand.

There was no response.

Is any member of the jury panel aware of any bias or prejudice that they may have either towards the

State or towards the Defendant in this matter? If so, would you, please, stand?

There was no response.

Is there any member of the jury panel that is a member of the Greenville County Grand Jury that issued the Indictments in this matter? If so, would you, please, stand?

There was no response.

Is there a member of the jury panel who is a member of or a contributor to any group which has as its primary concern the promotion of law enforcement or victims rights? If you are a member of or contributor to any group which has as its primary concern, the promotion; of law enforcement or victims right, please, stand. Those -- examples of those but certainly not the only would be MADD, SADD or CAV. If you're a member of any of these groups or a contributor to any of these groups, would you, please, stand.

There was no response.

Is any member of the jury panel know of any reason whatsoever, with particular inferences being on your ability to be fair and impartial to both the Defendant and to the State, why you should not be selected to serve on the jury in this matter. If you know of any reason whatsoever, would you, please, stand?

There was no response.

Very good.

Any additional voir dire from the Defense?

MS. ROSS: No, Your Honor.

THE COURT: From the State?

MR. MOYER: No, sir, Your Honor.

THE COURT: Very good.

All right, ladies and gentlemen, let me tell you the process we're about to go through. In just a minute, they will call your jury number. You will come through the little alleyway right there and you'll stand up between the State and the Defense table and face them. And they will make a decision as to whether or not you will be selected to serve on this juror. If your name is called, I'm going to ask that you grab your personal belongings and bring them with you in the event you are selected, you don't have to send somebody out to get your personal information.

Are you ready to go forward?

THE CLERK: Yes, sir.

THE COURT: Okay, Madam Clerk.

THE CLERK: All right.

Juror number 9, Misty Andrews.

(Misty Andrews, a white female, came forward.)

What says the State?

MR. MOYER: Please present Ms. Andrews.

THE CLERK: What says the Defendant?

MS. ROSS: Please seat the juror.

THE CLERK: Ms. Andrews, if you'd, please, come this way, have a seat in the jury box.

Juror number 269, Zoraida Gonzalez.

(Zoraida Gonzalez, a Hispanic female, came forward.)

THE CLERK: What says the State?

MR. MOYER: Please present Ms. Gonzalez.

THE CLERK: What says the Defendant?

MS. ROSS: Please excuse Ms. Gonzalez.

THE CLERK: All right, Ms. Gonzalez, you may be seated back in the gallery, you have been excused from this case.

Juror 229, Stephanny Simmons.

(Stephanny Simmons, a white female, came forward.)

What says the State?

MR. MOYER: Please present Ms. Simmons.

THE CLERK: What says the Defendant?

MS. ROSS: Please seat the juror.

THE CLERK: Ms. Simmons, please have a seat in the jury box.

Juror 45, Robert Caldwell.

(Robert Caldwell, a white male, came forward.)
What says the state?
MR. MOYER: Please present Mr. Caldwell.
THE CLERK: What says the Defendant?
MS. ROSS: Please excuse the juror.
THE CLERK: All right, Mr. Caldwell, sir, you may be seated.
Juror 189, Kenneth Nix.
(Kenneth Nix, a white male, came forward.)
What says the State?
MR. MOYER: Please present Mr. nix.
THE CLERK: What says the Defendant?
MS. ROSS: Please excuse Mr. Nix.
THE CLERK: All right, Mr. Nix, you may be seated back in the gallery, you've been excused from this case.
Juror 61, Jeanne Connelly.
(Jeanne Connelly, a white female, came forward.)
What says the State?
MR. MOYER: Please present Ms. Connelly.
THE CLERK: What says the Defendant?
MS. ROSS: Please seat the juror.
THE CLERK: All right, Ms. Connelly, please, have seat in the jury box.
Juror 38, Lekayle Burdine.

(Lekayle Burdine, a black male, came forward.)
What says the State?
MR. MOYER: Please present Mr. Burdine.
THE CLERK: What says the Defendant?
MS. ROSS: Please seat the juror.
THE CLERK: All right, sir, please have a seat in the jury box.
Juror 46, John Callas.
(John Callas, a white male, came forward.)
What says the State?
MR. MOYER: Please present Mr. Callas.
THE CLERK: What says the Defendant?
MS. ROSS: Please seat the juror.
THE CLERK: Mr. Callas, please, have a seat in the jury box.
Juror 250, Jo Sweeney.
(Jo Sweeney, a black female, came forward.)
What says the State?
MR. MOYER: Please present Ms. Sweeney.
THE CLERK: What says the Defendant?
MS. ROSS: Please seat the juror.
THE CLERK: All right, Ms. Sweeney, please, have a seat in the jury box.
Juror 81, Deanna Dougherty.
(Deanna Dougherty, a white female, came

forward.)

What says the State?

MR. MOYER: Please present Ms. Dougherty.

THE CLERK: What say the Defendant?

MS. ROSS: Please seat the juror.

THE CLERK: All right, Ms. Dougherty, please, have a seat in the jury box.

Juror 58, Patsy Clemons.

(Patsy Clemons, a white female, came forward.)

What says the State?

MR. MOYER: Please present Ms. Clemons.

THE CLERK: What says the Defendant?

MS. ROSS: Please excuse Ms. Clemons.

THE CLERK: All right, ma'am, you may be seated back in the gallery, you've been excused from the case.

Juror 188, Jeffrey Nicklaus.

(Jeffrey Nicklaus, a white male, came forward.)

What says the State?

MR. MOYER: Please present Mr. Nicklaus.

THE CLERK: What says the Defendant?

MR. MOYER: Please excuse Mr. Nicklaus.

MS. ROSS: All right, Mr. Nicklaus, you may be seated back in the gallery.

Juror 265, Kok Wai Wong.

(Kok Wai Wong, an Asian male, came forward.

What says the State?

MR. MOYER: Please excuse the juror in this case.

THE CLERK: All right, sir, you may be seated, you've been excused from this case.

Juror 90, Yanira Diaz.

(Yanira Diaz, an Hispanic female, came forward.)

What says the State?

MR. MOYER: Please.

MR. WHITE: It's Diaz, D-I-A-Z, Juror 90.

MR. MOYER: Please present Ms. Diaz.

THE CLERK: What says the Defendant?

MS. ROSS: Seat the juror.

THE CLERK: Thank you, Ms. Diaz, please have a set in the jury box.

Juror 112, Michael Green.

(Michael Green, a white male, came forward.)

What says the State?

MR. MOYER: Please excuse the juror in this case.

THE CLERK: All right, Mr. Green, you may be seated back in the gallery, you have you excused from this case.

Juror 191, Vicki Odom.

(Vicki Odom, a white female, came forward.)

What says the State?

MR. MOYER: Please present Ms. Odom.

THE CLERK: What says the Defendant?

MS. ROSS: Please seat Ms. Odom.

THE CLERK: Ms. Odom, please have a seat in the jury box.

Juror 213, Ellen Robinson.

(Ellen Robinson, a black female, came forward.)

What says the State?

MR. MOYER: Please present Ms. Robinson.

THE CLERK: What says the Defendant?

MS. ROSS: Please seat Ms. Robinson.

THE CLERK: Ms. Robinson, please, have a seat in the jury box.

Juror 77, Amanda Dionne.

What says the State?

MR. MOYER: Please present Ms. Dionne.

THE CLERK: What says the Defendant?

MS. ROSS: Please excuse Ms. Dionne.

THE CLERK: All right, ma'am, you may be seated, you have been excused from this case.

Juror 192, Reginald Owens.

(Reginald Owens, a black male, came forward.)

What says the State?

MR. MOYER: Please present Mr. Owens.

THE CLERK: What says the Defendant?

MS. ROSS: Please seat Mr. Owens.

THE CLERK: Sir, please, have a seat in the jury box.

Juror 270, Marsha Mcdonald.

(Marsha Mcdonald, a white female, came forward.)

What says the State?

MR. MOYER: Please excuse the juror in this case.

THE CLERK: All right, Ms. Mcdonald, you may be seated, you have been excused from this case.

Juror 177, Urvin Moore.

(Urvin Moore, a white male, came forward.)

What says the State?

MR. MOYER: Please present Mr. Moore.

THE CLERK: What says the defendant?

MS. ROSS: Please excuse Mr. Moore.

THE COURT: All right, sir, you may be seated, you have been excused from this case.

Juror 215, Mitchell Rosemond.

(Mitchell Rosemond, a black male, came forward.)

What says the State?

MR. MOYER: Excuse the juror panel in this case.

THE CLERK: All right, Mr. Rosemond, you may be seated, you've been excused from this case.

Juror 222, Julie Seigler.

(Julie Seigler, a white female, came forward.)

What says the State?

MR. MOYER: Please present Ms. Seigler.

THE CLERK: What says the Defendant?

MS. ROSS: Please excuse Ms. Seigler.

THE CLERK: All right, ma'am, you may be seated, you have been excused from this case.

Juror 110, Bradley Gray.

(Bradley Gray, a white male, came forward.

What says the State?

MR. MOYER: Please present Mr. Gray.

THE CLERK: What says the Defendant?

MS. ROSS: Please excuse Mr. Gray.

THE COURT: All right, Mr. Gray, you may be seated, you have been excused from this case.

Juror 254, Kimberly Walls.

(Kimberly Walls, a white female, came forward.)

What says the State?

MR. MOYER: Please say that number again?

THE CLERK: Two fifty-four.

What says the State?

MR. MOYER: Pleas present Ms. Walls.

THE CLERK: What says the Defendant?

MS. ROSS: Please seat Ms. Walls.

THE CLERK: Ms. Walls, please, have a seat in the jury box.

THE COURT: Let me ask you last 12 as far as alternates one or two?

MR. MOYER: I think one will be fine.

MS. ROSS: Sure, that sounds fine with me, Your Honor.

THE COURT: Okay.

THE CLERK: Juror 36, Kimberly Bufano.

(Kimberly Bufano, a white female, came forward.)

What says the State?

MR. MOYER: Please, present Ms. Bufano.

THE CLERK: What says the Defendant?

MS. ROSS: Please seat Ms. Bufano.

THE CLERK: Ms. Bufano, please, have a seat in the jury box.

THE COURT: Any motions directed towards jury selection?

MR. MOYER: Not from the State, Your Honor.

MS. ROSS: None from the Defense.

THE COURT: Madam Clerk.

THE CLERK: Yes, sir.

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

THE COURT: Ladies and gentlemen of the jury, those of you who were not selected in this trial of this matter, you're not quite off the hook yet. I'm going to ask that you look at your jury card and call in tonight after six o'clock. And there will be a message on there as to when you're to report back and if you're to report back. But thank you for being here this morning. I'm going to excuse you for the remainder of the day.

(WHEREUPON, the jury venire left open court at approximately 1:00 p.m.)

THE COURT: All right, ladies and gentlemen of the jury, what we're going to do in just a second, one I'm going to ask that this jury go back to its jury room and select someone who will be the foreperson of the jury. The foreperson, number one, resides over the deliberations, also the foreperson is somebody who communicates with the Court anytime there needs to be any communication. It does not have to be unanimous. The only prohibition is that our alternate may not serve as the foreperson since she is the alternate juror.

But, ma'am, you do have a right to vote on who you would like to be the foreperson.

Once the foreperson is selected, I'm going to ask that you write your name down and your juror number on a piece of paper the bailiffs will give to you, then I

want you to tally your jurors. I need you to get information for us to let us know whom, if anyone, would like to have pad and pencil to take notes during the course of this trial. Once you get that number down, if you'll just write numerically 10, 11, whatever number it is, knock on the door, we'll receive you here back in the courtroom. But if you'll go with the bailiff now and get us that information, we'll receive you back.

(WHEREUPON, the jury left open court at approximately 1:02 p.m.)

THE COURT: What motions do we have at this point? Do we need to sequester anyone during the course of those motions?

MR. MOYER: Your Honor, I don't have any pre-trial motions.

THE COURT: Ms. Ross.

MS. ROSS: I just got the suppression motions. And my client would like to actually do -- I call it a motion questioning the identification made by testifying Co-defendant.

THE COURT: He can give you notes to ask but you're going to be counsel in this matter.

MS. ROSS: Okay. So I don't think I need sequester, I can go ahead and start with the motions.

THE COURT: Okay, tell me -- identify what your

motion to suppress is, please.

MS. ROSS: Motion to suppress is based on -- there was a search warrant issued for a car. And then a later search warrant issued for the contents of a phone. And I would move to suppress the evidence that was found as a result of those search warrants.

THE COURT: What's the basis of your motion, please?

MS. ROSS: As far as the car, we question whether probably cause was established in the affidavit. That was based on some testimony that supposedly was there by Antonias Williams, the Co-defendant. As far as the subpoena for the actual phone, that was -- that was referred to in initial phone records. The phone was looked into and it says in reference to a subpoena but I didn't see a subpoena for the phone originally. Then the phone was looked into again last Friday. A new subpoena was issued at that time. And we'd argue that it didn't comply with Section 17-13-140. We'd argue probably cause was not established to search the phone. And we state that that's a violation of state law. And the Fourth Amendment, Article One, Section 10 of South Carolina Constitution.

THE COURT: What is that Code Section again, please, ma'am?

MS. ROSS: It's 17-13-140.

THE COURT: Okay.

MS. ROSS: And I'd also point out 17-13-150, where clearly being in SCDC, Mr. Russell wasn't furnished a copy of the warrant. I don't know if that frankly would apply to this situation when he's in SCDC, but the statute does state that the Defendant must be furnished a copy of the warrant and the affidavit.

THE COURT: Were you supplied a copy of the warrant?

MS. ROSS: Not until after the return was made and the search was done.

THE COURT: All right, Mr. Moyer.

MR. MOYER: Your Honor, if I can address the search of the vehicle first. I would argue that we don't even need to get to the point of the hearing on this matter because the Defendant's not abstaining to contest that. It was not his vehicle. The vehicle was in the possession of his Co-defendant. It was abandoned at the scene of the crime on the night of the incident. So the -- it's going to be alleged by our witnesses and our testimony in this case that the Defendant and Co-defendant arrived together in that vehicle. But there's no question the vehicle belonged to the Co-defendant. So the Defendant's not abstaining to challenge that.

THE COURT: So ownership, possession and abandonment, is that you're saying?

MR. MOYER: That's correct, Your Honor.

THE COURT: All right, Ms. Ross, why does he have any standing to assert this vehicle at all?

MS. ROSS: Well certainly in drug trafficking cases and such, if the items are going to be used against you and they're going to allege that they belong to Mr. Russell, at that point he'd certainly have standing to contest them. Because you don't want to exist an illegal fiction where the phones or the contents are being stated that they belong to Mr. Russell and then state that he doesn't have standing to contest--

THE COURT: No, I'm looking more--

MS. ROSS: As far as the car, I don't have a whole huge problem with that. My main problem and the problem, I think, in this case, is the issue's the phone.

THE COURT: Okay.

MS. ROSS: And what it would be would certainly fruit of the poisonous tree from the search of the car. But then the later actual search of the phone and the contents of the phone would be more to the issue in the trial today.

THE COURT: Okay, I'm going to deny your motion on the vehicle. And I'll be glad to go forward with the

phones. Do we have need to take any testimony?

MR. MOYER: I can give you a summary, Your Honor. First off, our argument is going to be abandonment with the phone as well. Just to give you a little background, the incident happened December 18th, 2010. It's going to be alleged in the trial that the Defendant and Co-defendant committed an armed robbery and burglary at a residence on [redacted] Street in Greenville. Police were alerted to the incident while it was taking place. Arrived while the Defendant and Co-defendant were still inside the residence.

The Defendant and Co-defendant were alerted to the police being there. At that point, the Co-defendant ran out the backdoor. The police officers caught him at that time. While officers attention were all averted to the Co-defendant, the other person, who we allege is this Defendant, ran out the front door and got away. The officer then spoke to the Co-defendant, he told them where his vehicle was. Officers went there and found it. And inside the vehicle was a cell phone. Which the officers did collect at that time. And so the testimony is going to be that the cell phone belonged to the Defendant.

And, Your Honor, I did some research over the weekend about search warrants with cell phones. I didn't find any case in South Carolina so I had to look outside

the jurisdiction. I'd like to look particularly at the case of the People vs. Daggs, D-A-G-G-S, a 2005 case from California. And in that case, Your Honor, it was a case fairly similar to this in that it was a robbery case where the suspect left his cell phone behind. And was identified that way. The Defendant fled the scene of the robbery, the cell phone was collected. Officers then looked at the cell phone to get information about it. Then they didn't take the next step of getting a search warrant in that case but I would argue, I think the law is fairly clear, that once property is abandoned, then it's abandoned. And officers can collect it. Which they did in this case. Two days went by, nobody appeared to the Law Enforcement Center to get that cell phone back from the officers. So I think before get to the step of having to talk about the search warrant, I would argue that the fact that it was abandoned makes it unnecessary to go through that statute.

THE COURT: Well, is there a distinction between the actual possession of the phone and then going in to get the contents of the phone?

MR. MOYER: And that is obviously one of the main points in this whole discussion. I would argue that it's not a distinction. That once it's abandoned, it's abandoned. And everything that can be done with the cell

phone as far as searching it, turning it on, looking at the contents of it. I would argue that is abandonment. And officers can do whatever they choose to do with it.

THE COURT: Ms. Ross.

MS. ROSS: Well, Judge, we just argue that it wasn't abandoned. If it was abandoned it was abandoned to be turned into the -- the give away pile or something of that sort. But as far as going into information within sort of the computer chip of that phone, which is what happened there, I would argue that that certainly would require a search warrant, a valid search warrant, and probably cause of the information to get a search warrant for it. Here, and I can pass a subpoena, if you can give it back to me, I don't have another copy, but I'll show you the second -- the only search warrant for the actual phone that was provided to me, was again from last Friday. And that's after they had already taken all this information off the phone. And again, if the allegation is that the phone belongs to my client and they intend to use the phone against him, then we would argue he does have standing to challenge that search. And we challenge it at this time.

I point out nothing in my statements, I highlighted the section of the affidavit about the Co-defendant stating the phone belonged to Mr. Russell,

there's nothing in any written statements that was provided to me in discovery that say anything about Mr. Williams saying the phone belonged to Mr. Russell.

THE COURT: Now, explain to me again how the State came in possession of the phone. They caught the Co-defendant?

MR. MOYER: They did, Your Honor. They caught the co-defendant, he told him where his vehicle was. The officers went and found the vehicle. They towed it to a secured location. Several days went by, officer got a search warrant for the vehicle at that time. And during the search of the vehicle they found this cell phone along with some other property that was in incriminating as far as the armed robbery was concerned. And so that was two days after the fact. It was found.

THE COURT: Pursuant to a search warrant of the vehicle?

MR. MOYER: Yes. Because we still -- it was the Co-defendant's vehicle but the officers did a search warrant at that time.

THE COURT: Then from that point forward, there was not another search warrant until February 7th, 2013 to search the contents of that phone, is that right?

MR. MOYER: Actually not, Your Honor. There actually was a search warrant conducted earlier. And that

search warrant was done on January 25th of 2012. And that search warrant was done for the purposes of doing forensic examination of the cell phone. Essentially, just download the contents of the cell phone into a printable form. Has the contacts, incoming calls, outgoing calls and so forth. So that was done about a year ago.

And then, Your Honor, the officer who did that cell phone is unavailable. So it was -- duplicated it last week so a different officer can testify. I can pass up the other search warrant if, Your Honor, would choose to see it.

THE COURT: Have you seen that other search warrant?

MS. ROSS: I don't believe I have, Judge.

THE COURT: Would you take a minute and let Ms. Ross see it.

Ms. Ross.

MS. ROSS: It appears that the affidavit the exact same in that search warrant, I did not have a copy of that search warrant. The only one for the phone that I recall having, again, there's quite a bit of discovery so if I need to go over this again, was the February 7th one that I passed up to you.

THE COURT: I'm going to deny your motion. But I'm going to ask, Ms. Ross pointed out that she's not been

provided any information on the Co-defendant supposedly identified that phone as belonging to the Defendant, is there anything you can add in that regard?

MR. MOYER: Well, Your Honor, I know he's going to -- at least I believe when he takes the stand, he will testify that--

THE COURT: That's not what I'm asking. I'm asking for discovery purposes.

MR. MOYER: I don't recall any instance where it was brought up by investigators so I don't think there's anything in any reports or statement to that effect.

THE COURT: All right, let me just say this. I'm sure that you turned over all the relevant discovery, all the necessary discovery, but in the event there is something in this matter that has information in it, I'm going to order that it be turned over to the Defendant in this matter.

MR. MOYER: Yes, sir, Your Honor.

THE COURT: All right.

MS. ROSS: And, Judge, just to put it on the record, that would bring up an issue that I have with the affidavit for the search warrant they handed up to you. That -- if that statement is not reflected in discovery, that is making false representation to a Magistrate in order to get a search warrant. And then that's the

problem. I would like to put that on the record as a problem with that search warrant is there's a statement in the officer's affidavit that says, Antonias Williams identified the phone as belonging the Christopher Russell. And I don't see anything in any kind of incident report backing up that statement.

THE COURT: All right, let's do this, I'm going to deny your motion to suppress. With the exception as to the grounds you just articulated. That is whether or not there's knowing this information put in this affidavit. I'm going to allow you, Ms. Ross, if the Co-defendant takes the stand, we can do a in-camera hearing and question him about that sole issue at the appropriate time. If you will remind me to do that. Then I'll make sure we do that outside the presence of the jury.

Anything further that at this stage from the State?

MR. MOYER: No, Your Honor.

THE COURT: From the Defense, Ms. Ross?

MS. ROSS: No, Your Honor, not on the suppression issue.

THE COURT: Okay. I have your search warrant here, let me give that back to you so I won't forget it.

MS. ROSS: Okay, thank you. If this is the proper time, I'd like to do a motion in limine at this

time just so I'm clear going forward on where -- as to my client's prior record and as well as witnesses prior records.

THE COURT: Okay.

Is any of the State's elements they must meet involve introducing his prior record?

MR. MOYER: No, Your Honor. If the Defendant takes the stand, then, of course, we would seek to impeach him with his prior record but not in our case in chief.

THE COURT: Otherwise you will or you have instructed your potential witnesses accordingly, they're not the bring up any prior record of his unless he does take the stand and we make a finding of those things relevant for cross-examination?

MR. MOYER: May it please the Court, as far as your question about that, no, Your Honor, we have actually not -- there's just no reason it would come up. Now I will say there's some prior bad act testimony that may come up.

THE COURT: Before any issues like that, please, bring them to my attention.

MR. MOYER: Yes, sir.

THE COURT: My normal practice is to handle that information in-camera.

MR. MOYER: Yes, sir.

THE COURT: That way we can avoid the matter getting out in front of the jury unnecessarily until I've ruled on it.

MR. MOYER: Yes, sir.

THE COURT: So if would let me know, bring it to my attention, we'll take up outside the presence of the jury.

MR. MOYER: Yes, sir.

THE COURT: All right, anything further?

Ms. Ross, anything further from the defense at this stage?

MS. ROSS: At this point we move to quash the Indictment for failure to comply with rule 3(C) of the South Carolina Rules of Criminal Procedure. I have the return from the warrant as January of 2011. While the Indictment didn't go through until July 19th. That did not fall within the 90 days mandated by that rule.

THE COURT: All right, I'm going to deny that motion.

MS. ROSS: And one more related that my client has, we move to quash the Indictment based on the failure to try the case within 180 days as the Order handed down over two years ago requires.

THE COURT: All right, deny that motion as well.

All right, the jury reports back that juror

number 254, will be the foreperson.

And Madam Clerk, each and everyone of them, included the alternate, want pad and pencils so we'll get 13.

THE CLERK: Okay.

THE COURT: April, if we can make this a Court's Exhibit.

Let me ask this to the State and to Ms. Ross, if we excuse the jury now, bring them back around 2:30, a quarter to 3:00, start with the opening statements at that point, or do you have any timeframe that you would look at?

MR. MOYER: I think we'll will be ready to go as soon as we come back from lunch. So whenever -- I leave it up to the...

THE COURT: I need to make sure everybody gets a sufficient time to have their own lunch. Maybe about an hour and thirty, what do y'all need? Hour and a half?

MR. MOYER: Hour's fine.

THE COURT: All right, Ms. Ross, any reason why we can't do that?

MS. ROSS: No, that's fine. Say, 2:30?

THE COURT: Let's do 2:40, give the Bailiff's a couple extra minutes.

All right, bring the jury in right quick,

please.

(WHEREUPON, the jury came into open court at approximately 1:20 p.m.)

(WHEREUPON, Court's Exhibit Nos. 1 & 2 were marked for identification and received into evidence.)

THE COURT: All right, madam foreman, ladies and gentlemen of the jury, my understanding is that all 12 of you would like to have pad and pencil, is that correct?

MR. FOREMAN: Yes, Your Honor.

THE COURT: Very good, we'll provide those for you, they will be made available before we start the trial. I'm going to excuse you in just a moment for the lunch break. Let me just go over a few brief guidelines, I'll tell you a little bit more later. But it will be improper for you to talk amongst yourselves or with anyone else about this case. Okay. I know at this stage you generally don't know a whole lot of what the charges are. But from this point forward, until I tell you at the end of this trial that you may begin your deliberations, you shall not and may not speak with one another about this case during breaks, overnight or otherwise. You may not speak with any third party, including court staff about the case. Okay. I'm going to excuse you and ask that you be back in your jury room by 2:40 and we'll begin the

trial at that point. Okay.

Now, madam forelady, if during the course of the trial you ever need to communicate with the Court, if you'd just do what you did, make a note, get the information to us, give it to the Bailiffs and we'll receive you here. Okay. I'm going to excuse y'all for lunch at this stage. Thank you.

(WHEREUPON, the jury left into open court at approximately 1:24 p.m.)

THE COURT: Any additions or exceptions from the State?

MR. MOYER: No, Your Honor.

THE COURT: From the Defense?

MS. ROSS: No, Your Honor.

THE COURT: All right, we'll be in recess until 2:40. Thank you.

(WHEREUPON, a lunch break was taken.)

THE COURT: State ready to proceed?

MR. MOYER: Yes, Judge.

THE COURT: Is the Defense ready to proceed?

MS. ROSS: Yes, sir.

THE COURT: Any other matters I need to deal with before I bring the jury in?

MS. ROSS: No, Your Honor.

THE COURT: Ms. Ross, do you intend to have a

opening statement?

MS. ROSS: Yes.

THE COURT: Very good.

Y'all ready to proceed.

Bring the jury in, please.

(WHEREUPON, the jury came into open court at approximately 2:53 p.m.)

THE COURT: Madam Forelady, ladies and gentlemen of the jury, everybody have the requested pen and pad that they need?

MADAM FORELADY: Yes, sir.

THE COURT: All right. Before we get started, Madam Forelady, let me just tell you, these are not endurance contests, if at any time anybody needs to stand up or move around a little bit, you may so do. If you need to get a break or have a break, let us know. If we summons you back here before the jury is ready to come back, let us know, okay. We want you to be comfortable at all times, okay.

MADAM FORELADY: Thank you, Your Honor.

THE COURT: With that being said, Madam Clerk, would you swear the jury, please.

THE CLERK: Yes, sir.

Please, stand and raise your right hand for the oath in this case. The proper response is, I will.

(WHEREUPON, the jury was sworn.)

THE CLERK: Thank you, please, be seated.

THE COURT: Very good. All right, ladies and gentlemen, I don't know if any of you have ever been involved in the criminal justice system before, either as participants, either as a witness or in some other capacity. I would suspect, however, that each and every one of you have watched on the T.V. or in movies, something that reports to reflect a criminal trial. And let me tell you that what you're about to engage in is going to be vastly different than what you see on T.V. Things don't happen in five minutes. And trials and in criminal session or criminal court are slow. They're deliberate, they're very methodical. And foremost, they're not entertainment. But they are a search for the truth.

These attorneys who are before you, they're professionals, they're good. There are rules of court, there are rules that they go by as attorneys require that they be advocates for their side of the case. And they'll do that. But at the same time, they are also officers of this court. What that means is that you can reasonably expect that these attorneys will be professional, they'll be competent and they'll be ethical to one another, to the various witnesses, to me and to anyone else that appear in

this courtroom.

You just took an oath where you swore or affirmed that you would be fair and impartial. What that means is that the State and the Defense in this matter have a right to except of you, that you will be fair, impartial and ethical in your dealings in this matter. Now, what I'm about to tell you is just a basic overview for your understanding of what you're about to do. It is not by any chance the law that you will apply at the end of this case. I will charge you on the law that you will apply at the end of this case. In other words, the law that applies to the charges in this case.

Now, one thing about the notes, sometimes -- use to be when I first went on the bench, I wouldn't let jurors take notes. I felt they'd get distracted by writing something down that they would miss something that would be valuable in the case. While I have changed my view on that, I still don't not believe that the note taking can be problematic. Number one, the fact that something appears in a perspective jurors notes, don't mean that it trumps somebody's memory. So at the end of this case, when you begin to begin your deliberations, if somebody's notes say something say, you know, my memory's a little different than that. It doesn't mean that those notes will trump the others. That's what deliberations

are for and you'll have to hash that out.

Also, in almost every case, you have to determine credibility of witnesses or the testimony that you hear. Part of making that determination would be looking at a person's demeanor while they're on the stand. So if you're engrossed in take your notes, you may miss some subtle response that somebody has that may be indicator of their credibility on the stand. I just tell you that so you can keep those things in mind while you go through this trial.

Now, again, the Defendant has the charges and the Indictments that you heard read to you multiple times, I'm not going to go through them again, you will hear about them. I remind you, however, that the fact that this Defendant has been indicted, charged and arrested, is not evidence of his guilt. It does not raise an inference of his guilt or a presumption of his guilt. In fact, he has stated, I am not guilty to these charges. What that means is that the burden is upon the State of South Carolina and remains there, at all times, to prove each and every element of all charges that he's been indicted for beyond a reasonable doubt.

Further, each one of these Indictments is a independent charge. In other words, each one of these Indictments or charges, must be considered on it's own.

And that before you can find guilt on one -- you can find guilty one or not guilty on another or not guilty on any or guilty on all of them or any combination of those. But they're free and they're independent as far as each one stands on it's own.

Now, it will be your burden to decide at the end of the case, whether or not the State has met its burden of proving the Defendant guilty by prove beyond a reasonable doubt. Let me give you a short charge on reasonable doubt so you can keep this in mind. A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act in an important matter in their own affairs. In this case, as I told you, the State has to prove each and every element of all charges beyond a reasonable doubt. Some of you may have served on jurors in the past on the civil side. In that case, the standard would be what is called a preponderance of the evidence or the greater weight of the evidence where the evidence tips ever so slightly. In this case, it's a much higher standard the State must prove. It is guilty beyond a reasonable doubt.

Now, prove beyond a reasonable doubt is prove that leaves you firmly convinced of the Defendant's guilt. Now, they're very few things in this world that we know with absolute certainty. And in criminal cases the law

does not require prove that overcomes every possible doubt. Now, if based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime or crimes charged, then you must find the Defendant guilty. On the other hand, if you think there's a real possibility that the Defendant is not guilty, then you must give the Defendant the benefit of the doubt and find him not guilty.

Now, as jurors your duty is to find facts. You are what we say in the law the sole judges of the facts. What that means is no one in this courtroom, including myself, can invade your province in being fact finders in this case. You are to determine the facts from the testimony and from the evidence that you hear in this courtroom, uninfluenced by anything you may see or hear outside of this courtroom. Also, our State Constitution does not allow trial Judges to comment on the facts or to have an opinion on the facts. In this case, if I say anything or if I do anything, either in my charge on in my rulings or in somehow throughout this case that seems to indicate to you how you are to find facts, I'm going to ask you and also instruct you to disregard that. I have no understanding of the facts, I have no opinion of the facts. I generally view -- my job so twofold. Number one, to instruct you on the law at the end of the case.

And number two, to make sure that the process is followed so that the State and the Defendant receives a fair and impartial trial.

Now, during the course of this case, I don't know how long it's going to be, I have not discussed that with these attorneys. I know will be through at the latest by Friday. Okay. So you can just console yourself of that. But during the course of this testimony, I'm going to ask each of you to pay close attention. If I make an error at law, then generally it's corrected by the Appellate Court down in Columbia. However, if you make an error on the findings of fact, that generally is not correctable on appeal. So it's very important that you pay close attention.

Now, the law that makes you the sole finders of the fact, makes me the sole instructor of the law. Now, you are to take the law as I give it. You should not and shall not be concerned with what you think it should be or what you wish it was. It would be a improper function on your part to make a ruling based on what you would like the law to be. You must accept it as I give it to you. Again, if I give it to you incorrectly, then it will be corrected on appeal down in Columbia.

Now, during the course of this case, I alluded to this earlier, but you may not begin any deliberations

until the end of this trial and I have sent the exhibits back to you with word that you may begin your deliberations at that point. What that means is, during any break in this case, you cannot discuss this matter amongst yourselves, you can't duties it with any significant others or any children, my neighbors or anyone. And it may not be by direct communication, cell phone communication, email or some other form of communication. The reason is quite simple, we want you to make your decision about what you hear in this courtroom and according to the law as I give it to you, uninfluenced by any outside influence.

Also, our Chief Justice, Chief Justice Jean Toal of the South Carolina Supreme Court, has instructed all trial Judges to instruct jurors, that they may not engage in any independent jury research. Again, it's on the same reason as for no communication amongst yourselves or anybody else. Independent jury research would include looking for online about a issue about a party. Looking up a issue online about a matter that you hear about in the courtroom. You may look up all you want to at the end of this case but during the course of it, I am going to instruct you not to engage in any independent jury research.

And finally, ladies and gentlemen, every single

case out there that occurs, there will be objections. The fact that there will be an objection or the extent that I let you stay in here or don't send you back to your jury room and rule on it, is not to be considered by you during breaks, not to be discussed by you in your deliberations. That is simply the process that occurs in every single case that I've ever been involved with either as a lawyer or as a trial Judge.

Now, in just one moment the attorneys are going to give what is called opening statements. The attorney for the State will stand up and tell you what he contends this case is about. What these attorneys tell you in their opening statements, closing statements and during their questions, is not evidence. It's not sworn testimony. It is helpful and it's designed to help you understand what's happening. But it is not evidence.

Now, the Defendant's attorney may but is not required to give you an opening statement as well. The same rules would apply. The reason she is not required is at all times the burden remains on the State of South Carolina to prove the Defendant's guilt by prove beyond a reasonable doubt. Now, to make sure I haven't neglected to tell you something or I have said something that I need to correct, I'm going to ask you, Madam Forelady, to go back to your jury room for two minutes. If you need

anything, let us know. But you'll hardly have the time to sit down before I bring your right back, okay. Go back to your jury room.

(WHEREUPON, the jury left open court at approximately 3:08 p.m.)

THE COURT: Any additions or exceptions from the State?

MR. MOYER: None, Your Honor.

THE COURT: From the Defense?

MS. ROSS: None, Your Honor.

THE COURT: Y'all ready to go? Do you need a quick break?

MR. MOYER: Ready to go.

MS. ROSS: Ready to go.

THE COURT: Okay. Tell them -- bring them in, we're ready.

MR. MOYER: Judge, are they coming back right now?

THE COURT: I was under the impression they were but maybe they have a different idea.

MS. ROSS: I have a witness who, an alibi witness, who will probably come up tomorrow or the next day. I did not prepare a formal Order to have him kept here overnight. I was wondering if you could just possibly make an Order on the record to keep him here

overnight and be available as a witness.

THE COURT: I'm glad to do that. However, where is this witness?

MS. ROSS: He's here now. He is --

THE COURT: So he's in the detention center?

MS. ROSS: He's in SCDC. He's here today but he is in SCDC in Spartanburg, I believe.

THE COURT: Well, I'm certainly not going to Order that be shipped back and that he be made available for testimony tomorrow.

MS. ROSS: All right, I appreciate that. My investigator's never done this before and since I can't assist her, this might help ensure that. Thank you, Judge.

THE COURT: Yes, ma'am.

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

THE COURT: Mr. Moyer, is the State ready to proceed?

MR. MOYER: Yes, sir, Your Honor.

THE COURT: Ms. Ross, is the Defense ready to proceed?

MS. ROSS: Yes, Your Honor.

THE COURT: Thank you, Mr. Moyer.

MR. MOYER: May it please the Court, Your Honor?

THE COURT: Yes, sir.

OPENING STATEMENT

MR. MOYER: Madam Forelady, ladies and gentlemen of the jury, good afternoon. My name is Mark Moyer, I'm a Assistant Solicitor for the 13th Circuit. It is my job, it is my opportunity to represent the State, specifically the people of Greenville County in criminal prosecutions. And that's what we're doing here today. I can assure you this case will be finished much sooner than Friday. I hope it will be done tomorrow, it's always hard to estimate these things a little bit. But I think it's a good chance we will finish tomorrow, if not then, then Wednesday morning.

Now, the Solicitor, for those of you who maybe are not from South Carolina or haven't lived here long, is essentially what every other jurisdiction in the country calls a District Attorney. We represent the State in criminal prosecutions. And that's why we're here today. For the criminal prosecution of the Defendant, Christopher Russell. He's been charged with four counts that you have heard read through several times now. Burglary, first degree, armed robbery, kidnapping and conspiracy.

Now, you don't know anything else about this case at this point so let's start there. Let's talk a little bit what about you're going to hear in this case.

Essentially, in a nutshell, it is about an evening of absolute terror that was inflicted on these two people who are seated on the end of the first row here. Mr. and Mrs. Lyles. The date was Saturday December 18th of 2010. Mr. Lyles was 56 years old at the time, he was at home. Although, it was a Saturday and he had his normal -- he was off from his normal job, he'd actually been working that day with his wife. His wife worked at a restaurant that was pretty much a family owned restaurant, a lot of relatives worked there. Mr. Lyles spent the day over there, helping as well. He left about five o'clock and he went home. And he came home and he started relaxing. He was waiting for his wife to come home. He started a fire, turned on some music, he opened a can of beer and he was relaxing. Like so many of us will be on a weekend.

Now, somewhere around nine o'clock that evening, Mr. Lyles went to the backdoor to go get some more wood for the fire. And when he did so, he was confronted, standing there by two men. Two men with masks and gloves and guns. These men started to force their way into the home. Mr. Lyles did what he could to try to keep them from doing so but they got in. And when they got inside the house they took him to the floor. As I stated, they had gloves on their hands, they had masks covering their

faces. They had hats that said the word, Police on them. In fact, they told Mr. Lyles they were with the police.

Well, when they got inside the house, they took Mr. Lyles to the floor. They tied his wrists with zip ties. They took him to a back bedroom and they kept him there in that bedroom. And they kept him in that room for some 30 to 40 minutes. And that is when they simply terrorized him. They were demanding money. They were talking about a safe. They told Mr. Lyles that they would kill him if he did not tell them where this money was. They told Mr. Lyles that they knew his wife was coming home and that they would kill her when she got home if he did not tell them where this money was. The men had guns, as I stated. One had a pistol which you will see. The other had what was described as a Uzi type of -- like a machine gun, like a small weapon like of that type.

Well, Mr. Lyles told them that he didn't know what they were talking about. That he would give them the money if he could but he didn't know what they were talking about. Well the robbers took his watch, they took about $760.00 that he had on his person. They took his cell phone. Well while this was happening to Mr. Lyles, Mrs. Lyles was back at the restaurant, was about ready to go home. She and her granddaughter, Danielle, Danielle Durham, seated next to Mr. Lyles, she was 16 years old at

the time.

Well, Ms. Lyles and Danielle were trying to get a hold of Mr. Lyles because they wanted to go get something to eat. They wanted to know if he would like them to bring some food home. Well she couldn't get in touch with him. Well this concerned her so she decided she would go home and find out what has happened. Well she did so. She and Danielle get to the home. They park, they don't see anything that causes them concern. They hear the music playing in the house, they walk inside, in the side door. Ms. Lyles goes in first. She walks into the living room and instead of being greed by her husband, a masked man jumps out with the gun. And he does to her what he did with her husband. Puts her on the floor, starts demanding money, starts demanding to know where this safe is.

Well, Danielle had not been seen, she walked in behind Ms. Lyles. The robbers did not see her. So she, when she saw the man with the gun and the mask, she quickly runs outside, finds a neighbor, hysterical, the police are called. Well the police get there quickly. The police arrive very quickly while the two gunmen are still inside the house. The officers are trying to figure out what is going on. Danielle is hysterical. The neighbor, who she's talked to, doesn't have the full

story. And they're trying to piece together what happened. They realize that there's at least one man inside the house. So they begin to try to circle the house.

Well, while this is going on, the two robbers inside the house realize that the police are there. So, one of the men goes to the backdoor. And after waiting a moment, runs out. Well the police were ready for him. They call for him to stop, he doesn't. He throws the pistol. He doesn't stop. A police dog is employed, takes him down and he's caught. While all this is happening and all the commotion and noise, the other officers you will hear testimony from, go around the back to assist their fellow officers. And when that happens the other Defendant, the other man, the other robber, was waiting at the front door. And he sees the diversion and he takes off running. He's seen by some officers and a neighbor running away but it's too late, he's gone.

Well, the man who was caught, you will hear, is a man by the name of Antonias Williams. And he is back behind that door right now. And he is going to testify in this trial. And he's going to tell you that the other person who was involved in this robbery was this man seated right over here, Christopher Russell. He's going to tell you that the two of them had been watching this

residence for a period of time. That they had been led to believe by somebody that the Lyles' son, had sold some drugs and had a lot of money. And that there would be a lot of cash. Perhaps as much as $200,000.00. That was the rumor or the word that they had gotten. So, they believed that the Lyles' son would be home on this night. And they chose that night to try to rob him. And when this happened -- when this started to unfold and the Lyles' son was not there and they were confronted by Mr. Lyles, they decided to go forward with the robbery anyway.

That's a summary, ladies and gentlemen, of the evidence you're going to hear. You're going to hear from officers, you're going to hear some corroborating testimony. Including the fact that this Defendant cell phone was found in the vehicle in which these robbers had come. You're going to hear some other corroborating testimony that will lead to the conclusion that this Defendant was the other robber.

Now, ladies and gentlemen, as you've heard, our burden, the State's burden in this case is to prove the Defendant's guilt beyond a reasonable doubt. That's is a burden we gladly accept. It is the same burden that is in all criminal cases, from the most seemingly insignificant to the most significant case like a capital murder case.

In all courts, it's the same burden. And it is one that we're going to meet today. And it's one that I hope to make a easy decision for your throughout this case.

Now, very quickly let me finish up. With just a couple of words about the law in this case. As, His Honor, has instructed you or has told you, he's going to instruct you fully on the law at the end of this case. Let me take just a moment to go over a couple of items of the law that I think you might want to be aware of going in. First the charges. Armed robbery. Armed robbery, is a robbery that takes place by someone who's armed. A robbery means taking goods or property, a type of theft, from a person or presence of another, using force or intimidation. That's robbery. What makes it armed robbery is that that person has a deadly weapon or even a representation of a deadly weapon. It could be a fake gun or a fake knife as well. It's being used like a real gun or a real weapon.

The next charge is kidnapping. Kidnapping means, in South Carolina has very broad -- it's very broad, it's very broad language. It's to seize, to confine, to inveigle, to decoy or to carry away. Essentially it means depriving someone of his or her freedom. That's what you have. Burglary, first degree. Well burglary means entering a residence without

permission with the intent to commit a crime. You can be entering that residence by any means. You can be breaking through or walking through an open door. If it is done without permission of the owner and with the intent to commit some kind of crime, any kind of crime inside that residence. Now, what makes it burglary first degree is if it's accompanied with some aggravating factor. For example, it happens in the nighttime or the burglar is armed. They're both circumstances of aggravation.

Finally, conspiracy is just an agreement between two or more people who commit some crime. The agreement to do the crime is the actual crime of conspiracy. The ultimate crime doesn't even have to be carried out. If people agree to commit a crime it is conspiracy.

Then one final word about the law and that is the concept of the law called accomplish liability. And this comes up in situations like this where you have several people involved in a crime. And doing different rolls, doing different aspects of the crime. We often refer to this in plain language as the hand of one is the hand of all. And what that essentially means is that if several appeal are committing a crime together, each one is responsible for what the others do. Take, for example, a bank robbery. Say you have the get away driver who waits in the car. You have a lookout person who stands on

the street. Then you have the guy who goes in with the gun. And actually takes the money. Everybody's responsible for the armed robbery because each one is responsible for what the other did.

Ladies and gentlemen, I am going to have one more opportunity to address you and that is going to be at the end of this case when I am going to argue to you why the evidence in this case proves conclusively beyond any reasonable doubt that this Defendant is guilty. But until then, all I would ask of you, ladies and gentlemen, is just to listen very closely to all the testimony that you hear, have an opened mind, use your good sense and your good judgment and your common sense to weigh that evidence that you hear. And at the end of this case do justice. Thank you.

THE COURT: Ms. Ross, you care to have an opening statement?

MS. ROSS: Yes, sir, Your Honor. May it please the Court?

THE COURT: Yes, ma'am.

OPENING STATEMENT

MS. ROSS: Ladies and gentlemen of the jury, Christopher Russell was the fall guy here. This was a horrendous crime and I don't have any comments on that. Other than I'm sorry that it happened, it was a horrendous

thing to happen to anybody. We don't attempt to mitigate that in any way. However, the evidence is going to show that Chris Russell has an alibi. He was with his mother, Eleanor Russell and his girlfriend, Ruby Willett at the time this crime occurred. He was not there. He was not the person who committed that crime.

Now, you're going to hear evidence from a man named Antonias Williams who was caught at the scene with a gun, with the victim's cell phone, with cash from the victim on him. With everything that was alleged to be taken from this home. He was caught there at the scene. And he said nothing. And he said nothing about who he was with, he said nothing, he thought about it. And thought about it. Over two weeks later, he comes forward. Not through an attorney, not through an officer of the court or the law, he comes forward and calls another police officer and says, I've got a story I want to talk to you about. Only then does Christopher Russell enter the picture as suspect in this case. And at that point he becomes the fall guy.

Now, there's a lot of police officers, a lot of people here. There was a horrendous crime. But don't let that take your eye away from what's important. And what's important is, is Chris Russell guilty or not? That's the question for you. And the only way you can make a

determination on that question is to look at the evidence. Look and study that evidence and see if that is something that leaves you firmly convinced that Chris Russell was there. Because it won't. The evidence is not there in this case, ladies and gentlemen. And I'd ask you to have an open mind while you hear it.

Now, I want to say one thing just regarding Chris Russell. You can see our side of the courtroom is kind of empty, I'll tell you, he didn't retain me, he didn't hire me, I'm not his choice to be his lawyer. I was appointed over two years ago. It's been two long years for Christopher Russell. He's not guilty and he's frustrated. And if you're watching him and his actions, if he appears frustrated, that doesn't mean anything about whether he's guilty or not, that means something about whether he's frustrated that he's been accused of this. When he wasn't guilty and he didn't get his choice of a lawyer. So I'd ask you to think of that when you're watching Mr. Russell's demeanor. Because a lot of clients who have appointed lawyers, don't have the money to hire who they want. Don't have the money to put up everything they may want to put up as a defense. A lot of times they're sort of the least of us in our society. So I'd ask you to consider that and not judge him on any action. If he's showing me papers or looks frustrated, don't hold

that against him.

Now, ladies and gentlemen, again, I would ask you to look at the evidence and look at what's there but especially look at what's not there. Because proof of guilt is just not there. Thank you.

THE COURT: Call your first witness, please, sir.

MR. MOYER: Thank you, Your Honor, the State calls Jeffrey Lyles. Jeffrey Lyles to the stand, please.

THE CLERK: Mr. Lyles, if you'd please come forward. Pause at the end of the bench. Place your left hand on the Bible, raise your right hand. Right there, sir. Mr. Lyles, if you'll stop right there. Please, place your left hand on the Bible, raise your right hand.

JEFFERY LYLES, after being duly sworn, testified as follows:

THE CLERK: Thank you, please be seated. Would you, please, state your name for the record. Please state your name for the record.

THE WITNESS: Jeffrey Lyles. [redacted] Street.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. MOYER:

Q Okay, Mr. Lyles, before we get started, just so that

the Judge and the jury knows, you're kind of hard of hearing, aren't you?

A (The witness nods.)

Q I've need you to answer yes or no.

A Yes or no.

Q Yes, sir. And you're a little bit hard of hearing?

A Yeah.

Q Okay, so what I want to make sure --

A Over the years it's been going down.

Q Yes, sir, I understand that. So I'm going to stand up here close to you so you can hear me and make sure you speak into this microphone here. So all -- everybody over here can understand what you're saying, okay.

A All right.

Q All right, Mr. Lyles, you already stated your full name, right?

A Yeah.

Q Jeffrey Lyles. And how old are you?

A Fifty-eight.

Q How old were you in -- when the incident happened in December?

A Fifty-six.

Q December of 2010, you were 56?

A Yes.

Q Okay. Now, if you don't here me or if you don't understand a question that either I or Ms. Ross ask you, please just ask us to repeat the question, okay?
A All right, thank you.
Q Okay. Now are you married?
A Yes, sir.
Q How long have you been married?
A Thirty-five years.
Q And you have three surviving children, isn't that right?
A Yes, sir.
Q You have two sons and one daughter?
A Yes, sir.
Q Is your daughter here in the courtroom?
A Yes, sir, she sitting right over there.
Q She's seated back over here. And who's the young lady seated next to her?
A My granddaughter.
Q That's Danielle?
A Yeah, Danielle.
Q Okay. Now, where did you go to high school?
A Greenville High.
Q Okay. Where do you -- where do you work right now?
A I'm doing brick mason, I work for a private mason.
Q You work for a private mason?

A Private mason, yes.
Q Okay. How long have you been a mason?
A Over 40 years.
Q So you've been working as a mason for over 40 years?
A Yes.
Q Now, your wife works too, right?
A Yeah.
Q Where was she working back in December of 2010 when this incident happened?
A She was running Sue's Kitchen.
Q Sue's Kitchen?
A Yeah.
Q And that's kind of a family restaurant?
A Yes.
Q Okay.
A Belton part owner.
Q I'm sorry?
A Belton.
Q In Belton?
A -- brother--
Q Your brother owned it?
A Yeah.
Q Okay, your brother owned it and your wife worked there?
A Right.

Q Okay. Now, let me take you back to December 18th of 2010, when this incident happened, where did you live?
A Where I was at that day?
Q Where did you live?
A I live at [redacted]
Q That's here in Greenville?
A Right.
Q Okay. What kind of -- tell us a little bit about your residence. It is a house or an apartment or what it is?
A It's a house, brick front. Got a little side door and den on the side. That's about it.
Q Okay, so it's a brick house, one story or two story?
A Two story.
Q How many bedrooms?
A Three.
Q Okay. And has a living room and a kitchen?
A Yeah, living room, kitchen, sun room and den.
Q Okay. Now, did you work that day as a mason?
A No, I worked over at Sue's Kitchen all day. Got off about quarter till 5:00 and got home.
Q So you were over at Sue's Kitchen?
A Yes.
Q Okay. And you were working over there with your wife

and other family members?
A Yes.
Q Do you remember what you did that day? I know it's been a while ago.
A Yeah, I was cleaning. I do a lot of cooking and cleaning. And I told her I was -- I'm tired, I'm going to leave. And about a quarter till, I went home.
Q Okay.
A Just started like I said started, I wanted to go home and start a fire and then --
Q Okay, we'll get to that in just a minute. So you went on home somewhere around five o'clock, you said?
A Uh-huh.
Q Okay. So tell the jury what you did when you got home?
A Well, I just started making me a fire. Made a fire and cut some music on. Stopped at the store and got a couple cans of beer. I got playing around with the fire and I got the fire going real good and I stepped out the door--
Q Okay, we'll get to that in just a minute. You have a fire place in the house?
A Yes.
Q Wood burning fire?

A Yes.
Q Okay. And you turned on your music?
A No, I turn my music up.
Q Okay you turn it up pretty high?
A Yeah.
Q For one reason you're a bit--
A Hard of hearing.
Q -- hard of hearing, right?
A Yeah.
Q Okay. Now, where do you keep the fire -- where do you keep the wood for your fire?
A At the backdoor where the sun room at.
Q Back by the sun room?
A Yeah, back by the backdoor where the sun room. See, I got two doors, you can go out either entrance.
Q Okay.
A Yeah.
Q Now, at any point that evening, did you have to go out and get some firewood?
A No, I stack all my firewood right outside the door because I didn't want to walk all the way down to the back end and pick it up. I just lined it up, covered it up at the backdoor.
Q Okay, you line up the firewood at the backdoor?
A Yeah.

Q All right. And did you at some point in the evening have to go outside to get some more wood?
A Yeah. I looked out the window, I opened the backdoor up.
Q Okay.
A That was it.
Q Well tell the jury what happened when you opened the backdoor to go out and get more firewood?
A After I opened the backdoor I saw a big guy there and little slim guy about my size, my height.
Q Okay.
A Next thing I know, they bust the door in throw me to the floor. They had me down until the police come.
Q How tall are you?
A Six-one.
Q You're 6'1?
A Yeah.
Q Okay. And well, tell us a little bit about what you remember about these men. I know it's been a long time ago, what do you remember about how they were dressed?
A Well they was standing there with the police with a stock cap on their head that said Police on it and a camouflage suit. Really, I thought it was the jump out boys.

They told me when I opened the door, knocked me to the floor told me, Get down on the floor.

And they tied my hands behind my back and one of them -- the little skinny dude started screaming and had the gun in mouth and talking about this police Houdini stuff.

Q Okay. You're getting a little bit ahead of me. Let's go back and just talk about what these two men looked like. So you mentioned you had hats on their, head?

A Yeah, police -- they have the stock cap cover their eyes and everything marked with police written on top.

Q It said, Police on the hat?

A Yeah, that was it.

Q And they had gloves on?

A Yes, they had -- I'm not sure.

Q Okay. Don't remember that, but you saw guns?

A Yeah, they had -- One had a Uzi and one of them had a big ole 357. I don't know what it is.

Q Now, let's talk about what you call a 357 first. Describe what it looked like?

A It's a big gray gun. Big gray pistol with a -- it's a big -- it's a pretty good size gun. You know, I don't know too much about them guns.

Q Okay.
A Yeah.
Q But it was a pistol?
A Yeah.
Q It was a pistol. Okay. And so one of the guys had a pistol?
A Yeah. Big guy had a pistol, the other had a Uzi.
Q Okay, now you said the big -- one of them is a big guy, he was kind of bigger around the waist?
A I mean, big like -- he looked like he weighed about 280, 260, something like that.
Q Okay. And is he the guy that they caught that night?
A No, he didn't talk.
Q No, no. That the police caught?
A Yeah. No. That little slim dude was doing all the talking.
Q Okay, the slim guy did all the talking?
A Yeah.
Q And tell me about the kind of gun the slim guy had?
A He had a little gun about this tall with a skinny -- on it and a long clip on it about that long. That's all.
Q How big was it?
A About that long. And the clip about that long sticking out the gun.

Q Okay. Now, so once they got inside your house, what did they do to you?

A They throwed me to floor, start kicking me in the side and stuff and telling me, We the police Houdini and tide my hands behind my back. And asked me about the safe.

If you don't tell me where the safe is, I'm going to shoot you, I'm going to kill you.

I say, Man I -- I don't know nothing about no safe.

And stuff like that, money and all that.

I said, Man, I'm just sitting here just enjoying my music.

Q Uh-huh.

A And they kept on, kept on, repeating the same thing over and over.

Q So they kicked you then?

A Yeah.

Q Did they hit you with their fist?

A Just a -- the little skinny one stuck the pistol all up in my nose and mouth.

Said, If you don't tell me where the money's at, I'm going to blow your head off.

I said, Man, I ain't got no money in this house. I kept on telling him.

Q Did you have any money?
A Sir?
Q Did you have any money?
A Yeah, I just had some money what's on me.
Q You had some money on you?
A Yeah.
Q Did you know about any other money in the house?
A No, sir.
Q Did you know about any kind of safe in the house?
A No.
Q Okay. Now -- now, after they got you on the floor, did they leave you there or did they take you somewhere?
A They started walking me through the house, looking in all through the rooms, all three bedroom.
Q And where did you end up?
A In the back bedroom on the floor.
Q Back bedroom on the floor?
A Yeah, where the police found me at.
Q Once you got in the back bedroom on the floor, what happened then?
A Told me, lay down, don't move.
Q Did you do that? Did you lay down?
A Yeah, I stayed on the floor the whole time.
Q Did anybody stay back there in that bedroom with you?

A Yeah, the big guy. The one that took the money off me.
Q One that took the money off you?
A Yeah.
Q He was the one with the pistol?
A Yeah, he was the one with the pistol.
Q Okay. And so he stayed back there with you?
A (The witness nods.)
Q What did the other guy do?
A He was roaming all through the closet and he went to the bedroom. Then they hear the door open. That's it. I just laid back there. Then all of a sudden they just told me my wife or anybody come, they going to kill them.

I said, Well. That's about it. I just told him, Man, ain't no money in the house, what y'all -- y'all wasting too much time in here. Ain't no money in here, I don't know nothing about no money. That's it.

Q Okay. Now, so they said something about your wife?
A Yeah.
Q Okay. So just to make this clear, and I should have asked you this issue earlier, was there anybody else home with you?
A No, just me.

Q Okay. Did you know your wife was coming home?
A Yeah, she called -- I heard her when she came in the door, you know, back in the back. She was calling my name, she turned the music down.
Q So you heard your wife come in the door?
A I didn't here.
Q What did you hear?
A Well she called my name, Jeffrey and that's it.
Q Then what happened after you heard her call your name?
A Nothing, they just went out. He told me to shut up. One of the guys told me to hush up. That's it.
Q So you're still in the back bedroom?
A Back in the back bedroom.
Q Okay. What did you hear going on with your wife and the men?
A Man, I don't know. It's been --
Q I know it's been a while --
A Screaming and that's about it.
Q You heard some screaming?
A Yeah.
Q Who did you hear screaming?
A Just hollering, crying, you know, going on. That's it.
Q Who was screaming, the men or your wife?

A My wife.
Q Mrs. Lyles?
A (The witness nods.)
Q Could hear what she was saying?
A No, sir.
Q Could you hear what the robbers were saying to your wife?
A One of them -- man, it's been so long, I don't know.
Q I just -- you just tell the best you remember. Do you remember what they were saying to your wife?
A Not really.
Q Okay.
A No.
Q What -- did you do or say anything when you heard them -- when you heard your wife screaming and you heard this going on?
A I ask the big guy to help my wife, don't let the guy shoot my wife, man, because that's the only thing I got right now.
Q Okay. Now, the man in that back room, did he eventually leave? Did the robbers eventually leave the house?
A No, the big guy finally walked out. Next thing I know I just seen the blue lights. Looked up, seen the blue lights come one, that's it. Come running

out the door.

Q Okay, you could see the blue lights?

A Yeah, I saw from the bedroom window.

Q You're still back in that bedroom?

A Yeah.

Q And that's when you realized the police were there?

A Yeah.

Q All right. Did the police come in there and did they cut you loose?

A Yeah -- well yeah, they cut me loose. I told them the thing was too tight and was starting -- cutting circulation off my arm. He finally set me up, called EMS. I told him I didn't need them.

Q So that brought EMS out there?

A Yeah.

Q Did you go out to the hospital?

A I went, my niece took off.

Q Okay. So you didn't go with EMS?

A No.

Q But you later on went to the hospital?

A Yeah.

Q That same night?

A (The witness nods.)

Q What did you do at the hospital?

A Well they went and took a CAT Scan on my head and see

what's going on and stuff like that.

Q Was your head hurting?

A Well it was hurting just a little.

Q Why was your head hurting?

A The way they punched me like a punching bag.

Q So they were punching you in the head?

A Yeah.

Q Were you hurting anywhere else?

A My knees started hurting later on.

Q And were you knees hurting?

A They kicked me in my knees and I guess they just started swelling up.

Q Okay. Now, what did they steal from you? What did they take?

A Big guy took my money and watch and my cell phone.

Q How much money?

A $760.00.

Q Okay. And you had a watch?

A Watch, yes.

Q And a cell phone?

A Yeah.

Q Now, did you get all that back?

A Yeah, the police gave it back to me.

Q The police gave it back to you?

A Yeah.

Q That same night?
A (The witness nods.)
Q Okay. How did you -- how did you feel while this was taking place?
A Terrified, you know, yeah. Ain't never been through that. Until somebody go through it, how you going to feel about it, you know. Just like -- just like sitting up here talking about it.
Q You're nervous now?
A Feel bad.
Q You feel bad because you remember what happened?
A Yeah, I think about it. Yeah.
Q Did you believe that they were going to do what they were threatening to do?
A I don't know.
Q At the time were you concerned they would actually kill you?
A Yeah. I thought -- man, I'm telling you, it was terrifying that night. I really don't know. Yeah. I think they probably talk about killing us or kill me so if I don't tell them where the money at. So I don't know.
Q If you had any money, would you had given it to them?
A If I had I would have got it for them and get on out. Before my wife come home. Wun't [sic] no need to

jeopardizing no life over no money.
Q Okay. Now, did you know either one of these -- you found out about the two men who were arrested for this?
A Right.
Q Did you know either one of these guys?
A No.
Q You didn't now Antonias Williams?
A No.
Q Did you know this Defendant, Christopher Russell?
A Never seen him before in my life.
Q Okay, one moment. All right, Mr. Lyles, I want to show you some pictures that you've had a chance to look at before, right? I'm going to start out with State's Exhibit No. 1. Do you recognize what's in that picture?
A That's the front of my house.
Q Okay. Is that a true and accurate representation of the way your house looked that night?
A Yes.
Q State's Exhibit No. 2, what is that a photograph of?
A It's side door, the backdoor, where the wood is stacked up. That's the backdoor.
Q Okay. Let me show you State's Exhibit No. 3, do you recognize what's in that photograph?

A Where I covered all the wood and stacked it up in the backdoor where I can get it.
Q So that's a picture of the backdoor where you went out to go get the wood?
A Yeah.
Q Let me show you State's Exhibit No. 4, do you recognize what is in that picture?
A That's my little storage house back there.
Q Okay. Is that the backyard of your house?
A Yeah.
Q State's Exhibit No. 5, do you recognize what is in that photograph?
A That's where I keep all my material stuff up on the side in the backyard.
Q So that's a picture of your backyard?
A Yeah.
Q State's Exhibit No. 6, do you recognize that?
A Yep. That's my where my fence came apart.
Q That's the fence in the back of your house?
A Yeah.
Q Now each of these pictures, what you just described, is that a true and accurate representation of the way that looked when this night happened, December 18th?
A Yes.
Q I'm sorry?

A They pulled the fence a loose.

Q Did the police pull the fence loose?

A Yeah.

Q That's the way it looked after--

A Yes.

Q That night?

A Yes.

Q Okay. So the rest of these, are they a true and accurate representation of the way that it looked that night?

A Yeah.

MR. MOYER: Your Honor, I move to have State's Exhibits No.'s 1 through 6 entered into evidence.

THE COURT: Any objection?

MS. ROSS: No, objection, Judge.

THE COURT: Admitted without objection.

(WHEREUPON, State's Exhibits Nos. 1-6 were admitted into evidence.)

BY MR. MOYER:

Q Okay, we're going to look at a couple of more pictures. Let me show you State's Exhibit No. 7, do you recognize what's in that picture?

A Yes, that's my back bedroom back there where they had me in my son room back there.

Q That's your back bedroom?

A Yeah.
Q State's Exhibit 8, that's the same bedroom?
A Same bedroom.
Q State's Exhibit No. 9?
A That's the same bedroom.
Q Okay. And same bedroom where they had you kept that night?
A Yeah.
Q Where they took you after they tide you up?
A Yes.
Q State's Exhibit No. 10?
A That's the hallway.
Q Okay. That's a picture of the hallway of your house?
A Yeah.
Q State's Exhibit No. 11?
A That's the money they took off me, my watch and my cell phone.
Q Okay. And that's the property that was stolen from you that night?
A Yeah.
Q The property you got back?
A Yeah.
Q State's Exhibit No. 12, do you recognize what that looks like?
A That's the gun the big dude had.

Q That's the gun, the pistol?
A Yeah.
Q Okay, you recognize it. State's Exhibit No. 13?
A That's me showing off my wrist where they had tide my hands, you know, with the scraps [sic].
Q That's a picture of you that night?
A Yeah.
Q Then State's Exhibit No. 14?
A That's where they had -- stopped it -- had my wrists.
Q That's a close-up picture of your wrists?
A Yes.
Q Now, each those pictures, once again, is that a true and accurate representation of the way the bedroom, that you and your property, all these things you've described, a true and accurate representation of the way they looked on December 18th?
A Yeah.

MR. MOYER: Your Honor, I move to have State's Exhibits No.s, 7 through 14 entered into evidence?

MS. ROSS: No objection.

THE COURT: Admitted without objection.

(WHEREUPON, State's Exhibits Nos. 7-14 were admitted into evidence.)

BY MR. MOYER:
Q Okay, Mr. Lyles, I'm going to ask you, if you would,

step down here for just a minute? Because we're going to show you pictures on the screen behind you. Let me ask you to stand right here, if you would. And we're going to look at the screen. Okay, Mr. Lyles, can you hear me okay?

A Yes.

MR. MOYER: I need the lights for one moment, please. I'm sorry. Okay, thank you.

BY MR. MOYER:

Q Mr. Lyles--

A It's upside down.

Q Okay, Mr. Lyles, can you -- can you tell the jury -- can you tell the jury what it is we see in State's Exhibit No. 1, right up here? Can you tell the jury what's it is we see here in this picture? What is this a picture of Mr. Lyles?

A Where I live, that's my house.

Q Your house, that's the front door?

A Yes.

Q Okay. State's Exhibit No. 2, what do we see in this picture?

A That's the backdoor where I keep the firewood at right there on the side, right there in the front.

Q Okay, so is this the backdoor--

A Out the sun room.

Q Okay, that's the sun room back here?
A Yeah.
Q And is this door that was used --
A That's the door where they came in at.
Q That's where they came in?
A Yeah.
Q Okay. All right, State's Exhibit No. 3?
A That's where I covered all the wood up on the wall -- cover it up there.
Q Is this where the wood--
A So I can reach out and get it.
Q Okay, this is where the wood is?
A Firewood.
Q Firewood?
A Yeah, cover it up under the plastic.
Q Okay. And is this the door where the robbers entered?
A Yeah.
Q Okay. And what is shown in State's Exhibit No. 4?
A That part of the backyard.
Q That's part of the backyard?
A Yeah.
Q Do you recognize what's right here?
A That must be the gun he throwed out.
Q Okay, Mr. Lyles, this is State's Exhibit No. 7, can

you tell jury what it is we see --
A Where the bedroom at they took me to and tore it up.
Q This is the bedroom?
A Yeah.
Q Did the bedroom look like that before you were taken back there?
A No.
Q What is different about it?
A Trying find -- they -- it was clean, picked up.
Q It was clean and picked up?
A They tore it apart.
Q They tore it apart?
A Yeah.
Q Okay. All right, what is in this picture?
A In the bedroom.
Q Now, where in this bedroom did they put you? Where in this bedroom were you?
A All the way back in the back of the hallway.
Q Okay.
A On the right hand side.
Q But where in this room were you? Where inside the room were you?
A I was over on this side over here laying down in front of the bed.
Q Okay. All right. Where is right where this laser

pointer?
A Uh?
Q You see this laser pointer up on the --
A Yeah.
Q Was it right in here?
A Back on the other side.
Q Over in that area, okay.do you recognize what I'm pointing out right here?
A That's a scrap [sic]. They had me tide up. That's the type of scrap they tied my arms up, my hands behind my back.
Q That's the strap they had you tide up with? Okay, this is State's Exhibit No. 9, that's also a picture of bedroom?
A Yeah.
Q This is State's Exhibit No. 10, what is that a picture of?
A That's where you go down the hallway.
Q And where -- does this show the bedroom that you were taken to?
A One down on the right where that door open. That to the right.
Q Right in here?
A Oh no, on down, the next door. Right there.
Q Okay. Do you recognize what's in State's Exhibit No.

11? Do you recognize that?
A Yes, sir.
Q What do you recognize that as?
A That's called a semi-automatic.
Q Did you see it that night?
A I thought it was a 357.
Q Did you see it that night?
A Yeah. I didn't see that back there, I didn't go outside.
Q Okay, you didn't see it outside?
A No, I didn't go outside. The police kept me in the house, told me not to go out. They kept me inside.
Q But you saw that gun--
A I saw the gun when they came in with.
Q Okay, so one of the robbers had it?
A Yeah, one of the robbers had it.
Q State's Exhibit No. 13, what is this showing?
A Just showing off my hand where the blood clot, where they turned red.
Q Is that a picture of you?
A Uh?
Q Is that you?
A Yeah.
Q State's Exhibit No. 14, we can't see it real well but does show where the marks were on your hand?

A Yeah, that's it.

Q All right. Then finally one more, State's Exhibit No. 11, what do we see in this picture?

A That's the money I had and watch and the cell phone. The rest of the stuff belonging to the robber.

Q Okay, so this cell phone right here, was that yours?

A That's me.

Q This was your watch?

A Yes, sir.

Q What is this over here?

A That was $760.00.

Q That was the money that was in your pocket?

A Yeah.

Q That those robbers took from you?

A They took it out of my wallet.

Q They took it out of your wallet?

A Yes.

Q And you got it back that night?

A I got it back from the police.

Q Okay, let me go ahead and ask you--

A Yeah, got all of it, everything back. Just the watch -- and the watch and my cell phone, yes, sir.

Q You got that back. Okay, you can have a seat again up here. Thank you. Just a couple more questions. Mr. Lyles, you actually -- did you have a son who use

to stay there sometimes?
A Yes.
Q What was his name?
A Tavarus Lyles.
Q Tavarus Lyles?
A Yes.
Q And he use to stay in one of the bedrooms?
A Yeah.
Q Did he stay in that bedroom where you taken?
A Yeah.
Q And he's actually in prison right now for some drug charges, isn't that right?
A Yes.

MR. MOYER: Okay, I have no further questions for you right now. Please answer any questions that Ms. Ross has.

THE COURT: All right, Ms. Ross, let's take about a 10 minute break for the afternoon, then we'll come back and do your cross-examination, okay.

All right, Madam Forelady, ladies and gentlemen of the jury, let's take a quick break for the afternoon. Come back in 10 minutes.

(WHEREUPON, the jury left open court at approximately 4:00 p.m.)

THE COURT: Mr. Lyles, you can step down but you

may not speak with anybody about your testimony, okay, sir.

All right, we'll be in recess for 10 minutes.

MS. ROSS: Judge, just quick before you go. My investigator just made this into an Order that you have to sign.

THE COURT: Okay.

MS. ROSS: She hadn't done one before so I appreciate it just to assure my witness is present. Thanks.

THE COURT: All right.

(WHEREUPON, a short break was taken.)

THE COURT: Mr. Moyer, you ready to proceed?

MR. MOYER: Yes, sir.

THE COURT: Ms. Ross you ready to proceed?

MS. ROSS: Yes, sir.

THE COURT: Bring our jury, please.

(WHEREUPON, the jury came into open court at approximately 4:15 p.m.)

THE COURT: Ms. Ross.

MS. ROSS: Thank you, Judge.

THE COURT: Yes, ma'am.

CROSS-EXAMINATION

BY MS. ROSS:

Q Mr. Lyles, I just have a few questions. First,

listening to your testimony before, you said, essentially, the big guy had the pistol?

A I can't hear you from back here.

Q I'm sorry.

A You need come up a little closer.

Q Okay. Just listening to your testimony before.

A Yeah.

Q You said the big guy was the one with the smaller gun?

A Yes.

Q And he's the one that put it in your face and nose and all that was right there on you?

A He's the one that came in, pushed me down, you know, knocked me down to the floor, tide me down.

Q Okay. And he was the one who took the money from you, your wallet, your phone and your watch, right?

A Yeah.

MS. ROSS: Okay, I've got no further questions.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. MOYER:

Q I forgot to ask you this before, could you tell if these guys were black guys or white guys? Could you tell if they were black or white?

A Yeah.

Q Which were they?
A They -- how they talk, yeah.
Q Okay, but you could tell. were they black or white?
A They black.
Q Could you see their face or their hands or anything?
A I, you know, got to tell the way they talk what --
MS. ROSS: I object to that. That's beyond the scope of my cross-examination.
THE COURT: I sustain the objection.
MR. MOYER: Okay, nothing further.
Thank you.
THE COURT: Thank you, sir, you may step down.
MR. MOYER: State calls Elaine Lyles.
THE COURT: Okay.
THE CLERK: Ms. Lyles, if you'd, please, place your left hand on the Bible, raise your right.
ELAINE LYLES, after being duly sworn, testified as follows:
THE CLERK: Thank you, please, be seated. State your name for the record.

DIRECT EXAMINATION

BY MR. MOYER:
Q Okay, Ms. Lyles, I'm going to ask you questions from back here. I want to make sure you speak into the microphone so everybody can hear you, okay?

A Yes.
Q Okay. Now, would you, please, state your full name?
A Elaine Lyles.
Q Okay. How old are you?
A I'm 56. Fifty-six.
Q Okay. How old were you in December of 2010 when this incident happened?
A Fifty-four.
Q And you're married to Mr. Lyles who just spoke?
A Yes.
Q You been married to him for about?
A Thirty-five years.
Q Thirty-five years. Where did you go to high school?
A Wade Hampton.
Q Where do you work now?
A I work for RL Temp Service at YH America.
Q How long have you worked there?
A I've been there a year.
Q Where did you use to work?
A At Sue's Kitchen.
Q What is Sue's Kitchen?
A It's a restaurant.
Q Where is it located? Is it still opened?
A No, sir.
Q Where was it located?

A It was on 123, Easley Bridge Road.
Q Okay. And it was -- it was your husband's brother's restaurant?
A No, my brother.
Q Your brother?
A Yes.
Q And how long did you work there?
A About a year.
Q Now, let me take you to December the 18th of 2010, do you remember what you did that day?
A Yes, sir.
Q What did you do?
A I was at the restaurant.
Q Did you work all day?
A Yes, sir.
Q Do you remember anything about what went on at the restaurant that day or that evening?
A I had catered a Christmas party that day.
Q At Sue's restaurant?
A Yes.
Q Okay. And do you remember what time you left?
A Around 8:30.
Q Okay. Do you remember, roughly, what time you may have gotten home that night?
A When I left the restaurant I went straight home.

Q Okay. Now, before you went home that night, did you -- where were you planning to go?
A The Waffle House.
Q Was anyone with you?
A Yes, my granddaughter.
Q Danielle?
A Yes, sir.
Q And how old was she at that time?
A Sixteen.
Q What kind of car were you in?
A That night I was driving a Expedition.

THE COURT: Do you mind speaking up just a little bit, please.

THE WITNESS: I was driving a Expedition.

BY MR. MOYER:

Q Okay, you may want to pull the microphone up just a little bit, if you can. Okay, thank you. Okay, now, what happened when you got -- when you got home that night?
A I pulled in the driveway, me and my granddaughter and I got out of the car and went towards the back. And I heard music playing. And went to open the backdoor, my and my granddaughter, she was behind me. And I went through the den and I was calling for Jeffrey but he didn't answer.

Q Did you notice anything wrong before you went in the house?
A Yes, the couch was moved.
Q Okay, so when you got inside. But before you got inside the house, did you see anything that made you concern?
A No, sir.
Q Okay. Did you try to call your husband before you went home?
A Yes, sir.
Q What was your reason for trying to call him?
A Ask him did he want anything from the Waffle House.
Q Were you able to get in touch with him?
A No, sir.
Q Is that unusual?
A No.
Q Okay. So sometimes he wouldn't have his phone on?
A Always have it on.
Q So he always has it on?
A Yes, sir.
Q Does he usually answer it when you call?
A Most of the time. If he don't he usually call back.
Q Okay. So when you got home, who all was with you, just Danielle?
A Yes, sir.

Q And you and Danielle went in the house?
A Yes, sir.
Q Did you go in the front door or side door?
A The side door.
Q And if you're facing the house, is to the right or to the left?
A It's facing to the left.
Q What about Danielle, what did she do?
A She was behind me.
Q So when you entered the house you said you noticed the couch was moved?
A Yes, sir.
Q What happened then? What did you notice then when you walked in?
A I just know the couch was moved and the music was so loud.
Q Okay. And then what happened?
A I walked towards the kitchen calling his name. And he didn't answer.
Q Okay. Then you didn't see him?
A No, sir.
Q Okay. So did you keep walking into the house?
A Yes, sir.
Q And what happened as you kept walking into the house?
A When I got ready to turn down the hallway, the guy

jumped out at me with a gun and told me to get down on the floor.

Q Tell us about what this guy looked like.

A He was kind of tall, had on a mask, big jacket, camouflage outfit.

Q A camouflage outfit sort of? Like dark camouflage or light?

A It was kind of light.

Q And was it -- was his face covered?

A Yes, sir.

Q With a mask?

A He had a mask on that said Police.

Q Said Police?

A Yes, sir.

Q Could you see any part of his face?

A No, sir.

Q At later point could you see any part of his face? Later on that night?

A Yes.

Q Could you tell if he was black or white?

A He was black.

Q Okay. Now you said he jumped out, where did he jump out from?

A Down the hall. When I got ready to turn the curb [sic] he jumped out at me.

Q You mentioned that he had a gun?
A Yes, sir.
Q Tell us -- describe the gun to us.
A It was a -- I don't know the name of the gun but it was a gun about this long with a little thing at the end of it.
Q Okay. Was it a pistol or like a machine gun?
A Look like a machine gun to me.
Q That's the way you would describe it?
A Yes, sir.
Q Did this -- do you remember anything else about was he tall or short or?
A He was kind of -- he looked taller than me.
Q How tall are you?
A I'm 5'6.
Q Okay. Did he say anything?
A Yes. He told me to get down on the floor. And he asked me where the safe was and where the money? I told him there's no money or no safe in this house. And he said I better tell him where it is or he was going to kill my husband.
Q Okay. Had you seen your husband at that point?
A No, sir.
Q When you say you were on the floor, how were you? What position were you on the floor? Were you lying

down, where you on your knees?

A I was on my stomach, my head was towards my bedroom and the rest of my body in the hall.

Q Could you see the man?

A Yes, I could see him when he told me to get down.

Q Okay. All right. What was going through your head when he was staying these things to you?

A At first, when he told me he was the police, I just thought it was the police until he started going through my purse and went through my bag that I brought home from the restaurant. And I told him just take the money.

He said, You stupid, I don't want that. I want the safe.

Q Do you have a safe in the house?

A No, sir.

Q Did you know what he was talking about?

A No, sir.

Q So tell us -- you said he went through your purse, how did he get your purse?

A I had it on my shoulder and a money bag up under my arm.

Q A money bag under your arm and your purse on your shoulder?

A Yes, sir.

Q How did he get the money back and the purse?
A He snatched it off my shoulder.
Q What did he take out of your purse?
A He just pulled a lot of stuff out.
Q Did he steal anything?
A He took the money that was in the money bag.
Q How much money, do you remember?
A It was about two hundred.
Q Okay. Now did you ever get any of that money back?
A No, sir.
Q Because that person wasn't caught, right; he got away?
A Yes, sir.
Q Now, you said he threatened to kill your husband, did you ended up seeing your husband?
A No, sir.
Q So what happened?
A I was just still on the floor. He told me not to move. And the other guy brought my husband down the hall but I still couldn't see him because my head was in my bedroom. And I heard them just telling my husband -- asking my husband where the money is, that he was going to jail if he didn't tell him.
Q Which one was doing the talking?
A The one that had me, the young, this slim guy.

Q And he was -- he did most of the talking?
A Yes, sir.
Q Did you hear the other guy do any talking?
A No, sir.
Q The guy who was with your husband?
A No, sir.
Q Okay. Did they -- anybody do anything with any other property in your house?
A Well when I was on the floor and he told me stay there and don't move and I didn't. But I realized they weren't the police because I started hearing them taking T.V.s a loose.
Q Did they steal your T.V.?
A No, sir. That's about the time the police came.
Q Okay. So how did you know the police came?
A Because the one that had me hollered for the other one and told him the police was out there.
Q At that point did you see lights or hear sirens or anything like that?
A I seen lights.
Q Okay. You see blue lights?
A Yes, sir.
Q At that point, could you see what the man who was with your husband, did you see what he did?
A No, the one with my husband -- both had left my

husband in the back room. And they both went in my den to get the T.V they both was in there getting the T.V.

Q Okay. Then what did they do?

A So I think one of them heard the police coming. The one that had me heard the police. So he came to the front door and looked and he hollered to the other guy the police was out there. But he ran to the den to see where the guy because the guy wasn't saying anything else back to him. And then looked like he kind of got scared and he just ran back and forth and back towards the front door.

Q Okay. And what did he do? So that was the guy who was with you, the one with the machine gun?

A Yes, sir.

Q Could you see what the other guy did?

A No, sir.

Q Or where he went?

A No, sir.

Q So you don't know where he went?

A No, sir.

Q Could see the front door where you were?

A Not laying on my stomach. Once I stood up I did.

Q Okay. Okay. So what did you see the man with the machine gun, what did you see him do?

A When he came back towards the front, he stood right in between my living room and I stood up. And he looked really was scared because the police was out there. And he pulled his mask off.
Q Okay, so you stood up before he did this?
A Yes. I was up when pulled his mask off.
Q Why did you stand up?
A I have no idea, my body just moved.
Q Okay. And you said he pulled the mask off?
A Yes, sir.
Q Did he turn to face you?
A I was facing him.
Q Did you get a really good look at him or not?
A Not really. Because once he pulled his mask off he turned towards the door and I just ran.
Q And you ran?
A Yes, sir.
Q And where did you go?
A I ran towards the door -- I ran back out the door we came in.
Q So not the front door where he was standing?
A No, sir.
Q You went out back to the side door?
A Yes, sir.
Q Did you see what the man, the robber who had the

machine gun, did you see what he did?
A When I was there he was looking out the front door. When he turned his back to me, looking at the front door and I just ran. I testimony see anything else.
Q Once you got outside what did you do?
A One of the officers grabbed me.
Q How were you act, how were you feeling?
A I was really -- I was real upset and I was scared. And all I can do was just scream and I told the police officer my husband was still in the house.
Q So I ask you and I asked your husband, what was going through your mind while this was happening to you?
A At first when I was on the floor, all I could think about was my kids and my grandkids. And I just started praying. That's all I could do is just pray and ask God to help me get through this. But for them not to hurt me.
Q Did you believe their threats?
A Yes, sir.
Q To hurt you and your husband?
A Yes, sir.
Q Now, when he pulled the mask off -- you said when you were still inside the house and the man with the machine gun pulled the mask off, did you get a good enough look at him to be able to identify him later?

A I just seen what color. I knew he was black. And I could just kind of just see a part of his lips. And I just took off. I really didn't stare at him, I just ran.

Q So you could tell he was black?

A Yes.

Q And you could see his lips?

A Yes.

Q Now you seen the Defendant here in this courtroom today, correct?

A Yes, sir.

Q Now even though you say you can't make a complete identification, what you could see as far as his complexion and his lips--

MS. ROSS: Your Honor, I object to this. Certainly, if she can make an ID, that's one thing. But if she cannot--

THE COURT: Just a second.

Forelady, would you take the jury back to the jury room, please.

MADAM FORELADY: Yes, Your Honor.

(WHEREUPON, the jury left open court at approximately 4:35 p.m.)

THE COURT: All right, Ms. Ross.

MS. ROSS: Thank you, Judge. I object and

certainly move to strike that line of questioning. Ms. Lyles gave a statement back on December 28th, 2013. As far as I know the police never chose to show her a photo line-up or anything of that sort. And then at this point to attempt to elicit anything other than, I can't identify this person would be -- would violate my client's due process rights. Certainly would be a violation of a show-up. The classic show-up. So I object to that and move to strike that line of questioning.

THE COURT: Mr. Moyer.

MR. MOYER: I'm not quite sure what the object is, Your Honor--

THE COURT: Well the objection is clearly that your witness cannot identify this gentleman as being the person who was there night. She just said twice, I can't identify him.

MR. MOYER: She did. And what we were going into, Your Honor, are to whether certain characteristics are consistent with what she saw that night. And I don't see any reason why that line of testimony cannot be pursued. Even though someone may not be able to say, Yes, I saw that person well enough to identify them, we can talk about well same complexion, same --

THE COURT: Well let's do a in-camera, I want to hear what it is and then I can make a determine. Go

ahead, please.
BY MR. MOYER:
Q All right, Ms. Lyles, I was about to ask you, you were able to see the Defendant here in the courtroom today, is that correct?
A I couldn't say but exactly.
Q Okay. But you've seen the Defendant, Christopher Russell in the courtroom today?
A Yes.
Q Now, what you described when he took off -- when the man took off the mask that night, is -- was the complexion of his face and the lips that you described you saw, consistent or inconsistent with what you see with the Defendant here today?
A Yes.
Q Consistent or inconsistent?
A Yes, I can tell by his lips. When he pulled the mask, the first thing I caught was his lips.
Q And the lips that you saw that, are they similar to the lips of the Defendant?
A Yes.
Q What about the complexion or?
A That kind of dark.
Q Okay. What about the heighth, did you see him standing?

A Yes, sir.
Q Was he about that height?
A Yes, sir, a little taller than me.
Q Consistent with that. What about his weight?
A Slim.
Q He was slimmer?
A Yeah, a little slimmer.
Q And what about, you heard him speaking earlier today as well?
A Yes.
Q Are you able to make any remark or any -- anything strike you about the voice that you heard here in the courtroom early today?
A Yes.
Q Tell us about that.
A I can tell because his voice was really mean.
Q Okay.
A Mean and heavy kind of a little.
Q Okay. And did you hear the Defendant's voice earlier today?
A Yes.
Q Was it consistent so inconsistent with the voice that you heard that --
A Yes.
Q You got to say one or the either, consistent or not

consistent.
A Consistent.
Q It was consistent?
A Yes.
Q It sounded like him?
A Yes, sir.
MR. MOYER: Okay, Your Honor, that would be the line of questioning that I would like to go into.
THE COURT: All right, Ms. Ross, why can't she testify to the consistency?
MS. ROSS: Well, Judge, for one thing that's not -- they could have shown a line-up before to see whether she could pick out my client from a line-up.
THE COURT: They didn't have to --
MS. ROSS: True.
THE COURT: -- there's nothing that says they do.
MS. ROSS: And then instead the bring -- they've never done a show-up. This man's been incarcerated for years and years. They've never brought him in the same courtroom to try to make an identification before. I don't have any records from the bond hearing but certainly I got no report of her recognizing my client from the bond hearing. Then in her description she describes someone who was taller than her, 5'6, had a slim build.

She states, The guy had a gun and he took his mask off and I could see that he was a dark-skinned black male. I just glanced at him, I did not get a good look at his face.

No comment on a mustache, which my client has now--

THE COURT: I don't think she testified to a mustache then.

MS. ROSS: No, she didn't. No testimony about that at all. So to come in now and say that lips and skin are similar, this could be similar to--

THE COURT: Well, the lips I thought was a little bit far out there. But the heighth, the voice and the skin complexion, I thought -- I don't see why she can not get into that.

MS. ROSS: I would object to that because it's a show-up in the courtroom and I think that violates his due process rights.

THE COURT: Well, first of all, I want to fair out. In court for the first time identification is somehow violative of the confrontation clause?

MS. ROSS: Well if someone can make a sure identification, that's one thing. But to say that black male might have the same lips or might have the same skin color, is a whole 'nother. This isn't a sure

identification. This is someone giving the generalities that are not enough to support testimony.

THE COURT: So you're basically saying that the probative value is outweighed by the prejudicial impact of this?

MS. ROSS: Oh, I would certainly say that. But I also think it has all the reliability of a show-up in the since that man is sitting here and I think the consistent or inconsistent phrase is leaving in, you know, a good portion of the population. And the jury, however, is going to hold that and find that it would be very prejudicial in that state as well as. She also described him as a slim build and taller than me and I'm 5'6. My client is 6'1, two weeks later when he went to jail I think he was 220 pounds -- excuse me six feet not 6'1.

THE COURT: Mr. Moyer, why would this not be more prejudicial than probative? Nothing in there identifies him with any particularity that would help this jury understand anything beyond speculation.

MR. MOYER: Your Honor, I don't think it's there's anything unfair about it. I mean, all she's doing is stating certain characteristics.

THE COURT: Answer my question, why would it would be more prejudicial than probative just by going in there and giving general characteristics?

MR. MOYER: Because the standard is unfair prejudice. In my opinion, Your Honor, my argument to you is that nothing unfair about it. All it is is a person saying, Yes, I was robbed by a person who has these certain characteristics. Here's this person, this person shares those characteristics. In fact, I would argue the opposite is true. She's not making the extra leap by trying to say, Yes, that's the man. She's very careful, fair analysis by not taking that extra step and saying it is him. I mean, there's no reason why a witness cannot make and in court identification. There's plenty of case law on going to that extreme.

THE COURT: Well, she's not technicality making an in court identification, she's making an in court description of similarities of him and some other people.

MR. MOYER: Yes, sir. And I think it's very probative. This is a case about identity. And any little factor that may help the jury's determination. You know, if we had clotting, we certainly would be able to show her clothing and say, Does look like the clothing the person was wearing? Does this look like the gun? Does this look like -- and just taking certain characteristics like height, skin tone, tone of voice, I think it's extremely helpful to the juror to make the determination about whether or not this was the person who was there. All the

points Ms. Ross brings up are certainly valid points for Cross-examination if she so choose to go there. This is certainly something that can be felt out in cross-examination. So, you know, I think this is extremely probative and there's nothing unfair about it.

THE COURT: All right, Ms. Ross, I'll be glad to hear you before I rule.

MS. ROSS: Okay. I just wanted to say, it's hugely prejudicial and the Solicitor was essentially saying that in saying that something that the jury would certainly consider to a good deal. But as far as relevant, evidence tending to make a fact of consequence more or probable, it really doesn't make it something more or less probable. If Christopher Russell has skin tone and lips and voice that now she's saying she recognizes, even after -- I don't know when she heard him speak, maybe during his motion, but to say that now does not make something more or less probable. In fact, I think it comes into all the natural problems that might come up with the fact that Mr. Russell is the one sitting there charged with these crimes. So I would object.

THE COURT: When was it that she heard it voice? I wasn't sure about that part of the testimony.

MR. MOYER: She testified that --

THE COURT: She had since heard his voice,

something along those lines?

MR. MOYER: Oh, this morning. She heard it today during the Defendant's pre-trial motion.

THE COURT: I'm going to grant the motion to keep this out. I don't think that it is necessarily probative but I certainly find the prejudicial impact is more -- it substantially outweighs the probative value. Therefore, I'm going to grant the motion to exclude this testimony.

Now, do you want me to give a charge say striking any testimony about the similarities?

MS. ROSS: Not a charge. I just move to strike that question and that's been ruled. Then later charges.

THE COURT: And I will grant that motion to strike that testimony. Anything further, Ms. Ross?

MS. ROSS: No, Your Honor.

THE COURT: Okay.

Mr. Moyer, you ready to proceed?

MR. MOYER: We are.

THE COURT: Very good.

Would you bring the jury in.

(WHEREUPON, the jury came into open court at approximately 4:45 p.m.)

THE COURT: Mr. Moyer.

MR. MOYER: Thank you, Your Honor, may it please

the Court.
BY MR. MOYER:
Q All right Ms. Lyles, I'm going to show you -- show you what's been marked as State's Exhibit No. 15, do you recognize what is shown in that photograph?
A Yes, cars.
Q Okay. Let me show you State's Exhibit No. 16, can you tell what's shown in that photograph?
A That's my dinning room.
THE COURT: Would you, speak up a little bit, please.
THE WITNESS: That's my dinning room.
BY MR. MOYER:
Q State's Exhibit No. 17?
A That's the sun room.
Q And what else is shown in that photograph?
A My T.V.
Q State's Exhibit No. 18?
A That's the sun room.
Q State's Exhibit No. 19?
A That's the sun room.
Q That also the sun room.
A Yes, sir.
Q Now these pictures of the sun rooms and these other rooms of your house, and the outside of your house,

are they true and accurate representations of the way those particular rooms and areas of your house looked on December 18th of 2010?

A Yes, sir.

MR. MOYER: Your Honor, at this time, I move to have State's Exhibits 15 through 19 entered into evidence.

THE COURT: Any objection?

MS. ROSS: No objection.

THE COURT: Admitted without objection.

(WHEREUPON, State's Exhibits Nos. 15-19 were admitted into evidence.)

BY MR. MOYER:

Q Ms. Lyles, I'm going to have to ask you to step down here, if you would, please.

A (The witness complies.)

Q All right, Ms. Lyles, we're going to start over with State's Exhibit No. -- this is State's Exhibit No. 1, can you tell -- this was already talked about by your husband, Mr. Lyles, but can you tell the jury once again, what we're taking a look at here in this picture?

A That's my house.

Q Okay. And use the -- what do we see here that I'm pointing to here with arrow?

A That's the front door on my house.

Q Is that this door you used to enter?
A No, sir.
Q Where's the door you used to enter?
A On the other side of the cars.
Q Back over here?
A Yes, sir.
Q Where the laser pointer is pointed?
A Yes, sir.
Q Okay. I'm showing you State's Exhibit No. 15, can you tell the jury what we're seeing in this photograph?
A That's the cars and that's the door that I went in.
Q So is this the side of your house over her on the right-hand side?
A Yes, sir.
Q These are some vehicles that were parked out in front of your house?
A Yes, sir.
Q This door back here, is that the door you used to enter the house?
A Yes, sir.
Q Now the door where the wood is that your husband talked about, is that around the backside of that?
A Yeah, it's right around the other side.
Q If you walked around back here behind the -- around

the house.
A Just around the house.
Q Okay. Show you State's Exhibit No. 19, would you tell the jury what we see in that photograph?
A That's the door that I came in and that's the couch was moved.
Q So this is the couch you noticed that had been moved?
A Yes, sir.
Q Is this the door you entered?
A Yes, sir.
Q State's Exhibit No. 18, can you tell the jury what we're seeing in this photograph?
A That's the sun room.
Q That's that room you talked about that you entered?
A Yes, sir.
Q What do we see over here?
A That's a door that's going into the den.
Q That's where you went?
A Yes, sir.
Q And State's Exhibit No. 16?
A That is my kitchen, dinning room.
Q Did you walk into that room?
A Yes, sir.
Q What happened when you walked into that room?
A Right there where you see the closet door, that's

where turned, that's the hall. And he came out right there.

Q If go down that hallway does that lead to that sun room?

A No, sir.

Q Okay, which way?

A You have come back. Where the chair sitting at, you have to come back this way.

Q Back this way?

A Yes.

Q So you walked this way into the house?

A Yes, sir.

Q And then what happened when you got right here?

A Right there, that's when he jumped out at me.

Q Okay. Then State's Exhibit 17, what is shown in that picture?

A That's in my den.

Q Okay, that's your den?

A Yes.

Q Is that where your television was before you left that morning?

A Yes -- no, sir. No, sir.

Q That's -- when did that the way it was after you entered -- after the robbers had entered the house?

A Yes, sir.

Q Okay. Okay, please have a seat again.
A (The witness complies.)
(WHEREUPON, State's Exhibits Nos. 34 & 35 were marked for identification only.)
BY MR. MOYER:
Q Okay, Ms. Lyles, I want to show you what's been marked as State's Exhibit No -- excuse me, State's Exhibit No. 34, okay. And can you take a look at this diagram?
A Yes.
Q Have you had a chance to look at earlier today?
A Yes.
Q Is that a true and accurate representation of the streets and the layout of where house is--
A Yes, sir.
Q -- on [redacted] Street. And same with State's Exhibit No. 35, is that a true and accurate representation of the layout of the streets where your house is located?
A Yes, sir.
MR. MOYER: Your Honor, at this time I move to have State's Exhibits 34 and 35 entered into evidence.
THE COURT: Any objection?
MS. ROSS: No objection.
THE COURT: Admitted without objection.

(WHEREUPON, State's Exhibits Nos. 34 & 35 were admitted into evidence.)

BY MR. MOYER:

Q Were they wearing gloves?

A Yes, sir.

MR. MOYER: Okay, please answer any questions the Defense may have.

THE COURT: Cross-examination.

MS. ROSS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. ROSS:

Q All right, Ms. Lyles, just looking back on your statement, you gave a statement right after this happened, didn't you?

A Yes, ma'am.

Q And you described the man as taller than you and you're 5'6?

A Yes, ma'am.

Q And you stated he had a slim build?

A Yes, ma'am.

Q And he stook his mask off and I could see that he was a dark-skinned black male?

A Yes, ma'am.

Q All right. Now, after that did the police ever show you a line-up? Do you know what a line-up is?

A Yes, ma'am.

Q From T.V. where they have the pictures. Were you ever shown a line-up?

A No, ma'am.

MS. ROSS: All right, I've got no further questions.

THE COURT: Redirect?

MR. MOYER: Your Honor, I have a matter to take up outside the presences of the jury, can we approach?

THE COURT: Yes, sir.

(WHEREUPON, an off-the-record bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: Madam Forelady, would you mind going back to your jury room for just one moment. Thank you.

(WHEREUPON, the jury came into open court at approximately 4:55 p.m.)

THE COURT: Okay, just for the record, Mr. Moyer approached and said, I feel like the door had been opened as to physical description of the Defendant or similarities.

And you were saying something, Ms. Ross, I couldn't understand. I felt like you had opened the door.

MS. ROSS: And I disagree that I opened the door. Those were all things that I did reiterate that she

had testified to before in her statement. Simply that it was a dark-skin black male under the cap. He had a slim build and he was taller than her and she was 5'6. These are things that she stated in her direct as well. And so I don't think -- I didn't go beyond that in any way. The jury is certainly opened to make any comparisons they'd like to make as far as that goes.

And then beyond that, I did ask about a line-up. But I disagree that that opens the door in any way.

THE COURT: I agree with the line-up part of that. But so those matters, taller than me, slim build, dark-skinned black male, were all contained in her written statement to the police?

MS. ROSS: Yes. And I can hand that up to you to see. And I did not add, purposely, her statement -- in her statement that she could not identify him, that she couldn't get a good look.

THE COURT: All right, Mr. Moyer.

MR. MOYER: Your Honor, may it please the Court, I think it just goes to further demonstrate why it's important that she be allowed to give this testimony. I mean, otherwise we're having a one way argument. That obviously is going to the argument that what she said, what her description was, is Dissimilar to this Defendant. And with her being muzzled and not given the opportunity

to explain or elaborate is vastly, clearly unfair.

THE COURT: I agree with you. All right. The issue of the similarities and the consistencies was something I was concerned about because of the tendency for the jury to generalize without having more of a identifying ability than what I heard. However, since these matters are out there and it goes to the description of the Defendant in a general way, then I'm going to allow you to go into on a limited basis. I don't want it to be a free ranging. And you have voice identification, you have lips, height, build and complexion, if I'm not mistaken.

MR. MOYER: Yes, sir.

THE COURT: Okay. no further than that.

MR. MOYER: Yes, sir.

THE COURT: Subject to your objection.

MS. ROSS: And, Judge, I point out that I certainly didn't change anything by asking about what was simply in her statement about slim build.

THE COURT: Well --

MS. ROSS: So as far as voice and lips--

THE COURT: Let me just tell you the distinguishing factors. Ms. Ross, I thought at first maybe you were, right. But I think that you asked that those matters be stricken from the record. And certainly,

at the time, I thought properly so. But then got thrown back into the record, I think that it's properly for the State to go into the descriptions. I note your objection.

MS. ROSS: All right, thank you, Judge.

THE COURT: Anything further from the defense before we bring the jury back out, Ms. Ross?

MS. ROSS: No Your Honor.

THE COURT: From the State, Mr. Moyer?

MR. MOYER: No, sir, Your Honor.

THE COURT: All right, bring our jury, please.

(WHEREUPON, the jury came into open court at approximately 5:00 p.m.)

THE COURT: All right, Mr. Moyer.

MR. MOYER: Thank you, Your Honor, may it please the Court?

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. MOYER:

Q Just a few more questions, Ms. Lyles. Did you have a chance to see the Defendant, Christopher Russell, here in court today?

A Yes.

Q Have you seen him standing as well as seated?

A Yes.

Q Did you have the opportunity to hear him speaking as

well?
A Yes, sir.
Q I have just a couple of questions about that. As far as what you observed of him, is his height consistent with the height of the person who was holding that machine gun in the house that day?
A Yes.
Q Did you notice anything about his face, this Defendant's face, that's consistent or inconsistent with what you saw of the person holding the machine gun when he took the mask off?
A His complexion and lips.
Q Okay. And by his complexion you're saying his skin tone?
A His skin tone.
Q Is that what's consistent?
A Uh-huh, yes, sir.
Q What about his lips?
A His lips was kind of small. When he pulled the mask off that's the first thing I seen of him.
Q Okay. And they stood out to you at that time?
A Yes.
Q And they're consistent with what you see today?
A Yes.
Q And you further mentioned you heard him speak today?

A Yes.
Q What observations? What did you notice about that?
A The tone of his voice.
Q What about the tone of his voice?
A It's kind of sound harsh a little bit and--
Q Was it similar or dissimilar?
A It's similar.
Q Did it sound like the person who had the machine gun?
A Yes, sir.

MR. MOYER: Okay, I have no further questions, thank you.

THE COURT: Ms. Ross.

RECROSS-EXAMINATION

BY MS. ROSS:

Q Now, have you been told why Mr. Russell was charged with the crime at all?
A No.
Q So you haven't been told anything about why he was arrested?
A Yeah, because the other guy.
Q The other guy said it was him?
A Yes.
Q So -- so you know, sitting here now, that's why Christopher Russell was arrested and that's why he's here.

A Yes, that what the private investigator told us.
Q And that's what the investigators told you. And they've been keeping you informed of this all along, correct? Or to some degree?
A Some degree.
Q Now, did they ever, again, bring you a photo line-up or try to show you a photo line-up and say we want to be sure, let's see a photo line-up with Christopher Russell?
A No, ma'am.
Q And when you originally described the perpetrator in your home, you said, Taller than me and I'm 5'6, right?
A Yes.
Q And you said a slim build?
A Yes.
Q And that's how you described him. And you said, I didn't get a good look at his face.
A Yes.
Q Now, there's nothing in your description, you said nothing about a mustache or the person having a mustache. And you said you -- you just testified here that you got a good look a his mouth but you said nothing about a mustache?
A No.

MS. ROSS: All right, nothing further.

THE COURT: All right.

MR. MOYER: Your Honor, one clarification.

REDIRECT EXAMINATION

BY MR. MOYER:

Q When he took the mask off, didn't you testify that you did not get a real long look at him?

A Yes, I didn't look at him long.

Q How long do you think you looked at him?

A Well when he pulled his mask I could just see his lips. I just glanced at his lips and I ran.

Q If you were to give an amount of time that you looked at him, how -- like a second, a couple of seconds? Are you able to say?

A Might have been, it was so quick.

Q Very quick?

A Yes, it was just this and ran.

Q So just looked at him and turned your head. So maybe a second or two?

A Yes.

MR. MOYER: Okay, thank you.

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

Madam Forelady, ladies and gentlemen of the jury, we're at that point in time in the day, it's a good

time to take a break, go home for the evening. Let me remind you that you're not to speak amongst yourselves or with anyone else about what you've heard in here today. If by chance you happen to run across anything in the media or print or audio somehow the radio, T.V., do not listen to it, read it or watch it. It will be time after this case is over with to do that. Thank you, have a good evening. We'll see you in the morning at 9:30.

Any reason we can't start at 9:30?

MADAM FORELADY: No, sir.

THE COURT: Very good, thank you.

MADAM FORELADY: Thank you, Your Honor.

(WHEREUPON, the jury left open court at approximately 5:07 p.m.)

THE COURT: All right, any additions or exceptions from the Defense, Ms. Ross.

MS. ROSS: No, Your Honor.

THE COURT: From the State?

MR. MOYER: No, Your Honor.

THE COURT: All right, thank you. We'll be in recess until tomorrow morning at 9:30.

(WHEREUPON, the proceedings were concluded for the day to be reconvened on February 12, 2013.)

THE COURT: Is there anything from the State before we proceed?

MR. MOYER: Your Honor, the only thing I want to mention is that they're a couple of matters we're going to have to take up outside the jury's presence at some point. My third witness will entail some testimony involving a prior bad act in the form of failure to stop and resisting arrest with assault. Happened sometime between the dates of when this incident happened and when he was arrested. About a halfway point in between he was involved in a chase by police and resisting arrest. He was arrested for that and taken to trial as you have heard. We would seek to introduce that evidence as evidence of flight which is admissible under several cases. I know we need to take that up, that will be my third witness.

Then also, this will be probably an hour and a half or so but the issue of some cell phone records. And if we need to redact some, come up with some information, come up with a stipulation, we have to take that up, too.

THE COURT: Okay, if you would, just let me know before we get there so we can send the jury out and just do it in-camera.

Ms. Ross, is there anything from the Defense?

MS. ROSS: Well, if it's Officer Jeremy Jones Mr. Moyer's referring to, I would object to reference to

Mr. Russell's arrest. At this point there was no mention of this charge. It had nothing to do with this charge.

THE COURT: Well, we'll take that up at the appropriate time.

MS. ROSS: Then I have nothing further before we go ahead.

THE COURT: You ready to proceed then?

MR. MOYER: We're ready, Your Honor.

THE COURT: You ready, Ms. Ross?

MS. ROSS: We're ready, Your Honor.

THE COURT: All right, bring the jury in.

(WHEREUPON, the jury came into open court at approximately 10:40 a.m.)

THE COURT: Good morning, Madam Forelady, ladies and gentlemen of the jury. Before we get started let me ask you, has anyone read or seen anything about this case during the break? If so, would you raise your hand.

There was no response.

Has anyone discussed with anyone any particulars about this case during the break?

There was no response.

Very good.

State ready to proceed?

MR. MOYER: We're ready, Your Honor.

THE COURT: Defense ready to proceed?

MS. ROSS: Yes, Your Honor.

THE COURT: Would you call your next witness, please.

MR. MOYER: State calls Danielle, Danielle Durham.

THE CLERK: Ms. Durham, if you'll, please, pause at the end of the bench. Place your left hand on the Bible, raise your right hand.

DANIELLE DURHAM, after being duly sworn, testified as follows:

THE CLERK: Thank you, please be seated. State your name for the record.

THE WITNESS: Danielle Durham.

DIRECT EXAMINATION

BY MR. MOYER:

Q All right, Ms. Durham, how old are you now?

A Eighteen.

Q When's your birthday?

A [redacted]

Q So how old were you on December the 18th of 2010 when this accident happened?

A Sixteen.

Q Are you in school right now?

A Yes.

Q Where do you go to school?

A Southside High.
Q What grade are you in?
A Twelfth.
Q So you're going to graduate this year?
A Yes.
Q Do you have any plans after you graduate?
A Yes.
Q What do you want to do?
A I want to go to Upstate.
Q Want to go where?
A Upstate.
Q College?
A Yes.
Q Okay. Now, are you related to Mr. and Ms. Lyles who's seated here and testified yesterday?
A Yes.
Q What is your relation?
A Granddaughter.
Q Okay, it is your mother, father?
A My mother.
Q Okay. You're mother is there daughter?
A Yes.
Q Okay. So have you been close with them your whole life?
A Yes.

Q Now let's take you back to December 18th 2010, do you remember, were you working that day?
A Yes.
Q Where did you use to work then?
A Sue's Kitchen.
Q What did you do for Sue's Kitchen?
A I was a waitress and a cashier.
Q How much did you just to work, how often?
A Everyday.
Q Everyday while you were in school?
A It was over the summer. Well on weekends during school.
Q Okay, over the summer you would work everyday and when you were in school you would just work on the weekends?
A Yes.
Q December 18th was a Saturday?
A Yes.
Q And you were working that day?
A Yes.
Q Okay. Let's talk about when you got off work that night. Did you accompany your grandmother, Ms. Lyles?
A Yes.
Q Where were y'all planning to go?

A We was planning on leaving, going to the Waffle House to get something to eat.
Q Okay. And why didn't you go to the waffle -- go straight to the Waffle House?
A Because we was calling my grandfather and he wouldn't answer. So my grandmother got worried and wanted to go by the house.
Q So y'all went to the house?
A Yes.
Q On [redacted] Street?
A Yes.
Q You saw photographs that were shown yesterday, that's the house you went to?
A Yes.
Q Okay. Tell us what you observed when you got up there to the house that night.
A Well we went in, I seen the couch had been moved --

THE COURT: Just one second.

Would you take the to the jury room for just one second, please?

(WHEREUPON, the jury left open court at approximately 10:45 a.m.)

THE COURT: All right, Mr. Russell, you're going to have to speak more quietly to your attorney. You're disturbing, I can hear you up here. And I notice the

jurors are being distracted by that. I'm going to ask you keep your voice down. Okay, sir?

MR. RUSSELL: All right.

THE COURT: Do you need any pad or pencil to write notes on?

MR. RUSSELL: Yeah, I do.

THE COURT: All right. Now, I want you to be able to communicate with your attorney, you just have to keep it down, sir.

Okay, bring the jury back.

May I see the attorneys up here right quick?

(WHEREUPON, an off-the-record bench conference was held.)

THE COURT: I just want to place on the record, the Bailiff contacted me and said I had a juror that wanted to speak to me. And what I did, out of an abundance of caution, I brought the attorney for the State and attorney for the Defendant back in the room with me and this juror. In response to my earlier question this morning at the beginning of the trial about whether or not they had read, heard or seen anything about the case or spoken with anybody, she had not. But she indicated that she may be familiar with a person that she doesn't know is going to be a witness or not.

She just says, I may know who they are. But

does not impact my ability to be fair and impartial to both the State and to the Defense.

I questioned her on that multiple times. And I am satisfied that she can be fair and impartial. She has not discussed any of this with the remaining jurors. She did ask the foreperson to make known to me her wishes to come forward and speak.

And with that being said, Ms. Ross, does that fairly outline the substance of the meeting we had?

MS. ROSS: Yes, it does.

THE COURT: Anything you want to had on the record beyond that?

MS. ROSS: No, Your Honor.

THE COURT: Mr. Moyer.

MR. MOYER: I agree, I have nothing further to add, Your Honor.

THE COURT: And as a result of my questioning of this juror and her being adamant that she can be fair and impartial to both sides and apply the law given at the end of the case, I'm leaving her on the jury at this stage. Okay.

That being said, is the State ready to proceed?

MR. MOYER: We're ready, Your Honor.

THE COURT: Ms. Ross, you ready to proceed?

MS. ROSS: Yes, Your Honor.

THE COURT: All right, would you bring the jury in.

(WHEREUPON, the jury came into open court at approximately 10:46 p.m.)

THE COURT: Mr. Moyer.

MR. MOYER: Thank you, Your Honor, may it please the Court?

THE COURT: Yes, sir.

BY MR. MOYER:

Q Okay, Danielle, I know it's been a few minutes but let's back up to where we were when we had this break. Okay, you talked about how you left Sue's Kitchen, you left with your grandmother. And you went to her house, is that correct?

A Yes, sir.

Q And you road with your grandmother in her car?

A Yes.

Q The two of y'all?

A Yes.

Q Now, when you got back to the house, what did you notice anything different or out of place or did anything look wrong?

A From the outside, no.

Q From the outside. And you parked in the driveway.

A Yes.

Q And you got out? Got out of the car with your grandmother and what did y'all do?
A We went up to the door and she opened the door and I went in behind her.
Q Okay. So she went in first?
A Yes.
Q And you used the side door?
A Yes.
Q Is that correct? The door that's all the way on the left side of the house?
A Yes.
Q Okay. And that opens into what kind of room?
A The sun room.
Q The sun room?
A Yes.
Q Okay. So your grandmother walks in first. Did you hear anything or see anything when you first walked in?
A I seen that the couch was moved and the music was loud.
Q Okay. So what did you when you?
A Well continued to walk on to the back. And I went over to the stereo to turn the music down.
Q Where was the stereo?
A It's like -- the backdoor is right here and the

stereo is right beside it.
Q So it's in that sun room?
A Yes.
Q That little room. Okay. So you stayed in that room then to go tend to the music.
A Yes.
Q Did you turn the music down?
A Yes.
Q Where did your grandmother go?
A She went on around the corner and so--
Q She went into the house?
A Yes.
Q Okay, now after you turned the music down, what did you do?
A I turned around and getting ready to walk to the back where she was until I heard her scream. So I stopped and that's when I seen the man dressed in all back with a gun.
Q Oaky, what do you remember about the gun, what did it look like?
A It looked like a machine gun.
Q How big was it?
A It was like this big and it had like a big ole barrel on it.
Q Okay. What's the best you can remember about what

this person looked like?
A It happened so fast, all I seen was black.
Q Just saw black?
A Yes.
Q So how long did you look at this man?
A Maybe like five seconds.
Q So just really quick?
A Yes.
Q What was your reaction when you say him?
A Just run.
Q Okay. And that's what you did?
A Yes.
Q So you turned and ran. Which way did you run?
A Back out the side door.
Q Same door you came in?
A Yes.
Q Okay. Now when you -- I'm going to take you back to when you saw this man, you say you saw a gun in his hand, did you hear anyone say anything?
A I heard my grandma scream and the man say, Get down.
Q Okay. Could you see your grandmother?
A Yes.
Q What did you see, if anything, your grandmother do?
A I just seen her back turned.
Q Her back turned?

A Yes.
Q Okay. So you just saw this man for a few seconds?
A Yes.
Q Do you remember anything else about him other than he was dressed in all black and he had a machine gun?
A No.
Q Then you ran outside?
A Yes.
Q What did you do when you got outside?
A I stopped and I was looking around and that's when I seen my neighbor was outside and I ran next door.
Q Who's your neighbor?
A Jimmy.
Q Is that this gentleman seated right here?
A Yes.
Q When you saw him what did you do?
A I told him that someone was in this house and I just started calling the police.
Q Did you call the police?
A Yes.
Q Do you remember what you said to the police?
A I just told them my address and that someone was in the house, they had my grandparents.
Q Told them he had a gun?
A Yes.

Q So you only saw one person then with a gun?
A Yes.
Q So as far as you knew there was only one person in the house?
A Yes.
Q Okay. Did you stay there with your cousin until the police got there?
A Yes.
Q Did the police get there pretty quickly?
A Yes.
Q Like within a matter of minutes?
A Yes, like a minute.
Q Okay. Then when the police got there, did you talk to some officers?
A Yes, I talked to one guy.
Q Okay. You told them what you had seen?
A Yes.
Q What happened after that?
A He took me across the street. And I was telling him what was going on. And we was just waiting at the neighbor's house.
Q Did you observe anything else while you were there waiting?
A Yes.
Q What did you observe?

A I seen a man in the front door -- that's when the police had came, I seen a man in the front door, he was looking around. Then he took off running across the yard. And I was yelling at the police officers to get him but the other guy told me to be quiet, he could shoot at me or something.

Q Okay. Now when you saw this man at the front door, are you talking about the door you used to go in with your grandmother?

A No, we don't really use the front door that often.

Q So it was the main front door of the house?

A Yes.

Q And could you see, did the man have a mask on at this time?

A I couldn't really see. I just seen like a figure, like moving around.

Q Just moving around?

A Yes.

Q So once again you didn't get a good look at this person?

A No.

Q You couldn't -- you couldn't see his face to identify him?

A No.

Q Could you tell anything else about him?

A No, not from the window.
Q Was he dressed like the man you had seen with the machine gun?
A Yes. When I had seen him run out the front. When I seen him running.
Q Okay, you can tell it looked like the same, as far as clothing goes, it looked like the --
MS. ROSS: I object to leading.
THE COURT: Rephrase.
BY MR. MOYER:
Q Well, was there similarities between the clothing that you saw the man running away as the man that you saw in the house with the machine gun?
A I could just tell it was a man.
Q Okay. Okay. Where -- what did you see the man do when he left the house?
A I seen him running across the yard.
Q Okay. And then you waited there -- did you see when the other man was caught behind the house?
A No.
Q You could not see that?
A No.
Q So you waited there and talked to the police?
A Yes.
Q Okay. One moment, please.

THE COURT: Yes, sir.

MR. MOYER: I have no further questions, please answer any questions the Defense may have.

THE COURT: Ms. Ross.

MS. ROSS: I have no questions for this witness.

THE COURT: Thank you, ma'am, you may step down.

MR. MOYER: The State would call Jimmy McDaniel.

THE CLERK: Place your left hand on the Bible, raise your right hand.

JIMMY MCDANIEL, after being duly sworn, testified as follows:

THE CLERK: Thank you, please be seated. State your name for the record.

THE WITNESS: Jimmy McDaniel.

DIRECT EXAMINATION

BY MR. MOYER:

Q How old are you, Mr. McDaniel?

A Thirty-two.

Q Where did you live back in December of 2010?

A I stayed in West Greenville.

Q Stayed in West Greenville?

A Uh-huh.

Q Are you familiar with [redacted] Street?

A Yeah, that's the house my parents own.

Q Okay, what address is that?

A [redacted]?
Q [redacted]?
A Uh-huh.
Q Did you grow up in that house?
A Yeah, since I was six.
Q Since you were six?
A Uh-huh.
Q Okay. When did you move out of that house?
A Probably when I was like 20, 21.
Q Who was living in that house in December 2010?
A My brother.
Q Now, [redacted] is in what relation to [redacted] where the Lyles live?
A Well it's family.
Q Okay.
A Because like, you know, his dad was my coach when I was a kid, stuff like that. Just I've been living there since I was six, you know.
Q So the Lyles lived there the whole time?
A Yes.
Q So they were like family to you?
A Yeah.
Q So Mr. Lyles actually coached you --
A Baseball, basketball, everything.
Q Now, if you're looking, standing on the street and

you're facing East, you're facing the Lyles home?
A Uh-huh.
Q Was your house on the left or on the right?
A On the left.
Q On the left. Okay and it's the house right next to it?
A Right.
Q Okay. Now, did you have occasion to be over there the night of December 18th, 2010?
A Yeah. I was coming from a birthday party.
Q Okay.
A It was my Dad's birthday.
Q It was your Dad's birthday?
A Yes.
Q Okay. So what led you to go over to his house that night?
A Well I went to -- I had a friend car, I had borrowed a friend car. And he was there at the house asleep.
Q Okay. Okay. So then you were taking the car over there to your friend and brother?
A Yeah.
Q Okay. So tell us what happened when you arrived there at the house, at [redacted] on this night.
A Well when I pulled up, I seen somebody running out

the driveway. Like--
Q Out of whose driveway?
A Ms. Lyles' driveway. And I thought it was somebody playing with my friend, like a girlfriend or something. But it was the niece.
Q Okay. And who's the niece?
A Danielle.
Q Danielle, the young lady who just testified?
A Yeah.
Q Do you know her?
A Yeah.
Q How long have you known her --
A Since she was born.
Q Okay. So you've known her?
A Yeah.
Q So where were you when you saw her, what were you doing?
A When I was passing the house I seen her running out.
Q Okay. And you were still in your car?
A Yeah, I was going pass the house, going to the driveway.
Q Okay.
A But I just, you know, I thought it was somebody messing with my friend guy. Like one of his friend girls.

Q Okay.
A And when I pulled up she was running to the car by then, out the driveway. So she was hysterical and I was like, Call the police, just calm down.

She was like, They guns, they got my grandma.

I was like, Hold on, just calm down, let's call 911. So we called them, they was there -- they had to be in the neighborhood already.
Q Who's they? Talking about the police?
A Police, yes. Because they came in like so quick.
Q Okay. Let me stop you there for one moment. How did you say Danielle was acting?
A She was hysterical. She was out of breathe, she was running, she didn't know what to do.
Q Okay. All right. Now, when the officers got there, did you speak with the officers?
A Yeah.
Q And you were there when Danielle spoke to them, also?
A Yes.
Q What did you do?
A Well when I told the police to block the backdoor off because the little side door, you want notice if you don't know the house. So when they blocked the backdoor off--
Q Let me stop you right there for a minute. What do

you mean you told the police about a backdoor, why did you do that?

A Because I know they could get away. If you didn't know the house, you wouldn't know the door's back there.

Q Talking about the backdoor to the house?

A Yeah, the side door. You just see the front door, you don't really notice that door.

Q So you told the officers about the backdoor?

A I said, Please, circle around, get the backdoor before they get away.

Q Okay. Did the officers do that?

A Yeah. But when they went around to the back, the front door was opened. So that's when I just see him like this.

Q Okay. Let me stop you there for a moment too. Did you stay at the front of the house then?

A Yeah, I was right across the street in the neighbor's yard.

Q I'm sorry, I didn't meant to talk over you. You were across the street?

A Yeah, in the neighbor's yard.

Q How close would you say you were to the front door of the Lyles residence.

A Probably 10, 15 feet.

Q The distance I am from you right now or further?
A I little further. Probably back -- maybe the second row.
Q About the second row?
A Somewhere like that.
Q Okay, now, it was dark out.
A Yes, it was dark.
Q Where there lights on inside the house?
A The hallway light was on.
Q So you can see into the house?
A Yeah.
Q So the door was opened?
A Yeah.
Q Tell us what you saw going on in the door while you were standing there.
A I just seen a man like -- like he didn't know what to do. He was, you know--
Q How was he acting?
A He was panicking.
Q Okay. What was he doing to make you think he was panicking?
A Because he was going like this, like, you know. He didn't know where he wanted to run to, basically.
Q Kind of going back and forth?
A Yeah, but like, like, you know, what I'm going to do?

Q Like shifting?
A Yeah, because that's when they had the guy in the back already.
Q Okay, now, tell me about that, could you hear something going on?
A Yeah, I heard them bust out the backdoor. The police was back there already waiting on them.
Q So what did you hear?
A Like holler, Oh, get down.
Q Okay.
A You know, the dog was bitting him, I think. Yeah.
Q So you heard him get caught?
A Yeah.
Q So that was going on while you saw the man in the front door?
A Right.
Q Okay. What did the man then do?
A He took off.
Q So he came out of the house?
A Yeah. Came out the front door and ran down next door on the left side.
Q Towards your house or--
A No, the other side. It's like a wooded area, like a creek area. He ran down that way.
Q And when you saw him run out of the house what did

you do?
A I hollered like, Hey he going. But nobody hear me.
Q Okay. Did you consider at all trying to catch him?
A I wanted to chase him.
Q But what kept you from doing it?
A I knew they had guns.
Q You heard Danielle saying that?
A (The witness nods.)
Q Okay. Now, did the man you saw at the door, did he have a mask on at that point?
A He didn't have a mask on.
Q Could you see him well enough to identify him?
A I just seen his build. I didn't see his face.
Q Tell us about his build.
A Just like -- he was maybe 6 feet. He was taller than me, I'm 5'10. Because he was standing in the hall, the doorway. You can see like this, it was pretty high up there.
Q Okay, he was taller than you. Do you remember anything about his build?
A He was kind of slim.
Q Okay. Do you remember anything about -- about his hair or anything?
A He had a low hair cut?
Q Real low?

A Yeah, like bald.
Q Like bald?
A Yeah.
Q Okay. Could you tell what race, white or black?
MS. ROSS: Your Honor, I object to leading.
THE COURT: Overruled.
BY MR. MOYER:
Q Could you tell if he was white or black?
A I could tell because nobody wouldn't be in that neighborhood doing that kind of stuff.
Q Okay. But could you tell by looking at them white man a black man?
A By his build, yeah I could tell.
Q Which was it, white or black?
A It was a black guy.
Q Okay. Okay. Now, let me -- one moment. Let me ask you, if you would, step down just a moment. Take a look at State's Exhibit No. 34 for the juror. If you would, just step over here. And can you point out which is the Lyles' residence?
A Right here.
Q It's one that's labeled [redacted]
A Yes.
Q Which was your residence?
A Right here.

Q Okay. And tell us where you were standing when you were looking at the Lyles residence.
A Right about here.
Q So that's at the end of the driveway, the house across the street?
A Yeah.
Q And tell us where you saw the man one when he came out.
A Ran down through there.
Q Ran down this way?
A Yeah. It's a little small house, you can't really see it, but it's like real wooded.
Q It's like real wooded in this area, is that what you said?
A Yeah.
Q Okay. You can have a seat again, thank you.
A (The witness complies.)

MR. MOYER: Okay, please answer any questions the Defense may have.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MS. ROSS:

Q How many police officers were there when you were there.
A When it first happened or just period?

Q Well how about when you heard the commotion in the back of the house, how many police officers do you think?

A It was like three police.

Q Then later more came?

A Yeah, it was probably like 20 police down there.

MS. ROSS: Okay, nothing further.

MR. MOYER: Nothing further, Your Honor.

THE COURT: Thank you, sir, you may step down.

MR. MOYER: Your Honor, before I call the next witness, this would be the witness that I've asked...

THE COURT: Okay, Madam Forelady, ladies and gentlemen of the jury, we have a couple of administrative? Matters we need to take up. If you would go back to your jury room, we'll get you back as soon as we can.

(WHEREUPON, the jury came left open court at approximately 10:25 a.m.)

MR. MOYER: May it please the Court, Your Honor, the next witness is prepared to testify three separate incidents. One, he was the first officer to arrive on the scene and he participated in the arrest of the Co-defendant. The next -- well another incident happened on January 10th, 2011. That's when this Defendant was arrested. And he's prepared to testify about the arrest of this Defendant and how that took place. And then the

third matter, Your Honor, would be a date about half way in between those two dates would be January 2, 2011, this officer along with another officer was involved in a car chase involving this Defendant. On that date another officer initially saw a vehicle violating traffic violation. He begins to follow the vehicle and it turns into a chase, a failure to stop. That vehicle takes off. The first officer loses the vehicle.

A very short period of time later, the officer on a hunch, went to a location where he thought the vehicle would be, sure enough found the vehicle. And this Defendant was with the vehicle. That officer chased this Defendant into some woods where the Defendant grappled with the officer, ended up striking him and got away again. The Defendant then circled back to the vehicle, gets in the vehicle and takes off again. At that point, this officer, Officer Leppard, beings to follow the Defendant. And once again, there's the failure to stop for blue light situation. The Defendant takes off and gets away again. The Defendant was identified by a person who was at the scene where the resisting arrest took place. And that first officer was also able to identify him. That led to the arrest on January 10th when the Defendant was arrested on these charges, he was also arrested for two counts of failure to stop and resisting

arrest with assault.

We took the Defendant to trial on that. I don't remember the exact date but it's been a little while. He was found guilty of one count of failure to stop and resisting arrest with assault. And he was sentenced on that date. So, Your Honor, we would like to bring in evidence of the failure to stop situation as evidence of flight for purposes of this trial as well.

THE COURT: Okay. Now, let me ask you this, earlier you mentioned that you were looking at potentially putting in as a prior bad act. And wasn't it Justice Pleicones who had an opinion last year that in order to qualify as a prior bad act to be probative, that the element of dishonesty had to be a part of the prior bad act. In other words, whether or not it went to their truthfulness or non-truthfulness in order to qualify as a prior act. I'm not saying anything about flight, just talking about prior bad act.

MR. MOYER: Are you talking about the armed robbery case?

THE COURT: Quite frankly, I don't necessarily remember the facts of it, it may be the armed robbery case but it was something out of Texas or something. Does that sound familiar?

MR. MOYER: I remember there was a case

involving armed robbery where the -- that was a situation that was being used for impeachment. I believe it was that case from a few months ago. So I think that would be a different situation. Because in that case it was being used for impeachment purposes.

THE COURT: Still is the standard with whether or not it would be for impeachment or not impeach would be a prior bad acts exception of the hearsay rule.

MR. MOYER: Your Honor, I would distinction it this way. I would not seek to impeach the Defendant for this because it does not involve dishonesty. So if he took the stand, I would probably concede, although it carries more than five -- more than a year but it doesn't involve dishonesty. So, it perhaps should not be used for impeachment. However, for purposes of evidence of his guilt--

THE COURT: Flight. What is foundation requirements for introducing evidence of flight?

MR. MOYER: Your Honor, there has -- well there has to be a nexus between the flight and the offense charged. I'm looking right now at State vs. Hagin, which is a 2006 case. And, I mean, essentially, there has to be clear and convincing evidence of a prior incident. And the evidence of flight is admissible to show guilty knowledge of a Defendant when the flight is clearly

linked -- when the flight is -- when there's a nexus between the flight and the offense charged. Evidence of flight --

Well, Your Honor, I'll just read from this case. The flight from prosecution is admissible as guilt. The critical factor to the admissibility of evidence of flight is whether the totality of evidence creates an inference that the Defendant had knowledge that he was being sought by authorities. It is sufficient that circumstances justify an inference that the Defendant's actions were motivated as a result of his belief that the police officers were aware of his wrong doing and were seeking him for that purpose. Flight or evasion of arrest is a circumstance to go to the jury.

So, Your Honor, I would argue to you that in this situation, that's clearly the case. Because he was fleeing from the police the night this happened. He fled from the residence. So he knew the police were looking for him. He knew his Co-defendant had been caught. So he knew there was a good chance that his name was out there and that the police were looking for him. So I would that his flight on January 2 of 2011 from the officers trying to do this traffic stop with him, is clearly linked to this crime based on that.

THE COURT: All right, Ms. Ross.

MS. ROSS: Thank you, Your Honor, may it please the Court. First, the great leap here is assumption that the State's making that this person who committed this burglary, armed robbery, was Christopher Russell. Here he's maintained he's not guilty, we're here for a trial to ascertain his guilt. So there's no nexus between the flight and the offense. And to bring in the prior would only be more unduly prejudicial to the jury because it's suggesting that there was a nexus between. And that he was the one and he knew why he was being chased. Or that Christopher Russell knew why he was being chased on this occasion.

Also, there has to be clear and convincing evidence of the guilt that the flight being knowledge of why there's flight or guilty knowledge for the flight to bring this in. Here, that simply doesn't exist. It's not a prior bad act. I'd argue it happened --

THE COURT: It's not a prior --

MS. ROSS: -- it didn't happen before anyway. It happened afterwards. So what we're looking at -- and it doesn't show common scheme or plan or identity or anything like that.

THE COURT: Of course, flight would always have to happen afterwards because you couldn't --

MS. ROSS: Right. So flight would be a

different issue.

THE COURT: I agree with you. And it's certainly not a prior bad act under the standard.

Seems to me, Mr. Moyer, I'm going to hear you but let me say this, it seems to me that there needs to be a little bit more foundational information put in the record before that nexus is even before me. I know that what you're saying, I'm having to make a leap from a evidentiary standpoint, the jury certainly can't and I'm not ruling inadmissible but I think you have to have a little bit more information in the record that's not here at this point in order for that nexus to be there. And if I find that it is, then it certainly would be evidence of flight. At this stage, I think it's a little premature.

MS. ROSS: And just one thing, if I can put on the record?

THE COURT: Sure, absolutely, please do.

MS. ROSS: Mr. Russell was charged with driving under suspension and with that failure to stop for blue light, so there's a suggestion why he might be -- another reason he could have been failing to stop, simply because it was driving under suspension.

THE COURT: I got you.

All right, let's take about a five minute break, then we'll come back and resume.

So, do you understand what my ruling is, Mr. Moyer? I know it's fairly ambiguous but what I'm trying to say to you is I think there needs to be more information in the record before that nexus is available for that evidentiary information to come in. Okay, sir.

MR. MOYER: Okay, Your Honor, yes, sir.

THE COURT: All right, thank you.

Have a break, about five minutes.

(WHEREUPON, a short break was taken.)

THE COURT: Mr. Moyer, you ready to proceed?

MR. MOYER: Yes, Your Honor.

THE COURT: Ms. Ross, you ready to proceed?

MS. ROSS: Yes, Your Honor.

THE COURT: Bring the jury in, please, sir.

(WHEREUPON, the jury came into open court at approximately 10:50 a.m.)

THE COURT: Mr. Moyer, you may call your next witness.

MR. MOYER: Your Honor, the State calls Bryan Leppard to the stand.

THE CLERK: Officer Leppard, please, place your left hand on the Bible and raise your right hand.

BRYAN LEPPARD, after being duly sworn, testified as follows:

THE CLERK: Thank you, please be seated. State

your name for the record.

THE WITNESS: Bryan Leppard.

DIRECT EXAMINATION

BY MR. MOYER:

Q Okay, Deputy Leppard, where do you work?

A Greenville County Sheriff's Office.

Q How long have you been in law enforcement?

A About five and a half years.

Q Has it all been with the sheriff's office?

A Yes, sir.

Q Here in Greenville County. What is your position with the sheriff's office right now?

A I work in the warrants division.

Q Okay. What was your position in December of 2010?

A Uniform patrol.

Q What was your duties as a uniform patrol officer?

A Respond to 911 calls, check for suspicious activity, routine patrol, things like that.

Q Okay. So when you say respond to 911 calls, can that be pretty much first responder for about most incidents that happen?

A Yes, sir, it can be just about anything.

Q Okay. And did you get -- is that what happened on December 18th of 2010? Were you called to respond to a 911 call?

A I was.
Q What was the location?
A [redacted]
Q What did the call go out as?
A An armed robbery in progress.
Q When you got the call, how many suspects were you led to understand was in this residence?
A They stated just a suspect, they didn't state more than one.
Q Now, when did you get the call?
A It was around, I don't remember the exact time, around 9:30-9:40, something like that.
Q What was your arrival time?
A Within two minutes, I was pretty close.
Q Okay, you have the date listed on your report? I'm sorry, I mean the time listed on your report?
A Nine forty-three.
Q Nine forty-three, is that the time you got the call or when you arrived?
A That would have been when I got the call.
Q Okay. You arrived within a couple of minutes?
A Yes, sir.
Q And were you the first officer to arrive?
A Yes, sir.
Q Did you have your blue lights and sirens activated?

A I did.
Q Now, what did you find upon your arrival at that location?
A When I pulled up -- I was fairly close, it only took two minutes to get there. When I pulled up I was the first one on the scene. And the incident location was the house on my right. And I saw Jimmy McDaniel and Daniel Durham, I later knew those names, standing in the roadway, the house past the incident location at [redacted]
Q Did you stop and talk to them?
A I did.
Q And what did you learn from your conversation with them?
A I spoke mainly with Jimmy because Danielle was pretty upset. And he stated that -- he kept saying that the suspects were inside the house or suspect was inside the house. And that they were going to run out the back. And he said it several times that they were going to run out the back and was concerned about getting around there so nobody would go out the back.
Q Okay. So what did you do in response to that?
A I advised the units on the radio that we needed for units emergency --
Q More officers?

A More officers. Then I around, there was a privacy fence at [redacted], and to find cover I went around [redacted] behind the back tree, one of the trees in the backyard to watch the backdoor. And I had my gun pointed to the backdoor.

Q Did other officers arrive?

A They did.

Q Did some other officers come back to where you were?

A Not at that point. Deputy Bowers was the next on the scene. And he went to speak with Danielle and Jimmy. And to get them more away from the house in case something happened. And he stayed towards the front and I could kind of see him out of the corner of my eye. And then I'm not sure the order but I know that Master Deputy McMakin arrived and then -- or the K-9 united arrived.

Q Who was the K-9 officer?

A Detective Rivera.

Q So what happened, what did you observe while you were watching the backdoor?

A While I was at the backdoor I observed some movement, there was a window back there, too. They had a light on so you could kind of see movement. I saw the light change and knew that somebody was towards the back was going to be coming out. They jiggled the

doorknob and kind of cracked it open. And I got on the radio and told Deputy Rivera that they're about to come out the back, if he could come around the side while I covered the door.

He then came around the side. And when -- it took about, I'm going to say 20, 30 seconds, I guess, they were figuring out what they were going to do, he then took off running, the suspect, Co-defendant--

Q Let me stop you real quick. You used the word they there a little bit as if there was more than one. How many people could you see?

A We still only knew there were one at that time.

Q Okay. So you were why watching one person at the backdoor?

A Yes, sir.

Q What happened at that backdoor while you were watching?

A Well I got Deputy Rivera to the side, it was at the side of the house, just the -- he's at the backdoor and it's right at the side with his dog. Antonias Williams ran out the backdoor towards the back fence. I then ran around the back fence and he ran right into the back fence which made a whole for him to get through. Then Deputy Rivera pulled his K-9 after him. The K-9 bit him, took him to the ground and I

was able to get him in handcuffs after having him showing his hands several times. And to stay on the ground, stop resisting.

Q Now, you referred to Antonias Williams, was he the Co-defendant in this case?

A That's correct.

Q Now when he came -- when he first came out the backdoor, was he walking, running?

A No, he jetted out the backdoor. As soon as he came out he was running. Actually, I saw him make a movement and throw something to the side when he came out.

Q Okay, let's talk about that for a second. So you saw him throw something?

A Yes, sir.

Q Did you ever find out -- ever go back to where the area where something was thrown?

A I did later.

Q What did you see?

A Found it was a gun.

Q What kind of gun?

A I'd have to look at my report.

Q A rifle --

A No, a handgun.

Q Okay, it was a handgun. Now, were you saying

anything to him while he was running?
A Yes, to stop obviously and show me your hands. And I was yelling loud enough that the deputies in the front could definitely hear me.
Q That was my next question, what did those deputies in the front do while you were yelling?
A One of the deputies, Deputy Brewer, was on the opposite side of the house towards the back. And he started running to the back, too. And it's my belief that the other deputies heard me yelling at him and started running to the back as well. We all thought there was only one suspect at that time.
Q Okay, so then -- then Deputy Rivera deployed the dog and took down the suspect?
A Yes, sir.
Q Do you remember how he was dressed at that time?
A The suspect?
Q Yes.
A He had camo pants, a dark black and blue t-shirt. And the victim advised that he had a police stocking cap on.
Q He had that on, too?
A Uh-huh.
Q Okay. Let me ask, if you would, just to step down to this map that is on the easel in front of you. And

just to point out a few things to the jury. If you could use this laser pointer right here. If you can show, first off, the house. And if you can show where the area was that the man, Antonias Williams, came out the door right and where he ran and was apprehended.

A He ran through -- there's a private fence right here.

Q Okay.

A Right through the corner.

Q Where had -- where were you while this was taking place?

A Behind that tree there. I ran around through the woods, right in here.

Q And that's where he was apprehended, right there?

A Yes, sir.

Q Okay.

A And Deputy Rivera was on the side right here.

Q That's Deputy Rivera who had the dog?

A The K-9.

Q Okay. Okay you can have your seat again, please.

A (The witness complies.)

Q Actually, let me revise that and ask you to step back out. We want to show you just a couple of photographs on the screen behind you. I'm going to ask you once again to take the laser pointer. If we

can start with State's Exhibit No. 3, can you tell the jury what it is we see in that photograph?

A That's the backdoor of the house where Antonias Williams ran out.

Q Okay. State's Exhibit No. 4?

A It's upside down.

Q One moment, please.

Can I ask you to turn on one of the lights so we can see a little bit. Okay, that's great, thank you.

A The back of the -- right there is where he ran through.

Q Okay, that's where Antonias Williams ran?

A Yes, sir.

Q What about i the foreground of that photograph?

A That's what he threw --

Q That's what Antonias Williams threw? That the handgun that you went back and saw?

A Yes, sir.

Q State's Exhibit No. 12, is that--

A Same handgun.

Q That's the handgun that was that found?

A Yes, sir.

Q State's Exhibit No. 6.

A That's where he ran through the back of the fence.

Q Now, did you take some property off Antonias

Williams?

A I did.

Q What did you take off him?

A I read him Miranda as soon as I got him over to my car, Miranda Rights. And he advised that he had the victim's cell phone. Mr. Lyles. He also had the victim's cash, $765.00, zip tie, screwdriver and I can't remember anything else.

Q Okay. Did you take those items from Antonias Williams?

A I turned them over to Investigator Weiner.

Q Investigator Weiner seated right here?

A Yes, sir.

Q Okay, so you took them from Antonias Williams and gave them to Investigator Weiner?

A Yes, sir.

Q Let me show you State's Exhibit No. 11, can you point out to the jury what it is we're looking at?

A That's -- it came out of Antonias Williams' pocket.

Q That's the money?

A That's the money and that's his screwdriver, zip ties and the victim's cell phone.

Q The watch?

A Yes. Yes, sir.

Q Okay. And that was all in Antonias Williams' pocket?

A Yes.
Q Okay. Thank you, please, have a seat. Now, did you speak to Mr. Lyles?
A I did.
Q Could you tell us how he was acting, what his reaction was?
A He was -- you could tell he was very frightened. He definitely -- he was kind of more in shock, didn't remember quite everything right away. Mainly because he was scared, so.
Q Okay. And did you talk to him inside -- were you the officer who went in and got him inside the house or was that somebody else?
A I don't know if anybody spoke to him before me, because I stayed with Antonias at my car for a while. I went in and spoke with him because I was doing an incident report and talk to him about the incident.
Q Okay. So you just talked to him to get some information for your report?
A Yes, sir.
Q Now, then the case was turned over to the investigator?
A Yes, sir.
Q Now, let me ask you -- jump ahead a few weeks to January 10th, 2011. Did you participate in the

arrest of the Defendant in this case, Christopher Russell?

A I did.

Q And when did that take place?

A It was January, I believe it was the 10th. I'm not sure of the exact time, it was in the afternoon.

Q Okay. It was 2011?

A Yes, sir.

Q And where did this take place?

A On 291 North Pleasantburg, just up from Worley Road.

Q How did it come about?

A We had received an anonymous tip that the Defendant--

MS. ROSS: I object.

THE COURT: I sustain that.

BY MR. MOYER:

Q Okay. Let me back up. Did you receive a call from dispatch about information about where the suspect may be?

A We did.

Q Okay. And in response to that call, what did you do?

A Responded to Boulder Creek Apartments and was looking for the suspect. And then he was supposed to be riding a bicycle and wearing dark clothes. There was several of us that responded there. And we were all riding double that day was it was ice and snow on the

grown, it was a ice storm. And we went up to the Spinx because we couldn't find him.

Q Spinx Station on Pleasantburg?

A Yes, sir, at Worley Road. Me and Deputy Hager, who I was riding with, then drove up North Pleasantburg, leaving the Spinx. Observed the Defendant. And went to try to get out with him to stop him, pulled into the Citgo. He was riding a bicycle wearing dark clothes. And when I went to get out with him at the Citgo, he turned around on his bicycle and started pedaling the other way on 291 back towards the Spinx. And I knew we already had a bunch of deputies there so I got on the radio and advised the deputies there, Hey, we're headed back to the Spinx, he running on his bicycle.

I ran after him and I advised the deputy that was in the car to go -- stay in the car and go after him in the car. Deputy Hagar. I was running behind him and other deputies were running up North Pleasantburg. One in the middle lane, one on the Southbound lane, one on the Northbound lane. We all ended up meeting in the middle and apprehending him.

Q Okay. And he's on a bicycle at that time?

A Yes, sir.

Q Okay. And the location you referred to, [redacted]

[redacted] Street, that's where the incident took place, that's in Greenville County?

A Yes, sir.

Q And did you know the height and weight of the Defendant at the time you arrested him?

A The Co-defendant or Defendant?

Q The Defendant, Christopher Russell?

A Just what the victim had gave me. The around 6-foot one, around 155-160. He said skinner than that Co-defendant. What his exact words were.

Q When you arrested the Defendant at that time, was he thinner than he is now?

A I mean, I think so.

Q Okay. Okay.

MR. MOYER: Please answer any questions the Defense may have.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MS. ROSS:

Q You spoke to Williams, you essentially arrested him, first on the scene to arrest him?

A I'm sorry, what's the question?

Q You were the first on the scene and you actually arrested Antonias Williams?

A I did.

Q And he spoke to you at that time?
A After I mirandized him, yes.
Q And you found him with money and the money and watch and a phone on him?
A Yes.
Q And those items had been taken from Mr. Lyles?
A Yes.
Q You later found out. And Mr. Williams denied taking the money, initially, didn't he?
A I don't remember if he did or not.
Q Okay.
A Did not ask him.
Q And Antonias Williams at that point gave some information about where his car was and some further information. Were you the one who took that information?
A I believe the only way I found out about the vehicle was the tracking ticket.
Q All right. And Antonias Williams said nothing about the person who was there with him, he said nothing about Christopher Russell, did he?
A When I asked him about the Defendant or who was with him, he would not tell me anything. He said he doesn't want to say anything right now. That -- he just said that there was supposed to be $200,000.00

at that house and there wasn't.

Q All right. So he said -- he made no mention of the name Christopher Russell of any name of a Co-defendant at that time?

A No, sir.

MS. ROSS: All right, I've got nothing further.

MR. MOYER: Nothing further, Your Honor.

THE COURT: Thank you, sir, you may step down.

MR. MOYER: The State calls Detective Walter Bowers to the stand.

THE CLERK: Sir, please place your left hand on the Bible, raise your right hand.

WALTER BOWERS, after being duly sworn, testified as follows:

THE CLERK: Thank you, please be seated. State your name for the record.

THE WITNESS: Detective Walter Greg Bowers.

DIRECT EXAMINATION

BY MR. MOYER:

Q Where are you employed?

A With the Greenville County Sheriff's Office, sir.

Q How long have you worked with the sheriff's office?

A Four years.

Q What is your position with the sheriff's office.

A Deputy in uniform patrol.

Q And was that your position in December of 2011?
A Yes, sir.
Q I'm sorry, 2010.
A 2010, yes, sir.
Q That was your position, okay. Now, did you respond to a call at [redacted] on that date?
A Yes, sir, I did.
Q When did you arrive on the scene?
A Maybe a minute or two after Deputy Leppard did.
Q Okay. What was taking place when you arrived?
A Deputy Leppard was kind of on the back side of the house. We were starting to set up the perimeter and so I went to the opposite side, the front side of the house.
Q Okay. Did you speak to anyone while you were there?
A Yes, sir, I spoke with Ms. Danielle Durham and the neighbor Mr. Jimmy McDonald.
Q How was Danielle Durham, how was her demeanor?
A Very upset. But I believe she was able to at least tell me that there was one person inside and they had her grandmother basically hostage.
Q Now, what did you observe going on there with the house while you were speaking to them?
A Not much honestly, sir. I was just trying to get them away from the house and we were still trying to

set up the perimeter.
Q And did you hear -- what do you mean by setting up a perimeter?
A I'm sorry, setting up a containment perimeter so if anyone does run out or anything like that, you can catch them.
Q So kind of set up officers all the way around the house?
A Yes, sir.
Q Now while you were doing that, did you hear what was taking place around the back of the house?
A While we were doing that I did hear that over the radio that there was one -- one person started to run out the backside and Deputy Leppard and the K-9 went after him.
Q Okay. And you stayed there at the front?
A Yes, sir.
Q Okay. And what did you observe while you were there after that?
A Shortly after that, I believe the grandmother, Ms. Lyles, came running out. I also believe I saw another person--
Q Before we get to that, let's talk about Ms. Lyles. Ms. Lyles came out of the house?
A Yes, sir.

Q Which door did she come out?
A I believe she came out the front, sir.
Q When she came out, what did you do?
A Try to secure her, make sure she was okay and try to move her to the safest area we could get across the street in a neighbor's yard.
Q How was she acting?
A Also very upset, very hysterical. I think she was very concerned for her husband, Mr. Lyles.
Q Okay. And then so while you were talking to her, you said you observed something else happen with the house, what did you observe then?
A I observed another subject run out of the front door and run into the hole while we were still setting up our perimeter. And go across the street and disappear in between some houses.
Q Were you able to get a good look at that person?
A No, sir, I was not.
Q So you're not able to identify -- do you remember anything about the person at all?
A No, sir.
Q Just that a person came running out of the house?
A Yes, sir.
Q When he ran out, what did you do?
A Continued to keep -- provide security for Ms. Durham

and Ms. Lyles. And I believe I tried to radio in saying that we had running through the hole in our perimeter.

Q Okay. But that person was not caught that night, isn't that right?

A He was not caught that night, no, sir.

Q Now, did you get any medical attention for Ms. Lyles?

A I believe we did call EMS to the scene. And then eventually I think she ended up going to a neighbor's house down the street.

Q Ms. Lyles did?

A I believe so.

Q And did you later visit her there?

A Yes, sir, I had to give her a Victim's Assistance Form that we normally provide for victims of crime.

Q Okay. You give that form to all victims?

A Yes, sir.

Q And do you remember how much later it was that you did that?

A An hour or two. It was after everything was secured at the scene. And I believe forensics was out at the scene. So it was a good while later, sir.

Q Do you remember anything about her emotional state at that point?

A I believe she was still pretty upset. I believe I

ended up giving the form to another family member because they said she was in a difficult emotional state.

Q Okay.

MR. MOYER: Okay, thank you. Please answer any questions the Defense has.

MS. ROSS: I have no questions.

THE COURT: Thank you, you may be excused.

MR. MOYER: Thank you.

The State calls Mason Hubbard to the stand, please.

May I have one moment, please, Your Honor?

THE COURT: Yes, sir.

MR. MOYER: Your Honor, the State calls Richard McGruder.

THE CLERK: Sir, place your left hand on the Bible, raise your right.

RICHARD MCGRUDER, after being duly sworn, testified as follows:

THE CLERK: Thank you, please be seated. State your name for the record--

MR. MOYER: I'm sorry.

DIRECT EXAMINATION

BY MR. MOYER:

Q I was going to ask you to state your name for the

record?
A Richard Douglas McGruder, Jr.
Q Okay, Deputy McGruder, where are you employed?
A Greenville County Sheriff's Office.
Q How long have you been in law enforcement?
A Three years.
Q And has it all been with the sheriff's office?
A Yes, sir.
Q What's your position now?
A Currently a School Resource Officer.
Q What school are you in?
A Berea Middle School.
Q What was your position back in December of 2010?
A Deputy on uniform patrol.
Q Now, let me take you back to the night of December 18th, 2010, do you remember that night?
A Yes, sir.
Q Okay. Where were you that night when the call came out for this case?
A When the call originally came out I was working at the front desk.
Q Did you hear the radio traffic about the incident?
A Yes, sir.
Q Okay. And did you eventually, at some point that night, go to that scene, that location?

A Yes, sir.
Q What led you to go out there that night?
A Dispatch advised that there was a second -- possible second subject that ran out the front door. And that there was also a possible suspect vehicle, being a white Toyota van.
Q So you were looking for a white Toyota van?
A Yes, sir.
Q Were you given anywhere specifically to look for it?
A No, sir.
Q Okay. So what did you do? How did you do your search?
A While I was patrolling the areas around the incident location, I discovered a white color Toyota van parked at [redacted] Which is a street that parallels [redacted]. And it's a vacant resident, windows are boarded up but the vehicle was backed into the driveway.
Q Okay, let me ask you to just step down and take a look at this map, State's Exhibit No. 34?
A (The witness complies.)
Q Can you point out to the jury where [redacted] is?
A Three zero three Satterfield Drive is right here.
Q So as we can see from the map, it's just the next

street over from [redacted]?

A Correct.

Q And can you point out on that map where you saw the vehicle?

A The vehicle was parked back into the driveway, right here.

Q Was it backed in or driven in forward?

A It was backed into the driveway.

Q Okay. All right, you can have a seat again, please.

A (The witness complies.)

Q When you saw the vehicle, what did you do?

A I immediately stopped, called for additional units. And after additional units arrived, we approached and properly cleared the van. Didn't observe any subjects in or around the van. But we did notice that it had a dealership paper tag on the back of it. And that there was a set of keys, black cap, bag and also a cell phone inside the car.

Q Did you go in the car?

A I did not go inside the car.

Q So you were just looking through windows?

A Correct.

Q With your flash light. And did you stay with that vehicle?

A I stayed with the vehicle until forensics unit

arrived. And after forensics unit arrived, we notified a towing service and they removed the vehicle.

Q I'm handing you State's Exhibit Nos. 20, 21, 22, can you take a look at those photographs? Do you recognize what is in those photographs?

A Yes, sir.

Q What is it?

A It's the location of [redacted] and the vehicle how it was that positioned in the driveway.

Q That's the way it looked that night?

A Yes, sir.

Q December 18th, 2010.

MR. MOYER: Your Honor, I move to have State's Exhibits 20 through 22 entered into evidence.

THE COURT: Any objection?

MS. ROSS: No objection.

THE COURT: Admitted without objection.

(WHEREUPON, State's Exhibits Nos. 20-22 were admitted into evidence.)

BY MR. MOYER:

Q Let me ask, if you would, just step down here.

A (The witness complies.)

Q And use this laser pointer. Let's start off with State's Exhibit No. 24. Can you tell the jury what

that is a photograph of?

A Here's a photograph of [redacted], that's the window boarded up.

Q Okay.

A And right here is the driveway.

Q Okay. State's Exhibit No. 20, tell the jury what we see in that photograph?

A The same picture, [redacted]. And the same white vehicle backed down the driveway.

Q Then State's Exhibit No. 21.

A That the white Toyota van that was backed down the driveway at [redacted]

Q Then you stood by until forensics officer came out?

A Correct.

Q All right, please, have a seat.

MR. MOYER: I have no further questions for this witness.

THE COURT: Cross-examination.

MS. ROSS: We have no questions for this witness.

THE COURT: All right, thank you, Officer, you may be excused.

MR. MOYER: The State would call Iona Ooten to the stand.

THE CLERK: Please, place your left hand on the

Bible, raise your right.

IONA OOTEN, after being duly sworn, testified as follows:

THE CLERK: Thank you, please be seated. State your name for the record.

THE WITNESS: Iona, I-O-N-A, Ooten, O-O-T-E-N.

DIRECT EXAMINATION

BY MR. MOYER:

Q Where are you employed?

A With the Department of Public Safety in the Forensics Division.

Q What is the forensics division, what do y'all do in the forensics division?

A I work mainly with the crime scene unit. We respond out to the crime scene to process and collect the evidence and bring it back to process.

Q How long have why been working for the forensics division?

A Five years.

Q Now, were you called out to the [redacted] Street?

A I was.

Q On December 18th of 2010?

A I was.

Q Okay, what time were you called out there? When did

you arrive on the scene?

A I believe I was dispatched at 10:29 p.m. And I got out there around 10:52 p.m.

Q Okay, how long were you there?

A A little over an hour.

Q Okay. Now, did you do anything out at [redacted]

[redacted]

A I did.

Q Okay, let's start off, were you able to process for fingerprints?

A Not at the scene. When I arrived there I was told that the suspect that had been apprehended was wearing gloves. And then later on speaking to the victim, he stated that both suspects were wearing gloves. So I knew there were not going to be latent prints on the scene. However, the latent prints that were collected, mainly the .40 caliber firearm, I did process it for latent prints at a later time in our office.

Q Okay, we'll get to that in just a moment. So you -- there's no reason that the process -- there's nothing to process for fingerprints at the scene because they were wearing gloves?

A Correct, correct.

Q Okay. And so at that point did you collect any

evidence there?

A I did.

Q What did you collect?

A I collected .40 caliber firearm in the backyard, I collected a face mask in the area where Deputy Leppard advised the suspect had been taken into custody. I also collected a zip tie that was in the victim's bedroom. As a matter of fact, both of them were in the victim's bedroom. So I collected two zip ties.

(WHEREUPON, State's Exhibit No. 36 was marked for identification only.)

MR. MOYER: Your Honor, I will advise the Court that the firearm has been cleared with courtroom deputies as safe and has locks on it.

THE COURT: All right, ladies and gentlemen of the jury, just for your edification, I know you just heard that, but anytime there will be weapons handled in this courtroom, number one, they will be disabled, that will be not capable of being discharged.

Also, I'm going ask to any witness or person that question the witness to instruct them not to point it regardless in anybody's direction, okay, sir?

MR. MOYER: Yes, sir. Okay, thank you, Your Honor.

BY MR. MOYER:

Q I'm going to hand you what's been marked as State's Exhibit No. 26 [sic], can you take a look at the contents of that box?

A Yes, sir.

Q Do you recognize what that is?

A I do.

Q What is it and how do you recognize it?

A It's the .40 caliber firearm that I collected along with the magazine and the bullets that were in the magazine. It's my -- I got my initials on the packaging. And I recognize the serial number.

Q Okay. So that is the handgun you collected. Where did you collect it from?

A It was in the backyard, just out from the rear entrance door.

Q Okay, did you take photographs of it?

A I did.

Q There are paragraphs already entered into evidence, State's Exhibit No. 4 and 12. If I can just hand those to you. Are they photographs of this handgun as it was in the yard before you collected it?

A Yes, it was.

Q Okay. Now, tell us, was the gun loaded then?

A It was loaded.

Q How many bullets were in there?
A There were 10.
Q In a magazine you said?
A Correct.
Q And you have taken the magazine out of the pistol?
A Correct.
Q And the bullets were taken out of the magazine as well?
A Correct.
Q And they are in a separate little bag in the box?
A They are.
Q Now, what did you end up doing with that firearm?
A The firearm, the magazine and all 10 bullets were processed for latent prints.
Q How do you do that?
A It was placed in a fuming chamber with cyanoacrylate to try and set on any other latent prints to show if they had touched it previously without having the gloves on. But nothing came out with it.
Q Is it normally -- like if you were to try to find fingerprints in the Lyles' home, how would you have done that?
A Typically, that's done with just using a flashlight and then applying black fingerprint powder on to the surfaces that they would have touched. Any of the

effected areas that the suspects were seen messing with.

Q Okay, why didn't you do that same process with this firearm?

A Well, the firearm was laying in the grass, it was a little bit moist -- excuse me. It was a little bit moist so I let it get back to the office and dry completely. Because if any water is on the item when you process it with a brush, it can smear the print and ruin it. So it took a chance of messing up any evidence of that nature.

Q Okay, so then the item is in an actual container and it's fumed?

A Yes. It goes in a chamber where the -- basically it's super glue that adheres to the latent prints so it makes it more visible to the eye. Then at that point you can either apply powder to it or photograph it if there is a print.

Q Okay. And you weren't able to find any fingerprints on this weapon?

A No, I was not.

MR. MOYER: Your Honor, at this time I move to have State's Exhibit No. 26 entered into evidence.

THE COURT REPORTER: Mark, it's 36.

THE COURT: Any objection?

MS. ROSS: Judge, I would question the relevance of the weapon. This was the weapon that I believe the evidence is showing that Mr. Williams, who is not on trial, possessed. So I would just object to its relevance at this time. I think it's that simple.

THE COURT: I'll overrule your objection.

MR. MOYER: And just to make a correction, Your Honor, it's actually, State's Exhibit 36 not 26.

THE COURT: Thirty-six?

MR. MOYER: Thirty-six, Your Honor.

THE COURT: So admitted.

(WHEREUPON, State's Exhibit No. 36 was admitted into evidence.)

BY MR. MOYER:

Q I'm going to now hand you State's Exhibit No. 37. And, if you could, open the contents of that bag and tell us if you recognize what is contained therein.

A (The witness complies.)

Q That's not in evidence yet so, if you would, just hold it down below the bar when you take a look at it.

A Okay. Yes, I recognize them.

Q Okay. What is contained in that bag?

A One is a black face mask that was collected from the backyard. And the other two items are the zip ties

that were collected from the victim's bedroom.
Q Okay. And you collected those items that night?
A I did.
Q And how were you able to recognize those items?
A It's my handwriting on the back and it's sealed with my initials.
Q Okay. And what did you do with those items after you collected them?
A They were basically just packaged and placed in P&E, property and evidence.
Q Okay, and they were bought to court today.

MR. MOYER: Your Honor, at this time I move to have State's Exhibit No. 37 entered into evidence.

MS. ROSS: Same objection, Judge.

THE COURT: Overruled, it will be admitted.

(WHEREUPON, State's Exhibit No. 37 was marked for identification and received into evidence.)

BY MR. MOYER:
Q Let me ask you, the items that you just described were in other bags as well, is that correct?
A Yes, sir, they are.
Q Would you just open those bags.
A (The witness complies.)
Q Okay, let's start with the bag that you just opened last. Would you just pull out the contents of that

and tell the jury what that is.

A This is a black face mask that in the backyard on the other side of the fence in the wooded area where the suspect was taken down with the dog.

Q Go to the next.

A This is a zip tie I collected from the victim's bedroom floor.

Q Okay. Then the final bag, if you would.

A This is the second zip tie I collected, it was on the victim's bed.

Q Okay. So did officers direct you to these items, these zip ties that you talked about?

A They did.

Q Did you take photographs of them?

A I did.

Q I'll show you number 8, does that photograph contain photographs of the zip ties that you collected?

A Yes, it does.

Q Okay. Thank you. Okay. Now after collecting that evidence there at [redacted], did you do anything else involving this case?

A I was instructed to go over to 303 Satterfield to photograph and seal the vehicle that was at that location.

Q Okay. And what did you find when you got to that

location?

A When I got there Deputy McGruder was standing by and it was the white Toyota van. At that time we knew a search warrant was going to be obtained for it so I did not go in the vehicle. My job was strictly to photograph it as it was and seal it up.

Q Okay. And you were here when the photographs were shown a few minutes ago?

A Yes.

Q Is that the vehicle that you went to?

A Yes, it is.

Q Okay.

MR. MOYER: Please answer any questions that the defense may have.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MS. ROSS:

Q Were keys to that vehicle located around the vehicle?

A I believe they were in the vehicle.

Q Okay. And it's my understanding the vehicle was unlocked so you didn't--

A I didn't touch it all. Except to put the tape on it.

Q Okay. Now, you said you got one mask?

A Yes.

Q And that was a full head and face mask?

A It was.
Q Did you look for any hair or DNA samples off the mask?
A We didn't do that at that time, I didn't do it. It was packaged and placed at that point. If it was to be sent off for DNA, anything of that nature, it would have been.
Q So you're not aware whether that happened or not but you did not do that?
A I did not.
Q Now, at the scene was there a second face mask there?
A I did not locate one.
Q Did anyone say anything about one or point you towards one?
A Not that there was one on scene, no.

MS. ROSS: All right, thank you.

MR. MOYER: Nothing further, Your Honor.

THE COURT: All right, thank you, ma'am, you may be excused.

MR. MOYER: May we approach?

THE COURT: Yes, sir.

(WHEREUPON, an off-the-record bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: Madam Forelady, ladies and gentlemen

of the jury, we're going to take a morning break at this stage. Probably about 15 minutes. If you'd go back, make yourself relaxed. If you need anything let the bailiffs know, okay.

(WHEREUPON, the jury left open court at approximately 11:35 a.m.)

THE COURT: All right, be in recess 15 minutes.

(WHEREUPON, a short break was taken.)

THE COURT: You ready?

MR. MOYER: Yes, Your Honor.

THE COURT: Ms. Ross.

MS. ROSS: We're ready, Your Honor.

MR. MOYER: Your Honor, before the jury comes in can I put one other matter on the record.

THE COURT: Yeah. Hang on, make sure he didn't get them.

Thank you, Deputy.

Yes, sir, Mr. Moyer.

MR. MOYER: I will be introducing -- moving to introduce some cell phone records into the record about three witnesses from now. I just want to -- we've entered into some stipulations about redacting some of the records. For the record, we've agreed that we've redacted some text megasses from those records. It shows when the texts were sent, just the actual messages have been taken

out. And also, there's some video, photograph files on the record as well, we have agreed they're not relevant to this trial. We agree to stipulate that they won't come in either.

THE COURT: Ms. Ross, you agree to that stipulation?

MS. ROSS: Well, let me just clarify the stipulation. At the opening of trial I did a motion to suppose those phone records. And in handing up the subpoena on those, I did see -- I thought that there was a material -- potential material misrepresentation in that there was a statement that the Co-defendant -- that Mr. Williams had indicated that the phone belonged to Christopher Russell. I haven't heard anything to -- like that and I haven't seen any testimony of that. Nothing in discovery. So I just argue that that would be a Franks v. Delaware situation of material misrepresentation on the warrant. So I would certainly stipulate to the phone records if they are found by you to come in that that redacted version is fine.

THE COURT: Subject to your objection. Okay, fair enough.

Now, you're ready to proceed?

MR. MOYER: Yes, sir.

THE COURT: Ms. Ross?

MS. ROSS: Yes, Your Honor.

THE COURT: Bring the jury now, please, sir.

(WHEREUPON, the jury came into open court at approximately 12:00 p.m.)

THE COURT: Mr. Moyer.

MR. MOYER: May it please the Court, Your Honor, the State calls Jonathan Hamilton to the stand.

THE CLERK: Sir, please, place your left hand on the Bible, raise your right hand.

JONATHAN HAMILTON, after being duly sworn, testified as follows:

THE CLERK: Thank you, please, be seated. State your name for the record.

THE WITNESS: Jonathan Hamilton.

DIRECT EXAMINATION

BY MR. MOYER:

Q Where are you employed?

A Greenville County Department of Public Safety Forensics Division.

Q How long have you been in law enforcement?

A Law enforcement, total 12 years.

Q How long have you been with the forensics division?

A In a few months it will be six years.

Q What do you do in the forensics division?

A We go to calls of service for any kind of crime scene

for documentation, collection and preservation of any evidence.

Q Did you participate at all in the case that's before the court?

A Yes, sir, I did.

Q Okay, what was your role?

A I responded to a tow company in reference to processing a Toyota van which had been sealed and a search warrant obtained.

Q Okay. Did you note the location where you went to process that vehicle?

A Yes. It was [redacted], that's downtown Greenville.

Q And it was for the purpose of processing the van you said?

A Yes, sir.

Q A do you have details on the van?

A Yes, sir, I do. It is a 2011 Toyota Sienna.

Q Did you take photographs of it?

A Yes, I did.

Q I'm going to show you State's Exhibit No. 27, can you recognize what's in that photograph?

A Yes, sir, it's the van that I spoke of.

Q Okay.

At this time I move to have State's Exhibit No.

27 entered into evidence.

MS. ROSS: No objection.

THE COURT: Admitted without objection.

(WHEREUPON, State's Exhibit No. 27 was admitted into evidence.)

BY MR. MOYER:

Q Now, when you say you process a vehicle or something else, what do you mean by that?

A Processing vehicle means that I document from the exterior and go in. So I would first take documentation by photographs, then I would move into collection of any evidence if need be from the inside or outside of the vehicle. Then move on to processing it for any kind of latent fingerprints.

Q Now, in this particular situation, did you collect the evidence or did you leave it for somebody else?

A No, I didn't. Sergeant Weiner actually is the one that collected the evidence.

Q Sergeant Weiner, this investigator is the Sergeant who was with you when this processing took place?

A Yes, sir, he had a search warrant in hand when I responded out to the tow company.

Q Now, when you found the vehicle, did you notice anything about whether it had been -- anyone else had done anything with the vehicle prior to your doing

it?

A Yes, our protocol -- remember we have a vehicle which we know is going to have a search warrant obtained, we photograph it at the scene, where it is as it stands. Then we seal it. We put a piece of evidence tape, something to seal the doors to show the person who is to going to execute the search warrant, me, that the doors have not been tampered and nobody's opened the vehicle.

Q Was this vehicle sealed?

A Yes, it was.

Q By whom?

A By Officer Ooten.

Q Okay, who just testified a minute ago?

A Yes, sir.

Q Okay. Now, what was the date that you conducted this processing?

A December the 20th of 2010.

Q Do you have the time of day?

A I received the call at 10:14 and arrived on scene at 10:28 in the morning.

Q Okay. Did you try to find or process this vehicle for fingerprints.

A Yes, I did. I processed certain areas, of course, the areas in which someone would handle or touch is

what we mainly focus on during the search warrant.
Q Okay. And before we talk about what areas you searched, tell us how you go about how you processing for fingerprints or looking for fingerprints on something.
A A fingerprint is something that you normally can't even see. It oils -- oils and particles from your fingers that leave trace behind of that fingerprint. So what we do is we add powder to it with a brush and that brings that latent print out so that we can see it with our eye. At which time we put a piece of tape down, clear tape, pull that tape of and put it on a white card. So that way you have that transparency where you can actually see whatever we pull out.
Q Okay. So, tell us what all areas of this vehicle that you looked for fingerprints.
A On this date for this vehicle, I processed the exterior and interior of the driver side front and driver side rear sliding doors. The exterior and interior of the passenger side front and rear sliding doors. The exterior of the gas tank lid, the rear hatch lid, the exterior of the front dashboard molding, so the dashboard, the hard smooth areas of the dashboard, the rear-view mirror, the radio and

information display, the center of the dashboard. And the exterior of the driver and passenger front seatbelt inserts. The actual metal part that inserts into the actual seatbelt.

Q Okay. So you're actually just looking for areas that somebody might normal would--

A Would touch.

Q Touch.

A Yes, sir.

Q Okay. Well what did you find when you processed this?

A I only received a -- I received a positive match on the front dashboard, actually. And the rest of the places were either non-comparable, which means we can't really make a match of off that print or negative results. Which we didn't get anything off the rest of it.

Q Okay. So in other words, you were only able to lift one fingerprint from this whole vehicle?

A One card, yes, sir, was only one I was able to retrieve.

Q Now, when you say something is non-comparable, what does that mean?

A Non-comparable means that my latent examiners, when I forward that latent card down to my latent examiners,

is a print that they're not going to be able to make a match for because there's not enough points, the ridges are not visible. You know, multiple different things that they look for.

Q So it's kind of a partial print that is just too small to be able to make a match?

A Yes, sir.

(WHEREUPON, State Exhibit No. 38 was marked for identification only.)

BY MR. MOYER:

Q All right, was that fingerprint card for that one fingerprint you were able to lift, was that brought to court?

A Yes, it was.

Q Let me hand you State's Exhibit No. 38, can you recognize what that is?

A This is a latent card envelope where we place our latent cards that we get on the scene. And inside, have a latent fingerprint card as well as a Latent Comparison Request Form.

Q Okay. And what's the purpose of that?

A The Latent Comparison Request Form is -- when I was on the scene, if investigator tells me, okay, we have a person of interest in this case, they will give me their information. And I will go back and actually

look up on the computer screen to see if there's any ID patch from prior arrests and prior records. If I find one, for me to be able to let my latents division know, that hey, there's a print out there that we want to try to match too, I'll send that card, they're able to pull that up and it narrows the search down for that fingerprint.

Q Okay. And then you -- the fingerprint that you lifted with the tape, did you put it that on that card?

A Yes, I did.

Q And what did you do with the card after you put the latent print on that card?

A Once attached the tape to the back with the possible fingerprint, I fill the front of it out and then I put it into a latent envelope. And then later put it into a -- at that time into a box at the -- our crime scene office.

Q And it's put in that box for what purpose?

A It's a secured box. The only people who have a key to that box is the latents division. So it goes from my hands into that box and nobody else can touch it without the latents division. They have to come out, unlock the box and then retrieve those latent envelopes.

Q And latents division, they're the folks, the people who actually go out and try to do the comparison with the fingerprint?
A Yes, they're another section of the forensics division that actually that's their main purpose to look at any latent fingerprints that are collected to try to make a match and do that side of our fingerprinting.
Q So that's done by somebody else, you just take the print and then turn it over to the other person?
A Yes, sir.
Q Okay.

MR. MOYER: Please, answer any questions the Defense may have.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MS. ROSS:

Q So you can't say whether that fingerprint has any anything -- any match to do with this case at all, can you?
A Once I forward that fingerprint, I don't do any other follow up to that.

MS. ROSS: All right, nothing further.

THE COURT: Any redirect?

MR. MOYER: No redirect, Your Honor.

THE COURT: Thank you, you may be excused.

THE CLERK: Place your left hand on the Bible, raise your right.

CHRISTOPHER GARY, after being duly sworn, testified as follows:

THE CLERK: Thank you, please, be seated. State your name for the record.

THE WITNESS: Christopher Adam Gary.

DIRECT EXAMINATION

BY MR. MOYER:

Q Where are you employed?

A I work with the Greenville County Department of Public Safety in the forensics division.

Q What's your position there?

A I'm the latent fingerprint examiner.

Q How long have you been with them?

A I've been with Greenville County a total of four years full-time this coming July. And prior to that I actually had the opportunity to work with them in a internship where I was studying in an apprentice style training program for three years. For a total of seven years with Greenville County.

Q What are your duties -- first, what's your position?

A A latent fingerprint examiner.

Q What do your duties entail?

A The crime scene office, they go out and they retrieve what are called latent fingerprints. And once they put them in a locked drop box, I pick them up every morning. And I examine those fingerprints for quality and I compare them to any individuals that they're requested to be compared to. And then I issue reports or other matches of my findings and present that evidence in court.

Q Okay, how far did you go in school?

A I have a Bachelor's Degree from the College of Charleston.

Q What specialized training have you had to be a latent prints examiner?

A In 2009 I was accepted -- I was one of 15 in the country to go down to the National Forensics Science Technology Center in Florida. And I was in a training program that was sponsored by the National Institute of Justice. At this training program, we were there for 10 weeks for a total of 400 hours. In this training program we went through basically the beginning of a latent print examiner, all the way through court testimony. Like I said, a total of 400 hours.

MS. ROSS: I stipulate to his expertise.

MR. MOYER: Okay.

THE COURT: What area are you stipulating to?

MS. ROSS: In latent prints.

THE COURT: Very well.

Ladies and gentlemen of the jury, normally witnesses are limited to giving their testimony about what they've heard, they've seen, they've smelled, what their senses tell them. However, because of their education or experience, a person may be qualify in a particular field. In that case they're allowed to give their opinion in that field and the facts surrounding that opinion. In this case, this witness has been stipulated to be an expert in latent fingerprint examination and will be allowed to give his opinion in that area. His testimony is like any other testimony in this case. You may accept it, you may reject it or do what with it what you think is proper.

All right, sir.

BY MR. MOYER:

Q I just have a few questions for you then. Let me hand you what's been marked as State's Exhibit No. 38 for identification purposes only at this time. Can you identify what that is?

A Yes, I can.

Q What is it?

A It is a latent fingerprint envelope.

Q Okay. What is inside that envelope?

A Inside this envelope is a latent fingerprint card that was submitted by Officer Jonathan Hamilton, ham as well as a comparison request with the name Antonias Williams on it that was requested for me to compare that individual to this latent fingerprint.

Q Okay. And when was that in your possession and your custody and control?

A I took control and possession of this on December 21st, 2010.

Q And how long has it been in your possession and control?

A This has been in a locked filing cabinet in my office until court today.

Q Okay, you brought it to court today?

A Yes, sir.

Q How were you able to recognize it?

A My initials and the date that I received it at the bottom card. As well my handwriting on the front and the back of the card.

Q Okay, did you -- okay. It is substantially in the same condition now as it was when you used that card for examination purposes back in December 2010?

A Yes, it is.

MR. MOYER: I move at this time to have State's Exhibit No. 38 entered into evidence.

THE COURT: Any objection?

MS. ROSS: Same objection about the relevance to Christopher Russell.

THE COURT: All right, overruled. It will be admitted.

(WHEREUPON, State's Exhibit No. 38 was admitted into evidence.)

BY MR. MOYER:

Q Okay, now, did you attempt to make any fingerprint matches with that latent print that was taken from this vehicle?

A Yes, I analyzed the fingerprint for quality. And I saw that it was not the greatest of quality but it was a fingerprint that we could compare, it had enough ridge detail. If you think of your fingers, if you look on your hands, it's kind of like a rubber stamp. You have raised ridges. And when they come in contact with a surface, you leave behind oil moisture in the form of a latent fingerprint and that's what's lifted. And I did say that this fingerprint did have enough -- had enough ridges and had enough detail that I could examine it and compare it. I did compare it, as I was requested to, to Antonias Williams on December 21st, 2010. On June 9th, 2011, I was also requested to compare this

to Christopher Russell.

Q Okay. Were you able to match it against either one of those two people?

A No, I did not. It was neither one of those two individuals.

Q Okay. So, we don't know whose fingerprints that is?

A That is correct. There was no identifications made on that fingerprint.

Q Now, tell the jury a little bit how fingerprints are left on a surface.

A Like I said earlier, if you think of like the rubber stamps we had as children or maybe we still use as adults, you have on your hands and actually on the surface of your feet, these raised ridges. These raised ridges, they collect moisture. If you were to feel your hands you would feel that you have a little bit of moisture. The more nervous you get or situations like that, you build up more moisture. And that's just from sweating. You can also collect oil from your face anytime you touch another object. Or anytime you come in contact with say blood or makeup or chocolate, that substance would then adhere to those surfaces. Whenever you touch a surface, you then leave behind or have the chance to leave behind latent fingerprints that crime scene later comes

along and they dust when they're looking for objects that may have been touched. And then that dust adheres to that. Then we can put tape, it's kind of like Scotch tape, it's nothing special, but you put it over that black powder and you can lift it. And then you can put it on a card and put all that information that's associated with that case, so you know where that fingerprint came from.

Q Are fingerprints always left behind when a person touches a surface?

A Unfortunately, not. A lot of times we see television shows that make us think that fingerprints are everywhere. That's simply not true. A lot of times the texture that a fingerprint is on, may or may not yield a fingerprint. If it has a lot of ridges or it's very textured, maybe like a leather purse or a leather handbag, you would not generally leave behind fingerprints. The individual as well also plays a big factor. Like I said, moisture is the key component in leaving a fingerprint. If a person doesn't sweat as much or maybe they have damaged ridges -- typical professional like a brick mason who is constantly lifting bricks and rubbing off their fingerprints with those bricks all day long, they generally do not leave a good fingerprints. Another

factor is if an individual was wearing gloves or something over their hands, that they would not directly come in contact with a surface, they would not leave fingerprints.

Q Now, when a fingerprint is left on a surface, how long will that fingerprint -- how long can that fingerprint remain on that surface?

A It could remain -- like I said, you can touch a surface and not leave a fingerprint at all or it can remain indefinitely. There's no scientific timetable for how long a fingerprint can or cannot remain on a surface. It just depends on the conditions, you know, the weather conditions and the conditions that the fingerprint was placed there to begin with as to how long that it will last.

Q So a fingerprint can be left somewhere indefinitely then?

A Yes, sir, tact.

Q Okay.

MR. MOYER: Please, answer any questions that the Defense may have.

CROSS-EXAMINATION

BY MS. ROSS:

Q All right, so you studied that one fingerprint and made a comparison to Christopher Russell's prints,

correct?
A Yes, ma'am, I did.
Q And when you said they were on file, they might have been on file from his January 10th arrest on these charges, correct?
A Yes, ma'am. That is the fingerprint card that I used to make the comparison.
Q And that is the one you compared one-on-one and you can say definitely that it's not a match?
A Yes, ma'am.

MS. ROSS: All right, nothing further.

MR. MOYER: Nothing further, Your Honor.

THE COURT: All right, thank you, sir, you may be excused.

MR. MOYER: State would call Sergeant Dave Weiner to the stand.

THE CLERK: Sir, if you'd, please, place your left hand on the Bible, raise your right hand.

DAVE WEINER, after being duly sworn, testified as follows:

THE CLERK: Please, be seated, please state your name for the record.

THE WITNESS: Dave Weiner.

DIRECT EXAMINATION

BY MR. MOYER:

Q Okay, what is your position with the sheriff's office?
A I'm currently employed as a Sergeant or supervisor over crimes against children's unit.
Q How long have been in law enforcement?
A Thirteen years, with the sheriff's office.
Q What are your duties right now as Sergeant?
A In layman's terms I'm a paper pusher. I make sure my people have what they need to get their job done. Crimes against Children, obviously, specifically is sexually or physical abuse against minors.
Q Okay. What were you doing in December 2010?
A I was assigned as an investigator in the armed robbery unit.
Q How long were you in that unit?
A Almost five years.
Q Okay. And what did you do before you were in the armed robbery?
A Uniform patrol. Every deputy starts there. I worked uniform patrol for almost seven years?
Q So you worked your way up to --
A Yes, sir?
Q -- an armed robbery investigator and then now you're a Sergeant?
A Yes, sir.

Q Okay. Now, were you assigned the case that's currently before the court?
A Yes, sir.
Q When did you first get involved in this case?
A I was actually working what we call a side job, secondary employment. We're government employees, we obviously don't make the best salary so we supplement that by working secondary employments. It was a Saturday night, I was working a neighborhood as security. I heard the call actually get dispatched.
Q Were you nearby the area?
A No, I was working a neighborhood off of Devenger Road on the East side of town. And this obviously was on the West side. But as I heard the call developing, I started heading that way.
Q Okay. When you arrived, what was taking place there at the scene?
A A lot of uniform patrol deputies, several of their supervisors. Usually when I can come in I can generally settle things down a little bit. People get very excited. There was one suspect detained, he had been bitten by a dog. So I try to bring a little bit of calm and order to what's going on out there so we can try and piece everything together.
Q And that was Antonia Williams who had been --

A Correct. He was in the backseat in the back of the patrol car when I got there.
Q Did you speak to him?
A I did, yes, sir.
Q Did you get any information from him that helped you that night?
A When I responded I heard that one of the suspects had fled out the front door and had not yet been apprehended. I knew to me, there's a great risk to the public at-large being that there's a armed robbery suspect out there on the loose. I knew they had to get there some way so I wanted to know where the get away car was. Can we track it and see if he returns to the get away car.
Q And did Antonias Williams tell you where that was?
A Eventually. He didn't want to cooperate for the first two or three minutes, but I just almost begged him, help us out. And he told me where the car was parked, one street over.
Q Okay. And you got that information out on the radio?
A Yes, sir.
Q Now, you heard some testimony that he refused to tell deputy Leppard who the other suspect was, did you talk to him about that as well?
A Yes, sir.

Q And were you able to get any information from him at that time?
A He wouldn't tell me.
Q Okay. Now, are you aware of the stolen property that was found on Antonias Williams?
A Yes, sir. When I went up to the patrol car, deputy Leppard was waiting outside and actually had removed it from Mr. Williams.
Q Okay. And you saw the photograph yesterday and today of that property?
A Yes, sir.
Q And did -- you took that property from him?
A I did, yes, sir.
Q What did you do with it?
A The money, the cell phone and the watch were returned to Mr. Lyles there on the scene that night.
Q Okay.
A The flashlight, screwdriver and I think one other item, I put those in property and evidence.
Q Did you bring them to court?
A I did.

(WHEREUPON, State's Exhibit No. 39 was marked for identification only.)

MS. ROSS: I renew my same objection as to relevancy of these items found on Antonias Williams.

THE COURT: I will note your objection.

BY MR. MOYER:

Q All right, hand you State's Exhibit No. 39, can you take a look at the contents of that bag?

A Yes, sir.

Q Okay. What is in that bag?

A The screwdriver, flashlight and a couple of zip ties that were with Mr. Williams. Again, they were handed to me by Deputy Leppard.

Q Okay.

A Under the pretense that they were removed from him.

Q What did you do with those items?

A They were placed in our property and evidence storage.

Q You brought them to court yesterday?

A Yes.

Q -- they were?

A Yes, sir, they were sealed with evidence tape. I believe they were -- they may have been processed for forensics. I'm sorry, they were not. It says, Open for discovery.

Take a look at it.

Q Okay.

MR. MOYER: Your Honor, at this time I move to have State's Exhibit No. 39 entered into evidence.

THE COURT: Admitted subject to objection.

MR. MOYER: Thank you, Your Honor.

(WHEREUPON, State's Exhibit No. 39 was admitted into evidence.)

BY MR. MOYER:

Q If you could, just open this bag and...

A A screwdriver, red flashlight, a couple of zip ties.

Q Okay. Thank you. Now after speaking to Mr. Williams, Antonias Williams, did you go through the house?

A I did, yes, sir.

Q What did you notice about the condition of the house?

A Ransacked. Everything was thrown about, furniture moved. I specifically remember a TV, like in the den area, being pulled away from the wall.

Q As in State's Exhibit No. 17?

A Yes, sir. Again, just -- I've seen dirty houses but this wasn't like a dirty house somebody just took their clothes off and dropped them. Things were just thrown everywhere. There were not -- shoes were tossed everywhere. It was not a disorganized home, I think, on a general basis. It was clearly done during this incident.

Q Okay. Now, okay. Now let me take you to Monday December 20th of 2010. You took the statement from

the Victim, Danielle, that day?
A Yes, sir.
Q And you also participated in a search of the vehicle as Officer Hamilton testified to a brief period of time ago?
A Yes, sir.
Q Where did that take place?
A I want to say Elgin. It's a wrecker yard on South Main Street, just below Reedy Park, it's a big tow yard. But it's a secured location that we use as a duty wrecker.
Q Okay. And while you were there, did you collect evidence?
A Yes, sir.
Q What did you collect from the van?
A Among many items there was pieces to like a fake costume, police set that you might buy for a child. It was a little badge, little plastic -- plastic pair of handcuffs, two cellular phones, makeup, a little bag and a Nike -- or not Nike, a New York Jets stocking cap.
Q I'm going to hand you State's Exhibit No. 28 through 33, can you take a look at those photographs and see if you recognize those.
A Yes, sir.

Q Okay. And they're pictures of that vehicle and the items that you took from that vehicle on December 20th, 2010?
A Yes, sir.
Q Are they a true and accurate representation of that?
A Yes, sir.
MR. MOYER: I move to have State's Exhibits No.s 28 through 33 entered into evidence.
THE COURT: Any objection?
MS. ROSS: And I just ask subject to my prior motion regarding the search warrant.
THE COURT: Okay. Be admitted subject to your objection.
(WHEREUPON, State's Exhibits Nos. 28 through 33 were admitted into evidence.)
BY MR. MOYER:
Q Detective Weiner, if I can ask you to step down and show you some photographs on the screen behind you. Let me start off with State's Exhibit No. 27, do you recognize that?
A Yes, sir. That's the van as it was sitting in the tow yard.
Q State's Exhibit No. 28?
A Very simple, the driver's door opened to notice one of the cell phones is sitting right there.

Q Okay. State's Exhibit 29?
A Close-up view of that cell phone next to the seat.
Q And you collected that cell phone?
A Yes, sir.
Q State's Exhibit No. 33?
A Just a view through that back sliding door. This blue bag here, you can see a little bit of that stocking cap. And we'll open up that blue bag in just a minute.
Q Okay. State Exhibit No. 32?
A Contents of that blue bag. Like I was describing to you, is that this is just actually real, cheap plastic cuffs and badge. A pry bar. And I'm not sure it that. Was a case for a camera or a cell phone, it's just a small, padded protective case. And that was all inside the blue bag.
Q And the blue bag was on the floor in the back seat?
A Yes, sir. Right there, yes, sir.
Q All right, State's Exhibit No. 30?
A Center console, between the two front seats. That's the stocking cap, you can see the blue bag. I did collect those keys there as well.
Q Then State Exhibit 31?
A That was underneath the stocking cap, plugged in the cigarette charging was that cell phone.

Q Okay. So, can you show us --
A It was right -- it was right under here.
Q It was under that cap?
A Yes, sir.
Q This cell phone was?
A Yes, sir.
Q So, they're two cell phones in the vehicle?
A Yes, sir.
Q One -- this one that's plugged in and then the one by the driver's seat?
A Correct.
Q Did you collect all those items?
A Yes.
Q What did you do with them?
A I put them into property and evidence.

(WHEREUPON, State's Exhibit No. 40 was marked for identification only.)

BY MR. MOYER:
Q I'm going to hand you State's Exhibit No. 40, can you take a look at that?
A Yes, sir.
Q Do you recognize what it is?
A Yes, sir.
Q What is it?
A That's the blue bag found in between the two seats

that contains the hat and pry bar, cell phone case. All that stuff we saw we photographed.

Q The badges and --

A Yes, sir.

Q Okay. And you put that in property the evidence?

A Yes.

Q And brought it to court yesterday and today?

A Yes, sir.

MR. MOYER: Your Honor, I move to have State's Exhibit No. 40 entered into evidence.

MS. ROSS: And again, I just reserve my motion at the beginning regarding the warrant.

THE COURT: Subject to your objection they will be admitted.

(WHEREUPON, State's Exhibit No. 40 was admitted into evidence.)

(WHEREUPON, State's Exhibits Nos. 41 & 42 were marked for identification only.)

BY MR. MOYER:

Q Investigator Weiner, I'm going to hand you State's Exhibit 41, can you take a look at the contents of that envelope?

A Yes, sir.

Q And do you recognize what that is?

A Yes, sir.

Q What is that?
A That's the cellular phone that was discovered just next to the driver's side seat.
Q On the floor?
A Yes.
Q You took that into your custody?
A Yes, sir.
Q And brought to court?
A Yes, sir.
Q Last couple of days.

MR. MOYER: Your Honor, at this time I move to have State's Exhibit 41 entered into evidence.

MS. ROSS: Same objection.

THE COURT: All right, admitted subject to your objection.

(WHEREUPON, State's Exhibit No. 41 was admitted into evidence.)

BY MR. MOYER:

Q Finally, State's Exhibit 42?
A Yes, sir.
Q What's State's Exhibit 42?
A This was the cellular phone found on the center console that was charging that was inside that white van.
Q Okay, the photograph we just saw?

A Yes, sir.

MR. MOYER: Your Honor, I move to have State's Exhibit No. 42 entered into evidence.

MS. ROSS: Same objection.

THE COURT: Admitted subject to objection.

(WHEREUPON, State's Exhibit No. 42 was admitted into evidence.)

BY MR. MOYER:

Q Are you determined who owned that vehicle?

A The vehicle belonged to Toyota of Greenville. It was like a -- I don't think it was a demo car, it was kind of like a loaner car. If your car went in for service or something, they would loan it out.

Q Did you notify Toyota of Greenville about the vehicle being recovered?

A Yes, sir. And I think they retrieved it.

Q Okay. Did you interview Antonias William?

A Yes, sir.

Q When did that take place?

A Our formal interview took place on January 5th.

Q I know you talked to him out at the scene?

A Right. Obviously, he had had to go to the hospital, he had a dog bite, they fought a little bit. He provided me enough information, obviously, to implicate himself, as well as the victims statements.

But he refused to cooperate any further than that. So I waited until January 5th to pull him from the jail again.

Q You went and got him?

A Yes, sir.

Q He contacted you?

A No, sir.

Q At that time, is that when he gave you a statement about what took place?

A Yes, sir.

Q Did he tell you who was involved?

A Yes, sir.

Q Who did he tell you was the other person?

A The Defendant seated at the table, Christopher Eric Russell.

Q Okay. Now, let me ask you about State's Exhibit 42, this HTC cellular phone.

A Yes, sir.

Q Did you make any attempts to try to determine whose that was?

A Yes, sir. Two ways. The first was by asking Antonias on the fifth when he and I were talking. I asked him about two cell phones in the car. Most of us possess just one. And he said in description of them, and I'm able to pull up the photographs at my

desk, my work station, that forensics took, he identified the one next to the driver's seat as his personal cell phone and the one on the center console as Mr. Russell's.

Q Okay. Did you attempt to corroborate the fact that that belonged to Christopher Russell?

A I did initially through just a Court Order signed by a magistrate judge to determine ownership. Or if you get your phone through AT&T, T-Mobile, whoever you use, you usually have to give a name and address, things to identify yourself. And I can subpoena those records if it's, obviously, for a case like this and that's what I did.

Q Were you able using that method to find out whose phone it was?

A No, it's what we call a pre-paid or burner. You just go to the gas station and you can buy it. And so there's no records maintained as far as ownership. You don't need to -- you can elect to provide that information but it's not required.

Q Okay. So you did get records from the company, though?

A Yes, sir.

Q It just did have -- it did not say who it was registered to or who bought the phone?

A Correct.
Q Okay. So then did turn that phone over to anyone else?
A Yes, sir. I obtained a search warrant to actually download the contents of that phone. The sheriff's office, we have two full-time employees that they work in a unit called computer crimes but they forensically analyze computers, cell phones, anything that stores data. And that phone was turned over to computer crimes to be analyzed.
Q Okay.

MR. MOYER: Okay, please, answer any questions the Defense may have.

THE WITNESS: Yes, sir.

CROSS-EXAMINATION

BY MS. ROSS:
Q Okay. You typed out a long statement for Antonias Williams on January 5th?
A Yes, ma'am.
Q And is this the statement, does that look familiar to you?
A A statement and a waiver.
Q And waiver. Just talking about the waiver, was Mr. Williams with an attorney? Did his attorney contact you or just did he contact you directly or

did you pull him out directly?

A No, I pulled him from the detention center.

Q All right. And then, this was about, I don't want to get my dates wrong, this was about two weeks after the incident?

A Yes, ma'am.

Q And he had been interviewed before and never gave any idea of who the person was that with him that night?

A At the scene I interviewed him, yes, ma'am.

Q Okay. And no indication then of who the other person was?

A Right, he wasn't going to provide it.

Q Now, here two weeks later he does give the name?

A Yes, ma'am.

Q And is there anywhere in that statement where he makes any reference to the phone in the car?

A I don't think it's in his written statement, just what we discussed.

Q Okay. But when you write a statement isn't the point of the statement is to put down all of the relevant information that that witness has?

A Yes, ma'am.

Q You put that down. And that there's no mention of the HTC phone was the phone that belonged to Chris Russell?

A Not in his written statement.
Q Nothing in that written statement that I showed you. All right. And did you take a video recording of your interview with him?
A No, ma'am, not standard practice for us.
Q So there's video you can show us saying this is our questioning, this is -- no?
A No, ma'am.
Q Okay. Okay. Now, just showing you -- well, I'll just ask, did someone or did you handle the phones when you took them into custody and evidence from the car?
A I did, I put them into evidence.
Q Okay. And so it is true that some were turned on, you were able to turn them on and power them up?
A I believe so yes, ma'am, yes.
Q And I just got a picture showing one that looks apparently it's powered up.
A Yeah, they were just sitting on the seat like that. They were still turned on.
Q All right. So they were accessible for you to just look at at that point?
A Yes, ma'am.
Q Now, did you take a warrant out on Chris Russell?
A His arrest warrant?

Q Yes.
A Yes, ma'am.
Q All right. And was that date January 5th?
A Yes, the fifth, yes, ma'am.
Q And that was after you talked to Antonias Williams?
A Correct.
Q Okay. Now, just talking about the stuff that you took from the car, where there any prints taken off these things, off the phones?
A No, ma'am, they were processed there on the scene and came back without--
Q No prints --
A -- no results.
Q And no prints or hairs from any toboggans or caps?
A No, ma'am.
Q The little metal badge, nothing?
A No, ma'am.
Q Okay. And so no DNA from that either or hair samples?
A No, ma'am.
Q Okay.

MS. ROSS: Beg the Court's indulgence, I just don't want to miss anything I wanted to ask. Okay, I've got nothing further.

THE COURT: Redirect?

MR. MOYER: No redirect, Your Honor.

THE COURT: You may be excused.

THE WITNESS: Thank you.

MR. MOYER: The State calls Chris Hammett to the stand.

THE CLERK: Sir, please, place your left hand on the Bible, raise your right.

CHRIS HAMMETT, after being duly sworn, testified as follows:

THE CLERK: Thank you, please, be seated. State your name for the record.

THE WITNESS: Henry Christopher Hammett.

DIRECT EXAMINATION

BY MR. MOYER:

Q Where are you employed?

A Greenville County Sheriff's Office.

Q What is your position with the sheriff's office?

A Investigator currently assigned to the homicide unit.

Q How long have you been in the homicide unit?

A Five years.

Q Is that all you do is investigate homicides?

A And other violent crimes. Other death investigations suicides, natural deaths and kidnapping.

Q How long have you been in law enforcement?

A Fifteen years.

Q All with the sheriff's office?
A Yes, sir.
Q What did you before you were in the homicide division?
A Prior to the that I was a burglary investigator for six years. Prior to that I worked in uniform patrol for five years.
Q Okay. Now, as -- have you also been trained in cell phone data recovery.
A Yes, I have.
Q When did you receive that training?
A About a year and a half ago, I believe.
Q What do we mean by cell phone data recovery?
A Basically you take a cell phone and all the data that is stored in that phone is retrieved from that phone to another memory device. Which a report is then generated from to tell us what's on the phone.
Q Okay. And how is it done?
A The phone itself is powered on, it's connected to a cable that is plugged into the charging port, and then the other end is a USB that is plugged into a machine that's called a Cell Bright Data Recovery Machine. The machine then extracts the memory from the phone to the machine. And then from a machine to a thumb drive. And then that thumb drive is taken

and placed into a computer in the forensics computer lab. It's downloaded into a file, under that case number, and from that point a CD is generated that shows the report that's created by the machine.

Q Okay. Now, did you perform a cell phone data recovery on a cell phone in this case?

A I did.

Q Where did you get this cell phone from?

A From property and evidence.

Q Okay. I'm going to hand you State's Exhibit No. 42 and ask you if you're able to recognize that?

A Yes, sir.

Q And how do you recognize it?

A Based on the packaging that it was in, it's DW-13, which is the same item number I ran the examine on.

Q Okay.

A As well as the description of the phone.

Q Okay. And when did you do those?

A I'm sorry, when?

Q Yes.

A February -- I actually checked it out on February 7th. But it had to charge the battery overnight. So the actual examine is completed on the eighth of February this year.

Q Of this year?

A Yes, sir.
Q And are you aware the fact that it actually had been done once before? As far as cell phone data recovery from that phone?
A Yes, sir, that is correct.
Q And over a year ago?
A Yes.
Q Okay. And you aware that the officer who did it, initially, was unable to be here in court this week?
A That's correct, yes.
Q That's the son why you went back and did this?
A Basically to recreate it so I could testify to the authenticity of it. Because he was unavailable.
Q Okay. But you did a completely new --
A Completely new examine.
Q Okay.
A Yes.
Q And when you did it, were you with the officer who did the initial one?
A Yes.
Q He was in your presence?
A Yes.
Q And when you generated your report, did you compare it against the report that the initial officer had generated?

A The prior one from a year ago, yes.
Q And was it the same?
A With the exception of obviously the extraction date which is listed on the report also. Other than that, no.
Q Okay. Which means that the date that the report was --
A The date the examination was done, correct.
Q Okay. Now, so you did compile a report from this cell phone?
A Yes.
Q I'm going to hand you -- one moment, please.

(WHEREUPON, State's Exhibit No. 43 was marked for identification only.)

BY MR. MOYER:
Q Let me hand you State's Exhibit No. 43. Would you take a moment just to look at those documents.
A (The witness complies.)
Q Are you able to recognize that?
A Yes, sir.
Q What is that?
A This is the actually hard copy that was printed from the CD of the data that was on the phone that I examined.

MR. MOYER: Your Honor, at this time we move to

have State's Exhibit No. 43 entered into evidence.

THE COURT: Any objection?

MS. ROSS: Yes, Your Honor, I would object to that. And would like to renew my motion, possibly outside the presences of the jury as to the search warrant.

THE COURT: Okay, Madam Forelady, thank you.

(WHEREUPON, the jury left open court at approximately 12:45 p.m.)

THE COURT: Okay, I'll be glad to hear from you.

MS. ROSS: Thank you, Judge. My understanding is that this search was based on the February 7th search warrant that I handed up yesterday. And I'll be happy to hand it up again.

THE COURT: I saw where you highlighted it.

MS. ROSS: Yes, this is where Williams identified the cellular phone as belonging to Russell. I would just like a ruling on record before we go forward as to -- we would object and state that under Franks v. Delaware, if there was a material misrepresentation made, that search warrant is invalid. And the prior search warrant for the contents of the phone held the same basis. The Magistrate was told that the phone had been identified by Antonias Russell -- I mean, Antonias Williams as belonging to Christopher Russell.

And again, that was not in the statement that

Mr. Williams put out. So we would renew that objection based on the Statutory No. 13 -- 17-13-140 in Franks v. Delaware.

THE COURT: I'm going to overrule your objection as the officer clearly testified that that was told to him by the Co-defendant. I understand your argument that it did not find its way into a written report. I don't think that rises to the level of material misrepresentations referred to. So, I'm going to overrule your objection and find that it is admissible.

All right, you ready to proceed, Mr. Moyer?

MR. MOYER: Yes, sir.

THE COURT: Ms. Ross, subject to that objection?

MS. ROSS: Yes, Your Honor.

THE COURT: All right, bring the jury back in, please.

MS. ROSS: Judge, may I add one thing out of an abundance of caution?

THE COURT: Yes, ma'am.

MS. ROSS: As far as the chain of custody on the phone, I have an objection because I didn't hear name of everyone in the chain of custody.

THE COURT: Clearly, under the current law you don't have to name every person. I think the chain is certainly sufficient. But I note your objection for the

record.

MS. ROSS: Thank you, Judge.

THE COURT: Yes, ma'am.

We're ready whenever they are.

THE BAILIFF: They're using the bathroom.

THE COURT: Okay, that's fine.

(WHEREUPON, the jury came into open court at approximately 12:55 p.m.)

THE COURT: Mr. Moyer.

MR. MOYER: May it please the Court, Your Honor?

THE COURT: Yes, sir.

MR. MOYER: At this time I renew my motion to have State's Exhibit No. 43 entered into evidence.

THE COURT: All right, Exhibit 43 will be admitted.

(WHEREUPON, State's Exhibit No. 43 was admitted into evidence.)

BY MR. MOYER:

Q Okay. Investigator Hammett, I'm going to ask you, if you would, to just step down because I'm going to look at just a few items on these records, and I'm going to ask you to explain to the jury -- there's a laser pointer on there, right there behind you. Just step to the side. Start off with the first page of the report. And this just lists just basic general

information about the cell phone, is that correct?
A Yes, sir, that is correct.
Q Okay. I'm going to go to page two. Of your report. And can you tell the jury what information is started to be provided on page two?
A It's listed right here. The report actually breaks it down into separate divisions. This is the phone contact list. Which is basically a phone book. Numbers that the owner of the phone has programmed in. Sometimes with names that are associated with it as well as the number.
Q Okay. So it goes through several pages worth of contacts, is that correct?
A Yes, sir.
Q Okay, I just want to point out on page five of the report, would you just state who the contact name is listed and what telephone number is listed for that.
A Yeah, this is page five of the report. Momma. And then the number listed for that is 207-6038.
Q Okay. I'm going to go back, actually, there's one thing I meant to ask you about on page one of the report. Can you tell us what the phone number is this cell phone that you did the examination of?
A Yes, sir. It's 1-864-201-1472 listed right there.
Q So that is the...

A That is the number of the phone itself. Attached to that phone that we examined.
Q Okay. Go to page six of the records and what types of records are then provided?
A This would be text messages sent to the phone.
MR. MOYER: Your Honor, at this time I would ask to place on the record a stipulation between the parties.
THE COURT: Okay. Sir.
MR. MOYER: The stipulation is that the actual content of the text messages is not relevant to this case and have been deleted from the records.
THE COURT: Do agree with that stipulation?
MS. ROSS: I do.
THE COURT: All right, very good.
MR. MOYER: Further that line, the text messages had been along the right-hand side of the page and have been deleted.
THE COURT: They have been deleted?
MR. MOYER: They been taken out, that's correct.
THE COURT: You agree with that also, Ms. Ross?
MS. ROSS: Yes, Your Honor.
THE COURT: Very good.
BY MR. MOYER:
Q Move to page 11 of the report. Can you tell the jury what information is begun on page 11, after the text

messaging section.

A Right here it's listed as Phones Incoming Calls List. And that will list all phone calls that are incoming to that phone. In other words, if you call that phone it will show on there.

Q Okay. Does it give any other information about the call that is made?

A Yes, it will tell if it's incoming here and it will tell the number as well as the name if the name is in the contact list. And the date and time. And the duration which is basically how long the call was in progress.

Q Okay. And when you said it will give a name -- I'll show you page 12 of the report. Do you see and instances where a name has been given for the incoming call?

A A specific name?

Q The column you have been talking about.

A Yes, sir. Jetta Bug, Fat Chop, Boo, all those would be in the name category.

Q Coming from that contact list?

A Yes, sir, correct.

Q Move on down to page 15 of the documents. Tell the jury what section is begun after the incoming calls.

A Yes, sir, it would start here. It's the phone's

Outgoing Calls List. Which are phones -- excuse me, calls that originate from the phone we did the examine on.

Q Okay. And again, tell us what information is provided for that.

A It's obviously the type -- the phone number that the call is made to. Again, the name, if it is saved in the contact list, as well as the time and date and the duration or the length of the call.

Q I'll move now to page 20 of the document. Can you tell the jury what section comes next?

A This is the missed calls list. Which is basically calls that have been made from another phone number to the phone we did the examine on that were not answered.

Q Okay. And that takes us then, finally, to the last page we introduced which is page 25 of 34. Which is images --

And, Your Honor, this takes us to the second stipulation that the parties have reached which is that the following pages regarding images of video files has no relevance to this case and have not been included with the document that has been entered into evidence.

THE COURT: Pages 26 through 34?

MR. MOYER: That's correct, Your Honor.

THE COURT: You agree with that?

MS. ROSS: Yes, Your Honor.

MR. MOYER: Okay, please take your seat. Please answer any questions the Defense may have.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MS. ROSS:

Q Okay, as far as your examination of this phone, you can't tell who's touched it or looked at it before you?

A No, ma'am.

MS. ROSS: All right, nothing further.

MR. MOYER: No redirect, Your Honor.

THE COURT: Thank you, you may be excused.

All right, Madam Forelady, ladies and gentlemen of the jury, it's time to go ahead and take a lunch break. I'm going to excuse you until 2:30. I'll remind you, please, not to talk amongst yourselves or anyone about this case. We'll see you back at 2:30.

(WHEREUPON, the jury left open court at approximately 1:03 p.m.)

THE COURT: Anything before we break for lunch from the State?

MR. MOYER: The only other matter, Your Honor,

at some point would like to revisit the issue of the failure to stop incidents that took place on January 2nd of 2010. Whether we can recall an officer--

THE COURT: Let me tell you, I've done a little bit of research and in all candor, it's certainly not an exhaustive but in my research, I have found, it appears, that they differentiate between fleeing from the scene, fleeing sometimes afterwards. Also, the cases that the State vs. Robinson, which is 600 S.E.2d 100. That's a Court of Appeals case from 2004. It says, Evidence of flight should be excluded when the flight is clearly linked to a separate offense for which the Defendant is not on trial.

Now, I'm not ruling that the -- I'm excluding it at all, but at this stage, from what I've heard, we don't have evidence of the Defendant fleeing from the scene that you're trying to refer to -- you're talking about some weeks later that was based on a traffic violation. So quite frankly, I have some severe doubts as to the admissibility, but I'll give you ample opportunity to try to get that done. Before you do, let's do another in-camera hearing. But I want to give that food for thought. Also, State vs. Pagan, which is 631 S.E.2d 262. Which basically was what you were citing to me earlier. Okay.

With that being said, anything before break?

MR. MOYER: No, Your Honor.

MS. ROSS: Nothing, Your Honor.

THE COURT: All right, very good.

(WHEREUPON, a lunch break was taken.)

THE COURT: All right, anything from the State before we proceed?

MR. MOYER: Wait a minute the victim to get in. As soon as they do we're ready.

THE COURT: Okay. Thank you, I appreciate you pointing that out.

MR. MOYER: We're ready.

THE COURT: Defense ready?

MS. ROSS: Yes.

THE COURT: Okay, bring the jury.

(WHEREUPON, the jury came into open court at approximately 2:34 p.m.)

THE COURT: State ready to proceed?

MR. MOYER: Yes, Your Honor.

THE COURT: Defense ready?

MS. ROSS: Yes, sir.

THE COURT: Call your next witness.

MR. MOYER: The State calls Captain Jinny Moran.

THE CLERK: Please, place your left hand on the Bible, raise your right hand.

JINNY MORAN, after being duly sworn, testified as follows:

THE CLERK: Thank you, please be seated. Please, state your name for the record.

THE WITNESS: Jinny Moran.

DIRECT EXAMINATION

BY MR. MOYER:

Q Where are you employed.

A Greenville County Public Safety.

Q What is Greenville County Public Safety?

A Greenville County Public Safety is made up of the detention center, forensics, crime scene and record management services.

Q How long have you been in that position?

A Over 30 years. Captain since 2001.

Q So been a captain for 12 years now?

A Yes.

Q Okay. Over that same department?

A Uh-huh.

Q Now, what are your duties as Captain of that department?

A We manage the records generated by the Greenville County Sheriff's Office, the Greenville City Police Department and I also oversee the management of the detention records, inmate booking. I also handle the

release of medical to the Courts when ordered.

Q What kind of records?

A These are -- the sheriff's office and the police department are generated incident records, case files accident reports. And also we manage criminal -- local criminal history record.

Q Okay. And you do you also manage records for inmate booking for the Greenville County Detention Center regarding inmate booking records, internal forms and forth?

A Yes.

Q All right. Is part of your job, it is your responsibility to respond to the Courts of this county to provide records from these departments for Clerk of Court purposes?

A Yes, routinely.

Q So you have testified before?

A Yes.

Q Now, when somebody gets booked into the Greenville County Detention Center, is that person asked to provide information as to whom his or her next of kin is?

A Yes. There's a series of questions that asked, then answered and the data is entered into the computer system.

Q Okay. And one of those question is next of kin?
A Yes.
Q Now, is that information recorded and preserved then once that is given by the person who is being booked?
A Yes.
Q And is there a regular practice of Greenville County Detention Center to keep that information?
A Yes, it is.
Q And is the information kept in the course of regularly conducted business activity?
A Yes, these are regular business records that we manage and handle daily.
Q Okay. Do you have access to that information as a regular and normal function of your job?
A Yes, sir, as the records manager I have access to all these different types of records.
Q Okay. Now, let me ask you this, when this Defendant, Christopher Russell, was booked into the Greenville County Detention Center on January 10th of 2011, whom did he list as his next of kin?
A The records indicate Eleanor Russell.
Q What relationship was she listed as?
A The relationship is mother.
Q And what telephone number did he give for his mother?
A The records indicate (864)270-6038.

Q Okay. And when he was booked into the jail, what was his eight and weight listed as?
A The height was 6'1, the weight was listed as 179.
Q A hundred seventy-nine pounds?
A Yes.
Q Okay.

MR. MOYER: Nothing further from the witness.

THE COURT: Cross-examination?

MS. ROSS: Thank you.

CROSS-EXAMINATION

BY MS. ROSS:

Q Ms. Moran, I'm just going to show you what I got MY investigator to print off our screen, the jail screen, can you identify this?
A This is a print screen of a computer screen.
Q All right. And would that be part of the inmate records that are kept in the regular course of business?
A Yes. This is how things look at on the computer, but we also have a function down at the bottom of the screen, we can print a nice, crystal report, yes.
Q And that's not it, that's just what came off --
A This is a computer print screen.
Q Right. And just looking at that, can you tell me, who would have access to something -- that

information? Would law enforcement have access to it?

A Well, depending on your level of access, I really can't answer who for sure but I know that there are people in detention, there are police officers, like people who are assigned to a certain position who have access, would be able to view this information on a computer screen, yes.

Q And do you recognize what this is?

A Yes.

Q What is that?

A This is a printout that someone has printed from a mug shot photo from our In-house Mug Shot System.

Q And would that be something that you keep in the regular course of business?

A Yes, it is.

Q All right.

MS. ROSS: If I could just take a look at it. I would ask this to be marked as Defendant's Exhibit No. 1.

(WHEREUPON, Defendant's Exhibit No. 1 was marked for identification only.)

BY MS. ROSS:

Q And granite, this is basic black and white, would it be black and white off your computer screen?

A No, the actual mug shot main system is in color.

Q It is in color?
A Depending on your printer. I can print it in color.
Q Right.
A And then depending on if you're at your desktop, if you have a black and white printer, it's going to print it that way.
Q And that's a fair representation of what a black and white print-off would look like?
A Yes. Well now our format looks a little bit different. As far as the data is not centered like the way this one is.
Q But the information would be the same information?
A Yeah, it has a name. Yeah. And the date of birth, the arrest date, right.
Q Okay. Would a mug shot reflect what the person looked like at that arrest date? The date on there, I think, is January 10th, would a mug shot reflect what that looked like, someone looked like when they were arrested and their picture was taken?
A When the picture is taken, it's just dated, the system is automatically dated.
Q Okay. So that picture was taken on that date?
A It says date of photo January 10th, 2011.

MS. ROSS: All right, I'd introduce this as Defendant's Exhibit 1.

MR. MOYER: No objection.

THE COURT: In without objection.

(WHEREUPON, Defendant's Exhibit No. 1 was admitted into evidence.)

BY MS. ROSS:

Q Now, I just got another sheet, would this be something that would also be kept in the regular course of business at the jail?

A Yes, that is an inmate property record. Those forms are maintained in the inmate booking file.

Q Okay. And would that reflect the property that that inmate had on them when they were arrested on that January 10th, 2011 date?

A Yes. This form is completed by the property person or by the arresting officer of the kind of property he had on him or his clothing.

Q All right.

I'd ask this to be marked as Defendant's Exhibit No. 2.

(WHEREUPON, Defendant's Exhibit No. 2 was marked for identification only.)

MS. ROSS: I'd ask this to be entered as Defendant's Exhibit 2 at this point. I mean -- yeah.

THE COURT: Any objection?

MR. MOYER: Your Honor, I'm not going to object.

I've not seen that before today. It was not been provided to me.

THE COURT: Well within your own records. Any objection to that information?

MR. MOYER: No, I will not object to that.

THE COURT: Okay, be without objection.

(WHEREUPON, Defendant's Exhibit No. 2 was admitted into evidence.)

BY MS. ROSS:

Q All right, one last thing, this, I believe, we also printed off the computer this morning, do you know what that is?

A Looks like you printed this from a screen, the top of the heading has Inmate Alias Names.

Q Correct. Would that be something that's kept in the regular course of business?

A As part of the Detention Center Jail Management System.

Q Okay. Can you read what the alias names are on that piece of paper?

A One says, Chris Russell, one says Christopher Gary Russell. Then there's a -- looks like a nickname our code for like a street or nickname, its says, New York.

Q All right. Is there any alias indicated there,

Poncho?

A Not on this particular screen. And this is from the booking date of January 10th.

Q All right. So there's those three names?

A For this booking date of January 10th, 2011.

MS. ROSS: All right, thank you. I've got no further questions.

THE COURT: Redirect?

MR. MOYER: One moment, please.

REDIRECT EXAMINATION

BY MR. MOYER:

Q Just a couple of questions. Let me start with State's [sic] Exhibit No. 2 and I wasn't quite sure what this is. This is a inmate property record?

A Right. When an inmate is booked into the facility, clothing and -- there's a clothing exchange and also their personal property. Their regular clothes or if they have any extra, extra bags or sometimes. So it's taken and these forms are filled out. Sometimes there could be more than one. I can't -- I can't say if there's more than one on this one or not because I didn't bring this.

Q So you didn't bring that to court today?

A No.

Q No asked -- you weren't asked to generate that report

and bring it?
A Not today. Usually, I bring a copy that I refer to.
Q Okay. So you don't know if there were more -- if there were more of those forms or not?
A Right. This is actually stamped excess property. And usually when it has excess property it's actually stored some place else. Because it won't actually fit in the property room. From my knowledge of the inmate property operations.
Q Okay. So, when somebody is booked into the jail they take all the property and they store it somewhere, right?
A Yes.
Q And then they have to log all the property down on a form. And this is the one of forms that is used?
A Yes. I just -- I haven't seen this. I wasn't asked to actually review the entire booking file.
Q Okay.
A So, I don't know if there's just one page to this or if there's more than one. I don't know.
Q Okay. Then the inmate is asked to look over it and sign it?
A Yes, they have to review that this is all your property and then they actually sign it when it's stored and then when they're released they review it

before they take it back.
Q So just there's no question about --
A Something missing--
Q -- something getting lost or misplaced or forth?
A Right.
Q Okay. And are you familiar with how -- you were about some aliases?
A Yes.
Q Just a moment ago. Are you familiar with how that information is put into those records? As far as what the aliases are?
A Sometimes the information is electronically -- since it's electronically maintained, it may carry over from a previous arrest.
Q Okay.
A But there is a link of the aliases system, it's called Identification Pack System, our local criminal history. It does kind of tie into our local criminal history record that may show all the aliases.
Q Okay.
A But if they -- it is not known, then it may not be entered, so.
Q Okay. Sometimes -- okay. Sometimes inmate just asks what the aliases are?
A Clerical staff can only enter it as far as the ID

clerks can only enter it if they know of the information.

Q Okay. And are you aware of some people who have lots of aliases? Have you ever seen...

A Yes.

MS. ROSS: I object to that, rather that's relevant or not.

THE COURT: I'm sorry.

MS. ROSS: I would just object to that, whether there are people with lots of -- the general question where she can --

THE COURT: Overruled.

MS. ROSS: -- be able to answer that or not. Or have a special ability to know that.

THE COURT: Overruled.

BY MR. MOYER:

Q Now, isn't it true that some people have just lists of aliases. Just lots of different names?

A Yes, in my 30 years of experience -- over 30 years of working in the records division, I've pulled lots of records where people have many aliases.

Q Okay. And unless the inmate tells whoever is writing that down, what aliases -- I mean, not necessarily the aliases may not necessarily get in that record, isn't that true?

A Correct, the law enforcement agency contacts us and lets us know also.

Q Sometimes law enforcement agency lets you know, also?

A Yes.

MR. MOYER: Okay, I have nothing further, thank you.

MS. ROSS: Just on redirect [sic] briefly.

RECROSS-EXAMINATION

BY MS. ROSS:

Q Now, wouldn't law enforcement have the ability to put in aliases into that name bank?

A No.

Q Law enforcement has no ability to put that in?

A There's controlled access to make sure that the information stays secure and as accurate as possible. Not anyone can just add data.

Q So you can't -- how does the data ever get in there? How did the aliases ever get into the system?

A Through the detention center, like when they're booking someone new. Or -- and then also, if somebody is like recog, like if they don't go to jail, those records are actually handled through the ID clerks office and then all those records come to us. So, it's handled by two different areas. But then when it comes to my office, my staff actually

manages the data. We review the documents that has been completed by someone so we can actually make sure that the data was entered accurately.

Q But wouldn't the aliases information be just useless if it was based only what someone who arrested told you their aliases were? In other words, the names listed here, aliases, consist of more than just what someone who's arrested would say their aliases are?

A I'm not understanding the question.

Q Okay. You were saying before there's a data bank of aliases on people?

A It's --

Q It's kept track--

A It's part of our local criminal history records.

Q Okay. So it's part of the local criminal history--

A --a line to their primary name and if the person is known by other names, then that data is also entered.

Q So, if they're known by another name, that data is entered --

A Yes.

Q -- in there as an alias?

A Yes.

MS. ROSS: All right, thank you.

MR. MOYER: Nothing else.

THE COURT: All right, thank you, ma'am you may

step down.

MR. MOYER: May it please the Court, the witness may be released?

THE COURT: Absolutely.

MR. MOYER: Thank you.

Your Honor, the State calls Antonias Williams.

THE CLERK: Mr. Williams, if you'd come around to this side of the bench. If you'd pause at the end of the bench, please. Place your left hand on the Bible, raise your right hand.

ANTONIAS WILLIAMS, after being duly sworn, testified as follows:

THE CLERK: Thank you, please be seated. State your name for the record.

THE WITNESS: Antonias Williams.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. MOYER:

Q All right, Mr. Williams, I want to make sure you speak into that microphone so everybody back here can here what you're saying. Sit close to that. If I can't here you, I'll let you know. How old are you?

A Forty-four.

Q Can you pull that a little closer to you?

A Forty-four.

Q Okay. And you are -- are you married or single?
A Single now.
Q Have you had any children?
A No.
Q Now, we can see the way you're dressed, you are in prison right now. Is that because of this robbery and home invasion of the Lyles' residence back in December of 2010?
A Yes, sir.
Q And you pled guilty to some charges related to that, isn't that true?
A Yes.
Q Conspiracy, armed robbery and kidnapping?
A Yes.
Q And you were sentenced on one of the charges, right?
A Yes.
Q Just the conspiracy, isn't that right?
A Yes.
Q Five years on that?
A Right.
Q And you know you were still looking to be sentenced on your other charges?
A Yes.
Q Now, what is your understanding of when you will be sentenced on those other charges?

A I don't know.
Q You don't know. You know it will be after this case is over?
A I guess so.
Q What is -- what, if anything, have you been promised regarding your sentencing for being in here today and testifying?
A Nothing really.
Q Nobody--
A No.
Q Make sure you lean into the microphone so they can hear you.
A Nothing. That I can honestly say has been promised to me.
Q Okay.
A I got more charges.
Q Nobody from law enforcement or myself or anyone has promised you anything about what your sentence will be?
A No.
Q All right. Now, let's talk a little bit about before you got locked up in December of 2010. Were you working at that time?
A Yes.
Q Where were you working?

A Toyota of Greenville.
Q How long had you worked for Toyota of Greenville?
A Six years.
Q What did you do for Toyota of Greenville?
A Sell cars.
Q I'm sorry?
A Sell cars.
MR. MOYER: Is that microphone on?
THE COURT: Would you speak up?
Is the microphone on?
MR. MOYER: I don't think it's on.
THE COURT: Try that again, please.
THE WITNESS: Sell cars.
THE COURT: Thank you.
BY MR. MOYER:
Q All right, I think we heard you that time. You were selling cars?
A Yes, sir.
Q What did you -- what were you're doing when you -- what were you first hired to do?
A Sell cars.
Q You did that for six years?
A I did that for five years and then I started in the service department.
Q Okay. Is that what you were doing when you got

locked up?
A Yes, sir.
Q Working in the service department. Okay. Where did you live?
A Three Sunwood Court in Piedmont.
Q Who did you live with at that time?
A My wife.
Q So you were married then but you're not married now?
A Right.
Q Okay. Now, you worked for Toyota of Greenville, there's been a photographed entered into evidence of a vehicle, a Toyota?
A Sienna.
Q Sienna. You familiar with that vehicle?
A Yes.
Q Let me show you a photograph, I'll show you one of the pictures, State's Exhibit No. 27, do you recognize that?
A Yes.
Q How do you know that vehicle?
A That's the loaner car I had from the dealership.
Q Why were you in a loaner car?
A I had to put a starter on my truck and hadn't had a chance to put it on yet.
Q Okay. And how long were you using that vehicle?

A I had been in it maybe a week.
Q Maybe a week. And were you keeping it, just you driving it every day back and forth to work?
A Uh-huh.
Q And every other activity you did. Who else would ride in the car with you?
A Me, my dad rode with me one day. Chris road with me. Pretty much that's about it.
Q What was the vehicle you -- before you -- before it was given to you as a loaner vehicle, what was the vehicle used for?
A Just say if you come in to buy a car -- or get your car worked on, we would loan you that van.
Q Okay.
A Just in case you had to go back to work or somewhere else.
Q So just used by members of the public--
A Right.
Q -- while their vehicle was being worked on. Okay. Okay. Well let's go to December 18th of 2010. And you've admitted you were involved in the robbery of Mr. and Ms. Lyles?
A Yes, sir.
Q Who did this with you?
A Christopher Russell.

Q And I saw you look over toward the table over here, are you referring to the Defendant?
A Yes, sir, Poncho, Christopher Russell. I call him Poncho.
Q You call him Poncho. Where did you come up with that name?
A Just a name he picked up in the street.
Q Okay. How long had you been -- how long had you known Christopher Russell?
A Eighty-three, '84, been knowing him a long time.
Q You mean from the year 1983, 1984?
A Yes.
Q Which would have been -- about how old would you have been then?
A Sixteen, 17 somewhere around there. Fourteen. One of them.
Q Is he older or younger than you?
A He younger than me.
Q Okay. So, you've know him that long?
A Yes.
Q And were y'all close? Were you friends?
A Yeah, we been friends, we been friends our whole life. Me and his uncle -- me and his uncle were best friends.
Q You were good friends with his uncle?

A Yes.
Q Then you become friends with him. Now, let me take you -- ask you another question, referencing back to December 18th of 2010, this night. You lost a lot of weight, is that true?
A Yeah, lost about lost about 25, 26 pounds.
Q Okay. That's from being locked up?
A Yeah, exercising everyday.
Q Exercising everyday?
A Yeah, running.
Q Okay. So, how about the Defendant in this case -- well let me back up. How tall are you?
A I'm 6'2.
Q Okay. What about Christopher Russell?
A He's a little shorter than me.
Q He's a little bit shorter?
A Yeah.
Q Now back in December of 2010, how would you characterize his build?
A Smaller than he is now. He was probably about 170, 178, 180, something like that.
Q Okay. All right. No whose idea was it to rob the Lyles, who came up with the idea?
A Well actually his brother David came up with the idea. He told Chris about it and that's where it got

started from.
Q Okay. And who brought the idea to you?
A Chris did.
Q And about how long prior to this incident was it that y'all decided to do this?
A We went back and forth to the Lyles house probably about three, four weeks, maybe a month, back and forth. Just watching the house, watching their son, watching them.
Q What was the reason -- why did y'all choose that house?
A Because he said it was $200,000.00 in the house. Him and his brother came up with that. That was the main reason for us going back to the house.
Q Two hundred thousand dollars?
A Yes.
Q Okay. And so once you got that information, you mentioned you went over three or four weeks, tell us about that, you'd go over and look at the house?
A Yeah, just go over, watch the activity, watched what they did. Watch and see would T would come and leave. Tell you the truth, for about a week or so, I never even knew the dad lived in the house. I just thought it was the mom.
Q Okay.

A And then seeing about, maybe, two weeks later.
Q Okay. Now you mentioned the word T. You said, See if T --
A That's what we called his son, T-Lyles.
Q Okay, you call him T-Lyles?
A Yes, sir.
Q And he also lived at that house?
A Yeah, as far as I knew.
Q Okay. And is that the person whom this supposed large amount of money was supposed to have been connected to?
A Yes.
Q All right. So tell us about what you would do when you would go over there over these three or four weeks period of time.
A Just watch. Just, you know, observe.
Q How would you watch?
A There was a trailer actually behind the house. We would just sit right there in driveway and watch. Sometimes we would go in the yard and sit behind the house and watch. That particular night that the father came out to get wood to go into the fireplace, we were sitting outside there beside the house.
Q Okay, we'll get to that in just a minute, we'll talk about the other nights. So, you would go -- what

were watching for?
A Just to see what kind of move T would make, T-Lyle would make. Just to see if he would hide the drugs, money or whatever in the yard. In the storage building behind the house. Just watching. Just to see him.
Q Would you go everyday?
A Just about.
Q How long would you spend over there?
A Maybe an hour, two hours.
Q Okay. All right. Now, why December 18th, 2010? Did y'all come up with that date as the date you were actually going to do the robbery?
A No. It was another day we was going to see what kind of activity that was going on at the house, that's all.
Q Okay. Were you expecting T-Lyles to be home that night?
A Actually, yes. We were kind of like going to see and wait him out. See if he was going to come home.
Q And if he did were you going to do the robbery that day?
A Yes.
Q Now, there's been some things marked into evidence that I'm going to show you now. Start with State's

Exhibits No. 40, some items that were found inside of your -- inside of that vehicle, do you recognize that?

A Yeah, that looks like my wallet.

Q Your wallet with your ID in it?

A Yeah.

Q You left it in the vehicle?

A Uh-huh.

Q There's some -- some cheap little, look like badges, police badges and handcuffs.

A Yeah.

Q What was that all about?

A I actually was using it to act like we was police.

Q Was that part of your plan?

A Yes.

Q Okay. And how was that supposed to have helped you commit this?

A A lot of times people, when you say you the police, most people kind of like stand in attention, you know. We knew what he was doing, he knew what he was doing, so we was posing as the police because we thought that would scare him and he would turn over the money, the drugs or whatever.

Q What else did you go to pose as police officers that day?

A We had on the masks, actually. The badge that we supposed to have around our necks, the ski mask we had on had police written on them, so.
Q Now, there was a mask that was collected when you were -- after you were arrested. Do you recognize this?
A Yes.
Q Okay, is that what you were wearing that night?
A (The witness nods.)
Q Did you have something else as well?
A Had one over the top of it.
Q You had another one over the top it?
A Yeah.
Q And the one over the top of it is the one that said, Police?
A Yeah.
Q Okay, there was -- do you recognize this?
A Uh-huh.
Q What is that?
A Something you use to jimmy into a door or something if we had to get in.
Q Okay. Now, you left this stuff in the car?
A Yeah.
Q Why didn't you take that stuff in?
A Like I said, we were just going to watch at that

particular time.
Q Okay. Now, you had masks covering your faces completely?
A Yes.
Q Both of y'all?
A Yes.
Q Were you armed?
A Yes.
Q Okay. Let's start with you, what did you have?
A I had a Glock .40.
Q Show you State's --
A Nine millimeter.
Q I'm sorry, I didn't hear the last--
A Nine millimeter.
Q I'm going to show you State's Exhibit No. 36, do you recognize this?
A Yeah.
Q What is that?
A That's the gun I had.
Q That's the gun you had?
A Uh-huh.
Q What about Christopher Russell, what kind of gun did he have?
A He had a -- it wun't [sic] quite that big but it was kind of like that. More of a semi-automatic kind of

weapon.
Q Okay.
A Had a long clip in it.
Q Had a long clip in it?
A Yes.
Q Would you be surprised if somebody seen it that it might look like a little machine gun?
A Yeah, it looked kind of like a machine gun.
Q Where did y'all get these guns?
A Actually, that one right there we stole from somewhere else.
Q This one here?
A I don't know where Chris got his gun from.
Q Okay. Well, do you remember what you did that day?
A That day? No. Actually just road around that day. I was off that day.
Q It was a Saturday?
A Yes.
Q And then who all went over the there to the Lyles' residence that night?
A Just me and Chris.
Q And you were in this vehicle that you were using from Toyota of Greenville?
A Yes, sir.
Q And when you got over to that area, where did you

park?
A On a back street. The street behind the house.
Q Okay.
A I don't remember the name of it.
Q What was back there that you parked?
A Trailers. Empty houses.
Q Okay. Like some abandoned houses, do you remember that?
A Yes.
Q I'm going to show you State's Exhibit number 20, do you recognize that?
A Yes.
Q Is that accurately show where y'all parked?
A Yes, where I parked at.
Q So you backed in?
A Uh-huh.
Q And who was driving?
A Me.
Q And y'all had your masks on or did you to put them on before you get out of the car?
A Put therm on after we got out of the car.
Q Gloves?
A I ain't for sure. We just put them on. We had to walk down the street, so. Probably waited a minute, you know. I don't remember.

Q Don't want to draw attention?
A It wasn't too much lights on the road, too much -- you know, just a little short walk from that to the actual house behind their house.
Q Okay. And both had your guns?
A Yes.
Q And your masks. And wearing gloves?
A Yes.
Q Okay. So when you got there to the Lyles house, what did y'all do?
A Just started observing. Just looking. Just watching the house.
Q Did you hear or see anything?
A Yeah, Mr. Lyles was in the house, playing the music.
Q Where did you hang out there at his house?
A Right behind his house, actually. Right beside the trampoline in the yard. Kind of stood beside it.
Q Okay, so you stood there. How long would you say y'all stood there?
A It was pretty cold that night. I would say maybe a good hour, hour and a half, something like that.
Q Okay. Then while you were waiting there -- well actually, let me ask you another question. Let me back up. I'm going to show you State's Exhibit No. 41, do you recognize this?

A Yes.
Q What is that?
A That's my telephone.
Q Telephone, it's a Blackberry?
A Yeah.
Q And you left it in the car?
A Uh-huh.
Q Was found on the floor by your seat?
A Yes.
Q Is that right? Did you leave it there purposefully?
A Yeah.
Q Let me ask you about State's Exhibit No. 42, you recognize that phone?
A That's Chris phone.
Q Okay. And it was found in your vehicle plugged in on the center console?
A Uh-huh.
Q Why did y'all leave your phones in the car?
A Didn't want to make no noise. The phone vibrate, lights, anything can be seen.
Q So it was purposeful to leave the phones in the car?
A Oh, yes.
Q So you got back there and you're waiting for this period of time. And then you saw Mr. Lyles come to the back door?

A Yes.
Q What did y'all do when he came to the door?
A Hid beside the house.
Q Okay. And he opened the door.
A Uh-huh.
Q Then what happens?
A He came out and got a piece of wood and stepped back in the house.
Q What did y'all do?
A Nothing at that time. Just stood there and watched him.
Q Okay. Did he come back again?
A Yes, the second time.
Q What happened the second time?
A Then he went back and left the door opened.
Q And then what happened?
A And at that point we came in behind him.
Q And what did you do when y'all got in the house.
A Well put him down on the ground. Then Chris tide him up.
Q What did he tie him up with?
A Little flex-type ties, white ties.
Q How did he tie him?
A I can't answer that part, I was in the back. As soon as he was on the ground and started tying him up, I

went to the back room.
Q Okay. How was Mr. Lyles acting?
A Scared. Pretty much.
Q Okay.
A He didn't say too much. I think Mr. Lyles at the time thought we were really the police.
Q You thought at first he thought that?
A Yes.
Q Okay. And then what did y'all do with Mr. Lyles?
A He pretty much compiled with everything we said. When I went to the back room, Chris brought him to the back. We was in T-Lyles room at the time. And me and Chris laid him on the floor, we started searching the room.
Q Okay. And y'all were looking for this money?
A Yeah. We was looking for money and dope to be honest with you.
Q Did you find a lot of money?
A We didn't find no money. We found probably about a pound and a half of weed, marijuana.
Q Did somebody end up taking that?
A Yes.
Q Who did?
A I think Chris did. It was in a black bag. We put everything in the bag we had and took it back up

front with was.
Q What room was this?
A The last room on the right.
Q Okay. Where was it?
A It was up under the back of the bed in shoebox.
Q Okay. So you got that but you didn't find any other money?
A Not that I know of.
Q You didn't anyway?
A No.
Q But you took the money from Mr. Lyles?
A Yeah. Mr. Lyles had 650 or $750.00 in his pocket. In his wallet.
Q So his money that was found on you when you were caught?
A Was Mr. Lyles' money.
Q And the cell phone?
A Mr. Lyles?
Q And the watch?
A I think that T's. His son.
Q But it was taken from the house?
A Yes.
Q Okay. All right. So you put Mr. Lyles in the floor in that back bedroom and then y'all searched the house like you said you did?

A Yes.
Q And then at some point did you go back there with Mr. Lyles?
A Yeah, me and Mr. Lyles was actually in the room across the hall when his wife came home.
Q Okay. Why were you back there with him?
A Well I remember Poncho was saying somebody was coming. So we kind of just stood in the room, kind of like hiding. I was anyway. I'll just say it that way.
Q Then what happened -- could you hear when Ms. Lyles got home?
A I heard somebody hit the floor, kind of like somebody getting rustled down on the floor. Then when I came out she was on the floor.
Q Okay.
A I had Mr. Lyles with me at that point.
Q You brought Mr. Lyles out?
A Yeah, me and him was going back up towards the front.
Q That's when threats are being made that he would be killed if they didn't tell where the money was?
A I don't remember that part right there. I don't remember nobody saying that. It probably got said but it wasn't said in my presence.
Q Okay. Now, at some point did you realize that the

police were on the way?
A Yes. Not on their way but actually outside. Because when we was standing there talking, after he had took Mr. Lyles back to the back room, I'm standing in the front with Ms. Lyles still laying on the floor, that's when I seen the police pull up.
Q You actually saw the car or the lights?
A I saw the car pull up, no lights.
Q Did you tell Christopher Russell that you saw the car?
A Yeah, he done came back up front by then. We both seen the car at that point.
Q Okay. What did you do? What did y'all talk about?
A Well I decided to go out the backdoor, the same door that we came in. He decided he wanted to steal the T.V.
Q Okay. So did you go to the back room -- the backdoor?
A Yeah, I actually opened the door, was getting ready to go out when he hollered out he wanted to steal the T.V.
Q What happened then?
A I shut the door back, got ready to go back and then changed my mind, ran back out the door anyway.
Q Okay. So you ran out then?

A Yeah.
Q Could you see any police officers when you ran out?
A No.
Q What did you do when you ran out?
A Ran back towards the middle fence. It was a fence in the back of the house and has an open part in it and I went straight for the fence.
Q Okay. And then what happened while you were running toward the fence?
A K-9 unit, the dog chased me down.
Q Caught you?
A Yeah.
Q And what did you do with the gun while you were running?
A I throwed it. Hit the side of the house.
Q Why did you throw the gun?
A I just didn't want to got caught with it. It wasn't registered to me so I just figured get rid of it.
Q Okay. Did you ever see what was going on with the Defendant, Christopher Russell, while you were running?
A No.
Q You just knew he stayed in the house?
A Tell you the truth, I didn't know which way Chris went.

Q Okay. Now, when you got -- when you got caught by these officers --
A Uh-huh.
Q And a couple of them spoke to you about what -- about what happened, isn't that right?
A Uh-huh.
Q Did you tell right away who was involved in this with you?
A No.
Q It was actually about a couple weeks later before you told, isn't that right?
A Yeah.
Q Why didn't you tell right away?
A It's kind of code thing. You know, you got a friend, y'all do stuff together, y'all kind of look out for one another. And they had me at the time so I just figured ain't no point in telling on him too.
Q You knew you were caught?
A Oh yeah, definitely.
Q I mean, you had the money?
A Everything.
Q Gun, mask?
A Yes.
Q Okay. Now, although you haven't been promised anything for cooperating, are you hoping that?

A Of course.
Q It will be taken into consideration when it comes time for sentencing?
A Yes, sir.
Q Is that one of the reasons you're cooperating now?
A Not really. The truth has to come out regardless, so.
Q I want to ask you a few questions about some phone records that have already been entered into evidence, okay?
A Okay.
Q Going to try having you, if you could just back your chair against the wall a little bit, I'm going to try not to blind you. All right, did you have a nickname?
A Yes, Jetta Bug.
Q Jetta Bug?
A Jetta Bug.
Q Okay. We're going to look at some information that is -- what's been marked as State's Exhibit No. 43, some records from the cell phone that was found in the console of your car.
A Uh-huh.
Q I'm going to start off by looking at page four, which is the contact, which is the phone contacts section

of the phone. Are you able to read that from where you are?

A Uh-huh.

Q Now, looking at entry number 15, are you able to read--

A Yeah, I see it.

Q Okay, is that your name?

A Yes.

Q Is that what you were called by the Defendant, Christopher Russell?

A Uh-huh.

Q And is that your phone number?

A Yes.

Q What is your phone number?

A 360-3276.

Q Okay. Now, we're going to look at some incoming phone calls from December 18th, 2010. I want you to start off by looking at entry number six and seven. Is that your name, Jetta Bug?

A Yep.

Q That's your phone number next to it?

A Yep.

Q Does it surprise you to see that you called him at 6:34 and 6:33 p.m. that evening?

A No.

Q Okay. And looking further down these records, entry number 41, which is the day previous, you see your name again?
A Uh-huh.
Q Surprise you to know that you called him on the 17th of December 2010?
A No.
Q Now, we're going to -- now we're going to look at some outgoing phone calls, some phone calls that he made. Once again, looking at December 17th, 2010, looking at entry number 4?
A Uh-huh.
Q Which is a call he made. And is that again, your name and your phone number?
A Yes.
Q And that is December 18th of 2010 at 1920, which is 7:20 p.m. Would it surprise you that that phone call was made to you?
A Nope.
Q And the same with the one right under that at 7:10 p.m.?
A Uh-huh.
Q And if you look down to entry number 10, do you once again see your nickname and phone number?
A Yes.

Q So once again, this would be about 6:11 p.m., surprise you to know that a phone call was made at that time?
A No.
Q And entry number 20, do you again see your name and phone number?
A Uh-huh.
Q This again would be 3:47 p.m.
A Yes.
Q On December 18th of 2010. Would it surprise you to know that he called you on that date?
A No.
Q And that time?
A No. We correspond pretty much everyday.
Q Okay. Just a couple more one, more I want to ask you about. Which is also on December 18th, 2010, entry number 27 at 3:22 p.m. Once again, you see your name and phone number?
A Yes.
Q Now, why would y'all have been -- on December 18th that afternoon, from 3:00 until 6:30 or so, why would y'all have been calling each other?
A Making plans.
Q Making plans for what?
A Pretty much whatever we was going to do that day.

Q Which would be going over to the Lyles' residence?
A One of the things.
Q Now, you mentioned having a truck, what kind of truck did you have at that time?
A I had a Yukon.
Q A Yukon?
A A GMC Yukon.
Q Was that the only vehicle you owned?
A Yes.
Q Did you ever own a white Marquise?
A Yes.
Q Okay. Had you forgotten about it?
A No, I haven't forgot about it, just didn't think much of it at the time to tell you the truth. When you asked me what I owned, I just thought about the Yukon.
Q Okay, that was the main car you drove?
A Yeah.
Q You also did own a white Marquise?
A Yes.
Q And why you didn't you use that vehicle this night?
A It didn't have any insurance on it.
Q Okay. Did you ever allow anyone else to drive -- you can move back over to the microphone.
A Chris did.

Q You allowed Chris to drive the car?
A Chris drove the car.
Q Okay. How often would you -- over how long a period of time would you allow him to use the car?
A He kept the car over at his house.
Q But it was yours?
A Yes.

MR. MOYER: Okay one moment, please. Okay, please, answer any questions the Defense may have.

CROSS-EXAMINATION

BY MS. ROSS:

Q So on this charge, you were facing life without parole, weren't you?
A Yes, ma'am.
Q And that was because of a prior trafficking that you had an 18 year sentence on?
A No.

MR. MOYER: Your Honor, may we approach?

THE COURT: Yes, sir.

(WHEREUPON, an off-the-record bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: Madam Forelady, would you take the jury to the jury room, please.

(WHEREUPON, the jury left open court at approximately 2:25 p.m.)

THE COURT: Okay.

MS. ROSS: Judge, he was convicted of trafficking in 1993 and sentenced to 18 years. My understanding of the rules is you go back 10 years from the end of punishment. Which would be--

THE COURT: Well, you still have to show probative value and same conversation we had earlier with Mr. Moyer--

MS. ROSS: Well certainly --

THE COURT: Hold on for a second. I'll certainly hear you. My understanding of show the probative value is the propensity to show truthfulness or the lack of truthfulness in their testimony.

MS. ROSS: Well--

THE COURT: Drug offenses do not indicate truthfulness or lack of truthfulness according to my understanding of the cases.

MS. ROSS: Well Judge, it certainly would come in under the rules of 10 years. As far as truthfulness or not, it would go to bias. Because due to these extra strikes, this would be the automatic three strikes --

THE COURT: Well certainly --

MS. ROSS: -- cause him to get life without

parole.

THE COURT: Go ahead, I'm interrupting you, I'm sorry.

MS. ROSS: Go ahead.

THE COURT: I was going to say certainly you have a right to cross-examine him, the fact that he's looking at a LWOP or a mandatory minimum. I think the cases are clear about that. However, the exact charge, unless it fits into that room work of prior bad act. For that purpose I don't think comes in.

MS. ROSS: All right. I would ask that it at least come in as a most serious charge that could lead to automatic life without parole.

THE COURT: Well I certainly, again, and I want to be clear, I'm going to let you cross-examine him. I don't see a problem with the fact that you cross-examine this gentleman with the fact that based on his prior record, without getting into the particulars of it, at the time of this charge, he was looking at life without the possibility of parole and to show his bias. Also, if there's a mandatory minimum he was looking at, you would have the right to get into that. As to the particular charge and his prior record, unless it fits in the prior bad act category or some other exception, I don't think you can get into it. I'll be glad to hear from you about

that, though.

MS. ROSS: Judge, I would be satisfied to -- but I would like to be able to explain to the jury he has been convicted of a charge that is a most serious crime. And has potentially two or three strikes. I think that goes to bias. And the probative value certainly outweighs the prejudice to let in that information.

THE COURT: Mr. Moyer, I don't see any problem with her doing that.

MR. MOYER: The problem is it's not most serious, trafficking is serious. He's not looking at life without parole. He's grant it, he's looking up to life because of the burglary charge.

THE COURT: Have y'all looked at his record?

MR. MOYER: Yes, I have it right here.

THE COURT: Well look at the records and make sure. Either he was looking at LWOP or he was not based on his record.

MR. MOYER: He was convicted of trafficking in cocaine.

MS. ROSS: I thought that was most serious. I -- I could be incorrect but it still would be one strike, serious, but it means any conviction from armed robbery or kidnapping, both most serious, could be automatic life without parole.

THE COURT: The records speak for itself. I certainly would not be able tell you I know all the serious, most serious, I do not. So let's take a break, we're getting close to that time in the afternoon, look at it, okay. And y'all come up with -- it maybe that we continue -- do you have a copy of that we can make a Court's Exhibit in this matter.

MR. MOYER: Of his criminal history?

THE COURT: Yes, sir.

MR. MOYER: Uh-uh.

THE COURT: Okay, if you didn't mind doing that, please, sir.

They'll take you back but you can't speak with anybody about your testimony during the break, okay.

We'll be in recess. Let's go to about 15 minutes, will that give you enough time? I tell you what, once y'all finish looking at, send word back and then we'll take a break, then we'll start back. Thank you.

(WHEREUPON, a short break was taken.)

(WHEREUPON, Court's Exhibit No. 3 was marked for identification and received into evidence.)

THE COURT: We're ready to start back, have y'all had your own break?

MR. MOYER: Your Honor, I just got a couple of documents I'm looking at as we speak.

THE COURT: Okay. While you're doing that I'm going to step out and get me some more coffee right quick.

MR. MOYER: The Defendant does have some convictions from 1992. He has several drug convictions. Two of the convictions are for trafficking and trafficking cocaine and trafficking heroin. Trafficking drugs is a serious offense, not a most serious offense. So these -- although, we have two convictions, they're from incidents that happened at one time.

THE COURT: So it would be treated as one.

MR. MOYER: So it would be treated as one. Which means he has on one previous strike. Which under the life without parole statute means he's not eligible for life without parole.

THE COURT: You agree with that, looking at the record, Ms. Ross?

MS. ROSS: Well, since armed robbery and kidnapping, again check up on me, are two strikes, that's three strikes.

THE COURT: I thought since those were in the same incident on 12/18/2010 you could just them one only--

MS. ROSS: Right but even one count of armed robbery or kidnapping equals two strikes. It's a most serious. So if you have a serious and most serious, you're looking at life without parole is my understanding.

MR. MOYER: Actually, under the statute of 25-45, when someone is convicted of a most serious offense, they're eligible for life without parole if they either have a previous most serious offense or two previous -- or two previous serious offenses. He only has one previous serious offense from the drugs. So that means when he was convicted or pled guilty to the armed robbery or kidnapping, most serious offenses, he's not--

THE COURT: Well, I've asked that question before because it's really that same statute but it's set for the general statutory construction that it's a penial statute and it's strictly construed against the State. Unless it's specifically unambiguously stated that under the circumstances it's LWOP when it would not be a LWOP. That's the only way I know to construe it. Unless it unambiguously says one most serious plus one serious equals --

MS. ROSS: Three.

THE COURT: Three.

MS. ROSS: Okay. So, I would just go ahead and make an argument that as far as without him getting into Rule 609 -- 608(B) when you're going into the truthfulness and not the bias of the witness, I do think it increases the probative value of his prior record. And the fact that what he was looking at here on -- potentially looking

at--

THE COURT: I disagree with that a hundred percent. I just want to make sure that when you were looking at the range what he's looking at cross-examine him on the proper time.

MS. ROSS: Right. So, your ruling on that, I believe, are you saying that your ruling is that he's not eligible for life without parole?

THE COURT: I'm basing what I'm ruling on what you're telling me is in the record and you're telling me that there's one most serious and one serious. And under the unambiguous wording of the statute, that does not qualify for LWOP to me. Especially since it's a penial code to be construed against the state or penial statute, excuse me. With that being said, what would be the maximum time that he would get if you add up all the charges?

MS. ROSS: For kidnapping, of course, life and burglary first.

THE COURT: Well certainly, you have the right to cross-examine him on the fact that he was looking at life.

MS. ROSS: Right.

THE COURT: He served a mandatory minimum. There's not a mandatory minimum on any of these, is there?

MS. ROSS: Armed robbery 10.

THE COURT: Ten. Under the case law, I think that was Judge Welmaker's case, you have the right to ask him about the mandatory minimum. Obviously, in your discretion. So up to life a mandatory minimum of at least 10.

MR. MOYER: Kidnapping's up to 30, Your Honor. It use to be up to life but kidnapping's zero to 30.

THE COURT: Add any one of those cases together and that's the number of years he's facing. And that's what he's looking at.

MS. ROSS: The burglary first is 15 to life. I hope I'm right about that at least. But I know that there was a life sentence in there some where.

THE COURT: I'm not disagreeing with you. I don't try to be perfect on these. I like to be.

MS. ROSS: Just another thing I would ask--

THE COURT: Hold on just a second, I want to make sure on the record so we don't stump our toes, mandatory minimum on ten on armed robbery up to and just add the number of years that he could have gotten consecutively because that's certainly what he was looking at. Okay. So you had all those up, how much would that will be?

MS. ROSS: Well the burglaries 15 to life, so.

THE COURT: Burglary is clearly 15 to life?

MR. MOYER: And just so we're clear on this fact, the burglary charge he's not being convicted on, what being dismissed. And I know it--

THE COURT: She's going to have the right to ask him if it's 15 to life, that he has up to a life sentence and a minimum of 15 years under the burglary category.

MR. MOYER: Yes, I acknowledge that.

THE COURT: Then it's a LWOP that we have established because I think that shows bias. Then a motive to go ahead and testify to get favorable treatment from the State.

MR. MOYER: I agree with that. I just want to make sure that the jury is clear that at no point was he looking at mandatory to life, he was looking at a range of 15 to life.

THE COURT: Right.

MR. MOYER: For those charges.

THE COURT: Okay.

MR. MOYER: All right. Then to move on to the second issue about what charges he can be impeached on. We have these drug charges from 1992. The second question, I think--

THE COURT: Well wouldn't that be beyond the scope of the 10 year statute unless you show some

particular reason why? What rule is that?

MS. ROSS: 609(B). My understanding is that 10 years from conviction or release or confinement, whichever is later.

THE COURT: Right.

MS. ROSS: So therefore, since -- I just looked at the rap sheet which is sometimes not the most trustworthy thing, but it said 18 years so I simply added that he was convicted in '93. Eighteen to '93 and got 2011. His release might have been a few years earlier than that with 85 percent. But then I don't know if he had conditional release or not given the time of his convictions.

MR. MOYER: We can ask him, he's in the courtroom right now. Can we ask him what year he was released from prison.

THE COURT: What year were you released?

THE WITNESS: 2001.

THE COURT: 2001?

THE WITNESS: Yes, sir. September the 18th, 2001.

THE COURT: These charges were 2010. He was arrested 2011, that would have been within the 10 year statute. The time of the arrest.

MR. MOYER: Time of arrest. But then the next

question is the Court still has to do a balancing test.

THE COURT: Well here's what 609 says as to a witness. Says, Shall be admitted to the category unless I find that it's more prejudicial than probative.

MR. MOYER: And we see all the time, when the shoe is on the other foot, very rare we're allowed to impeach a defendant on a--

THE COURT: Well it differentiates between the accused and witness. The standard is different from one. So, I mean, I didn't write the rules, I'm just reading it.

MR. MOYER: Okay. Well, I would just argue for the record that I think a conviction from 20 years ago has little, if any, probative value on his -- if, Your Honor, sees -- if, Your Honor, is going to allow it to come in, I would just ask that first off, these two charges trafficking in heroin and trafficking in cocaine and the sentence range -- the sentence, what he received on those charges, although, I guess it's already out but that certainly is not admissible.

THE COURT: I agree with that. I mean, the only thing that you can cross-examine, the fact that he was convicted or pled guilty to the charge. And anything else you cannot go into under that rule. Okay. Under 609(A)(1).

MS. ROSS: Okay. So I will just ask that, I

won't talk about mandatory life. But I will talk about potential life sentence from the burglary first. Can I just clarify exactly what he pled to? Armed robbery, conspiracy and?

MR. MOYER: Kidnapping.

MS. ROSS: Can I mention the ability of the State to revisit a guilty plea, a later date and change that substantial performance, I believe it is, under the new law within a year?

THE COURT: No.

MS. ROSS: Okay.

THE COURT: I --

MS. ROSS: I just thought I'd ask --

THE COURT: I'm not being frustrated, I'm just thinking out loud. No, I don't think you can.

MS. ROSS: All right, thank you.

THE COURT: All right, we're ready to proceed?

MR. MOYER: Only other thing, Your Honor, we ask for his criminal history to be --

THE COURT: Make that a Court's Exhibit, nothing to go to the jury.

MR. MOYER: Okay.

(WHEREUPON, Court's Exhibit No. 3 was marked for identification and received into evidence.)

MR. MOYER: Your Honor, if it pleases the Court,

I will pass up -- this will be Court's Exhibit 3. Which is the criminal history rap street for Antonias Williams.

THE COURT: Just give it to the Court Reporter and it needs to go me. Am I supposed to look at it for any reason? I don't think I am but.

MR. MOYER: I don't think at this point we really need to.

THE COURT: Okay, thank you.

All right, Mr. Moyer, State ready to proceed?

MR. MOYER: Yes, Your Honor.

THE COURT: Ms. Ross, Defense ready to proceed?

MS. ROSS: Yes.

THE COURT: Okay, bring the jury.

(WHEREUPON, the jury came into open court at approximately 4:00 p.m.)

BY MS. ROSS:

Q All right, Mr. Williams, again, you were convicted of a trafficking charge in 1993, is that correct?

A Yes, ma'am.

Q And on these charges here, you were facing a life sentence, that's correct; isn't it?

A I guess, I don't know to be honest with you.

Q Now, here, you're cooperating with the State and testifying against Christopher Russell. Now, isn't it true that you do expect some kind of benefit off

that testimony?
A Yes, ma'am.
Q Okay. And, in fact, the burglary charge that you didn't have to plead to carried 15 years to life itself and that has been dismissed?
A Right.
THE COURT: I need you to speak closer to the microphone, please, sir.
THE WITNESS: Okay.
BY MS. ROSS:
Q Now, just talking a little bit about the incident, here today you admitted that you took the $700.00 and the watch and the phone from Mr. Lyles that evening?
A Yes.
Q Now, when you gave your original statement you denied taking that money, didn't you?
A Yes.
Q All right. And in your original statement you talked about how you knew a guy named Poncho?
A Right.
Q You said he's Christopher Russell but you knew him as Poncho?
A Yeah.
Q And you said that you had known him pretty much all your life?

A Yes, ma'am.
Q And you knew his brother David as well?
A No, not all my life.
Q Not all your life?
A Just actually met David in 2010.
Q All right. Now, I'm just going to go through some of your testimony. You talked a lot about how you had been watching the house or watching the place. And said that you weren't intending to go in that night but you had the gun and the screwdriver and the flashlight with you, right?
A Right.
Q And you said and the guy was with you and got a bag of weed and ran out with the bag of weed?
A I'm a little confused, what you mean?
Q Well earlier you had said that Poncho had a gun and got some kind bag of weed at the house.
A Right.
Q Essentially, you didn't see him leave but he took the bag of weed?
A I'm assuming he did. Because the police said they didn't find it.
Q So -- so, that's your assumption that he had dope and had left with it because you didn't?
A Right.

Q Now, I want to talk about Anthony Lounds. Isn't it true that you know Anthony Lounds?
A Yes.
Q And isn't it true that when you were arrested in December you met Anthony Lounds at the LEC?
A The who?
Q When you were arrested in December of 2010.
A Right.
Q Anthony Lounds was at the LEC as well as you at the Greenville Law Enforcement Center?
A No.
Q You're saying that he was not in jail when you were there?
A Not that I remember.
Q Okay. So, you're denying that you ever tried to use his phone points to make phone calls on his phone?
A No, ma'am, I never did that.
Q Okay.

MS. ROSS: I beg the Court's indulgence, if I could just look at one thing.

THE COURT: Okay.

BY MS. ROSS:

Q Okay, just for what it's worth, it's your testimony that you never saw Anthony Lounds at the law enforcement center between December of 2010 and May

of 2011?
A No, ma'am, I didn't.
Q Okay. So you're denying that in front of Anthony Lounds you said, The police knows someone else was there?
A Yes, ma'am, I deny it.
Q And you deny that you said, I'm going to give up J.D., Rodney Pitts, Febe Smith or Chris Russell?
A No, ma'am, I didn't say anything of that.
Q Are you denying that when you were using his phone points and making calls, you were, yelling on the phone saying, I've got something for you?
A Ms. Ross, I said none of that.
Q And you're denying that you were angry at your old lady and thought Chris had been messing with her?
A Definitely denying that.
Q All right. Now, you're wearing a red jumpsuit right now?
A Yes, ma'am.
Q Is that for some kind of infraction that they make y'all wear red instead of orange?
A They put me in this to keep me away from Christopher.
Q So they put you in red to protect you?
A Yes.
Q That's your testimony?

A That's what they did.
Q They punished you instead of him?
A I wouldn't call it punishment. Just keeping us away from one another.
Q Now, when you were arrested, you had a long time to talk to law enforcement, you were sitting out there, you were caught; correct?
A Correct.
Q And you'd been bitten by a dog and you went to the hospital?
A Correct.
Q And at that time -- at no time did you mention Christopher Russell at the hospital or at the scene afterwards, did you?
A No, ma'am.
Q And only -- did you have a lawyer two weeks later when you went and talked to Detective Weiner?
A No.
Q So you just contacted him yourself with no lawyer suggestion?
A No, actually he contacted me.
Q Okay. Now, I just want to get another thing straight about what you had said before. You talked a little bit about T-Lyle, is that the son of Elaine Lyles?
A I guess. I don't know her first name. I just say

Ms. Lyles.

Q Ms. Lyles. And you said you'd gone over to the house with Christopher Russell?

A Yes.

Q To that house and met with T-Lyles before?

A No.

Q But you'd gone over to that house?

A Yes.

Q And you're saying you'd gone in the house before?

A Yes.

Q With no one there, you'd just gone there to the house?

A With me and T-Lyles went in the house.

Q So you and T-Lyles had gone into the house?

A Yes.

Q And didn't you say earlier that Poncho was with you or that Christopher Russell was with you?

A No, ma'am.

Q So it was just you and T-Lyles. So you knew T-Lyles?

A Yes, ma'am.

Q Okay. Now, isn't it true that you're using Christopher Russell as a name just to get yourself out of this situation?

A No, ma'am. I promise you I'm not.

MS. ROSS: All right, no further questions.

THE COURT: Redirect?

MR. MOYER: I have just a few matters on redirect. May it please the Court.

REDIRECT EXAMINATION

BY MR. MOYER:

Q Mr. Williams, first off, to clear up the kind of time of sentence you were facing, you realize that you were never looking at any kind of mandatory life without parole, do you realize that?

A No, sir. I just go by what y'all tell me.

Q Okay. And do you understand that the burglary charge that was dismissed, that carries 15 years to life?

A Yeah.

Q But the other charges you pled guilty to, you can get up to 65 years in jail?

A Right.

Q You know that. And no one has made any promises to you as to where in that range you're going to get?

A No.

Q Now, the marijuana that you talked about that was found in the house, how big was this bag? Can you use your hands to give us an idea?

A Not really.

Q Okay. You hold your hands--

A Just say that brown bag.

Q About as big as this brown bag?
A Where your hands at right now.
Q I'm sorry?
A Where your fingers at.
Q Yes.
A About that much, yeah.
Q Okay. And you said it fit in a shoe box?
A Yeah.
Q And you don't know whether anyone took that or not?
A No, I have no idea.
Q Okay. You just saw it in the house?
A Yeah.
Q Now, when you're asked about Anthony Lounds, your testimony is you didn't see him when you were in prison?
A Last time I seen Anthony Lounds was in 1991.
Q Okay. So you don't know if he was in the jail but just that you didn't see him?
A Right.
Q The jail is pretty big, isn't it?
A Yes, sir.
Q So there could be people in you won't see?
A Right.
Q And you said the jumpsuit you're wearing now is not because of anything you did it was--

A No, I haven't been in no trouble at all.
Q You spend the night down at the Greenville County jail, right?
A Yes.
MS. ROSS: I object to leading.
MR. MOYER: This is reply, Your Honor.
THE COURT: Just rephrase.
BY MR. MOYER:
Q Did you spend the night in the Greenville County Detention Center?
A Yes, I did.
Q Okay. When did you go into the Lyles' home with T-Lyles?
A This happened in early 2010. I would say about May sometime.
Q Was it before you and the Defendant came up with the plan to rob him?
A Oh yes, definitely.
Q So well before that?
A Yes.
Q So when you and Christopher Russell use to go over there, it was not to meet with T-Lyles?
A No.
Q Just to watch?
A Yes.

Q So making sure you weren't seen?
A Yes.
Q Is that the reason why you didn't do much of the talking during this incident?
A I guess you can say that.
Q Had you ever met Mr. Lyles?
A No.
Q Okay. So, you weren't worried about him recognizing you?
A No.
Q Okay.

MR. MOYER: Thank you, nothing else.

RECROSS-EXAMINATION

BY MS. ROSS:

Q So, you were just talking about your part in this, you admitted you're expecting a lesser sentence than Christopher Russell, right?
A I wouldn't say that, I just expect at lesser sentence for cooperating.
Q And isn't this the gun that you took and put in Mr. Lyles face and in his nose?
A No.
Q And were yelling at him, demanding his money, with this gun in his face and nose?
A No, ma'am.

Q So that's all a lie?
A Yes.
MS. ROSS: Nothing further.
THE COURT: All right.
Thank you, sir, you may be--
Any reason why he can't be excused?
MS. ROSS: None from the Defense.
THE COURT: Thank you, you may be excused.
MR. MOYER: Your Honor, may we approach?
THE COURT: Yes, sir.
(WHEREUPON, an off-the-record bench conference was held in the presence of the jury but out of the hearing of the jury.)
THE COURT: All right, Mr. Moyer, call your next witness.
MR. MOYER: Your Honor, at this time the State rests.
THE COURT: All right, ladies and gentlemen of the jury, let me tell you normally the case The State presents its case in chief because it has the burden of proof. After that I take up some administrative matters, then we'll bring you back, may be tomorrow, may be this afternoon. Let me look and see in a few minutes. So if you'd go back to your jury room, just relax for a few minutes, we'll let you know as soon as we can, okay.

Thank you.

(WHEREUPON, the jury left open court at approximately 4:17 p.m.)

THE COURT: All right, Ms. Ross, any motions?

MS. ROSS: Yes, Judge, I move for a directed verdict at this time. The mere suspicious of guilt is not enough to get beyond this point in trial. So we would move for a directed verdict. I also renew my prior motions. Especially in terms of the search warrant, my motions to suppress and my motion to quash.

THE COURT: Those motions are denied.

Okay, Mr. Russell, would you stand up, please, sir. Raise your right hand.

CHRISTOPHER RUSSELL, after being duly sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Okay, I need you to speak loud enough so I can hear you. You don't necessarily have to speak in there, just speak a little bit louder. Now, let me tell you at this point in time I need to go over with you concerning of your rights. I'm going to make sure that you understand them and I feel comfortable that you have gone over this information with your attorney but I need to satisfy myself that you have,

okay?
A Yes, sir.
Q First, we've reached that point in this trial where you have a right to present a defense which would include potentially you taking the stand and testifying. Now, you have the right under the Fifth Amendment of the United States Constitution to claim the right to remain silent or the right against self-incrimination. Number one, has those rights been explained to you?
A No, sir.
Q Sir?
A No, sir.
Q Okay. Well, I'll explain them to you now. Under the Fifth Amendment right to the United States Constitution, neither me, your attorney, nor the state or anyone, can compel you to come up here and testify against yourself. Do you understand that?
A Yes, sir.
Q Now, if you were to go and not testify in this case and at the end of the day when I charge the jury on law, I will instruct them as part of my charge that they shall not consider your failure to testify whatsoever. Because number one, that is your right under the Fifth Amendment to the United States

Constitution. And number two, the burden remains on the State of South Carolina to prove you guilty beyond a reasonable doubt by establishing all elements of all crimes that you're going to trial for, do you understand that?

A Yes, sir.

Q Now, on the other hand, if you decide that you do want to take the stand, then you will be subject to direct examination from your lawyer, you also will be subject to cross-examination from the State just like any other witness. If you have any crimes involving punishment for more than a year and crimes involving dishonesty or some type of moral turpitude and it's been within the last 10 years, then you may be cross-examined on those crimes if I find that the probative value outweighs the prejudicial impact on your case. Do you understand that?

A Yes, sir.

Q I need you to speak louder, please.

A Yes, sir.

Q Has that been explained to you?

A Yes, sir.

Q Do you have any questions whatsoever about anything I've gone over with you thus far?

A No, sir.

Q Do you have any questions with me?
A No, sir.
Q Okay. Now, let me tell you this, whether or not to exercise your right under the Fifth Amendment of the Constitution, is a personal right solely belonging to you.
A Yes, sir.
Q You can make that decision in conference with your attorney. You can make that decision in conference with some other family member or friend or somebody you reasonably would like to confer with. However, at the end of the day, the decision of whether or not to exercise your right under the Fifth Amendment is yours and yours along to make. Do you understand that?
A Yes, sir.
Q In order to waive or exercise your Fifth Amendment right. Otherwise, in order to say I want to remain silent or say I want to testify, you have to make that decision knowingly, intelligently and voluntarily. Do you understand that?
A Yes, sir.
Q Okay. Do you have any questions whatsoever?
A No, sir, not at this time.
Q Okay. Now, do you wish to discuss with your attorney

or anyone else further whether or not you wish to testify in this matter?

A Yes, sir.

THE COURT: Let me do this. Would you confer with them whether or not that could be done now or we need to take a break in the proceedings, Ms. Ross?

MS. ROSS: I think we can do that now.

THE COURT: Okay.

(WHEREUPON, an off-the-record discussion was held between Ms. Ross and the Defendant, Christopher Russell.)

MS. ROSS: Okay, just stand up.

We have conferred and my understanding is that Mr. Russell does not want to testify.

BY THE COURT:

Q Mr. Russell, have you had sufficient time to speak with your attorney or whoever else you'd like to speak with?

A Yes, sir.

Q I need you to speak louder, please, sir.

A Yes, sir, I need to speak to my mother.

Q Is she here?

A Yes.

Q I'll let you speak with her within a few feet from the rail or whatever you call that piece of furniture

back there but you can't touch her. She can't be within arms length of you. Would you like to speak with her for a second?

A Yes, I'd like to speak with her.

Q Okay, go ahead, sir.

Officer, you secure whatever precaution you feel like you need to have.

(WHEREUPON, the Defendant, Christopher Russell, had an off-the-record discussion with his mother.)

BY THE COURT:

Q All right, Mr. Russell, at this point do you wish to testify?

A No, sir.

Q Okay. Now, you're making that decision freely and voluntarily and intelligently knowing your rights under the Fifth Amendment?

A Yes, sir.

THE COURT: Very good.

Ms. Ross, do you have a witness you'd like to call or a witness we can get in today?

MS. ROSS: Yes, I have two. And we might be able to complete them today depending on cross-examination.

THE COURT: Okay, call your first witness.

Bring the jury in. Hang on.

State ready to proceed?

MR. MOYER: Yes.

THE COURT: Ms. Ross, you're ready to proceed?

MS. ROSS: Yes, Your Honor.

THE COURT: All right, go ahead.

MS. ROSS: I apologize, they need to get him back. They're going to transport him up here. The witness that I had, I apologize.

THE COURT: Okay, just one second, please.

THE BAILIFF: Yes, sir.

MR. MOYER: Your Honor, we probably should talk about what this next -- what impeachment testimony can be brought out on this witness.

THE COURT: Okay. All right.

MR. MOYER: And I think he has convictions from 1995 for manslaughter which he got seven years on. Then he had some other convictions that kept him in prison for the majority until about 2010. However, those convictions were overturned on appeal. He was serving life without parole on those. Then in 2011 he was convicted of armed robbery. And he's serving life without parole for that. So, I think, really then the only charge that would come within the past 10 years would be the armed robbery in 2011.

THE COURT: The armed robbery?

MR. MOYER: Yes, sir.

THE COURT: What is your position on the armed robbery, Ms. Ross?

MS. ROSS: You know, Judge, I always ask, for defendants, I always ask that it's just treated as your serving -- you're in on a felony and you pled guilty to that. So I would ask for that. But as it is I recognize his record and I'm...

THE COURT: All right. So, we have one case for impeachment purposes, one charge.

MR. MOYER: I think that's the only one. Yes, sir, Your Honor.

THE COURT: Okay, very good. Anything else we need to clarify?

MR. MOYER: Just is your ruling that we may go into that?

THE COURT: Yes, sir.

MR. MOYER: I don't know of anything else.

THE COURT: Okay, very good. Both parties ready to proceed?

MR. MOYER: Yes, sir.

MS. ROSS: Yes, sir, Your Honor.

THE COURT: Bring the jury in, please.

(WHEREUPON, the jury came into open court at approximately 4:30 p.m.)

THE COURT: All right, Ms. Ross, call your first witness, please.

MS. ROSS: Thank you, Your Honor.

Anthony Lounds.

THE CLERK: Mr. Lounds, if you'd come around, place your left hand on the Bible, raise your right hand.

ANTHONY LOUNDS, after being duly sworn, testified as follows:

THE CLERK: Thank you, please be seated. State your name for the record.

THE WITNESS: Anthony Maurice Lounds.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. ROSS:

Q Hi there, Mr. Lounds. My name is Susannah Ross but you know me, is that true?

A Yes, ma'am.

Q Okay. And right now you're in the South Carolina Department of Corrections for an armed robbery, is that true?

A Yes, ma'am, I am.

Q And back from June 11th, 2010 to July 18th, 2011, where were you?

A At the LEC, Greenville County Detention Center.
Q All right. I'm just going to show you a booking report, are those the correct dates that you were in the Greenville Law Enforcement Center?
A What you talking about?
Q Well were you in there -- it's already been asked but from 6/11/2010--
A Uh-huh, until July 18th, yes, ma'am.
Q All right. So those dates, when you were in the Greenville County Law Enforcement Center, did you ever happen to run into Antonias Williams?
A Yes, ma'am, in the new jail.
Q So you saw him at the new jail?
A Yes, ma'am.
Q What was the context of how you saw him?
A He came in, he asked me could I give him three-way phone call.
Q Why would he ask you that?
A I guess he was having difficulty using the phone.
Q How did you know who he was?
A I had met him '95 at McCormick.
Q All right. Just going back, I forgot to ask you before, with your armed robbery, that had nothing to do with the armed robbery involving Antonias Williams?

A No, ma'am.
Q That was whole different thing?
A No, ma'am.
Q That occurred a long time ago?
A Yes, ma'am. Allegedly. Let's get it correct.
Q Allegedly occurred, okay. And that's not what you're here about today. How did I contact you or how did we talk?
A I had gave your client my name.
Q Why did you do that?
A I had met him on the reg field -- I had left the county -- from the new jail to the old jail after speaking with Antonias Williams, right? He asked to use the phone. And when he -- in the process of using the phone, something -- something occurred. I think it was like a dude had answered the phone. And he was like -- he made a comment like, I got something for both of all. He slammed the phone down. Like made a big commotion.
Q Why did that lead you to contact Chris Russell?
A We went further. He was like -- he said that he -- I asked him why he was in there?

And he was like he and his brother-in-law had got trapped off.

That was my first question to him, What you

doing here?

He and his brother-in-law had got trapped off.

And that's when he asked me about the phone. I let him use the phone. And...

Q Now, did Antonias Williams ever say anything else that you thought pertained to Christopher Russell?

A Yes, ma'am, he did.

Q What else did he say?

A He ask me had I seen him?

I was like, No.

He said that if I tell the police that Chris was wit [sic] me, what they going to do to him?

I told him, What they do to you? They going to lock him up. And I was like -- I had left. I left. I went back to the old jail. And I went to cut my toe nails on reg field. And that's when I seen Chris. I didn't recognize him at first. You know, he was making laps. I was sitting down on the ground and I was cutting my toe nails. He kept walking by. I ain't seen him in years. Appearance change, you know.

And he said like, I know you from somewhere.

I got up and started walking and stuff. Chris, you know. Then it dawned on me then that what had transpired.

Q All right. What had transpired?
A Well he had told me -- I asked him why he was in there?

He was like, Somebody had said that he was involved--

Q I got you. So you put this all together when you were out clipping your toe nails out at the -- okay. Now, going back to what you heard Antonias Williams saying, who else did he threaten?
A He didn't threaten anybody. He said, I got something for both of y'all. Whoever that was on the phone.
Q All right. Did he say anything else as far as this case?
A No, ma'am.
Q Okay. Now, what made you decide to testify today?
A I don't want to see nobody go to prison for something they didn't do.
Q What makes you think that may be occurring?
A You know, it was said they have was having a kind of like sex affair.

And she asked him, Was in or he is out? Is he out?

You know what I'm saying?

And he was like, He in.

So, you know.

MS. ROSS: Okay, I've got nothing further.

THE COURT: Cross-examination.

MR. MOYER: Thank you, Your Honor, may it please the Court?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. MOYER:

Q Okay, I just have a few questions for you. So, when was it that you had this conversation with Antonias?

A Uh, at the county jail. I was there from July -- from June 10 to July 18th, the day I left. I was in the old jail. I stayed there over year, you know, so.

Q Okay. You got locked up -- I'm sorry, I didn't mean to interrupt you. You got locked up June 10th of what year?

A 2010.

Q June 10, 2010, that's when you got locked up?

A Uh-huh.

Q And you stayed --

A I've been all over the jail. I've been in every cell in the jail.

Q Okay.

A I guess you can see a year I have boom, boom, bounced around.

Q They moved you all over the jail?
A All over the jail.
Q Okay. Just so the jury understands what we're talking about, the jail is kind of split into two sections?
A Yes, sir.
Q An old jail and a new jail?
A Yes, sir.
Q And so you've been -- during that year you say you're all over?
A All over the jail house.
Q Okay. At one point you say you saw -- you saw Antonias?
A In the new jail.
Q In the new jail?
A Yes, sir.
Q And you heard him have this conversation where he said, I got something for both of y'all?
A He was on the phone.
Q Right, on the phone?
A Yeah, I made a three-way phone call.
Q Okay. I understand that. I'm just saying, you heard him say, I got something for both y'all?
A Yeah.
Q You don't know who he was talking to?

A Whoever answered the phone. The person that was on the phone that made the three-way phone call related back that, you know, a dude answered the phone.
Q Okay. But you don't know who this dude was?
A No, I do not.
Q Okay. And you don't what this, I got something for a both of y'all has to do with?
A What else could it mean?
Q Well, we don't know, that's all speculation, though; isn't it?
A Yeah.
Q We don't know who he was talking to or what he was talking about, isn't that right?
A No.
Q That's true, right?
A You say is that true?
Q Yes.
A Saying who he was talking about?
Q You didn't know what he was talking about.
A He asked me -- right after he got off the phone he asked me -- he asked about Chris Russell.
Q Okay.
A And he asked me, If I say Chris Russell was with me --

Prior to that he told me that his

brother-in-law -- he and his brother-in-law had got trapped off.

Q Had got what?

A Had got trapped off. That's why he was in there.

Q I'm sorry, I didn't quite understand the words you're using. He and his brother-in-law got?

A Trapped off.

Q Trapped off?

A Yeah he said that he and his brother-in-law -- my first conversation with him was that what you in for, why in for, you know?

He was like, Me and my brother-in-law got trapped off.

Q Trapped off?

A Yeah.

Q What does that mean?

A Got in some trouble.

Q Got in trouble?

A Yeah.

Q Okay. Who is his brother-in-law? Do you know his brother-in-law?

A No, I do not.

Q Okay. And you haven't seen -- then you ended up over in jail -- then you got moved to another section at the jail?

A Back to the old jail.
Q Okay. And at that time you ran into Chris Russell?
A Yes, sir.
Q And started talking to Chris about this?
A Uh...
Q You told Chris about what you heard?
A No, I asked him why he was in there? He told me that somebody had said that he was involved in -- somebody burglary, something like that.
Q Okay. So, when would this have been?
A About February.
Q About February, 2011?
A About February. It was cold, it was kind of cold but it was like -- the sun was out so I say it was about February.
Q Of 2011?
A Yeah.
Q Okay. And so, Christopher Russell was in there for this robbery, right?

MS. ROSS: Object, he doesn't know what he was in there for.

MR. MOYER: I'm sorry, I thought he testified to that.

THE COURT: Lay a little bit of foundation.

MR. MOYER: Okay.

BY MR. MOYER:

Q Did you know why Christopher Russell was in there?

A No, he had said that somebody had said he was involved in a burglary.

Q Okay, a burglary. He didn't tell you any other details about it?

A Huh-uh.

Q Well why did you connect that then with what--

A Because he asked me about him.

Q He asked you about what?

A About -- about did I know Chris Russell.

Q Who asked you?

A Antonias Williams. First he said that somebody was wit [sic] him, you know. Then he said that Chris was wit him and what they were going to do to him.

Q Antonias said this?

A Yeah.

Q He said that Chris was with him?

A No. He asked me that what would they do if he said that Chris was wit him.

Q Okay. And locked him up? Okay, I'm just trying to make sure I understand what you're saying. So then when you saw Christopher Russell--

A Boom, there it go.

Q Then you thought, oh, well, he must have said

something and he got locked up.
A Yes. Yes.
Q So, this is February, 2011?
A Yes, sir.
Q So, at this point you're thinking, Antonias must have said something and got Chris locked up?
A Locked up, yes, sir.
Q For that thing that Antonias was talking about?
A He said like a burglary something.
Q Right. And you testified just a few moments ago that that seemed wrong to you because you didn't want to see somebody locked up for something they didn't do?
A Boom.
Q All right.
A I'm not getting anything for this testimony. I'm not expecting anything from this testimony.
Q That's not what I asked you. I mean, you said a few minutes ago that you didn't want to see someone get locked up for something they didn't do, right?
A Yes, I made that comment.
Q Okay. Well, you got this information the February, 2011. Did you ever call the sheriff's office and tell them what you found out?
A No, I just gave my name to Chris and he got in contact with his attorney.

Q Well that wasn't my question. My question to you is, did you ever call that Investigator sitting there a while ago, Investigator Weiner, and let him know?
A No, I did not.
Q Did you tell any guards to go tell anybody?
A The proper procedure--
Q That wasn't my question. My question is, did you tell guard to try to go get somebody over in the sheriff's office to let them know that somebody had been locked up for something they didn't do?
A No, I did not.
Q So you waited until -- you waited until here in court to give this information?
A No, I wouldn't said anything had I not seen Chris.

MR. MOYER: Okay, I have nothing further.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MS. ROSS:

Q But we talked a long, long time ago about this, right?
A When I spoke with you?
Q Right. It was a long time ago?
A Uh-huh.

MS. ROSS: All right, nothing further.

THE COURT: May he be excused?

MR. MOYER: As far as I'm concerned.

MS. ROSS: Yes, Your Honor.

THE COURT: Thank you.

You can call your next witness.

MS. ROSS: The Defense would call Eleanor Russell.

THE CLERK: Ms. Russell, if you would, please, place your left hand on the Bible, raise your right hand.

ELEANOR RUSSELL, after being duly sworn, testified as follows:

THE CLERK: Thank you, please be seated. State your name for the record. Please state your name for the record.

THE WITNESS: My name is Eleanor Russell.

DIRECT EXAMINATION

BY MS. ROSS:

Q Okay, Ms. Russell, how are you related to Chris Russell?

A He's my son.

Q All right. Is this your signature on his property record? They released that property to you?

A Yes, it is.

Q Now, and it wouldn't be surprising that you be listed as his next of kin, would it?

A No, it wouldn't.

Q Now, do you understand what Chris Russell, your son's, been charged with?
A Yes.
Q And do you know anything about this date of December 18th, 2010?
A Only that I know where he was at certain time on December 18th.
Q All right. That's called an alibi, would that make sense?
A Yeah.
Q Where was he?
A He was at my house.
Q Did he live at your house?
A No, he didn't live at my house.
Q Why was he at your house?
A He came to watch the game.
Q What kind of game?
A I don't know. He and his girlfriend and my other son, two more people had came by.
Q All right. And as far as -- did you have -- how would he watch a game at your house instead of at his house?
A I don't know why he just came to my house because I'm his momma. And they just wanted to get together for the game.

Q Now, what makes you remember this date in particular? How do you know that he was with you or why do you think he was with you?
A Well, an officer came to my house shortly after that, was telling me about some guy had gotten caught for armed robbery and whatever else. And that he was looking for my son, Christopher. But he wasn't looking him for that, he was looking for him something else.
Q Well, how did you know -- so how did you know -- when was that date?
A Oh, that was way after. Because Chris had come by, you know, had got by and I saw Christopher and was going to take him his dinner. And I didn't get to catch up with him. And later on my niece called and said they had wrestled Chris down and took him to jail. But I didn't know why.
Q Okay.
A They took him to jail.
Q And what makes you think that he was with you on the night of the incident. After you found out, what did you think?
A After that told me later on that -- that was Chris called me from the jail saying they accusing him of doing something that he didn't do.

And I said, For what and when?

He told me, December 18th.

And said, Well, you was at the house.

Q And you told him that because that's what you believed, right?

A Beg your pardon?

Q And you told him that right at the time, that's you said?

A Uh-huh.

Q All right. Now, what's your phone number?

A My phone number is 270-6038.

Q All right. And do you have any other children?

A Yes.

Q How many children do you have?

A Got three in all.

Q Do you have another son?

A Yes, I do.

Q Okay.

Beg the Court's indulgence. Okay, I've got nothing further.

THE COURT: Cross-examination.

MR. MOYER: Thank you, Your Honor, may it please the Court.

CROSS-EXAMINATION

BY MR. MOYER:

Q Ms. Russell, I just have a few questions for you. So, the first question I have for you, I think, has already been answered. So there's no question that 270-6038 is your phone number?
A Yes, that's my phone number.
Q So the phone number that was stored in this cell phone under, Momma --
MS. ROSS: I object --
BY MR. MOYER:
Q -- is your number?
A I don't know about Momma --
THE COURT: Stop just a second, don't answer that.
What's your objection?
MS. ROSS: What she would know was stored on that phone.
THE COURT: Would you show her the document, please, sir.
BY MR. MOYER:
Q I'm going to approach and I'm going to show you what's marked as State's Exhibit No. 43. At the top of page five--
A I can't see that well.
Q I have the same problem. See up here, top of the page here it says, Momma. And it says, 270-6038,

that would be you?
A That's the phone number that's the same as mine.
Q Okay. Now, you mentioned you have another son?
A I got other children.
Q Okay, how many sons do you have?
A I have got two. Christopher and another one. And I have a daughter, also.
Q Okay. So what's your other son's name?
A His name is David. David Ray Griffin.
Q Where is David right now?
A I don't know right now where he's at. I mean, he's home, he's in Greenville.
Q Okay. Where was he back in December of 2010?
A Well he was at home, too. He was back and forth with Christopher and his girlfriend. David lived with me. He lived me. So he in and out the house.
Q Okay.
A Uh-huh.
Q Okay. So he was living with you, too?
A Uh-huh.
Q And you said you have a daughter as well?
A Yes, I have a daughter.
Q And how old is your daughter?
A My daughter is 32.
Q Where does she live?

A She lives on Roper Mountain.

Q Okay. Now, did you know Antonias Williams?

A I never seen that man a day in my life.

Q Okay. So, you didn't know him at all?

A I didn't know him, huh-uh.

Q Okay. And he didn't come to your house or anything like that?

A No, I never seen him before. I looked. He favor a guy that know but it's not him.

Q Okay. Now, so your son then, let's talk about Christopher now, did he ever live with you?

A (Undiscernible.)

Q Christopher, did he live with you?

A Chris lived very next door to me. I could walk out my door then his.

Q Okay, lived right next door. In separate houses?

A Separate houses.

Q Separate houses. And who do he live over there with?

A With Ruby Willett.

Q With Ruby Willett. And do you know a girl named Boo?

A Huh-uh.

Q You don't know Boo?

A Huh-uh.

Q Or anyone nicknamed Boo?

A Huh-uh.

Q But he livid over there with Ms. Willett?
A Uh-huh.
Q And it's the young lady seated in the front row here on the end?
A Yes, sir.
Q Okay. And so your testimony then is on December the 18th, 2010.
A That's right.
Q He came over to your house?
A Yes, he came.
Q Okay. Let's talk a little bit about what time he came over there.
A You want to know what time he came?
Q Yes, ma'am.
A He came between 7:00 and 7:30.
Q Between 7:00 and 7:30?
A Uh-huh.
Q Okay, how long was he there?
A He left about 10:00 something.
Q Okay. And he came over along with how many other people? You said his girlfriend was there?
A Ruby.
Q Ruby was there?
A Uh-huh.
Q And your other son--

A Yeah, my other son was there.

Q -- David.

A David.

Q And you said a few more people, who else do you remember being there?

A Well my niece and my nephews.

Q Let's take them one at a time. Your niece, what's your niece's name?

A My niece, one of my niece?

Q Yes, ma'am. The niece who was there?

A Oh Lord how mercy, I got bunch of them. Erica.

Q Erica?

A Erica Brantley.

Q Erica Brantley, where is she?

A Where is Erica?

Q Where is Erica?

A I guess she at home. She don't live there. She at home, she got a son.

Q She lives her in Greenville?

A Uh-huh.

Q Okay. So, Erica Brantley was there, who else was there?

A Well my daughter.

Q Tell me your daughter's name again.

A Laquion (sp).

Q Say that --
A Laquion?
Q Laquion?
A Yes.
Q What's her last name?
A Russell.
Q Okay. And she was there, too?
A Uh-huh.
Q Who else was there?
A Christopher have a daughter, she was there.
Q How old is Christopher's daughter?
A She 22.
Q What's her name?
A Kristine, Kristine Brantley.
Q And anybody else there?
A Not that I can collect. They was just in and out.
Q Okay. So, those people were over there. And you said Christopher came over about 7:00-7:30?
A Between 7:00-7:30.
Q And what was the reason for him coming over that night?
A Just come to visit Mom, I guess. Just came over. Just in and out. They come -- all my kids come, my whole family.
Q Didn't you say something about a game?

A Yes, uh-huh.
Q Tell me about that.
A Well I didn't look at the game, I just know they was in there. I don't sit with the crowd. They just free at home. I didn't sit with them. I just know they were there.
Q They were there?
A Uh-huh.
Q They were watching the game?
A Yes, they were watching the game.
Q Is that the reason they came over?
A Well, they come to see me one thing, then the game came on. I guess, they were looking at it.
Q All right. Now, your testimony then is that left about 10:00-10:30. Did you see him much over the next week or two?
A Yes, I seen Chris.
Q Okay.
A I seen him up until when the police got him.
Q He lived right next door?
A He lived next door. He ain't been long moved.
Q Did he use to come over quite frequently?
A Uh-huh, yes.
Q How much would he come over?
A He walk out the door and say, Momma, what you

cooking? That was often.
Q So like a couple of times a week, everyday, how often would he come over?
A See when I pull up in my yard, he was very next door, he can see me in and out my house, I can see him in and out his. We were very next door. We walk out my door into his.
Q I understand. I'm just trying to get an idea of how often he would come over and spend time with you like he did that night.
A All the time.
Q Like a couple of times a week, would you say?
A Every other day or whatever. He catch me. Whenever I'm there.
Q Every other day or so?
A Uh-huh. He didn't have a key to my house, I know that.
Q Okay. So, you had to be home. But he could come over quite a bit?
A Uh-huh.
Q And bring Ruby over?
A Yeah, Ruby come herself. Ruby lived next door, too.
Q So Ruby would come by, he would come by, they would come by and spend time you?
A Uh-huh.

Q Okay. Now, you found out then on December -- excuse me on January the 10th of 2011, you found out he got locked up?
A Uh-huh.
Q Okay. You said an officer came by and told you that?
A Not that day. My niece called, Erica.
Q Erica called?
A Uh-huh. Said she saw them wrestle Chris down up there by Spinx and they was all over him. She called me.
Q And said they?
A The officers.
Q Said they [sic] got arrested?
A Uh-huh.
Q Okay. And when did you find out that -- I'm sorry let me back up. Then you said you spoke to him on the telephone?
A Yeah, he called me. He wanted me -- wanted me to get him out. Get him a bond.
Q Was it the same day that he got locked up?
A The same day? No, it wasn't the same day.
Q How much later do you think it was?
A It wasn't long after that.
Q A couple of days?
A It wasn't even a couple of days.

Q Maybe the next day?
A Maybe the next day.
Q Okay. So he called you and that's when he asked you to get him out on bond?
A Uh-huh.
Q And that's when he told why he had been locked up?
A Yes.
Q So this would have been January 11th or January 12th?
A I can't say exact day, you know, whether it was 11 or 12. All I know he called me then shortly after he got locked up. Because he really wanted out. He wanted me to get him out on bond.
Q Okay.
A Then he explained to me -- explained to me what everything that happened.

I said, what happened?

And he told me something about they say he done this, done that, done this.
Q Okay.
A That's what he said.
Q Okay. Then you said that's when you told him that he was over at your house?
A No, I didn't tell him that. I already knew he was at my house.
Q Okay. So, you didn't have a conversation about that?

A Huh-uh, no. Well, I told him that how could he done that on the 18th when he was at my house at whatever time it was. I don't know when you could have done that. I didn't even know when that had happened. You know, like when this robbery supposed to have happened. I just knew he was at my house at that time. I know it couldn't happen then.

Q Okay. Now, do you remember what day of the week that was when he came over?

A No, I don't remember what day it was. Because that's been some years ago. My memory ain't like it use to be.

Q Uh-huh, it's been a little while. Could you remember what he did the day before that on the 17th of December 2011?

A On the 17th, well I talked to Christopher and we was discussing the Christmas. And about my Momma. My Momma was still living. And he was asking me about Grandma.

And I said, She wanted to see you.

And he was saying he was going to be there. He was going to see her. And if I'm not mistaken, I don't think I am, I think he and Ruby did sit with my Momma for a while.

Q Okay. And that was the 17th?

A Right, that week, I just know that.
Q You don't remember which day?
A I don't know what day.
Q You can't say for sure?
A Huh-uh.
Q What about the 19th? What about the 19th of December?
A I don't know. I don't know about the 19th except that -- except that Chris -- I talked to Chris again and I got $20.00 from him for some gas.
Q Uh-huh.
A And I met him. I went by and talked with him.
Q Okay.
A But he wasn't at home, he was in City Heights. That's where he was at, Boulder Creek. And I met him up there.
Q And you remember that for sure, that was on the 19 --
A I got some money from him. It was about $20.00 to get me some gas.

He said, Momma, that's all I got. He said, I got 30, I give you 20 of it.

He did.

Q Okay. Do you remember what you did with Chris every day that month?
A I went to check on him. I goes check on him wherever

he be. You know, go by and holler at him. See if everything was all right. I done that.

Q All right. So, now you had this conversation with Chris on the -- about a day after he got locked up and you knew at that time that he had been with you?

A Yeah, Uh-huh.

Q So you knew --

A I knew on that day -- see it was fresh, my memory was fresh. He had gotten locked up because he called me.

Q Right. So, it was fresh on your memory and you knew that he couldn't have done that crime, right?

A Yeah, I knew then, not at the time. Yes, I knew he couldn't have done that.

Q And you knew then that you can prove it because both you knew and Ruby Willett knew and your son David knew --

A Yes.

Q And your niece Erica knew?

A Uh-huh.

Q And can't remember if there was someone else or not but at least five people you knew could get him off?

A Well I knew -- I knew someone had ask me but nobody asked me.

Q Okay. Well, did you ever go like try to find out who locked him up, try to talk to --

A Well the officer came to my house. And told me he didn't want Chris for that.
Q Okay. But did you ever call the investigator and tell them that he couldn't have done this because he was with you?
A Well, I told him when he came to my house.
Q Well, that was just a --
A The house that he came to, it was not my house. He came the my Mother's house.
Q Okay.
A My Mother live on down the road in Taylors.
Q Right.
A That's where he came to.
Q But did you ever call the investigators who handled this case and said listen--
A I didn't know about no investigators. I didn't know --

THE COURT: Just one second. Let him finish the question before you give your answer. And he'll let you finish your answer.

THE WITNESS: All right.

THE COURT: Okay, go ahead, please sir.

BY MR. MOYER:

Q My question is, you never called over to the sheriff's office and found out who the investigators

were who were handling this case and let them know they had the wrong guy locked up?

A No, I never did.

Q And now we're two years later and now you're telling us?

A You just now asked me.

Q Well, but ma'am, don't you never went to the police and said --

A I never went to the police --

Q Let me finish my question. You never went to the police and said, Listen you got the wrong guy, you need to go out there and keep looking and find the right guy and let my son go. You never did that, did you?

A Well, I never understood how they could charge him in the first place.

Q Okay. Let me just go over a couple more things with you. Christopher is obviously your son?

A Yes, that's my son.

Q And you love him very much?

A Yes, I do.

Q And you are here for him?

A Yes, I'm here for him.

Q You were here yesterday and today?

A He's 40 something years old and I have been here that

long for him.

Q Yes, ma'am. And nobody made you come up here, no one had to give you a subpoena to come up here?

A I came on my own.

Q And like any mother, you don't want to see your son locked away. You want him to be there for you, don't you?

A I want him to have his own life.

Q Right.

A And I live mines.

Q And you'd do anything for him to help him get out of this?

A No, I'm for the right. I sit with the right. I don't sit with the wrong.

MR. MOYER: Okay, nothing further.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MS. ROSS:

Q Just one question, Ms. Russell. Do you and Christopher talk on the phone regularly? I heard you talk a lot about he called me back and forth, do y'all talk on the phone regularly?

A Well, yes, we call. Yes, he talk to me regularly.

MS. ROSS: All right, nothing further.

THE COURT: May this witness be excused?

MR. MOYER: Yes, sir.

MS. ROSS: Yes, sir.

THE COURT: Okay, thank you, ma'am.

May I see the attorneys up here, please.

(WHEREUPON, an off-the-record bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: Madam Forelady, ladies and gentlemen I'm going to excuse you for the remainder of the day. I'll ask that you be back in your jury room at 9:30 in the morning. And we'll resume the testimony at that point. I'll remind you, also, please do not speak amongst yourselves or with anybody else about the case. Do not read, hear or listen to anything about the case. Thank you, you're excused.

(WHEREUPON, the jury left open court at approximately 5:03 p.m.)

MS. ROSS: Judge, just briefly, I'm sorry, that was my mistake. I had one more witness for today and then wanted to discuss --

THE COURT: Okay.

MS. ROSS: -- if that's okay, she's just here.

THE COURT: Sure.

Stop them before they go.

MS. ROSS: I apologize.

THE COURT: I misunderstood.

MS. ROSS: I apologize.

THE COURT: And you have one in reply tomorrow?

MR. MOYER: Yes, sir, Your Honor.

THE COURT: Is that witness here?

MS. ROSS: Yes, it's Ruby Willett and she's right here.

THE COURT: Okay.

(WHEREUPON, the jury came into open court at approximately 5:05 p.m.)

THE COURT: All right, ladies and gentlemen of the jury, I was given big ears at birth and they didn't work very well. And I didn't hear what I was told. We have one witness who will not be very long.

Is it okay, Madam Forelady, that we go forward with this witness at this point? Would you just poll the jury and make sure everybody's okay?

(WHEREUPON, the forelady of the jury nods.)

THE COURT: Are you sure?

MADAM FORELADY: Yes, Your Honor.

THE COURT: Very good, thank you.

All right, call your witness.

MR. MOYER: Thank you, the Defense would then call Ms. Ruby Willett.

THE CLERK: Ms. Willett, please, place your left

hand on the Bible, raise your right hand.

RUBY WILLETT, after being duly sworn, testified as follows:

THE CLERK: Thank you, please be seated. State your name for the record.

THE WITNESS: Ruby Willett.

DIRECT EXAMINATION

BY MS. ROSS:

Q All right, Ms. Willett, at one point you went by Ruby Russell, is that correct? Did you ever go by Ruby Russell?

A We was together for six years. I guess, you know, at one point I thought we was like common law married or whatever. But I also went by Ruby Willett.

Q Okay. Can you tell -- do you know why you're here?

A I was subpoenaed to be here.

Q All right. And can you tell what you know -- do you know what is involved with the charges against Christopher Russell? Do you know what those charges are?

A Yes, ma'am.

Q All right. And do you know that the charges are based on a burglary, armed robbery, kidnapping that was alleged to have occurred around or on December 18th, 2010?

A That's what I was told.
Q All right. Now, were you with Chris when he was arrested or at the time he was arrested around January 10th, 2011?
A No, ma'am, shortly just right after Christmas, I decided to pack up my stuff and leave.
Q So you left him?
A Yes, ma'am.
Q Now, as far as the date of January 18th -- I mean, December 18th, 2010, who were you with?
A Right before Christmas I was with Christopher.
Q All right. And did -- did you ever contact him or me or talk to someone about an alibi in this case?
A Well, shortly after he got arrested I was notified about what happened and everything. And I tried calling you. And you said it wasn't enough because I was his girlfriend at the time. But I know for a fact he was there because me and his mother was talking about how it was exactly a week before Christmas and we had a lot of late shopping to do and stuff like that. I didn't want to go too much into talking to anybody because when I left him I tried to put him totally behind me.
Q Okay. So, you did contact me and we talked?
A Yes, ma'am.

Q Soon after this occurred?
A Yes, ma'am.
Q Why back when. And at that time you contacted me because you felt that there was an alibi there?
MR. MOYER: I object to leading.
THE COURT: Rephrase your question.
MS. ROSS: I apologize.
BY MS. ROSS:
Q Why did you go ahead and contact me?
A It was the right thing to do.
Q And who were you with at that point? Were you with -- who were you with at that point? Were you with Chris anymore?
A When I contacted you the first time?
Q Uh-huh.
A No, ma'am.
Q All right. Now, can you tell a little bit about what the alibi is, what were y'all doing?
A We had just moved into some apartments in the Berea area. I ain't going to say the name of the apartments because I don't want nobody looking for me.
Q Okay.
A But we had moved in the Berea area and we didn't have any cable at the time, you know, it was hard times,

of course. He wanted to watch the game so we went over to his mother's. And, you know, we sat down and talked while the fellas was in there watching the game. And that's pretty much it.

Q Do you know the times? What were the times with that?

A It was in the evening because it was right after I cooked supper and stuff. So it was around 7ish, I guess.

Q Okay.

MS. ROSS: Okay, I've got nothing further.

THE COURT: Cross-examination.

MR. MOYER: Thank you, Your Honor, may it please the Court. One moment.

BY MR. MOYER:

Q Okay. All right. So, let's talk about this particular date that you said. Where did you go with Christopher Russell on this particular night?

A We went to his mother's house.

Q Okay. And you heard his mother testify a short time ago?

A I was sitting right there.

Q You were sitting in here?

A Yes, sir.

Q Okay. Do you remember all those other people being

there?
A People was coming in and out. I mean, I really wasn't paying too much attention.
Q Okay. Now, why does that date stand out to you?
A Because it was the week right before I left him. When I left him...
Q Well you left--
A Honestly, it was the best decision I have made.
Q We're not getting into all that.
A Okay, well.
Q Just answer the question I asked, okay. You left him after Christmas --
A That how I remember. You asked me the question and I'm telling you how I remember.
Q Okay. So that was important because you left him after Christmas. But you remember this date, I'm talking about the date that you were over at his mother's house?
A Yes, because it was exactly a week prior to Christmas.
Q Okay. When was it that you found out that Christopher Russell got locked up for something that happened on that night?
A When did I find out?
Q Yeah.

A I don't know how long he was in there. I can't give you -- I don't know.
Q I know you don't know exact dates. But it was after he got locked up, right?
A Yes, sir.
Q Okay. And you heard he was locked up on January 10th, 2011?
A (The witness nods.)
Q How did you end up having a conversation with him? If you had broken up with him, why did you have a telephone conversation with him?
A Telephone conversation with?
Q Chris.
A No, it was with -- his mother advised me that he was locked up.
Q His mother did?
A Yeah.
Q Did you call Christopher Russell?
A What do you mean, did I call him?
Q Did you call him or go talk to him at the jail?
A I went to go see him a couple of times.
Q Okay.
A I didn't -- I don't know.
Q How many times did you go see him?
A Just a couple of times.

Q Two, three times?
A Yes.
Q Was it shortly after he got arrested?
A Uh-huh.
Q So in January of 2011?
A Yeah, I guess, whenever he got arrested, yes, sir.
Q And is that when -- when you were talking to Christopher, is that when you found out he got arrested for that night he was with you or did his mother tell you that?
A No, she was like, You remember that night we was all at the house and stuff.

I was like, Yes.

And she was like, Well, they're trying to pin something on him and.

Q Okay. So it was his mother that told you that?
A That he was locked up?
Q Yeah.
A Yes, sir.
Q Okay. And do you remember when that conversation -- you had that conversation with her?
A I don't know.
Q Okay. Was it like weeks after he got arrested or days?
A About a week or so after he got arrested.

Q How did you end up having that conversation with his mother?
A I kind of still kept basis with them. I got real close with them as well as his children.
Q Okay. So, you were still in contact with her?
A Yes, sir.
Q Did she call you and tell you this or were you with her and she told you?
A No, she called me and told me about him being arrested.
Q Okay. So, she called you and told you that and then you went and visited him in jail?
A Yeah, to find out what was going on, you know.
Q Okay. And you went back several times after that?
A Uh-huh.
Q Okay. And you'd been together for six years with him?
A We was together for six years, correct.
Q Six years. Okay. So, tell us, why -- why did you go over to his mother's house that night?
A To watch the game, get out of the house a little bit.
Q What game did you all watch?
A I don't watch games, that's a manly thing.
Q You didn't watch the game at all?
A No, sir, I was in the kitchen.

Q What sport was it?
A If I'm not mistaken it was basketball, I'm not sure.
Q It was basketball?
A Uh-huh.
Q So, you don't know?
A I'm not sure, sir.
Q But that's the reason you went never there that night?
A We didn't have cable.
Q You didn't have any cable in your place?
A Huh-uh.
Q So the whole point of going over there was to watch sports?
A Watch the game.
Q Okay. And so then you found out about him begin locked up for something in your mind he didn't do?
A No, sir.
Q But you never contacted the police about it?
A I tried contacting his attorney.
Q You contacted his attorney?
A Yes, sir.
Q Right. And it didn't go anywhere, did it?
A No. But when y'all came to visit me at my job I tried to advise y'all as well.
Q That was a couple --

A The investigator.
Q That was a couple of months ago after we got -- as soon as we got--
A Nobody else tried to contact me, sir.
Q Right. But nobody else knew about you, did they, until then?
A I guess not.
Q Okay. So you called his lawyer and you were told it's not any good, it's not going to do any good. Isn't that essentially what you told us?
A Yes.
Q Okay. And then you just stopped there?
A Yes, sir.
Q Even though you knew -- you knew he was not guilty?
A Well, you know, I mean, if you would have went...
Q Well, you went the step to call his lawyer, right? Isn't that what you told us?
A Yes, sir. But after all that I tried to put everything behind me. I don't...
Q Well, why did you even call his lawyer?
A Because it was the right thing to do. I knew he was with me.
Q Well, wouldn't it have been the right thing to do is call the police?
A What was that going to do?

Q The police, they were the ones who arrested him. I mean, if you really thought it was the right thing to do to let --

A Also the ones that beat--

Q Let me finish the question. If you really thought it was the right thing to do to get an innocent man out of jail, wouldn't you have gone to the--

MS. ROSS: I object --

BY MR. MOYER:

Q -- police officer--

A Look, I did everything I possibly could, Mark.

THE COURT: Just one second, stop --

THE WITNESS: I really did--

THE COURT: Stop. Stop. First of all, y'all need to stop talking over one another. The Court Reporter can only take one of you at a time.

Now, what's your objection, Ms. Ross?

MS. ROSS: I think she can explain her answers.

THE COURT: Well she hasn't given him -- but she can -- here's the rule. He asks the question, do not respond until he's finished. Once you respond, he'll let you finish. You must answer his question first, then you can explain it. But your explanation has to be responsive to the question, do you understand?

THE WITNESS: Yes, sir.

THE COURT: Okay, ask your question again, please, sir.

BY MR. MOYER:

Q Okay. My question, Ms. Willett, is you sit here and told us that you knew it was the right thing to do to tell somebody that he was -- an innocent man was locked up. And you say you called his lawyer. And when that didn't go anywhere, you never called --

A I didn't --

Q Once again --

A I'm sorry.

Q I know. You never called -- you never called over to the sheriff's office to try to find out who the Investigator was?

A I didn't know what else to do.

Q You -- did you even try?

A No.

Q Did you walk -- when you went to visit him in the jail, that's right next to the law enforcement center, isn't it?

A Yes, sir.

Q You didn't walk out and just take two steps down there and walk into the sheriff's office and say, Listen, I need to know who locked up Christopher Russell because he's not guilty?

A I never been through this kind of stuff, sir, I didn't know what to do.
Q I mean, doesn't that seem kind of logical?
A I mean, it's logical that I called his attorney and spoken with her. I didn't know who else I was supposed to contact. I mean...
Q And that didn't work, did it?
A No.
Q So it wasn't until this case was scheduled a few months ago that we even knew you had this information, isn't that true?
A Yes, sir.

MR. MOYER: May we approach for one matter, Your Honor?

THE COURT: Sure.

(WHEREUPON, an off-the-record bench conference was held in the presence of the jury but out of the hearing of the jury.)

BY MR. MOYER:
Q Ms. Willett, just one more question. Is it true in 2011 you were charged and convicted for giving false information to police?
A Yes, sir.

MR. MOYER: Okay, nothing further.

THE COURT: Redirect.

THE WITNESS: Can I respond to that question?

THE COURT: Just one second. Yes.

THE WITNESS: That was for driving under suspension on my behalf, you know, to keep myself out of trouble. I could care less if he gets in trouble or not after all he's put me through. Tell you the God's honest truth.

MS. ROSS: Just have one thing on redirect.

REDIRECT EXAMINATION

BY MS. ROSS:

Q Going through some old notes, is it possible that I left a message for you on January 20th, 2011 regarding this case, a call back?

A It's possible.

Q What was your number then? Or was your phone number 201-10 -- I mean, 0101, is that possible?

A 201-0101?

Q Yeah.

A Yes, ma'am.

MS. ROSS: All right.

THE COURT: May this witness be excused?

Do you have any recross?

MR. MOYER: No, Your Honor.

THE COURT: Thank you, ma'am, you're excused.

THE WITNESS: Does that mean I can leave?

THE COURT: Yes, ma'am.

THE WITNESS: Thank you.

THE COURT: All right. Now, Madam Forelady, ladies and gentlemen of the jury, thank you for your patience. We're ending the testimony today as far as today's session. 9:30 in the morning. Same rulings, please. Thank you, very much.

(WHEREUPON, the jury left open court at approximately 5:20 p.m.)

THE COURT: Ms. Ross, do you anticipate any further witnesses in the morning?

MS. ROSS: I don't. I just didn't want to rest so I can...

THE COURT: Well I understand, I'm just trying to plan for tomorrow.

MS. ROSS: No, I don't.

THE COURT: Okay, and you're going to make a decision on the reply tomorrow?

MR. MOYER: That is correct, Your Honor.

THE COURT: Very good. Okay. Any reason why 9:30 is not good for you guys? Do we need to be here earlier?

MS. ROSS: None for me.

MR. MOYER: No, sir.

THE COURT: I can't think of any reason why we

need to be here ahead of time. I'm glad to be, I will be here. So, if y'all need me I will be in chambers.

MS. ROSS: Okay.

MR. MOYER: Yes, sir.

THE COURT: All right, we'll recess for the afternoon.

(WHEREUPON, the proceedings were concluded for the day to be reconvened on February 13, 2013.)

Wednesday, February

THE COURT: Good morning.

At this juncture, do you intend to call anymore witnesses, Ms. Ross?

MS. ROSS: No. No.

THE COURT: Okay.

MS. ROSS: We'll rest.

THE COURT: And let me make sure I clarify this on the record, too.

Mr. Russell, do you intend to testify or do you wish to waive or exercise your Fifth Amendment rights?

MR. RUSSELL: I want to discuss that once more with my lawyer.

MS. ROSS: I apologize, I was running late. I didn't get to talk to him this morning.

THE COURT: That's all right, that's an important matter. I want you to give it some thought.

MS. ROSS: Can he talk with his mother, briefly?

THE COURT: Yes, may not touch each other.

MS. ROSS: Right. He's saying the Defense rests at this point.

THE COURT: The Defense rests?

MS. ROSS: Uh-huh.

THE COURT: So, you do wish to the exercise your Fifth Amendment rights, Mr. Russell?

MR. RUSSELL: Yes.

THE COURT: Okay, very good.

All right, Mr. Moyer, do you intend to call a case in reply?

MR. MOYER: I do, Your Honor. I anticipate having a couple of witnesses, yes, sir. One very short and one -- well neither of them are very long. However, Your Honor, one of the witness is still on the way. Because we broke after 5:00 o'clock last night, I wasn't able to get somebody down at the jail, I wasn't able to talk to them until this morning. And so we'll have to get the subpoena down there. So, I've already spoken to the witness and they're ready to come up here. But it's going to be a few minutes before we'll be ready.

THE COURT: All right. I would then, Ms. Ross, from a procedural standpoint, just when the jury comes in, say, Call your next witness. Say the Defense rests, then get into reply. Y'all want to go into any motions at that point or you want to just reserve those and argue those later? Or just renew them?

MS. ROSS: I'd like to reserve them and argue them later. But my question is I don't have any idea what that rebuttal is about and if is such that I just change my mind and decide I'd like to put Mr. Russell up and discuss that with him. I'd just like to reserve the right

to do that as well.

THE COURT: Well, I mean, I don't know that I can make Mr. Moyer tell you. I think the rebuttal has to be in response to information that was placed in the record by the defense's case.

MS. ROSS: And that's what I don't understand how Mr. Moyer would know that he needed to put up rebuttal evidence before he rested in his own case. That suggests to me -- I was pretty careful. My alibi witnesses that I put up, both knew that Mr. Russell had never been called Poncho. I did not ask them that because I did not want to open the door to any rebuttal as to the nickname Poncho. So I specifically did not ask them that when they both were prepared to testify to that. So, if that's the rebuttal, I would argue that that should have been put up in their case before they rested. The only other thing I can think of is there was some reference to a car. If it has anything to do with that I have a whole other--

THE COURT: Some reference to a what, please?

MS. ROSS: A white Marquise that was asked about. If it's any reference to that, I have a whole litany of objections to that. I'll wait for that.

MR. MOYER: I don't mind talking about what my rebuttal witnesses will testify to.

THE COURT: Sir?

MR. MOYER: I said I don't mind talking about what my rebuttal witnesses will testify to.

THE COURT: Okay, sure.

MR. MOYER: Your honor, one of them is going to be in response to a witness who was called for by the defense, Ruby Willett, who testified yesterday and she gave some testimony that she had only -- that she had visited the defendant two times, at most three times at the jail and we have a witness who is going to contradict that testimony. The other witnesses, Your Honor, I plan to call would be Deputy Allen Smith. During the testimony it came out during defense questioning that defense elicited testimony that the Defendant does not have a nickname name Poncho. Whereas the Co-defendant testified that he knew the Defendant as Poncho. Allen Smith worked over in the area where this Defendant use to live and knows the Defendant. And the Defendant, in fact, introduced himself to him as Poncho. So, Your Honor, it's my intention to call Allen Smith to testify to that briefly. Now--

THE COURT: Let me ask you this. And I've -- I just have to review my notes, but as my memory serves, Antonias Williams said that we called him Poncho, that's his street name, et cetera. And you had -- I don't know if that was in Exhibit 43 that showed the calls or

whatever or not name Poncho. I don't recall either the Defendant's mother or Ms. Willett mentioning or testifying as to anything about poncho.

MR. MOYER: That's true, Your Honor.

THE COURT: I'm not saying they didn't. Because -- but if, just assuming they did not, then how would be responsive to the Defendant's case? And that's my understanding of what's required in reply.

MR. MOYER: Well, Your Honor, I would say this, I brought it up to the Court's attention during my case in chief, if you will recall.

THE COURT: Right.

MR. MOYER: That I wanted to call the officer at that time.

THE COURT: Right. And the officer wasn't on your witness list.

And Ms. Ross said, I object.

And I said, you have wait to do it in reply.

MR. MOYER: And I would like if, Your Honor, would allow me to flush that out a little bit.

THE COURT: Sure.

MR. MOYER: I wanted to call the witness at that time because this was information that there was no way I could have anticipated would come up in my case in chief. It came out in cross-examination. In fact, it came out

mainly through a witness named Jinny Moran. Who I called as a witness to testify about some -- about the Defendant's mother. The Defense had some elicited some other information about his nicknames. On jail records. It's clear that Defense would have called her in their -- would have called her as a witness had I not to get that information out. And before we had the Rules of Criminal Procedure as we have now, the Defense wouldn't have been able to question her on those issues. Because it use to be that you couldn't ask -- you could only cross-examine someone on issues that came out during direct. The rules have changed, of course, to streamline things so they can go into other matters.

So, Your Honor, at that time I made a decision that I would like to call Allen Smith to come in to testify to that. Because it came to my attention at that point. The only obstacle in calling him is that his name was not on my witness list. There's no mandated in The Rules of Criminal Procedure, The Rules of Evidence or statute or anywhere that witness lists are to be provided back and forth between Defense or the State. We don't have to give each other a witness list. The only witness for a witness list is during jury selection. We're to give them to the Court so the Court can read the names out to the panel and the panel can make a decision -- can tell

the Court and the attorneys whether or not they know these witnesses and whether or not they can be fair and impartial. That's the only reason for it.

So, Your Honor, when I gave my witness list to the Court, I did not know that I would need to call this witness. Nor was there any reason I should have been able to know. And so my request then was that at that time, that we -- we--

THE COURT: You certainly did, you wanted to call him in your case in chief and I said you could not.

MR. MOYER: That's correct, yes, sir.

THE COURT: Right.

MR. MOYER: And I asked to have -- and my suggestion was that we have Deputy Allen Smith's name called out to the jury and see if anyone knew him and if so, whether they could fair and impartial at that time. And in the unlikely event that one would have not been able to fair and impartial, we could have put the alternate in. And even more unlikely event, two jurors said they knew Deputy Smith and couldn't be fair and impartial, then I simply wouldn't have called him. So, that was the reason I wanted -- the way I wanted to handle that at that point.

So, Your Honor, now, I would ask that we do the same. That we have the jury asked whether or not they

know Allen Smith and whether or not they could be fair and impartial. And the reason I ask this, Your Honor, once again, I can't anticipate issues the Defense is going to bring on cross-examination. I mean, I think it would be the same as if somebody saw a trial on T.V. and said--

THE COURT: Well, you mentioned that twice already, that you can't anticipate the nicknames. But, in fact, that was part of your case in chief, the nicknames. So, didn't you, in fact, already anticipate that?

MR. MOYER: No, Your Honor, because, in fact, I didn't ask the witness what the nickname was. He just said -- I ask, Do you know the Defendant?

He said, Yeah, I know him as Christopher Russell but I also know him as Poncho.

THE COURT: That's not memory of the testimony quite frankly. It sounded to me it was elicited from you through your question. But I may be wrong.

MR. MOYER: As I recall, Your Honor, I asked did he know the Defendant?

He said, Yes, I know him as Christopher Russell, I also know him as Poncho.

And we moved on. I never made a big deal. I didn't know nickname was an issue in this case until the Defense brought it up. And I'm trying to think back. If I didn't--

THE COURT: Well, that was after she elicited from the jailhouse custodian of records the aliases.

MR. MOYER: Yeah. So, if I did ask him, I'm trying to think back, if I did, that would have been the only reason. because it had already been made an issue by the Defense. And so, you know, up until that point, there was no reason for me to think that would be an issue.

THE COURT: Well let me ask Ms. Ross, Mr. Moyer brings up the point that -- and I, just for the record, in protection of everybody, I told Mr. Moyer at the bench, along with Ms. Ross, that he wasn't on your witness list, you're not going to call him. You don't have to name them in reply case. Was under the impression that you did have to name them to call them in your case in chief. Out of fairness.

Now, what's your position? If it's not listed on his list of witnesses and Mr. Moyer says, If you look at our rules of procedure, criminal procedure, there's no court rule out there that says I have to.

MS. ROSS: Right. There is no rule about the witness list.

THE COURT: So then, when I blocked him from doing that in his case in chief, I effectively prevented him from calling witnesses that were available, didn't I?

MS. ROSS: Well, the problem is I think the

whole issue of not thinking that the name Poncho would be an issue in this case is frankly, with all due respect, disingenuous. Because clearly Poncho was the whole issue in this case. Whether Chris Russell was this same person Poncho in all these telephone records. I was in the room when Mr. Moyer interviewed Ruby Willett at one point. And my recollection was that he asked her, Are you Boo, who's in these records, do you know who Boo is? And he asked her, Does Chris Russell go by Poncho?

And she said, No, he's always gone by Chris.

So I knew that was there. I specifically did not ask her or Chris' mother that question because I believed that Mr. Moyer was going to attempt to bring this up in rebuttal. and I didn't think that would be proper unless I brought it up in my case in chief. Certainly, Mr. Moyer, whether he actually had ever looked up on the jail screen, Chris Russell's jail screen kind of information, this is accessible, certainly to solicitors and law enforcement. But even, I think, the general public. Or at least in our office, it's quite open to access. And those aliases are listed right there on that form. He obviously looked at it to get Eleanor Russell's telephone number, which was on that as next of kin, to link this phone. And this was a big issue in his case. So he obviously looked at that screen which listed the

aliases which didn't show Poncho as an alias.

I would also add, what makes this just even crazier is that in 2006 I represented Chris Russell in a possession of a drug case of some sort. And in that whole case, they were establishing that his nickname was New York. The whole trial. Which I think he lost.

Did you lose that or win that? I don't even remember.

But that whole trial the issue was the State saying Christopher Russell is New York. So it's particularly rich in light of that, them coming in and saying that they just want an officer witness to say that he is actually Poncho. And this is not anyone from the street or anyone that's law enforcement. They certainly would have been on notice to get this information for quite some time. And clearly they, you know, have the burden of proof. And that should have been put up and anticipated in their case in chief.

THE COURT: Let me ask you this, is that Exhibit 43 you have those downloaded from the cell phone?

MR. MOYER: I believe it is, Your Honor. But the cell phone really didn't--

THE COURT: Well, hang on. Just let me finish this.

MR. MOYER: Okay.

THE COURT: Then I'll hear you in.

In that exhibit, the one that you're showing Ms. Russell's number on there, is there any Poncho -- is there Poncho on any exhibit in this case?

MR. MOYER: No.

THE COURT: Is there any that you're aware of, Ms. Ross?

MS. ROSS: No. And that's why I brought it up. because I anticipated when the records custodian was brought, that they were going to bring in his phone number and that's why this is the same in-take form and that's why I brought up the aliases. Because it's certainly relevant.

MR. MOYER: And --

THE COURT: Go ahead.

MR. MOYER: I was just going to say, well, the point is it's his cell phone record. So the name Poncho, according to his Co-defendant, is his name. So there's no reason why that name should be in his cell phone records. So, I would argue that's really beside the point. But getting back to my original point, the issue about the witness list isn't an issue of fairness. As I said, we're not--

THE COURT: Well, let me stop you. I hear you. let me ask you this, do you want to risk dirtying up the

record, based on a procedural posture in this case, by introducing evidence what was not responsive to the Defense? Regardless of my mistake or not?

MR. MOYER: Your Honor, I really don't have a problem with it.

THE COURT: I do.

MR. MOYER: Okay.

THE COURT: I mean, I certainly don't knowingly make mistakes up here but we're all humane. I was under the impression that it had to be on the list, quite frankly.

At the same time, Ms. Ross, it is in some since a matter of fairness. If I prevented him, I clearly did, because I was pretty unequivocal at the time bench, you're not going to do that when he tried to. I just...

MS. ROSS: Well, Judge, this trial is about fairness to the Defendant.

THE COURT: Fairness to both State and the Defendant. One side doesn't have a priority over fairness.

MS. ROSS: Well, I understand that. I don't mean to say that. I just mean that Mr. Russell has due process rights to a fair trial.

THE COURT: Sure.

MS. ROSS: And certainly, your know, I was

thinking yesterday if I had enough time, it would be something that I should have done to just, if I had access to law enforcement, to run the nickname Poncho through their alias files and find who out there is listed as an alias Poncho. I don't have access to those files to find that but that certainly would be something law enforcement can do. Again, it just goes back to just the simple fact that we provided the State with an alibi, notice of alibi. That certainly would set up a situation where we were challenging whether that phone belongs to Chris Russell and whether Chris Russell was Poncho. And I just think that would be -- was certainly anticipated by the State, you know, shown by his questions to my alibi witness. Do you know this person as Poncho? That was clearly a question.

THE COURT: Go ahead.

MR. MOYER: Just in response to that, Judge, the issue, the fact that alibi comes up as a defense, doesn't mean that I have to somehow kind of anticipate every single facet that may come up to in this matter. There was -- the word Poncho comes up only in that one witness' statement, the Co-defendant. He mentions the name Poncho, we move on. In my experience, as a prosecutor, people have all kinds of nicknames. With different subsets of people, with different relatives. There's just simply no

way that I'm to anticipate that the fact that one person knows him by this one nickname, means that this is going to become an issue in the trial. And, of course, the fact that there's an alias list out there in law enforcement records somewhere is supposed to somehow give me a heads up that I'm supposed to anticipate this Defense. There's reams of documents on this Defendant. He has a criminal history that goes back as soon as he became an adult. I mean, if we have to be on notice for every single documented documentation about this Defendant's record and his different nicknames at different times, I mean, there's simply no way to anticipate that.

THE COURT: I understand that.

All right, give me a couple minutes to look at it. Quite frankly, if I'm going to air, you know, we're looking at someone looking at life without the possibility of parole, I'm going to air on the other side just to be cautious. I do note for the record that Mr. Moyer did adamantly try to put a witness up in his case in chief and I unequivocally blocked him. So that was my mistake and I apologize for that. That being said, let me think about it. Let me see the lawyers back in chambers.

(WHEREUPON, a short break was taken.)

THE BAILIFF: Please be seated, court is now in session.

THE COURT: All right, we're back on the record. And quite frankly, I've told both attorneys that I was consulting with one of my bretherns, which I did. And a suggestion was made, which I think is extremely reasonable, and that is that Mr. Moyer be allowed to proffer the testimony that you wish to proffer. I'll make a determination whether or not you will be allowed to put in front of the jury. Okay. It's limited solely to strict confines of nicknames.

MR. MOYER: Yes, sir.

THE COURT: Correct. Now, do now have a witness that we can put up now?

MR. MOYER: We do.

THE COURT: Okay.

Ms. Ross and Mr. Moyer, how about step up here one last moment.

(WHEREUPON, an off-the-record bench conference was held.)

THE COURT: All right, Ms. Ross, I'll ask you to call your next witness, you'll end case and we'll reserve argument of any motions after the reply case.

MR. MOYER: I may have misunderstood what you said. Do you want us to proffer the evidence right now?

THE COURT: No. what I was thinking -- well don't you have a witness here other than...

MR. MOYER: No, she's on the way. So I'm --

THE COURT: Okay. Well go ahead and do your proffer now then.

MR. MOYER: Call Allen Smith to the stand.

THE CLERK: Please place your left hand on the Bible.

ALLEN SMITH, after being duly sworn, testified as follows:

THE CLERK: Please be seated. State your name for the record.

THE WITNESS: Bruce Allen Smith.

DIRECT EXAMINATION

MR. MOYER:

Q Where are you employed?

A Greenville County Sheriff's Office.

Q How long have you worked for the sheriff's office?

A Twenty-nine years.

Q What is your position right now with the sheriff's office?

A Master Deputy. I'm assigned to the General Sessions Courthouse.

Q How long have you been doing that?

A Approximately the last eight years.

Q All right. Now, are you familiar with the Defendant's case, Christopher Russell?

A I am.
Q Where did you meet him?
A At City Heights also knowns as Boulder Creek Apartments, 300 Furman Hall Road in Greenville.
Q And you use to work out there?
A Well, I still work out there. I'm the security coordinator at section 8 housing. They hire deputies off duty to work there on a part-time basis. I've been the security coordinator there for approximately the last 23, 24 years.
Q That's where you met this Defendant?
A It is.
Q And when you met the Defendant, did he -- did you introduce yourself to him? Did you ask him his name? And if so, tell us what happened?
A As being deputy sheriff's security there on the property, it's private property. So it's my job know who comes and goes on the property. When I see a new face I make it a point to try to get to know who it is, find out who they're visiting. Approximately three or four years ago, I remember Chris Russell for the fact that it was kind of -- it wasn't July or August but it wasn't cold weather either, but I saw him riding a bicycle in a camouflage jacket. So, I pulled up beside him and said, Hey man, what's your

name?

He said, Poncho.

I said, No, man, what's your real name?

He kind of looked at me and said, They call me Poncho. And off on his bicycle.

That's kind of how I remembered him. Later on we had a couple of meetings where I confirmed what his real name was.

Q Okay. And his real name was Christopher Russell?

A Correct.

MR. MOYER: Okay, Your Honor, that would be essentially all I have.

THE COURT: You wish to cross-examine as this point, Ms. Ross?

CROSS-EXAMINATION

BY MS. ROSS::

Q You've been sitting here the entire trial?

A Yes, ma'am.

Q And watching what happened with the trial, correct?

A Yes, ma'am.

Q And you came up and volunteered this information, this recollection, from three or four years ago to Mr. Moyer?

A Well, Mr. Moyer didn't have any idea that I knew the Defendant. I'm typically in the courtroom on a daily

basis and provide security. He had no idea I was security coordinator for Boulder Creek Apartments.

Q All right. And just looking, have you ever run the name Poncho for aliases to see if they're other people with aliases Poncho or pictures of people with a alias Poncho in the system?

A I've never done that but there very well could be other people with the name Poncho. They're various nicknames out there. However, typically, when somebody's put in jail and the detention asks them their name to go on the records, typically, people don't own up to what their street name is.

Q And then, wouldn't the officer know the street names if they've been introduced as you were, saying someone introduced them as Poncho?

A Well, if I'm the one that put them in jail I may let them know. However, if somebody else put them in jail for any other reason, they may whatever reason pull them over in a car stop and find out he don't have a license, all they know is Chris Russell, they have no idea what the street name is.

Q Have looked at other pictures or images of people with the nickname Poncho?

A No, I haven't.

MS. ROSS: All right, nothing further.

MR. MOYER: That would be...

THE COURT: Thank you, you can step down.

All right, Mr. Moyer, I'm going to allow that testimony. I do not want you to get into Mr. Smith or Mr. Moyer, other arrests he might have had.

MS. ROSS: Judge, in light of that I would ask for some time to go and look up that name and see if they're people that look similar to Christopher Russell with the nickname of Poncho.

THE COURT: How long do you need to do that? What access do you need to have?

MS. ROSS: I don't even know. I guess I need law enforcement to run that alias and bring in some mugshots. So I would ask for time to do that. Be able to do that.

THE COURT: How much time would that -- I'm not saying that's necessarily admissible but I'll let you look at it.

How long will it take to do that, Mr. Moyer, do you think?

MR. MOYER: I'll ask Investigator Weiner.

How long do you think it will take to do that?

THE COURT: All right, I'm going to step back in chambers, would you, please, come back and let me know once you've looked at that?

MR. MOYER: Yes, sir.

THE COURT: Okay, thank you.

(WHEREUPON, a short break was taken.)

THE COURT: Okay, Ms. Ross, did you get what you needed?

MS. ROSS: No, sir, because I don't have access to it.

THE COURT: How much time because I'm not -- I've tried to be -- I'm about to call a hault to this, I got a jury that's been sitting back there for an hour. I know you're doing the best you can but what kind of timeframe are we looking at?

MR. MOYER: Investigator Weiner is doing the work.

Can you give us an idea?

INVESTIGATOR WEINER: Judge, as soon as the email comes in -- I called one of my investigators, he's supposed to email me just two pictures. And I've been hitting the refresh button since you came out.

THE COURT: I heard you had some firewall problems or something?

INVESTIGATOR WEINER: Yes, sir. But I was able to pull up at least my email so another investigator can email it to me.

THE COURT: Okay. So what -- I know you don't

have real control but what kind of timeframe?

INVESTIGATOR WEINER: I'm hoping just a minute. Or less. I've already talked to him on the phone, given the names and birthdays so he should be sending it.

THE COURT: All right. Good. Thank you.

MS. ROSS: This might save some time. Do you mind if I let him look at this picture and just see what he says to this picture?

We'll just say, Could that be the person?

DEPUTY SMITH: I've never seen this guy before in my life.

MS. ROSS: That would be your testimony?

DEPUTY SMITH: Yeah.

MS. ROSS: That's the only black male?

(WHEREUPON, Ms. Ross and Investigator Weiner had an off-the-record discussion.)

MS. ROSS: Okay, based on the State has given me fair information, I'm satisfied with them looking up the other aliases by the name of Poncho. However, just I'd like to put on the record some objections to the ruling.

THE COURT: Absolutely.

MS. ROSS: First, my client's pointing out that it's hearsay. That this is something that -- a statement by non-testifying party for the truth of the matter asserted. So just put that on the record. I also,

certainly, we argue that the probative value is outweighed by the prejudicial effect. This is a recollection of an officer from three or four years ago of seeing somebody. And we would object to that. Furthermore, I think I put on the record the objections to this being rebuttal testimony at all. And point out that Mr. Russell has his due process rights and that would deny him a fair trial.

THE COURT: I understand, I'm denying those motions. Again, as counsel pointed, I prevented the State from presenting his evidence. The Defendant interjected this into the case in your cross-examination. So out of a matter of fairness, I think it's appropriate. With that being said, I note your objections for the record.

MS. ROSS: All right. And then, also, I would object to the rebuttal testimony about visits that Ruby Willett made to the Law Enforcement Center to see Christopher Russell. She admitted to those visits. And I will say under 608(3), the Rules of Evidence, that she admitted that she made visits. So to go in and provide extrinsic evidence of something she already admitted would violate the Rules of Evidence and be improper at this time.

MR. MOYER: And, Your Honor, our response to that---

THE COURT: That's not a 608 matter. It's not

evidence of character I don't see but may be. But my understanding is that the State intends to attack her testimony by saying you were there a heck of a lot more. She repeatedly testified that she --

And I think you brought out, Ms. Ross, that these people were no longer, at the time, she was not dating him any further, they were not romantically inclined. She said herself, After what all he did to me, et cetera, et cetera, et cetera. Trying to give the impression that she was here under subpoena and that she did not have any bias in favor of this Defendant, she was just telling the truth. So, I think that would go to that.

MS. ROSS: Thank you.

THE COURT: All right.

MR. MOYER: And to protect the record, may I just question Investigator Weiner under oath as to what efforts he made regarding this matter?

THE COURT: Yes, sir.

Would you raise your right hand. You can stay right there.

DAVID WEINER, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MOYER:

Q Investigator Weiner, you just did some research regarding the this matter. Would you just state for the record what exactly you did.

A Yes, sir. I called the records division to determine how many other individuals were listed in the data base for Greenville County maintained from the city, from the county, any type of arrest or incident reports that has the nickname in it, Poncho, P-O-N-C-H-O. The list was six names. There were three white males, one Hispanic male and two black males. The two black males were Harold Oglesby, who was born in 1947. Was last arrested in 1969. So I did not have a photograph for him. And I also checked DMV, Department of Motor Vehicle's website and he does not have a license in South Carolina. But that would make him 65 years old. I'm sorry, 66.

The other one was Willy Johnson, born in 1960. And I was able to produce a driver's license -- driver's license picture of him.

Q And that was the photograph you just showed to Allen Smith?

A Correct.

Q Stating that he never saw that person before?

A Yes, sir.

MR. MOYER: All right, thank you.

THE COURT: Ms. Ross, do you have anything you want to ask the officer based on that or anything you want to place on the record based on what he testified to?

MS. ROSS: No, not regarding his testimony.

THE COURT: Okay, thank you.

Finally, since I am allowing the State to call these witnesses, does that change your client's decision as to whether or not he wishes to testify in this case?

MS. ROSS: No.

THE COURT: Very good.

Are we ready to proceed at this point?

MR. MOYER: We're ready, Your Honor.

THE COURT: Ms. Ross?

MS. ROSS: Yes, Your Honor.

THE COURT: Again, I'll ask you to call your witness, you'll say you've rested.

MS. ROSS: Yes.

THE COURT: Then we'll go into your reply case, okay.

MR. MOYER: Yes, sir.

THE COURT: Bring the jury in, please.

(WHEREUPON, the jury came into open court at approximately 10:43 a.m.)

THE COURT: Good morning. First, let me thank you for your patience. I know contrary to what some may

believe, we actually have been busy working this morning. These matters sometimes come up and that's just the nature of litigation, okay. Thank you for your patience.

Is the State ready to proceed?

MR. MOYER: Yes, we are, Your Honor.

THE COURT: Is the Defense ready to proceed?

MS. ROSS: Yes, Your Honor.

THE COURT: Okay, would you call your next witness, please, Ms. Ross.

MS. ROSS: The Defense rests at this time.

THE COURT: Very good.

Does the State wish to have a case in reply?

MR. MOYER: We do, Your Honor. We have a couple of witnesses to call. The State would first call Allen Smith to the stand.

THE CLERK: Place your left hand on the Bible, raise your right hand.

ALLEN SMITH, after being duly sworn, testified as follows:

THE CLERK: Thank you, please be seated. State your name for the record.

THE WITNESS: Bruce Allen Smith.

DIRECT EXAMINATION

BY MR. MOYER:

Q Where are you employed?

A Greenville County Sheriff's Office.
Q What is your position with the sheriff's office?
A Master Deputy.
Q How long have you been with the sheriff's office?
A Twenty-nine years.
Q What are you duties right now, where do you work?
A Primarily I'm assigned to the courthouse, general sessions. Second in charge of security, providing security to the courtrooms, that type of thing.
Q Okay. Now, you've been here for the trial?
A Yes, sir.
Q Past couple days. Do you know the Defendant, Christopher Russell?
A I do.
Q Have you met him before?
A I have.
Q Would you tell us when you met him, where you met him and what you know him as?
A I met him approximately three or four years ago. As Sergeant Weiner indicated, we often moonlight. I'm the security coordinator for Boulder Creek Apartments which is the same apartment complex known as City Heights Apartments. It's low income housing. They hire off-duty deputies to work there on a part-time basis. And I've been coordinator of security over

various deputies there for 23, 24 years.

Approximately three, four years ago, I met Mr. Russell. He was riding a bicycle. It was kind of warm weather outside. He was wearing a camouflage jacket. So I make it my job to get to know people in the complex. I pulled up beside him I said, Hey Bud, what's your name?

He said, Poncho.

I said, No, man, what's your real name?

He said, They call me Poncho. And he road off.

We had an occasion to meet a couple of times later on where I learned his real name.

MR. MOYER: Okay, I have nothing further. Thank you.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MS. ROSS:

Q Now, you've never arrested Christopher Russell, have you?

A No, I haven't.

Q And you didn't look at his license at that time, did you?

A When he road off on the bike, no ma'am.

Q All right.

MS. ROSS: No further questions.

MR. MOYER: Nothing further.

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

Call your next witness, please.

MR. MOYER: The State would call Sergeant. Dana Lewis to the stand.

THE COURT: Sergeant Lewis, please, place your left hand on the Bible, raise your right hand.

DANA LEWIS, after being duly sworn, testified as follows:

THE CLERK: Thank you, please be seated. State your name for the record.

THE WITNESS: Dana Lewis.

DIRECT EXAMINATION

BY MR. MOYER::

Q Where are you employed?

A Greenville County Detention Center.

Q What is your position with the Greenville County Detention Center?

A I'm the population manager and I keep up with the court records and the jail records for the detention center.

Q Okay. So, you have access to the jail records as part of the normal function of your job?

A Yes.

Q Now, how long have you been with Greenville County Detention Center?
A Eighteen years.
Q Eighteen years. Okay. Now, does the Greenville County Detention Center keep records of when people visit other inmates?
A Yes.
Q Are those records kept in the normal course of regularly conducted business for the detention center?
A Yes.
Q And those records are preserved and recorded?
A Yes.
Q Do you have access to those records as a normal function of your job?
A Yes.
Q Okay. Did you bring some records with you today?
A I did.
Q I would ask you, if you would, to tell us whether or not a person by the name of Ruby Willett visited the Defendant in this case, Christopher Russell?
A Yes.
Q And can you tell us how many times she visited the Defendant?
A After counting them up, there's a total of 22 visits.

MS. ROSS: Judge, I object to that under Rule 608.

THE COURT: All right, overruled.

BY MR. MOYER::

Q Would you state the dates she visited?

A Yes. January 17, 2011, January 22, 2011, February 1st, 2011, February 11th, 2007 -- excuse me, 2011, February 15th, 2011, February 20th, 2011, February 22nd, 2011, February 27th, 2011, March 3rd -- excuse me March 1st, 2011, March 6th, 2011, March 8th, 2011, March 10th, 2011, March 14th, 2011, March 23rd, 2011, March 26th, 2011, April 1st, 2011, April 21st, 2011, April 25th, 2011, May 11th, 2011, May 19th, 2011, June 13th, 2011, August 16th, 2011.

MR. MOYER: Okay, thank you. Nothing further.

THE COURT: Cross-examination.

MS. ROSS: I've got nothing.

THE COURT: Thank you, may be excused.

MR. MOYER: Your Honor, the State rests. Nothing further.

THE COURT: Very good.

Ladies and gentlemen of the jury, that will end the presentation of the evidence phase in this case. And I hate to do this to you but I'm going to send you back to your jury room. I'm going to go over with the attorneys

the law I intend to charge you in this case. That generally takes about 15, 20 minutes to get done. Once that's completed I'll give the lawyers a break, they will have closing arguments, then I'll charge you on the law. Just so you'll know where you are, okay. So go back to your jury room, please.

(WHEREUPON, the jury came into open court at approximately 10:52 a.m.)

THE COURT: Now, would hand this over? I only have one copy, I'm without a law clerk this week but that's the substantive law. I know both you guys have tried cases Judge Hill.

MR. MOYER: Judge Hill?

THE COURT: Judge Hill.

MR. MOYER: Yes, sir.

THE COURT: I basically plagiarized his -- structure of his -- has some three parts. He does the duties, define and control jurors. Then he charges on the substantive law, then he charges you on the concepts of deliberations. So, that's my charge, okay. But if y'all take a minute, look at those.

I will note for the record that the Defendant filed a motion, which I'm going to make a Court's Exhibit, to change the order and method of closing in this matter. And I am denying the motion. But I want to make sure it's

part of the record so that could be considered with everything else in the case.

MS. ROSS: Thank you, Judge. Any input on my requests for jury instructions?

THE COURT: When y'all look at mine, I'll look at yours and--

MS. ROSS: Sounds great.

THE COURT: All right, take a quick break.

(WHEREUPON, Court's Exhibits No. 4 was marked for identification and received into evidence.)

THE COURT: All right, any problem with the proposed charge? Have y'all looked at them?

MS. ROSS: Yes, Your Honor, no problem.

MR. MOYER: Actually page 10 through 11 of the burglary first has some language about him having two prior burglary convictions.

THE COURT: Yeah, I was going to go over which ones I need to charge.

MR. MOYER: Okay.

THE COURT: Give me one second.

Ms. Ross, I'm not going to charge your request to charge, that's State vs. Edwards, circumstantial evidence charge has been changed. According to my review.

MS. ROSS: Judge, I recognize that, I think it's King has changed that. And I just disagree with that

ruling and would like to put that on the record.

THE COURT: All right. Well, that needs to be changed at a different level than mine.

MS. ROSS: If it is, I just want the record to be protected.

THE COURT: You are.

I would suggest that you make your request to charge a Court Exhibit. That way, that matter can be reviewed if I'm incorrect.

MS. ROSS: I would ask that at this time or I got a --

THE COURT: Just mark that as a Court's Exhibit.

(WHEREUPON, Court's Exhibit No. 5 was marked for identification and received into evidence.)

MR. MOYER: Judge, my only other--

THE COURT: Hang on, hang on. Let me get my notes together.

MR. MOYER: Okay.

THE COURT: Solicitor, if you'd look at the charge that I give under substantive law. Under armed robbery, you go to page three, I will not go to anything other than describing other things that can be deadly weapons. Under the burglary first, the elements that I would charge would be that when entering while in a dwelling or when fleeing the defendant or accomplice was

armed with a deadly weapon. Then, I go into what is a deadly weapon as to guns but not talk about ordinary objects or toy guns or BB guns. I had some question as to whether I should charge while entering or in the dwelling or fleeing the Defendant accomplished or caused physical injury. There was testimony that Ms. Lyles was forced to the floor but it really didn't amount to any physical injury besides psychological fear. And I don't think that falls into that category.

MR. MOYER: Your Honor, my only other response is Mr. Lyles talked about how he went to the hospital and had a MRI because his ribs and knees were sore and his head--

THE COURT: She did? For some reason--

MR. MOYER: Mr. Lyles. Mr. Lyles.

THE COURT: He did?

MR. MOYER: Yes, sir.

MS. ROSS: He did.

THE COURT: Okay.

Do you dispute that evidence, Ms. Ross?

MS. ROSS: I don't.

THE COURT: All right. Then I think that charge would be appropriate then.

MS. ROSS: I would only state that I think Mr. Lyles had said that the -- that Mr. Williams was the

one who assaulted him. For what it's worth. But the hand of one...

THE COURT: Exactly.

MR. MOYER: Okay.

THE COURT: That doesn't make a difference as far as the charge. The next one would be when entering or in while in the dwelling the Defendant used or threatened to use a dangerous object. It seems redundant to the gun but I think that's appropriate. Then when entering or while in the dwelling or when fleeing the Defendant accomplished displaying what appeared to be a knife, pistol or revolver. The prior record, that's not in evidence at all, that would not be appropriate. So, I would not charge that. I would charge the Defendant entered or remained in the dwelling in the nighttime because that's the evidence. And those would be the elements that I would charge.

Now, Mr. Moyer, you're going to bring up some matters to me that you wanted me to consider?

MR. MOYER: Yes, sir. The only thing I noticed was in the instructions on armed robbery, it mentions a deadly weapon, it doesn't -- the charge does not mentions a representation of a deadly weapon. Now, I know we have an actual pistol in evidence, so, I guess the only reason I would ask that is because in my opening I did mention it

could be a representation of a deadly weapon as well.

THE COURT: Well opening is not evidence in this case, right?

MR. MOYER: Yes, sir.

THE COURT: Okay. And you're asking me to do what?

MR. MOYER: Well, under the statute 16-11-330, if a person who commits an armed robbery, he is either using -- while armed or while using a representation of a deadly weapon. Or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. I guess, I would just ask that that language be included.

THE COURT: Well, let me ask you. There is zero testimony in this case that I can put my hands on that this thing was anything other than a machine gun, pistol or a pistol with a .40 caliber Glock, actual, guns. I mean, I'm certainly -- if there's anything in evidence, I'm glad to charge with the -- what they call a toy gun, with a toy gun, that has the appearance or believed to be a real gun. But there's no evidence of anything like that in this case that I'm aware of.

MR. MOYER: No. And I know we have an actual pistol in evidence. Which I understand the hand of one is the hand of all. Obviously, the victims weren't able to

examine the other pistol. And they certainly said it looked like a real gun. I -- I guess, just all that language about a toy gun and so forth, I'm not sure I would ask for that but I think I would ask the Court when saying -- just would state that either by while armed or while using a representation of a deadly weapon or any object which a person present during the commission of a robbery reasonably believed to be a deadly weapon.

THE COURT: All right, I note that for the record.

MR. MOYER: Thank you.

THE COURT: All right, anything further from the State?

MR. MOYER: No, Your Honor.

THE COURT: Ms. Ross, do you feel like you need to put anything else on the record with regard to the order of argument, other than what you've placed in your motion?

MS. ROSS: No, Your Honor.

THE COURT: Okay. All right.

You guys want to take a quick break before you go do your closing or are you ready to go?

MS. ROSS: If I could just very briefly.

THE COURT: Okay, go right ahead.

(WHEREUPON, a short break was taken.)

(WHEREUPON, the jury came into open court at approximately 11:22 a.m.)

THE COURT: State ready to proceed with closing?

MR. MOYER: Yes, sir.

THE COURT: Defense ready to proceed?

MS. ROSS: Yes, sir.

THE COURT: All right, Mr. Moyer.

MR. MOYER: Your Honor, the State waives opening on the law.

THE COURT: Ms. Ross.

CLOSING STATEMENT

MS. ROSS: Thank you, Your Honor.

Ladies and gentlemen of the jury, first I'd just like to say what my role is here as a defense attorney. And I'm going to point out the holes in this case, okay. But that's not going to under mind my feelings for the victim and what they went through. So, I don't want you all to think that I don't understand how horrifying that experience must have been. But all this evidence here on the table is about Antonias Williams and someone else.

Now, in the beginning the Judge told you that if there was a real possibility that Chris Russell was not guilty, it is your duty to find him not guilty. That's so important here is the American justice system. And it's a great system because it's very difficult to prove your

innocence. For instance, with the alibi. Now, you're going to hear that Christopher Russell had no duty to present any evidence whatsoever. And he has the right to remain silent. Which he asserted.

Now, the Judge is going to tell you, you can't hold that against him at all. That is matter that you cannot even consider in your deliberations. Because that is the American justice system and everyone has a right to remain silent. And that is frankly partly my choice and a decision that I make and advise my client based on that. But even though Mr. Russell had no duty to present any evidence, he did present you with an alibi. Now, alibies are often not perfect because it's difficult as you're living your daily life, to go through and account for where you are at every moment. It's very difficult to have that perfectly done.

But in this case, both Ruby Willett and Eleanor Russell said, He was with us. This couldn't have happened. It was the week before Christmas. We were watching the game. Or he was watching the game on ESPN. They both said that. And it's to my -- in the beginning of this, of course, I admitted I am mostly a public defender, I have over 200 cases appointed to me a year. And when Ms. Willett called me, I did tell her that that might not be believable to a jury. But then there was

more. At that time, and it was in January, and I had a note, luckily, in my file on January 20th when I talked to her, it was right after I got this case. I had no discovery, I had no idea what this case was about. At that point I didn't know that this case was about the testimony of Antonias Williams who was lying. And that's really it.

Now, let's talk about the phone. Because the phone is there. This was the phone that Mr. Williams said belonged to Poncho. And would note, I asked him about when he gave his statement initially -- and that statement, remember, was two weeks later after he had been at the jail for two weeks. To brew about how his wife had been treating him or not. To get angry on the phone at his wife and whoever she might have been with. And remember, Ruby Willett broke up with Chris Russell right around this time. So she admitted that she still went to see him, that she still had connection with him. She admitted to that on the stand. You heard from her. But Chris Williams -- excuse me, Antonias Williams, beg your pardon, got on the stand and never mentioned anything about the phone in that initial statement that he gave. And wouldn't that be an interesting thing to talk about this phone to say, By the way, this phone belonged to Poncho. Well, I submit to you that maybe he hadn't come

up with that yet. Maybe he's protecting someone else.

Now, I don't know why Eleanor Russell's phone number was on that phone as a contact. But she did say that she had other children. And if you recall, Antonias Williams talked about another child, I believe it was David, that he had been friends with. And there were other children as well. And when you look through these phone records, lots of phone calls, incoming and outgoing for weeks. There is no call to or from Ruby Willett, who gave her phone number as 201-0101 or from Eleanor Russell's number. No incoming or outgoing phone calls. It's Just a contact. And I don't know how it got there but law enforcement had access to this phone. It was checked in and out to be studied. And a lot of other people, some other people, certainly, knew Eleanor Russell. Now, we put up those alibi witnesses even though we didn't have to.

Now, just talking a little bit more about Antonias Williams. He had a lot to lose here. He was looking at life. And it took him a long time to come up with a name. Now, it's interesting in his initial statement, and I'm just pointing out things that I ask you to consider. In his initial statement he said, This was Poncho, Poncho. I know him as Poncho. Okay. However, on the stand, he sat there and said Chris, Chris, Chris.

Now, if he knew him as Poncho, why did he do that? And I submit to you because he has been questioned over and over again, prepared to say certain things and they wanted to turn that into Chris. He also clearly lied to you about the gun in the face. He's mitigating his part in the crime when he was caught at the scene. He threw down this gun. He was caught at the scene. You heard Mr. Lyles, he was the one who held the gun in his face. Antonias Williams was looking at a lot of time. And he wanted to protect somebody and he came up with a fall guy, a name to give and law enforcement followed it from there.

Now, remember you heard some stuff about how he took a bag of weed. No one said anything about seeing -- an officer was talking about seeing Poncho or someone run from this house, from the front door and a light behind him. Couldn't even tell whether he was white or black but thought maybe the voice might be black. Nothing about a bag weed of weed and nothing about a gun. In the silhouette. He said he saw a bald head. Which is strange because there was no second mask found at the scene.

So, I would just suggest that either he saw a mask and just wants to say a bald head because he's looking at Chris Russell right there and he wants to say something that would match Chris Russell. Because he wants to give testimony to support his case. And that's

what he did.

Going back, Antonias Williams said, Chris road with me weeks and weeks before that. No fingerprints of that. Nothing on the car. Chris Williams [sic] had a brother, talked about hanging out with a brother, David. He talked about a brother, David. Then he said he'd been over to the Lyles' house before, he'd met with T-Lyles there at that house. Now, on direct it sounded like he said, to me, Me and David went over there. I wasn't sure what he said exactly. But it first sounded like he and someone else went over and met with T-Lyles. But there was nothing later on from T-Lyles coming in here to testify to you that he met Chris Russell before. So, you heard some testimony, I think Antonias Williams is a liar. And I think he lied to y'all. But you heard some testimony -- I thought I heard that T-Lyles had met them both. Yet you didn't hear T-Lyle [sic] come in here and testify and identify Christopher Russell as a person he'd met before.

Now, talking about this case, all this evidence here, all this evidence here, does not connect to Chris Russell. There's no DNA, there's no hair, there's nothing on any of this connecting directly to Chris Russell. And remember, when he was picked up, he was on his bicycle, riding around on his bicycle. And simply that does not

come up to the measure of proof beyond a reasonable doubt. There are reasonable doubts here, certainly. And the biggest one -- well one thing I want to address is rebuttal. First, as far as Ruby Willett visiting Christopher Russell at the jail, she admitted she visited him from the stand.

Now, talking about Allen Smith saying, Oh, by the way, Christopher Russell's Poncho, I think it's interesting that he was sitting in court this entire time and comes up and says that. But none of the officers or investigators on this case, none of the officers involved in this case ever said anything like that. None of them. They're no friends, no T-Lyles coming in saying, We know Christopher Russell as Poncho, no one. And that certainly is handy that he came in and said that now at this later date.

And finally, I want to talk about what to me is most probative in this case. And that is about the testimony of Elaine and Jeffrey Lyles. The victims in this case. Now, they were eye witnesses there. And how many times I've heard that when you hear that voice coming back to you from that traumatic incident, it rings a bell. You see that face again and it sends shutters up your spine. You did not hear that from either of them. Now, Mr. Lyles, could not have seen his attackers because they

were wearing masks. But he certainly heard the voice. And he was the one who was in there for a very long time. He was being attacked. And yelled at for a very long time. And he did not recognize that voice. He said nothing about it. He did not recognize that vice. Now, he talked about the big guy was the one who attacked him.

Now, talking about Elaine Lyles, she did not sit there and say, Gosh, seeing him in person, that's him. She did not say that. She did not say that about Christopher Russell. She did not say that. And I submit to you if he was the one that she saw robbing her, she would have. Now, what she said instead, I got a good look at his mouth, he had thin lips. I just ask you to look at this picture. He doesn't have thin lips. And he's got a mustache and a beard. Doesn't have thin lips. As far as -- she said the voice was similar. Well, think about that, ladies and gentlemen, similar -- a voice used in court to a Judge is going to be similar to a screaming, attacking voice during an armed robbery? I submit to you that the voice was not similar. And if she was sure at all, if she felt that Christopher Russell was the one who was there, that she would have said it.

Now, talking about this evidence here, none of this points to Christopher Russell. However, there was other evidence supposedly there. An Uzi, clothes a lot of

other evidence from this scene. Where was it? Where was the search warrant of Christopher Russell's house? Did they produce any of this stuff? Did they go look for the gun, did they bring that out for you? No. They stopped. And that's because they were worried about what they would find out. And that's not proof beyond a reasonable doubt. And that's the same reason a photo line-up wasn't given to Elaine Lyles. She wasn't shown a photo array. And I submit to you that's because there was fear that she wouldn't pick out Christopher Russell. And that would hurt their case and put questions in your mind, as there should be, whether he was the one. Because I would submit to you that if he was the one, she would have recognized him.

One thing, take this for what it's worth, Mr. Lyles at one point, I think he was talking about something else, but when Mr. Moyer pointed to Chris Russell and said, Have you ever seen him?

He said, I've never seen him in my life.

Now, he was robbed by a person in a mask, I understand. But that's the first thing that jumps out of his mouth.

Now, ladies and gentlemen, the way I do closings is go through a case and point out reasons like Mr. Russell wasn't guilty plea. I'm supporting that he

wasn't there, he has an alibi and there's not enough evidence to overcome that. Now, think about his third witness, the man who's in the Department of Corrections, ladies and gentlemen. He has no reason to lie. He doesn't have anyone to help out here. There's no deals.

He just came in and said, Bam, I thought there was injustice. I put those things together and I thought there was going to be an injustice.

And, ladies and gentlemen, we had no duty to present any evidence when we presented a great deal. And there's reasonable doubt in this case. And I ask you to find Christopher Russell not guilty. Thank you.

MR. MOYER: Thank you, Your Honor, may it please the Court?

THE COURT: Yes, sir.

CLOSING STATEMENT

MR. MOYER: Madam Forelady, ladies and gentlemen of the jury, first thing I will do will be to apologize about my miscalculation about how long this case would last. I told you in my opening that I thought we would finish yesterday. And I did preface that by saying it's difficult to anticipate these things. And I'm incorrect and went a little bit longer than I expected. But we're about finished and you're about to go back to that jury room to begin your deliberations. And as, Your Honor, has

instructed you, all the evidence -- the evidence phase of this case is closed, it's over. You're not going to get anymore evidence or hear anymore testimony. Sometimes we have jurors deliberating and they come back and say, Well, we'd like to have a little bit more, we want to hear from somebody else or get a statement or something like that. That can't happen. Very rare situations, very rare circumstances, witnesses statements and police reports aren't admissible into evidence. It's what you hear from witnesses when they testify. So that part of the case is over with.

You really have two questions here. I think you really have two questions when one analyze this case. And the first one would be, Did the crime -- were the crimes committed? Second one would be, Did this Defendant commit the crimes? Was he part of that two team robbery of Mr. and Ms. Lyles back on December 18th, 2010? And I'm going make my closing a lot shorter than I thought it would be because I think we can pretty much skip over the first question. These crimes happened. I don't think there's been any question or I don't think there's been any attack on whether or not the actual armed robbery and burglary and kidnapping occurred.

Both Mr.and Ms. Lyles had money taken from them by two people with guns. Both whom had guns. They were

both deprived of their liberty. Mr. Lyles was taken to a back room and tied up with twisty ties and put on the floor. And although that was much more egregious than what happened to Ms. Lyles, she was put on the floor, she was deprived of her freedom. They were both kidnapped. There was a burglary, first degree. These robbers entered a residence, without permission, certainly with the intent to commit a crime, a horrible crime. And it was at nighttime and they were armed with guns. And they were certainly working together to make this conspiracy. So, I think we can pretty much skip right over that fact. Were these four crimes committed? Yes.

So, let's move on now to the second part of this question. Is this Defendant the second person? Is he the second gunman who was in that house? And let's start off with what the defense has to say about this issue. The defense wanted you to believe that he was not the second robber. And he put up several witnesses in his defense. And these witnesses testified to you about various aspects of the case. And on cross-examination other issues came out. One of the issues was the issue of this nickname, Poncho. And during the State's case that became kind of a focal point with certain officers. Did you know him as Poncho? Was his nickname Poncho in law enforcement records? Because Antonias Williams said, I knew him as

Poncho and he's Christopher Russell, that's his name. It's a nonissue. That a nonissue.

First off, different people -- people have many different nicknames with different people with different subsets of friends. There's no question about it. And there was a little bit of question, maybe until this morning when Allen Smith testified.

He says, Yes, I know Mr. Russell. I met him. Three, four years ago. I was over in that area.

In City Heights, by the way, where the Defendant's mother testified where she went over to visit him that one day. So, we know that he stayed there. And he was on a bicycle. Which, if you recall, when he was arrested, remember when the officers said they arrested him on that snowy day on Pleasantburg, he was on a bicycle. Allen Smith said that he was wearing a camouflage coat, which is what one of the perpetrators who entered the Lyles home was wearing during this robbery.

And when Allen Smith said, Hey, what's your name?

He said, Poncho.

Allen says, what's your real name?

He took off on his bike. Allen Smith got to know him on several occasions after that, got his real name and said he went by Poncho. That's one of the

issues.

Now, let's talk about the three witnesses that the Defense put up in front of you. Three people all took the stand. All of whom said they were testifying because it's the right thing to do. Not getting anything out of it. Yes, they know this man but they don't want to see a innocent man punished. So, let's talk about that. First, who were these three people? Number one was the Defendant's mother. Number two was a woman, Ruby Willett. Who said she considered herself his common law wife. She lived with him for six years. She went by his last name. I'm going to have a little bit more to say about her in a minute. The third person was this person named Anthony Lounds who's also serving time for armed robbery in prison.

And all three people claimed that they were testifying not because of their relationship to the Defendant but because it was the right thing to do. And I want you to think about this. They claim to have vital, important information. Information that would set an innocent man free. Ladies and gentlemen, if what they are saying is true, if what they testified is true, then that means a horrible injustice has been done. An innocent man was framed, was set up and was held for a long period of time for something he didn't do. Facing great

consequences. And that point cannot be overstated. If what they have to say is true, than a horrible injustice has been done.

And the point of that is, my point about that is this, that each one of those persons had the key to remedy that injustice. And they had that key in their pocket. And they kept that key in their pocket for two years. Two years. They walked around carrying that key. Which if they just simply would have taken out would have solved everything a long time ago. Why is that information coming out just now? Why would they wait days, weeks, months, a couple of years and just let time past? Ladies and gentlemen, I argue to you, you wouldn't allow that to happen to a stranger. You wouldn't allow that to happen, perhaps, to your worst enemy. To allow somebody to sit in jail for something they didn't do. With such dire consequences.

Ladies and gentlemen, I argue to you that a person who would find out a couple of weeks after the fact, when Christopher Russell got locked up, and then find out that, wait a minute, that couldn't have happened, he was with me. He was at my house, we were watching sports. And not only was he at my house, but there were at least four other people there. Who all knew Ruby Willett. The Defendant's mother testified that--

MS. ROSS: Your Honor, I object at this time. I would just note that I had to give the State notice of an alibi defense.

MR. MOYER: Someone named Erica Brantley, his cousin. His brother, his own brother, David. The Defendant's 22 year-old daughter, Christy Brantley. According to the testimony, at least those five people knew he couldn't have committed this crime. Because according to what they said, he was with them. I contend to you that somebody who that information and knew, that all they had to do was go down to the law enforcement and let that person free. You wouldn't sit by and not let that information out. You'd be crying from the roof tops. You would go to the law enforcement. Well, first off, you'd get in your car, drive around and get each one of those four people and say, Get in the car, Christopher Russell's been locked up. Y'all know, remember he was with us. We got to get him out. And you go and you'd drive down to the police station and you wouldn't leave until something was done, until he was let free.

MS. ROSS: Your Honor, for the record, I'm just going to object to the comments on the defense. He has no duty to present any evidence.

THE COURT: Ladies and gentlemen, the burden is on the State of South Carolina at all times to prove the

Defendant guilty beyond a reasonable doubt of all charges. And any insinuation that may be given to you otherwise is incorrect.

So go forward, Mr. Moyer.

MR. MOYER: Thank you, Your Honor.

That's what they would have done. They would have gone down there and they would not allowed this injustice to have taken place. And if that didn't work they would have gone to Channel Four News, gone to Greenville News and say, There's a horrible injustice that's been done. Because not only is an innocent man free [sic] but the real person who did this, the real criminal, the real dangerous person, is still out there on the streets. I argue to you that's what would have happened. Instead of that, it was an ambush. They wait until all this time goes by and then they let it out.

MS. ROSS: Judge, again, I object. I gave him a notice of an alibi defense.

MR. MOYER: Your Honor--

THE COURT: Just one second.

I'm going to ask the jury to go to the jury room right quick, please.

(WHEREUPON, the jury left open court at approximately 11:48 a.m.)

THE COURT: What is your objection, Ms. Ross?

MS. ROSS: Judge, the State is stating that this was an ambush. Under Rule 5(C), I have to give notice of an alibi defense. And I provided the State with the names and addresses and a place where my client was during the time of the crime. There's no duty of a Defendant to provide an immediate alibi to call and say where they were. This line of argument is ridiculous. Under -- that's -- however, to say this is a ambush after--

THE COURT: I didn't catch the fact that you said it was an ambush. What were you saying?

MR. MOYER: I just said what they did by waiting until the end of this case by not going to the police. and that's my argument--

MS. ROSS: He said it was an ambush.

THE COURT: All right, I'm going to tell them that Defense, under the rules of court, have to give them and did give them a notice of an alibi as to who, when, where he was going to be, okay. Now, I'll be glad to hear you but I don't like objections during closing--

MS. ROSS: I apologize.

THE COURT: But I think that's an appropriate objection.

MR. MOYER: Well, Judge, if it please the Court, this case has been on the docket five times. I didn't get a notice of alibi until it was on the fourth time.

THE COURT: I don't care if you got it a 100 years ago or yesterday morning, Mr. Moyer, you have, you understand?

MR. MOYER: Yes, sir.

THE COURT: Okay, I've ruled. I'm not going to argue anymore with you, understand?

MR. MOYER: Yes, sir.

THE WITNESS: Okay, bring the jury in, please.

MS. ROSS: While they're out, I just put on the record, whether I need to put on the record, the request for a mistrial on the comment--

THE COURT: Denied.

MS. ROSS: Thank you, Judge.

(WHEREUPON, the jury came into open court at approximately 11:50 a.m.)

THE COURT: Just one moment, ladies and gentlemen of the jury, attorneys are allowed wide latitude in their arguments. And I'll remind you of this, when you go back and begin your deliberations, if your memory of the testimony and evidence differs from what either on of these attorneys tell you, then your memory will control, okay. With that being said, the Rules of Procedure in criminal court are if a Defendant wishes to assert an alibi defense, as was done in this case, that you have to give advance notice before trial to the State. And that

was done.

That being said, Mr. Moyer, you wish to continue?

MR. MOYER: Yes, sir. Thank you, Your Honor, may it please the Court?

THE COURT: Yes, sir.

MR. MOYER: Now, let's move on now to Anthony Lounds. He was the man who testified who had the convictions for armed robbery. I had a difficult time understanding exactly what he was testifying about. But you remember Antonias Williams was asked about him when he was on the stand. And he said he hadn't seen Anthony Lounds since 1992. He was very clear on that point. Anthony Lounds made a few comments about seeing Antonias Williams while they were incarcerated. Said something like he heard him on the phone, said, I had something for you. Exactly what he said I couldn't quite make out. But it sounded as if he didn't quite understand what Anthony -- what Antonias Williams was saying either. But he came in and he testified to that.

Then I'll move on to the Defendant's own mother, Eleanor Russell, who testified yesterday. And keep in mind, she is his mother. And I would argue to you that a mother would do anything to help her son. To help her son in a situation like that. Any loving mother would do.

Then I would move on to Ruby Willett. She was the woman who testified at the end of the Defense's case yesterday. And I would argue to you the evidence shows that she was just flat out telling the untruth. She testified, she tried to make it sound as if she had a relationship with him and that it was over. That she was an unbiased witness. But the truth of the matter is she also testified that she was with him for six years. She was -- she used his last name. She considered herself common law married to him. And after the fact she admitted that she also stayed close with the Defendant's mother. She stayed close with her. Then she said that she had gone to meet -- she went to the jail, she talked to the Defendant a couple of times. And when pressed on it, as I recall the testimony, she said two, at the most three.

Well, we heard the testimony this morning that that was not true. That over the next several months from January, February, March and April, May, she went some 23 times to visit him. That doesn't sound like somebody who had broken up with somebody and somebody who's an unbiased witness. She, I would argue to you, lied about that. She also has a conviction for giving false information to police. And I would argue to you that she is not a reliable witness.

Ladies and gentlemen, I would argue to you that

the kind of person who would commit the kind of crime that happened to the Lyles, is the kind of person who could get a mother and a common law wife and another guy in prison for armed robbery to say what he would like them to say. And I would argue to you that that's what happened. I also ask you to consider who these other people were who were apparently at the house with him on the night when he had his alibi. This Erica Brantley, his brother David, his 22 year-old daughter, Christopher [sic] Brantley, there was testimony that they were there at the house also. And that they still live here in Greenville.

Now, the Defendant's mother and Ruby Willett testified, somewhat confusedly I would argue to you. The Defendant's mother said that the Defendant lived right next door to him [sic] and would come over. Whereas, Ruby Willett said they had just moved across town, they didn't have the cable hooked up yet and that's why they came over there. I would argue to you there's inconsistencies there. But one thing -- and they're details about what exactly happened that night was all fuzzy except for one thing, that he was there from 7:00 to 10:00. Which I would argue to you is very convenient. Because that's the time when this incident happened to the Lyles.

So, ladies and gentlemen, the only person -- the person who cracked this case, was the only other person

who knew who the robber was. And that was Antonias Williams. And you were able to see him on the stand when he testified yesterday. And I suspect he was probably not quite the person you would have expected to be involved in a crime like this. He was married. He had a very good job. He worked for Toyota of Greenville, he was selling cars. He was trusted. He was given one of their cars to use, one of those demo cars to drive with. And he got involved in this situation, he got wrapped up in this.

But he's the one who cracked the case. He's the one who when with Investigator Weiner took him out of the jail a couple weeks later, he confessed and told them who was with him. He said at first the night this happened he wasn't going to say. He said, the words he used, There's a code. You're just not going to rat out your partner. And he didn't do it that night. But as you sit in jail a little while and you sit there a little while longer and that code starts to seem a little less important. And he starts thinking about all the years ahead of you. And you think, Well I'm caught. And he was caught. He was caught red handed, there's no question about it.

The issue then becomes, what can I do to help myself? And that would be to cooperate. And this case turns like so many others out in the real world and that is someone telling on their partner in crime. Like guys

who sell drugs tell on their suppliers. Like those Wall Street thieves who ratted out the people who were committing those crimes with them, Antonias told on Christopher Russell. That's how it was solved. It was not by forensic or scientific evidence. Something we might also refer to as T.V. or Hollywood evidence. I call it that because if this was on one of those shows like one of those forensic shows or cop shows, most likely this would have been solved that way. By DNA or GPS or fingerprints.

And I would argue, ladies and gentlemen, that in the real world that's not how it happens all the time. And this is one of those situations. And this is one of those situations that shows the limitations of that kind of evidence. The officers went to great lengths to try to get fingerprints. They processed that Toyota van, they sealed it up that night, they searched inside and outside of that van. They took that pistol and they put it that chamber with the super glue that would bring up any fingerprint that was on it. And out of all that, one fingerprint was found. Only one. Out of all those people out of Toyota of Greenville who would have been driving and using that vehicle, out of Antonias Williams who was using the vehicle for over a week and had other people in it, out of all the people who cleaned and washed and drove

the car around the Toyota of Greenville, one fingerprint. And it could have been anyones. You heard the forensic analyst talk about how those fingerprints will last forever. They'll last indefinitely. So, it could have been anyone. So there's limitations to that kind of evidence.

But Antonias Williams broke the case and he testified. And he testified to you that Christopher Russell did it. He says he also knows him as Poncho. I'm going argue to you, ladies and gentlemen, that the fact that he is facing and was facing all the time that he was, is great incentive to tell the truth. And I will say it for this reason, he knows he was caught. He knows he was caught red handed. He had the gun, he that the stolen property, he had the mask, he just ran out the house, he was caught. He pled guilty. He did the hard part, he admitted his guilt.

So, now it's time to think of someone who's in that position. Someone who has to through himself at the mercy of the prosecutors and the police and the Courts. What are you going to get help for? For cooperating, not for lying. He admitted to this two weeks after the fact. He told Investigator Weiner that Christopher Russell was the other person involved in this case. He didn't know what other evidence was out there. He didn't know what

other alibies that might be out there that could disprove his story. He didn't know if there was fingerprints, DNA or something else. He told Investigator Weiner that Christopher Russell did this with him without knowing that information. He could not risk getting caught in a lie. And why would he? Why would somebody in that position lie? How much would you have to hate somebody to completely frame that person for a crime as horrible as this and allow the real perpetrator to go free? How much would you have to hate that person?

And on the other hand, if you want to help yourself, you want the Courts to take into consideration how much help you've been, you don't want to get caught in a lie. And he couldn't take that risk. But not only that, I would argue to you that his testimony was corroborated. It was first corroborated by Mr. and Ms. Lyles and by Jimmy McDaniel, by what they told you they saw in that house.

Ladies and gentlemen, Ms. Lyles could not make an identification. She could an identification in court, she could not make an identification on a photo lineup. I'm going to argue to you that that reason and that cautious approach, that shows an unscrupulous person. Because if she were the kind of person who wanted to just come in here and say something untrue, she could have just

looked over at him and said, That's the person.

But I want you to think about the situation of this crime. How unsettling and sudden and unexpected it was. How frightened you would be. Imagine all the things going through your mind at a time like this. These could be the last few moments on your life. All of this going on. It's fast, it's sudden. And she got to see him as -- she got to see that face of the person for a split second. She testified that when the police showed up, the gunman went to the door and he was doing this, he was looking back and forth. And right before he went outside, right before he left the house, he pulled the mask off and she looked and for a split second she saw his face, then he ran. And no, she couldn't say definitively who did this. But you know what she said say? She said she saw the Defendant stand up and that was the height of the person. She said he was kind of skinny. And we know that when Christopher Russell was arrested he was 6'1 and weighed 170 pounds. She said that she heard his voice in court and she thought about it and when she heard that voice, she can think back and she thought to herself, that sounds like that other person with the gun.

Now, Mr. Lyles, he wasn't able to make any comments either positive or negative about whether it was the person. First off, you know that he never got to see

anyone's face. And we also know he's hard of hearing. Remember how when I had to question him I had to go right up to him and almost yell my questions to him.

Jimmy McDaniel, he testified it was dark out. And he was standing outside with Danielle. And he saw the person come to the door. And, once again, also, he wasn't able to get a really close look at the person but he could tell he was an African American man, about 6-foot 1. Fairly thin with close cropped or very support hair or even bald. That's what he said. All of which fits.

And I would argue to you that the cell phone, finally, is the greatest corroboration that it was this Defendant. Now, that cell phone hadn't been just dropped in that car, it wasn't under a seat, it hadn't fallen down. It was plugged in in the middle of the console as you can see in these photographs. It was deliberately placed in there. Now, the officers knew that was an important piece of information, they did what they could. Investigator Weiner did what he could to find out who's cell phone that was.

And he first got the phone records. But this is one of those prepaid phones. And they don't keep records of who the person was who bought that phone or bought that service. And so then they took the phone, they did what they could and they generated these reports. And it's

basically just a contents of what is on that phone. And we know from that there's a contact, Mom. Who is Eleanor Russell. And it has her phone number. This Defendant's mother. We know it has Antonias Williams phone plugged into it. And Antonias Williams went by Jetta Bug. Or Jitter Bug. It was spelled Jetta Bug on these records. We know his phone number was plugged into that phone. And we know there was contact back and forth between the two over the several day period of these phone calls. And it only goes back about three days. It goes back to about December 16th. So there's only three days worth of phone calls that were preserved. December 16th, 17th and 18th. So we know that. That cell phone was left in the car. I contend to you that it is the Defendant's cell phone.

Now, you've heard a number of times and you'll hear it some more when the Judge instructs you, that the Defendant is clocked in a presumption of innocence. That the Defendant cannot be convicted unless evidence proves him guilty beyond a reasonable doubt. And we agree with all of that, is it correct. We would have it no other way. And the State gladly excepts the burden in this case. It's a fundamental concept of American law and it's been the rule of law for centuries.

But remember this, every criminal defendant that's ever been convicted by a jury starts off that same

way. In every case. From the most seemingly significant to the most seemingly insignificant case, the burden is the same. And if a person is convicted, a group of citizens, just like you, must find him guilty beyond a reasonable doubt. If this doubt could never be overcome, then there would never be any convictions. There would never been consequences to criminal wrongdoing. Because no one would ever be convicted.

The only witness to this crime, Antonias Williams, who I argue to you has no reason to lie and every reason in the world to tell you the truth, pointed his finger at Christopher Russell and told you that he was the other robbery. Antonias Williams' testimony was corroborated by the cell phone that this Defendant left behind at the scene. And it was corroborated by the descriptions given my Ms. Lyles and the witness Jimmy Daniels [sic]. And I would argue to you that the Defendant's alibi is too far fetch to believe.

I argue to you, ladies and gentlemen, that there is more than enough evidence beyond any reasonable doubt. I asked you at the beginning of this case to listen closely to all the evidence and testimony and consider it all with an opened mind and at the end of this case do justice. A horrible injustice was done to Mr. and Ms. Lyles. A horrible violent crime took place.

A horrible injustice was done on the citizens and the community of Greenville County. And I would contend to you, ladies and gentlemen, that finding this man guilty, Christopher Russell, is justice. Thank you.

THE COURT: All right, Madam Forelady, ladies and gentlemen of the jury, my charge is going to be roughly 30 minutes. Let's take about a five minute break, we'll bring back in here and we'll do charge at that time, okay.

(WHEREUPON, the jury left open court at approximately 12:10 p.m.)

THE COURT: Recess for five minutes.

(WHEREUPON, a short break was taken.)

MS. ROSS: Judge, on my request for jury instructions, I did put up a request that you just read Rule 5(C) to the jury. That may have been covered in your--

THE COURT: I wouldn't charge it again.

MS. ROSS: All right.

THE BAILIFF: They're ready.

THE COURT: Okay, bring them in, please.

(WHEREUPON, the jury came into open court at approximately 12:15 p.m.)

THE COURT: Thank you, sir.

JURY CHARGE

All right, ladies and gentlemen of the jury, at this point in the trial it's my duty to charge you on the law. Unfortunately, I'm not as smart or articulate as these fine lawyers are, so some of this will be read to you. I apologize to you advance for doing that to you. However, the information contained in this charge is vitally important to the State and to the Defendant in this matter. So, please bear with me. With that being said, my instructions will be three parts. The first part will be to discuss with you the duty -- or the rules that define and control your role as a juror. The second part will be the substantive law of the charges that applies to this case as well the alibi defense. Finally, I'll give you some thoughts about your deliberations, just to let you know.

Then Madam Forelady, I will go over with you the verdict form that you will need the fill out in this case.

Now, if you recall, at the beginning of this trial, I told you you were finders of the facts. You're the sole judges of the facts. You are to determine what the facts are in this case based on the testimony and the evidence that's been presented here in this courtroom and from no where else. You must apply the law as I charge it to you now. You shall not be concerned with what you would like the law to be or what you think it should be.

It would be your absolute duty to apply the law as I give it to you. And apply it to the facts as you find the facts to be. And you should not be concerned with any personal likes or dislikes, any prejudice or undue sympathy that you may have from one side of this case to the other.

What that simply means, again, and I'll say it again in this charge, you are to make your decision based on the evidence and testimony presented here in this courtroom uneffected by anything else that may not be a part of this case. And again, in following these instructions, all these instructions are equally important. You ma not pick out certain aspects of this charge and say, I will do that and disregard others. These have been well thought out for years and they are equally important. So you must comply with them in all respects.

With that being said, you determine what the facts are by evaluating and weighing the evidence. Now, weighing the evidence in all reality is a figurative term. I can't give you a set of scales that you can stack the evidence on and weigh. It is a mental process and you should and you can use your good sense and sound judgment in your deliberations in reaching what you find the facts to be. With that being said, I'm going to tell you that

the evidence and what is not evidence. As you recall at beginning of this case, whether it was here from this witness stand by way of sworn testimony is evidence. It doesn't matter if it's direct examination, cross-examination or some combination of the other. Also, there's a number of exhibits that have been admitted into evidence. That is also evidence.

Finally, the parties, during the course of the trial, entered into a stipulation. And if you will -- and it has to do with regard to Exhibit No. 43. In that stipulation, both parties agree that the text messages were not relevant, were redacted or taken out. Also, pages 26 through 34 were not relevant to this case and, therefore, were not included.

Have I correctly stated the stipulation from the State's respect?

MR. MOYER: Yes, Your Honor.

THE COURT: Have I stated correctly from the Defense respect?

MS. ROSS: Yes, Your Honor.

THE COURT: Very good.

Now, ladies and gentlemen, that is the only evidence you may consider. Testimony, exhibits, stipulation. Now, as far as the stipulation goes, it will be your duty to find that as a fact. You can't debate

that stipulation, okay.

Now, that leaves me to what is not evidence in this case. Number one, what these lawyers have said in their opening statements, in their closing statements or at other times in this case is not evidence. They've not been sworn as witnesses, they've not been through direct or cross-examination. So, it has not, in a technical sense of the term, evidence. However, it is designed and is helpful to help you understand what the issues are in this case and try to led you through the maize of the information that you have to digest in reaching what the facts are in this matter. But, again, if what your memory of the facts in this case are, collectively, differs from what you were told by either side of this case or by both sides of this case, then your memory will control.

Now, that leads me back to my earlier statement to you about your notes. Remember, that just because something may appear in a particular juror's notes, somebody's memory may say something different. The notes don't triumph just because they're written down. That's why we call them deliberations. You are to go through, discuss the evidence calmy and courteously in reaching what your facts or your finding are.

Now, also, you've been herded in and out of the courtroom on multiple occasions. First, it would be

improper for you to discuss in any form or fashion, in your deliberations, the fact that one side or the other raised an objection or to the extent I let you stay in here in the courtroom, my ruling on that objection. I'll simply tell you that in every single case that I was ever involved with as a lawyer for 25 years or since I've been on the bench, that there is always objections and there's always opportunities for the jury to go out and come back in the courtroom. It's simply the process. And the lawyers have an ethical obligation to object when they see something they feel is wrong. So, just don't discuss it or consider it anymore. Finally, ladies and gentlemen, those things that you may have seen or heard while we're not here in the courtroom is not evidence. So, any discussion along those lines would be improper and I urge you and instruct you not to do that.

Now, in South Carolina we recognize two types of evidence. The first type of evidence is called direct evidence. The second type is called circumstantial evidence. Direct evidence is pretty much straighted forward and it's testimony by a person who asserts or claims to have actual knowledge of a fact. Such as an eye witness. I saw the car run through the stop sign. That would be an eye witness. Circumstantial evidence is indirect evidence. Or to put it another way, is

circumstantial evidence of a proof of a chain of facts. And circumstances from which you can find another fact exist. Although, that fact has not been proven directly. Now, I can look at your faces and tell you that wasn't very clear so let me give you an example.

If you were to go to bed at night and all of you were to have a virgin set of snow or layer of snow in your yard. If you were to wake up in the morning and you see tracks in the snow, you can infer, reasonably, from the existence of those tracks, that someone or something walked through your yard during the night. Although, you did not see it. That is the example of circumstantial evidence. The law makes absolutely no distinction between the quality or the use by you, the jury, of circumstantial or direct evidence. There's not a higher degree of prove required for circumstantial evidence to be considered by you. However, your circumstantial evidence, the inferences you make of it, cannot lead you to surmise or conjecture. Okay.

Now, with that being said, the next aspect of your duties as finders of the fact is that in considering all the evidence, you have to decide what we call as the lawyers or Judges, credibility of witnesses. And what that simply means is you're going to have to decide in your deliberations what testimony you want to believe and

what testimony you don't want to believe. You have a right to disbelieve all or part of any witness' testimony. You have a right to believe all or any witness' testimony. Now, in making your determination of credibility of witnesses, let me give you a set of factors that you may, but you're certainly not required to consider in making this determination.

Some of the factors are, one, was the witness able to hear, see or know about the things to which they testified about? How well was the witness able to recall or describe the things that they testified about? What was the witnesses manner while they were on the witness stand? In other words, what was their demeanor? You may ask yourself, was there some reason that the witness would want to help or hurt one side or the other? Did that witness have any bias or prejudice towards one side or the other? Or towards any issue or matter involving this case? You can ask yourself how reasonable that witness' testimony in light of all the evidence and testimony that's been presented in this case and whether that witness' testimony has been contradicted by what they said or did at another time or by the other evidence in this case or the other testimony in this case.

And Madam Forelady, ladies and gentlemen of the jury, those are just some but certainly not all of the

factors that you may consider when you make this determination of witness credibility as jurors. You don't check your good common sense at the door and you shouldn't do so in this case. So in your deliberations, those things in your day-to-day lives that you find indicative of truthfulness or indicative of lack of truthfulness, should be used by you when you engage in this process of determining the credibility of the witnesses. One thing you don't do, however, is add up the number of witnesses or the number of exhibits which have been introduced by one side or the other in making the determination of credibility. It does not matter. Whether the truth comes from the Defense or the State or some combination. Remember, your sole objective in this matter is to find the truth. And from the evidence presented here in court.

Now, you did hear some testimony by an expert witness or somebody who has been qualified as an expert. Now, as I told you during trial, but I'll remind you, people are normally limited to testifying about what they saw, they heard, they smelled, they tasted, something along those lines. However, expert witnesses are allowed to give their opinion, if based on their education and their experience or their combination of the two, they have developed an expertise in an area that is not generally noun by the population. Now, expert testimony

is no greater or any lesser than any other testimony presented in this case. You can accept it, you may reject it, you may give it as much weight as you think it deserves based on the basis of the testimony, their education, their experience, as well as all the other evidence presented in this case.

Now, I told you at the beginning of this case, it is an important fact for you to remember, the fact that Mr. Russell has been indicted, is not evidence of his guilt. It does not raise a presumption of his guilt, nor does it raise any inference of his guilt. These four Indictments are simply the mechanism by which the State of South Carolina brings a criminal Defendant before a jury, such as yourselves, for a determination of guilt or innocence. So, it would be improper for you to discuss the fact of the Indictments. Now, with regard to the Indictments, each Indictment stands on it on. What that simply means is you have to consider one the Defendant's guilt or innocence independently on each Indictment, independently of the decision on the other Indictments. Now, you may find the Defendant guilty or innocent as to any of the Indictments that you consider.

In this case, the Defendant has pled not guilty to all four of the charges against him. What that simply means, ladies and gentlemen, is that the burden is upon

the State of South Carolina to prove each and every element of all four of these charges against the Defendant by prove beyond a reasonable doubt. Remember, again, each charge is inspected of the other. Now, I will charge you, though, that it is an important rule of law, that any criminal, in any criminal case, no matter how serious or not serious the charge is, they will always be presumed to be innocent of the crime or crimes for which they are charged unless there's evidence of their guilt beyond a reasonable doubt.

Now, this is a presumption that begins at the time the Defendant is charged and it accompanies him throughout the course of this trial, until you have been convinced by proof that convinces you of his guilt beyond a reasonable doubt. Now, in the terms of the law, we say that it's like a robe of righteousness that's been placed around the shoulders of the Defendant. And it remains there throughout this trial and until you, in your deliberations, determine, if you do, of his guilt beyond a reasonable doubt. Now, again, the presumption of innocence is not a mere theory, it is not a mere legal phrase, it is a substantial right which each and every Defendant is entitled to unless you, the jury, are satisfied of his guilt beyond a reasonable doubt.

So, let me give you the definition of what a

reasonable doubt is. A reasonable doubt is the kind of doubted that would cause a reasonable, sincere, honest and conscientious person to hesitate to act in an important matter in their own affairs. Proof beyond a reasonable doubt is prove that leaves you firmly convinced of the Defendant's guilt. Now, ladies and gentlemen, there are very few things in this world that we know with absolute certainty. And in criminal cases the law does not require prove 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 or the crimes for which he has been charged, it will be your duty the find him guilty. On the other hand, if you think that there's a real possibility that the Defendant is not guilty of the crime or crimes for which he has been charged, then it would be your duty to find him not guilty.

A reasonable doubt may arise from the evidence or from the lack of the evidence. And I further instruct you, ladies and gentlemen, that each and every Defendant in every criminal case is entitled to every reasonable doubt that may arise in that case. Now, what that simply means is this. If upon any issue essential to a conviction and a verdict of guilt of a offense or offenses for which a person is charged, you have any doubt, it

would be your duty to resolve that doubt in favor of the Defendant and find him not guilty.

Now, in every -- excuse me, in order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness or criminal negligence. 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. Now, there is no way to prove intent to a mathematical certainty. There's no way medical science can dissect somebody's brain to determine what they had in mind at the time of their acts. So the law says that criminal intent may be inferred from the circumstances shown to have existed.

Now, 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. It is up to you to determine what the Defendant intended to do based on the

circumstances shown to have existed. Criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness or a difference to a duty or to the consequences that is considered by law to be the equivalent of criminal intent.

Now, finally, ladies and gentlemen, as to the first part of my charge, I charge you and I emphasize and instruct you that the fact that the Defendant did not testify shall not and is not a factor to be considered by you in any form or fashion. The State at all times has the burden of proving the Defendant guilty by proof beyond a reasonable doubt. It would be improper for you to consider or discuss that fact that he did not testify because that is a right enjoyed by every citizen of the United States according to the Fifth Amendment of our United States Constitution.

Now, Madam Forelady, that's the first aspect of my charge. The other part of my charge is a little bit less time. I will give you a chance to go back to the jury room or you can keep going. Would you poll your jurors and see what they would like to do?

MADAM FORELADY: Keep going.

THE COURT: Very good. Good Greenville County jury. Thank you.

Now, I'm going to charge you this time on the

substantive law. Now, the order that they appear and the order that these options appear on the jury -- on the verdict forms are of no consequences. It's just the order they were put together. Now, the first charge is armed robbery. The Defendant in this case is charged with armed robbery. In order to prove this offense the State must prove beyond a reasonable doubt that the Defendant took personal property from the person or presence of another person. Property is in the presence of a person if it is within the person's reach, inspection, observation or control so that the person could, if not overcome with violence or prevented by fear, keep possession of the property. The State must also prove beyond a reasonable doubt that the Defendant carried the property away, intending to permanently deprive the owner of the property and to keep the property for the Defendant's own use. The slightest removal of the property or the complete possession of the property, even for an instant, by the Defendant, is sufficient to show a taking and carrying away of the property. The taking and carrying away of the property must have been done with violence or by putting the owner of the property in fear of violence.

Finally, the State must prove beyond a reasonable doubt that the Defendant was armed with a deadly weapon during the robbery. A deadly weapon is any

article, instrument or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. The following are examples of instruments which may be considered deadly weapons. A pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a slingshot, metal knuckles, a razor, gasoline, firebomb, Molotov cocktail. A gun may be a deadly weapon even it is not operating. Ladies and gentlemen, that is the law of armed robbery.

The next is the law of kidnapping. The Defendant is charged with kidnapping. The State must prove beyond a reasonable doubt that the Defendant knowingly and unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted or carried away another person without authority of law. To do a thing unlawfully is to do it willfully against the law. Knowingly means with knowledge, consciously, not accidentally. Seize means to take hold of suddenly or forcefully. Confine means to limit, restrict or enclose within bounds, in prison or shut or keep in. Inveigle means to lure, entice or lead astray by false representations, promises or other deceitful means. Decoy means to lure or as if by decoy. And decoy is something to entice a person into a trap. Kidnapping is to remove a person against his will by

unlawful force or by fraud. Abduct means to carry off secretly or by force or an illegal purpose. Carry away means to remove.

The State does not have to prove that the Defendant did all of the above things. Instead, if you find beyond a reasonable doubt that the Defendant did any of these things, you may find the Defendant guilty of kidnapping. Something done without authority of law is something which the law does not sanction, permit, allow condone or provide justification for. Kidnapping does not have to be for any personal or monetary gain, for any illegal purpose but may be for any reason whatsoever. That is the law of burglary.

This is the law of first -- excuse me, that was the law kidnapping, this is the law of first degree burglary. The State must prove beyond a reasonable doubt that the Defendant entered a dwelling without consent. A dwelling is any building or portion of a building in which a person ordinarily sleeps. A building constructed as a dwelling that has never been occupied, cannot be considered a dwelling for purposes of burglary. But a dwelling -- a building is a dwelling even if the residence are temporarily absent from the building. In order to prove that the Defendant entered the dwelling, the State not have to show that the Defendant's entire body entered

the dwelling. The smallest entry is sufficient. It may be any part of the body, such as a hand or a foot or even an instrument such as a hook or other instrument. In addition, the State does not have to prove that force was used to gain entry. If a person enters a building by using deception, artifice, trick or misrepresentation to get consent to enter, this is an entry without consent.

Next, the State must prove beyond a reasonable doubt that the Defendant intended to commit a crime. Either a felony or a misdemeanor at the time of the entry. The mere entry into a dwelling without consent is not a burglary. If the intent to commit a crime is formed after the entry, it is not a burglary. On the other hand, if the Defendant intended to commit a crime at the time of entry, it is a burglary even if the intent was abandoned after the entry. It does not matter that the intended crime was not completed. Intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonably infer intent.

Finally, the State must prove beyond a reasonable doubt one of the following. Or one or more of the following. When entering while in the dwelling or when fleeing, the Defendant or an accomplice was armed with a deadly weapon or explosive. A deadly weapon is any article, instrument or substance which is likely to cause

death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. The following are examples of instruments which may be deadly weapons. A pistol, a shotgun, a file, a dirk, a dagger or knife, a slingshot, metal knuckles, a razor, gasoline, a firebomb or Molotov cocktail. And again, a gun may be a deadly weapon even if it's not operating.

Another factor would be when entering while in the dwelling or when fleeing, a Defendant or an accomplice caused physical injury to anyone not participating in the crime. Or when entering while in the dwelling or when fleeing the Defendant or an accomplice used or threatened to use a dangerous object. Or when entering while in the dwelling or when fleeing the Defendant or an accomplice displayed what was or appeared to be a knife, pistol, revolver, riffle, shotgun, machine gun or other firearm. Or the Defendant entered or reminded in dwelling in the nighttime. Nighttime is the period of time between sunset and sunrise in which there is not enough daylight to recognize a person's face except by artificial light or moonlight.

Now, finally, ladies and gentlemen, as to the substantive law, I will charge you on the law of conspiracy. In this case, the Defendant has been charged

with conspiracy. The State must prove beyond a reasonable doubt that the Defendant, combined with one or more persons for the purpose of committing an unlawful act or of committing a lawful act by unlawful means. There must be a mutual -- excuse me, there must be a mutual understanding agreement or common intention or plan. Mere passive knowledge of or consent to the criminal conduct of another is not enough to make a person a conspirator. There must be guilty knowledge and participation.

Similarly, the mere face that the Defendant may have associated with another person or met with another person and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy or that a Defendant was involved in a conspiracy. On the other hand, it is not necessary that the agreement be a formal one, that it be in writing or that the persons hold a meeting and expressly state the terms of the common plan, or that the agreement be stated in words between them. The agreement of a criminal conspiracy may come into being through an implied, mutual understanding. The willful intention and knowing of adoption by two or more persons of a common plan is sufficient. No overt acts need to be shown to establish a conspiracy.

A conspiracy may be shown by circumstances --

excuse me. A conspiracy may be shown by circumstantial evidence and the conduct of the parties. In order to convict the Defendant of conspiracy, the State must prove beyond a reasonable doubt, not only that the Defendant knew of the unlawful conduct, but that the Defendant agreed to combine with the other persons for the purpose of accomplishing the unlawful conduct. Those are the substantive charges.

Now, in South Carolina, ladies and gentlemen, we what is called the hand of one is the hand of all. And that is this. If a crime is committed by two or more people who are acting together in committing the crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probably or natural consequence of the acts done in carrying out the common plan and purpose. For example, two people can be guilty of killing another person when only one of the had a gun, there is only one bullet and only one of the two fired the shot which caused the death. If two or more people were together, acting together, assisting each other in committing the offense, the act of one is the act of all. Or as it's sometime said, the hand of one is the hand of all.

Prior knowledge that a crime is going to be

committed without more is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the Defendant is present when the crime is committed, is not sufficient to convict the Defendant as a principle. Guilt as a principle is shown by actual or constructive presence at the scene as a result of a prior agreement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as the principle. The State must prove beyond a reasonable doubt by competent evidence, that the theory of the hand of one -- excuse me, the State must prove beyond a reasonable doubt by competent evidence the theory of hand of one is the hand of all.

A principle in a crime is one who either actually commits the crime or who was present, aiding, abetting or assisting in committing the crime. When a person does act in the presence of, with the assistance of another, the act of one is done by both. Where two or more, acting with a common plan or intent or present at the commission of the crime, it does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all. Present at the commission of a crime means to be sufficiently near to aid and abet and assist in the commission of the crime. However, mere

presence at the scene of a crime is not sufficient to convict one as a principle on the theory of aiding and abetting.

Intent is also a necessary element. For there must have been a common design or intent to commit the crime and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act. Intent means intending the result which actually occurs. Not accidently or involuntarily. Intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonably infere intent. The State must prove these elements beyond a reasonable doubt.

In this case, ladies and gentlemen, the Defendant has raised the defense of alibi. In order to establish an alibi, it must be shown that the Defendant was at another specified place at the time the crime was committed. And that it was, therefore, impossible for the Defendant to have been at the scene of the crime. Mere denial of presence at the scene of the crime does not constitute an alibi. There is no burden on the Defendant to prove an alibi. The burden is on the State to prove beyond a reasonable doubt that the Defendant was actually present at the scene of the crime, actually participated in it and was not somewhere else. In other words, the

State has the burden of disapproving the Defendant's alibi defense. That is the substantive law.

And Madam Forelady, ladies and gentlemen, I'm very close so bear with me. I would like to go over a few matters with you about your deliberations. Deliberations is defined as this. It is a careful consideration weighing up with you -- to a decision. Now, regardless of what you may believe about our judicial or jurisprudence system, I would submit to you that the genius of our jury system is that it allows 12 men and women, such as yourselves, who are from 12 different walks of life, who have 12 different perspectives to come into the courtroom to listen to the evidence, to listen to the law and to go back and to courteously, calmly and fully discuss all the elements and come to a unanimous decision or a verdict. And we call them deliberations for a reason. You are to go through and consider all the evidence. You are to listen to everyone's points of view. Discuss everyone's points of view and do it in a courteous and thorough manner.

Now, you're not selected as jurors to be partisans or advocates for one side or the other. You are the judges of the facts. Your sole interest in this matter is to find the truth from the evidence that has been presented to you in this courtroom. I would ask you

but I also charge you to listen to everybody's points of view, consider everyone's arguments, go through and discuss all the evidence. And if you're doing something deliberately, you should not be in a hurry and you shouldn't be in one today. This is an important case for the State, this is an important case for the Defendant. And this is their only day in court. So when you go back, take your time and review all the evidence -- review all the evidence and listen to everyone's arguments.

Now, in order for your verdict to be -- to withstand, it must be unanimous. In other words, all 12 must agree on the verdict. That being said, each of you have to make your decision based on your view of the evidence. Do not be afraid to change your view of the evidence if the deliberations convinces you that it's the right thing to do. On the other hand, do not change your firmly held view as to the evidence in this case solely to appease your fellow jurors, i.e., solely to reach a unanimous decision.

With that being said, Madam Forelady, if during the course of your deliberations, you need to communicate with the Court, I would ask that you do what you did at the beginning of this trial. Write down the question, write down the information, sign your name, give it to the Bailiff, I will receive it here in open court with the

attorneys and we will make the proper response at that time. Now, finally, it will be your responsibility to preside over the deliberations and guide the deliberations. That's not an authoritarian position, it is more a democratic position, okay. That being said, you have four options as to the charges in this case. Again, the options that the charge -- the order that the charges are presented to you is of no consequence and the order of your choices are of no consequence, I have to put them in some order or the other.

But your first choice would be as to the charge of conspiracy under Indictment 2011-1118, if you find the Defendant not guilty, you would check the first line. If you find the Defendant guilty, you would check the second line. You would then go to the next charge of kidnapping under Indictment 2011-1122. If you find the Defendant not guilty, you would check the first line. If you find him guilty, check the second line. Then you go to armed robbery, under Indictment 2011-1123, again, the same options, not guilty, you check that. Guilty, you check that. And, finally, as to the first degree burglary under Indictment 2011-1124, you check whether you find him not guilty or guilty.

Once you have gone and made your decision as to all four charges, then I'd ask you to sign your name,

knock on the door and we'll receive your verdict back here and the evidence in the courtroom. Remember, each charge is independent of one another. You need to separately consider all the charges, okay.

Now, I'm going to send you back to your jury room. I'm going to ask these attorneys whether or not I have incorrectly stated the law or I neglected to state a proposition of the law. I may bring you back. So do not begin your deliberations at this point. In just a moment, you will receive the verdict form and all the exhibits with unequivocal word that you may begin your deliberations. Okay, thank you, very much.

(WHEREUPON, the jury left open court at approximately 12:56 p.m.)

THE COURT: Any addition or exceptions by the State?

MR. MOYER: None, Your Honor.

THE COURT: From the Defense?

MS. ROSS: None, that haven't already been --

THE COURT: You renew your objections?

MS. ROSS: Yes, sir.

THE COURT: All right. Thank you, ladies and gentlemen. I appreciate the lawyers patience with me when I was not necessarily being patient with you. I appreciate both of your preparation in this matter, both