VOLUME I

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Lexington County

Honorable Courtney Clyburn-Pope, Circuit Court Judge

RAPHAEL L. PONTOO,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001217

APPENDIX

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State of South Carolina)) County of Lexington)	In the Court Of General Sessions
State of South Carolina,)) Plaintiff,) vs.)) Raphael Lamarr Pontoo,)) Defendant.)	Indictment Nos.: 2014-GS-32-1408 2014-GS-32-1409 Transcript of Record

January 26 through January 28, 2015

Lexington, South Carolina

BEFORE:

The Honorable Thomas A. Russo, Judge

APPEARANCES:

Robby McNair, Assistant Solicitor
Shawn Graham, Assistant Solicitor
Attorneys for the Plaintiff

David Mauldin, Assistant Public Defender
Attorney for the Defendant

ORIGINAL

1/26/2015

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January 26, 2015

* * * * *

THE COURT: All right. Ladies and gentlemen, I think everyone has returned from the break and we're going to go ahead and we'll proceed to selecting our first jury so I would recognize the State to call the first case.

MR. McNAIR: Thank you, Your Honor. The State calls to trial the case of State versus Raphael Lamarr Pontoo. Indictment number 2014-GS-32-01409 armed robbery, and indictment number 2014-GS-32-01408 for failure to stop for a blue light resulting in death.

THE COURT: Thank you, sir.

All right. Ladies and gentlemen, you have just heard the Solicitor call the first case for trial. The State of South Carolina versus Raphael Lamarr Pontoo. Mr. Pontoo is charged under these indictments.

Let me first state to you folks that an indictment is simply a piece of paper that contains the charge or the allegations that's made against an individual. An indictment is not in any way evidence. In a moment I'm going to read to you the allegations that are contained in this indictment. Those allegations are not evidence against Mr. Pontoo. They are merely that at this stage. They're allegations that the state has made against

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Mr. Pontoo. To these allegations he has pled not guilty and so that plea of not guilty places upon the state the burden of proving the elements of these charges beyond a reasonable doubt.

Now, I'm going to read to you the contents of these allegations so that I can ask you questions as they relate to these charges. Indictment number 2014-GS-32-1409 charges Mr. Pontoo with the offense of armed robbery and the allegations are as follows: That Raphael Lamarr Pontoo did in Lexington County South Carolina on or about January the 24th of 2014 did knowingly and willfully while armed with a deadly weapon and/or having possession of an object which the victim reasonably believed to be a deadly weapon and alleging by actions or words that he was armed to wit with a .22 caliber pistol did feloniously take from the person or presence of Jonathan Ruple by means of force, threats or intimidation goods or monies being described as follows; $200 in United States currency and/or a nine millimeter pistol and/or clothing with the intent to deprive the owner of the use of such property all in violation of Section 16-11-330 Subsection (a) of the South Carolina Code of Laws 1976 as amended.

The next indictment is 2014-GS-32-1408. That charge or that indictment alleges that Raphael Lamarr Pontoo

did in Lexington County South Carolina on or about January the 24th of 2014 did willfully, knowingly and unlawfully fail to stop a motor vehicle while driving said motor vehicle on a road, street or a highway of this state when J.G. Snider, a law enforcement officer with the South Carolina Highway Patrol signaled and sounded his siren and/or turned on his flashing blue light and when driving he did perform an act forbidden by law or neglected a duty imposed by law in driving of that vehicle that resulted in the death of Alexander Clemmons in violation of Section 56-5-750 Subsection (c)(2) of the Code of Laws of South Carolina 1976 as amended.

Now, ladies and gentlemen, these are the allegations of the charges that have been brought against Mr. Pontoo to which he has pled not guilty.

Is there any member of the jury panel who knows anything about this case or about these allegations based on what I have shared with you this morning? If so, please stand. Thank you. There are none.

Ladies and Gentlemen, I'm going to ask the attorneys that will be appearing during the course of this trial to stand and introduce themselves to you. If you would, please, listen carefully as they do that.

MR. McNAIR: Good morning. I'm Robby McNair,

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Assistant Solicitor here in Lexington County. Sitting with me this week is Deputy Solicitor Shawn Graham and Investigator Todd Garrick with the Lexington County Sheriff's Office.

THE COURT: Thank you, folks. Ladies and gentlemen, is there any member of the jury panel who is related by blood, connected by marriage, or who has any close business or personal relationship either with Mr. McNair or Mr. Graham or who has either been represented by either of these gentlemen or prosecuted by either one of these gentleman? If so, please stand. All right. Sir, your name please?

WILLIAM LALIMA: William Lalima, juror number 120.

THE COURT: All right. Mr. Lalima, you're an attorney local here in town?

WILLIAM LALIMA: Yes, Your Honor.

THE COURT: All right. And obviously you know these folks. Are you related to either one of these gentlemen?

WILLIAM LALIMA: Not related, no. But I do have some pending cases with the Solicitor's Office. Well, actually one pending case, Your Honor, with the Solicitor's Office.

THE COURT: With either one of these gentlemen?

WILLIAM LALIMA: Neither of those two.

THE COURT: Okay. Well, the fact that you have that situation would that in any way affect your ability to be fair and impartial giving both the state and Mr. Pontoo a fair and just trial?

WILLIAM LALIMA: No, Your Honor.

THE COURT: Thank you very much, sir. You may have a seat. All right. Mr. Mauldin, if you would, please.

MR. MAULDIN: I'm David Mauldin and I'm representing Raphael Pontoo here. My paralegal Shanika Wilson will be assisting me in this case.

THE COURT: Okay. Thank you very much. Ladies and gentlemen, is there any member of the jury panel who is related by blood, connected by marriage, or who has any close business or personal relationship with Mr. Mauldin or who has ever been represented by Mr. Mauldin? If so, please stand.

WILLIAM LALIMA: And again, Your Honor, I do not have any specific business relationship with Mr. Mauldin, but we are colleagues at times around the courthouse.

THE COURT: Yes. Would that in any way affect your ability to be fair and impartial if you were selected on this panel?

WILLIAM LALIMA: No, Your Honor, it would not.

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THE COURT: Thank you very much, sir. Folks, you have met Mr. Pontoo. Is there any member of the jury panel who is related by blood, connected by marriage, or who has any close business or personal relationship with Mr. Pontoo? If so, please stand. Thank you. There are none.

Now, ladies and gentlemen, that question that I just asked you as it regards Mr. Pontoo, in other words, that is if you are related by blood, connected by marriage, or have any close business or personal relationship, that's the question that I'm going to be asking you as it relates to the names that I'm about to call out. I'm going to call out the names of people who are possible or potential witnesses. These are folks who may or may not be called during the course of this trial. That question that I just went over with you, that's the question that I'm going to be asking as it relates to these names. If you hear a name called and that question applies to that individual for you, I want you to go ahead and stand.

Now, I'm going to be calling out several names, so if you do stand, please continue to listen because it may be that you know one or more folks on this list, okay? These folks' names that I'm going to call out are possible or potential witnesses that may appear during

the course of this trial. Kyle Taylor. Brandon Lee. Jason Snider. Christopher Shelton. And let me just say that if there are any of these folks in the courtroom today, please stand briefly and then you can have a seat. John Mishoe. Amanda Sucher. Neal Price. Jeffery Berry. M.L. McCaw. Matthew Rowlette. Xavier Perdue. Mike Phipps. Jonathan Ruple. Todd Garrick. William Bennett. Samuel Smith. Marie Waring. Carlisle Jones. Patrick Johnson. Iquawn Jones. Janice Ross. Craig Davis. Jason Spears. Shelby Derrick. Glen Ross. Chris Stout. Keith Sprinkle. Beverly Smith. Candy Kyzer. Beth Holliman. Brad White. Nikki Rodgers. Nicholas Howard. Francisco Monaro. And Alex Mountzourous. Sir, your name please.

JASON SNYDER: Jason Snyder, 192.

THE COURT: All right. Mr. Snyder, who on that list do you know, sir?

JASON SNYDER: You called my name.

THE COURT: You're the Jason Snyder that appears on this list?

JASON SNYDER: But I know nothing about this case.

THE COURT: I'm going to assume since your responses to my earlier qualifying questions is that you're not Senior Lance Corporal Jason Snider?

JASON SNYDER: No.

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THE COURT: You know, when you stood up, I saw you kind of looking around like I don't know why I'm standing. Mr. Snyder, you're not a potential witness, but do you know this Jason Snider?

JASON SNYDER: No. I do not.

THE COURT: All right, sir. Thank you very much. You may have a seat. All right. Folks, is there any member of the jury panel or any member of your family or close personal friends who have ever either been the victim of a crime or accused of committing a crime? If so, please stand. All right. Folks, I'm going to start --

JIMMIE ROOKS: I'm not sure if this qualifies or not.

THE COURT: I'll be happy to hear from you, ma'am.

JIMMIE ROOKS: Your Honor, my son is a deputy sheriff and he's been shot at. Is that considered a crime?

THE COURT: That's considered a crime. Was he the victim of that crime? Do you all hear that her son is a deputy sheriff and he has in the past been shot at. He wasn't hit but shot at.

JIMMIE ROOKS: Correct. The case has not come to trial yet.

THE COURT: Would that in any way affect your

ability to be fair and impartial if you were selected on this case?

JIMMIE ROOKS: No, sir.

THE COURT: Thank you very much. You can have a seat. Thank you. Juror 177. She's good. All right. I was going to start over here, but I can start over here. It doesn't matter. Yes, sir, go ahead.

CHRISTOPHER BUCK: Can I approach?

THE COURT: Come on up. Sure.

BAILIFF: Juror number 40, Your Honor.

THE COURT: Let me do this. I'll get you to face this way so the court reporter can hear you.

CHRISTOPHER BUCK: My ex-wife was arrested in 2012. She was 60 at the time. She pled guilty. She went through pretrial. But it ultimately led to her death. She had a cardiac arrest and she had to have surgery and everything so I was kind of ticked off with the Solicitor's Office because they wouldn't listen to us. Her brother is a Richland County sheriff's deputy and was kind of manipulating the whole thing and I think I would just really have a hard time.

THE COURT: Let me do this, Mr. Buck. Let me transfer your service to a term of civil court that doesn't involve the Solicitor's Office and doesn't involve law enforcement.

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CHRISTOPHER BUCK: Because I was really upset.

THE COURT: I understand.

CHRISTOPHER BUCK: I almost did something stupid, especially when she died and she died in July.

THE COURT: Okay. Well, let's do that. What I will do is make it later in the year and it will be for a civil matter, okay? Let's do that. Thank you very much. You're free to go. We'll transfer Mr. Buck. All right. Yes, ma'am, right here with the glasses.

CANDACE LANE: Juror 122, Candace Lane. My very best friend, her mother was actually killed in 2001 in a Piggly Wiggly.

THE COURT: Ms. Lane, correct?

CANDACE LANE: Yes.

THE COURT: Ms. Lane, the fact that you have had that experience, would that in any way affect your ability to give both the state and the defense a fair trial in this case.

CANDACE LANE: Uhm, I'm a little partial to the armed robbery thing so kind of.

THE COURT: The fact that this case involves an armed robbery would cause problems for you?

CANDACE LANE: Yes.

THE COURT: All right. I'm going to excuse you from service on this case, but I'm going to get you to stay

with us because we have other matters that you might be able to help us with, okay? Ma'am, your name please.

SUSAN BROCK: Susan Brock, juror number 30. I witnessed an armed robbery back in 1986.

THE COURT: All right. Ms. Brock, the fact that you have had that experience, would that - would you be able to set that aside and judge this case and listen to this case based solely on the evidence that is presented during this trial and give both the state and the defense a fair trial?

SUSAN BROCK: Yes.

THE COURT: Thank you ma'am. You may have a seat. Yes, ma'am, your name please?

CORNELIA MOODY: Cornelia Moody, 144. While I was married to my previous husband he was shot in the back.

THE COURT: All right. Ms. Moody, would that experience in any way affect your ability to be fair and impartial if you were selected as a member on this panel?

CORNELIA MOODY: No.

THE COURT: Thank you very much, ma'am. You may have a seat. Sir, your name please.

THOMAS RILEY: Thomas Riley, 173.

THE COURT: All right, sir. And what's your situation now?

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THOMAS RILEY: I have a son that was accused of robbery.

THE COURT: Would that, sir, in any way affect your ability to be fair and impartial if you were selected as a member on this panel?

THOMAS RILEY: No.

THE COURT: Thank you very much, sir. You may have a seat. Yes, ma'am, your name?

BROOKE JONES: Brooke Jones.

THE COURT: All right. Ms. Jones.

BROOKE JONES: My mother's ex-husband was involved in armed robbery I guess.

THE COURT: Okay. Ms. Jones, would that in any way affect your ability to be fair and impartial if you were selected on this panel?

BROOKE JONES: No.

THE COURT: Thank you, ma'am. You may have a seat. Yes, ma'am, over here.

TABITHA GATES: Tabitha Gates, juror 85. I was a victim of a robbery at CVS in October.

THE COURT: Ms. Gates, would that in any way affect your ability to be fair and impartial?

TABITHA GATES: Unfortunately, yes.

THE COURT: All right. I'm going to excuse you from participating in this matter, but hopefully we will have

something else that we can use your help on. Yes, ma'am.

WILLIE DREHER: Willie Dreher, number 71. I have a nephew that was accused of murder.

THE COURT: Mr. Dreher, would that in any way affect your ability to be fair and impartial if you were selected on this case?

WILLIE DREHER: No, sir.

THE COURT: Thank you very much, ma'am. Is there any member of the jury panel or a member of your family or your close personal circle of friends who either currently works in law enforcement or who has previously served as a law enforcement officer or in any other way has the power of arrest? If so, please stand. All right. I'll start on the far end. I'm sorry.

JIMMIE ROOKS: Juror 177.

THE COURT: Yes, ma'am, Ms. Rooks.

JIMMIE ROOKS: My son is a deputy sheriff with Richland County.

THE COURT: All right, ma'am. Would that in any way affect your ability to be fair and impartial if you were selected in this case?

JIMMIE ROOKS: I do not think so.

THE COURT: Thank you very much. You may have a seat. Yes, sir.

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JEREMIAH APPLEWHITE: Jeremiah Applewhite, juror number 9.

THE COURT: Mr. Applewhite.

JEREMIAH APPLEWHITE: A close friend Chris Morris is a detective in West Columbia.

THE COURT: Sir, would that in any way affect your ability to be fair and impartial if you were selected on this panel?

JEREMIAH APPLEWHITE: No, sir.

THE COURT: Thank you, Mr. Applewhite.

THEODORE CARSON: Theodore Carson, juror 46. My brother is a homicide investigator for the City of Columbia.

THE COURT: Mr. Carson, would that in any way affect your ability to give both the state and the defense a fair trial?

THEODORE CARSON: No, sir.

THE COURT: Thank you, sir. You may have a seat. Ma'am, your name please.

KATIE RAINES: Katie Raines, number 166. My brother was a policeman overseas for almost 30 years.

THE COURT: Ma'am, would that in any way affect your ability to be fair and impartial?

KATIE RAINES: No, sir.

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

seat.

KATHERINE STURKIE: Katherine Sturkie, juror number 199. I have a cousin who is married to a police officer.

THE COURT: Miss Sturkie, would that in any way affect your ability to be fair and impartial?

KATHERINE STURKIE: (Witness shaking head.)

THE COURT: Thank you, ma'am. You may have a seat.

MEGHAN HILL: Meghan Hill, number 97.

THE COURT: All right, Miss Hill.

MEGHAN HILL: My brother-in-law is an officer with the Columbia police department.

THE COURT: Miss Hill, would that in any way have an affect on your ability to be fair and impartial, ma'am?

MEGHAN HILL: No, sir.

THE COURT: Thank you, ma'am. You may have a seat Yes, ma'am, your name.

DENISE MULKEY: Denise Mulkey, juror 148. At one time my spouse was employed as an unarmed security guard.

THE COURT: Ma'am, would that in any way affect your ability to be fair and impartial?

DENISE MULKEY: No, Your Honor.

THE COURT: Thank you very much. You may have a seat. Yes, sir.

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GARY CORRELL: Gary Correll, number 60. My brother-in-law is a retired detective from the Columbia police department.

THE COURT: All right. Mr. Correll, would that in any way affect your ability to be fair and impartial, sir?

GARY CORRELL: No, Your Honor.

THE COURT: Thank you very much. All right. Mr. Lalima.

WILLIAM LALIMA: Yes. Number 120. My father is a retired police officer from Charleston City and my law clerk is a retired Sheriff's deputy.

THE COURT: Would those relationships in any way affect your ability to be fair and impartial?

WILLIAM LALIMA: No, Your Honor.

THE COURT: Thank you very much, sir. Yes, sir.

STEVEN WOLFORD: Steven Wolford, juror 221. My stepbrother is a police officer.

THE COURT: Would that, sir, in any way affect your ability to be fair and impartial?

STEVEN WOLFORD: No, Your Honor.

THE COURT: Thank you very much. Have a seat. Is there any member of the jury panel who is a contributor or who has ever been a contributor of either money or of volunteering of your time to any organization that has

as its primary concern either law enforcement or victims' rights? Some of these organizations that I'm referring to, some examples would be MADD, Mother Against Drunk Drivers or SADD, Students Against Drunk Drivers, CAV, Citizens Against Violence. Fraternal Order Of Police. The South Carolina Sheriff's Association or the South Carolina Troopers' Association, any types of those organizations. Is there any member of the panel who is a contributor or has contributed by either financial means or volunteering of your time? If so, please stand. Ma'am, your name, please.

CAROLYN UMBARGER: Carolyn Umbarger, juror 208.

THE COURT: All right. Miss Umbarger, would that in any way affect your ability to be fair and impartial, ma'am?

CAROLYN UMBARGER: No, sir.

THE COURT: Thank you, ma'am. You may have a seat.

Is there any member of the jury panel who has had any exposure either by way of media report, news report, Internet sites, in any way has had any exposure to this case or to Mr. Pontoo in this matter at all? If so, please stand. Thank you. There are none.

Folks, as you can tell as I have been asking you questions, those who have responded to my questions my follow-up question is always would it in any way affect

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your ability to be fair and impartial giving both the state and the defense a fair trial. That's the goal that we seek to attain any time we impanel a jury whether it be for criminal court or whether it be for civil court. That's what our purpose is and that's what we're trying to do. We're trying to impanel folks that can set aside their experiences outside of the courtroom and judge this case and make your decisions in this case based solely on the evidence and the law that is presented during the course of this jury trial and that's what we seek to do. And I guess I could ask questions all morning to try to determine if there is anyone whose ability to do that would be affected, but maybe the easiest or most efficient way to do that is to simply ask you this: Is there any member of the jury panel who knows of any reason why you would not be able to be fair and impartial to hear the testimony and give both the state and the defense a fair and impartial hearing? If so, please stand. Thank you. There are none.

Are there any further or additional questions from the state?

MR. McNAIR: No, Your Honor.

THE COURT: Anything additional or further from the defense?

MR. MAULDIN: No, Your Honor.

THE COURT: All right. Folks -- If you would please prepare the -- It's ten and ten.

THE CLERK: Yes, sir.

THE COURT: That is correct, am I not, fellows? Ten and ten?

MR. MAULDIN: Ten and five, Your Honor.

MR. McNAIR: Ten and five.

THE COURT: That's what I meant. Ladies and gentlemen, let me explain to you how we go about selecting juries in General Sessions Court. Your names appear on these, on this juror roster and, of course, on this roster your names appear in alphabetical order. What we do is we have got a computer program and that program, Madam Clerk will hit a couple of key strokes and that computer program will take this list and it will completely jumble it up and it will throw it back together in random order so that I may be Tommy Russo juror number 134 on the original list, but on the new list that comes out I may Tommy Russo, juror number 14. There is no order to it. It's completely random. And what they'll do is she'll create that new list, that random list and she'll start with that list.

She'll start at the top of that list and she'll call the first name that appears on that new list. If your

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name is called, you will come forward and Mr. Mills is stepping up here. He's showing you. You will come forward through the swinging gates and come up here where Mr. Mills is standing and just as he's doing you will turn and face the back of the courtroom and you will stand there and then Madam Clerk will first inquire of the state words along these lines. What say you for the state? The state can either excuse you and if they excuse you, you'll go back and have a seat in the jury pool. Or they can present you. If they present you, you will just remain standing and then she'll inquire of the defense. The defense also has two options. They can either excuse you, and if they excuse you, you will go back and have a seat in the jury pool, or they can seat you. If they seat you, you can come around and you'll have a seat over here in the jury box and we'll go through that process until we have selected our jurors.

Now, folks, there is no way that anyone is going to know whether or not you're going to either be excused or be seated so because of that if your name is called, I would ask that you please bring with you any personal items that you brought to court with you today whether it be a pocketbook, a book, an umbrella an IPad or whatever, bring those items with you when your name is

called. Now, if you get excused, you will just go back and carry them back to your seat. But if you're selected on the panel, then you won't be returning to your seat. You will be coming over here. So please bring with you those personal items if your name is called. All right. So is the state ready to proceed to jury selection?

MR. McNAIR: Yes, Your Honor.

THE COURT: Is the defense ready?

MR. MAULDIN: Yes, sir.

THE COURT: All right. Ladies and gentlemen, I'm going to turn it over to Miss Frick and we'll begin the process.

THE CLERK: Number 20, William Berry.

(Whereupon, William W. Berry, a white male, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present the juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please excuse Mr. Berry.

THE CLERK: Please return to your seat, sir. Number 133, Linda Martin.

(Whereupon, Linda Martin, a white female, was called forward.)

THE CLERK: What say for the state?

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MR. McNAIR: Please present this juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please seat Miss Martin.

THE CLERK: Have a seat in the jury box, ma'am. 82, Lauren Gainey.

(Whereupon, Lauren Gainey, a white female, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present this juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please seat Miss Gainey.

THE CLERK: Have a seat in jury box, ma'am. 221, Steven Wolford.

(Whereupon, Steven Wolford, a white male, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present the juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please excuse Mr. Wolford.

THE CLERK: Please return to your seat, sir. 182, Ben Secoy.

(Whereupon, Ben Secoy, a white male, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please excuse this juror.

THE CLERK: Please return to your seat, sir. 177, Jimmie Rooks.

(Whereupon, Jimmie Rooks, a white female, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present this juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please excuse Miss Rooks.

THE CLERK: Please return to your seat, ma'am. 46, Theodore Carson.

(Whereupon, Theodore Carson, a black male, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present this juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please excuse Mr. Carson.

THE CLERK: Please return to your seat, sir. 72, Matthew Driggers.

(Whereupon, Matthew Driggers, a white male, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please excuse this juror.

THE CLERK: Please return to your seat, sir. Number 90, Frances Hall.

(Whereupon, Frances Hall, a white female, was called

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forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present this juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please seat Miss Hall.

THE CLERK: Please have a seat in the jury box, ma'am. 53, Mark Christman.

(Whereupon, Mark Christman, a white male, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present this juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please seat Mr. Christman.

THE CLERK: Please have a seat in the jury box, sir. Number 9, Jeremiah Applewhite.

(Whereupon, Jeremiah Applewhite, a white male, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present this juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please excuse Mr. Applewhite.

THE CLERK: Please return to your seat, sir. 202, Mark Temple.

(Whereupon, Mark Temple, a white male, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present this juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please seat Mr. Temple.

THE CLERK: Have a seat in the jury box, sir. 94, Roger Hayes.

(Whereupon, Roger Hayes, a white male, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present this juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please seat Mr. Hayes.

THE CLERK: Have seat in the jury box, sir. 78, Edwin Estrella.

(Whereupon, Edwin Estrella, a Asian male, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present this juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please seat Mr. Estrella.

THE CLERK: Have a seat in the jury box, sir. 225, Luann Zoerner.

(Whereupon, Luann Zoerner, a white female, was called forward.)

THE CLERK: What say for the state?

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MR. McNAIR: Please present this juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please excuse this juror.

THE CLERK: Return to your seat, please, ma'am. 217, Cheryl Whitfield.

(Whereupon, Cheryl Whitfield, a white female, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present this juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please seat Miss Whitfield.

THE CLERK: Have a seat in the jury box, ma'am. Number 10, Maria Aranda.

(Whereupon, Maria Aranda, a Hispanic female, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present this juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please seat Miss Aranda.

THE CLERK: Have a seat in the jury box, ma'am. 149, Paul Muskopf.

(Whereupon, Paul Muskopf, a white male, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present this juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please seat Mr. Muskopf.

THE CLERK: Have a seat in the jury box, sir. 196, Christopher Stewart.

(Whereupon, Christopher Stewart, a white male, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present this juror.

THE CLERK: What saw for the defense?

MR. MAULDIN: Please seat Mr. Stewart.

THE CLERK: Have a seat in the jury box, sir. 187, Jean Shoffner.

(Whereupon, Jean Shoffner, a white female, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present this juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please excuse Miss Shoffner.

THE CLERK: Return to your seat, please, ma'am. Number 51, Michael Chestnut.

(Whereupon, Michael Chestnut, a white male, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present this juror.

THE CLERK: What say for the defense?

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MR. MAULDIN: Please excuse Mr. Chestnut.

THE CLERK: Return to your seat, please, sir. 174, Fredric Robbins.

(Whereupon, Fredric Robbins, a white male, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present this juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please seat Mr. Robbins.

THE CLERK: Have a seat in the juror box, sir. Alternates, alternates Your Honor.

THE COURT: Two alternates, one and two each.

THE CLERK: Yes, sir. 214, Margo West.

(Whereupon, Margo West, a white female, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present this juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please seat Miss West.

THE CLERK: Have a seat in the jury box, ma'am. That's alternate number 1, Your Honor. 104, Jody Huffstetler.

(Whereupon, Jody Huffstetler, a white male, was called forward.)

THE CLERK: What say for the state?

MR. McNAIR: Please present this juror.

THE CLERK: What say for the defense?

MR. MAULDIN: Please seat Mr. Huffstetler.

THE CLERK: Have a seat in the jury box. That's alternate number 2, Your Honor.

THE COURT: All right. Any motions regarding jury selection from the state?

MR. McNAIR: No. Nothing from the state, Your Honor.

THE COURT: Any from the defense?

MR. MAULDIN: No, Your Honor.

THE COURT: All right. Ladies and gentlemen, for the balance of the panel I'm going to excuse you now for the balance of the day. I am going to ask that you please -- They have got the number and the --

THE CLERK: Yes, sir.

THE COURT: On your card there is a phone number and there is a website. You can access either one of those items either the website or the phone number, but please don't do that until after 6:30 tonight. After 6:30 if you would please either call that number or access that website and follow whatever instructions that you will get on that recording or on the website, okay? And there will be instructions for you and it will either be to return at a certain time or it will be to call back

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or to check back at a certain time, okay? So if everyone else will remain seated, the members of the jury panel you're excused for the balance of the day.

(The balance of the jury venire excused for the remainder of the day.)

THE COURT: All right. Ladies and gentlemen, while the members of the panel are filing out, I'm going to excuse you in just a moment and I'm also going to excuse you for the balance of the day. We're going to begin this case first thing in the morning, but I need to send you off with some instructions that I didn't need to send them off with. And the reason we are going to do that and start this case first thing in the morning is I have got some matters that are not associated with this case that I need to finish out the balance of this morning with and then this afternoon we're going to take up some pretrial matters that are non jury matters that will help the case proceed along quicker and resolve those issues so that when we start with the case tomorrow morning, we'll have those issues resolved and we'll be able to just proceed into the case and not have to stop and deal with those pretrial matters. So we're going to be working that out this afternoon, but it's matters that we don't need the jury for.

So what I'm going to do is excuse you and I'm going

to share this with you throughout the course of this trial and that is this: Any time that you are not in this jury box in this courtroom, you are to have no communications with anybody about the case and that includes amongst yourselves. From time to time during the course of the trial you will step back into the jury room as we take breaks and do things of that nature and while you're back there it's important that you do not discuss this case and you do not discuss any evidence in the case. There is only one time that you are supposed to begin those deliberations and that's at the close of the case after everything is in and after I have given you the charge on the law. But prior to that, it's improper to have any conversation about the case.

Now, when you leave here and go home, obviously you will have family friends or loved ones that will be curious as to whether or not you have been selected to be on the jury panel. You can let me them know that you have been chosen to be on a panel and that you have to be back in the morning, but that's really where it needs to stop. Now, they're going to be curious. If they're anything like my wife, she would want to know, really? What kind of case is it? What does it involve? What are the issues? Saying something as innocent as, well, it's a case that involves an armed robbery or a failure

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to stop for a blue light or it's a case that involves a gentleman by the name of Mr. Pontoo, something as innocent as those comments could possibly illicit a response that would somehow compromise your ability to be fair and impartial. So it's always better to err on the side of caution and have no conversation and just let them know you are not allowed to discuss anything about the case, even the charge or what it's about.

You can let them know and assure them at the close of the case when the case is over, then you're free to talk about it to anybody and whoever you want to talk to about it, but until that time you must not have any conversation.

Also, we live in a day and age where computers are a wealth of avenues to find stuff out on the Internet. There are phones that are capable of computer tasks. What is very important for you to understand is this: That your oath in this case is to judge this case and to decide this case based solely on the evidence that is presented during the course of this trial and on nothing outside of this courtroom. So I would caution you it would be highly improper for you while you're not here in the courthouse to do any independent investigation or to go on line and try to find out anything about this case. I don't know that you would find anything anyway.

But it's important that you do not do that. You're under oath to try this case based solely on the evidence that is provided during this trial. You are to protect yourselves from anything outside of this case.

We all know from experience that oftentimes what we hear in the media, what we see on the television, what we see on the Internet are, I'm not going to say not true. Some things are true. Some things are not true. Some things are embellished. Some things are not. It's just completely unreliable. It's not fair to the state. It's not fair to Mr. Pontoo to expose yourself to anything outside of what's presented to you here in the courtroom. So please protect that. Protect your ability to be fair and impartial and to judge this case based solely on the testimony and the evidence in this case, okay?

So I'm going to ask you, if you would, in a minute when I send you out follow Mr. Mills out. He's going to show you where the jury room is and when you come back tomorrow, that's where you will report. You will come up and report back to the jury room. There will be bailiffs out there to guide you back. I would ask you to please be back in the jury room at 9:30 in the morning and once you all have reconvened, we'll get started with the case at 9:30, okay? So everybody else

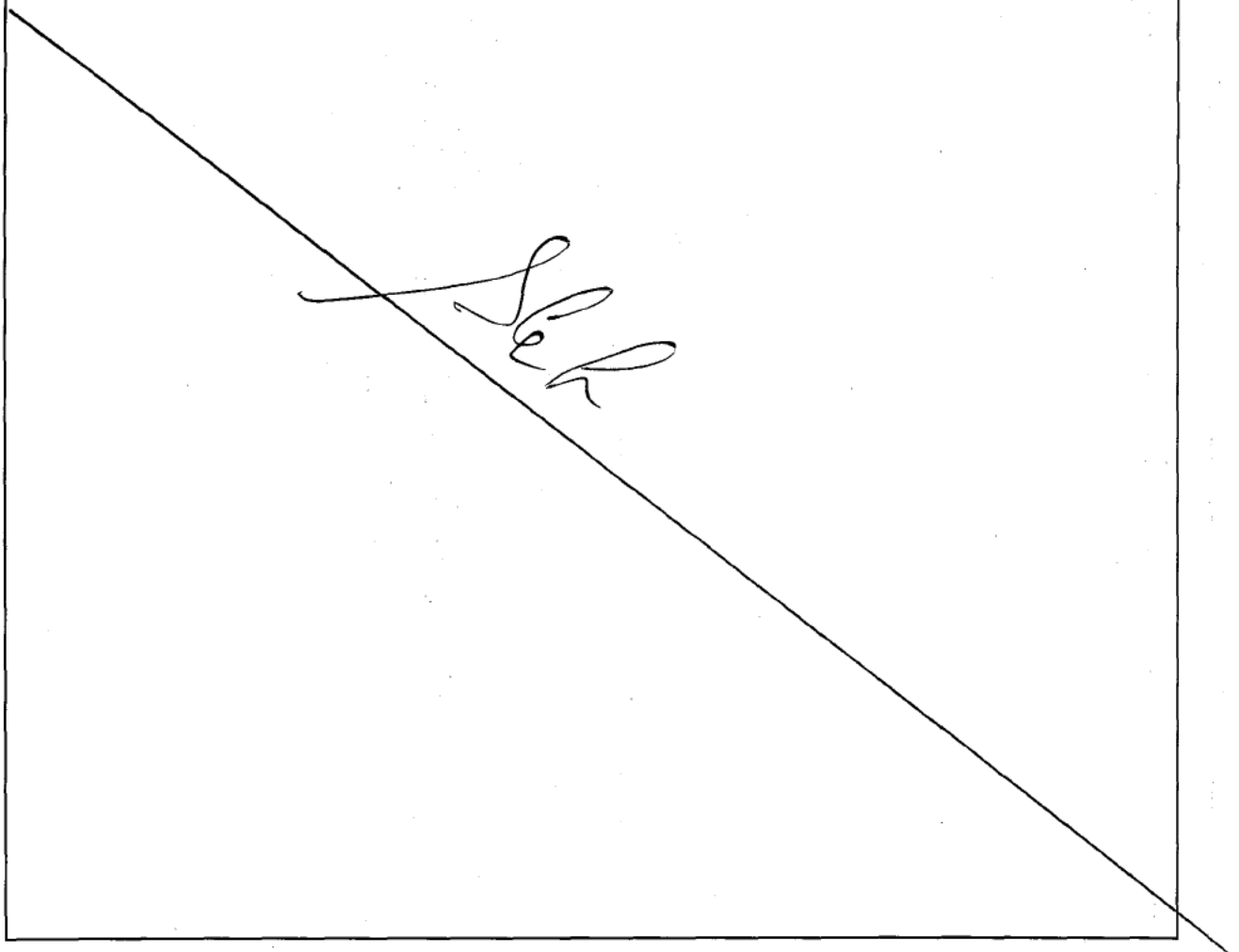
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please remain seated. Ladies and gentlemen of the jury, please follow Mr. Mills out and we'll see you back here at 9:30 in the morning. You're excused for the day.

(Whereupon, the jury was excused for the remainder of the day.)

THE COURT: All right. Folks, unless there is anything that we need to deal with this morning, we will be in recess on this case until 2:00. So we'll start back at 2:00 with this case and I think we may have a couple of matters that we're going to take up before we break for lunch so I think Scott had a matter.

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THE COURT: All right. We're back on the record in the State versus Raphael Pontoo and we're here to take up any pretrial matters that we may have. Anything from the state?

MR. McNAIR: Nothing from the state, Your Honor.

THE COURT: All right. How about from the defense?

MR. MAULDIN: Yes, sir. Your Honor, I made the state aware that there are some photo lineups in this case and I thought it would be appropriate to have a Neil v. Biggers Hearing regarding the suggestibility or potential suggestibility of them. The main issue I see is that there are two separate photo lineups that contain the same pictures. It appears that there is different handwritings on both by the same person so it appears that two of the same photo lineups is essentially the same person.

THE COURT: So the same person was shown in photo lineups on two different occasions?

MR. MAULDIN: Well, I have asked them about it because the circle and the signature are in different places and it looks like it's been signed in different places on the same day, but I have inquired about it, but I have not had any kind of explanation as to what that is. I believe it's both for a photo lineup six

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pack containing Mr. Pontoo, and I think there was a separate gun lineup as well that has a similar thing that there appears to be two separate ones. They're signed the same day, but they appear to be done differently as if they were shown two separate ones of the same thing. In that regard that would be our first one. The second one is regarding any potential statements by Mr. Pontoo that the state intends to introduce as far as if there are any Jackson v. Denno issues.

THE COURT: Okay.

MR. MAULDIN: And the state is aware of that. We have talked about those two separate motions. They are prepared with their witnesses.

THE COURT: Ms. McNair, let me first inquire as to, I'm going to kind of take them in reverse order. Are there any statements or anything that the state would intend to get into that we need to go over with a Jackson v. Denno?

MR. McNAIR: It kind of depends on what the defense is, Judge. I know Detective Garrick met with the defendant while he was in the hospital after the wreck. Asked him a few questions. He essentially said I don't know why you're here. I don't remember anything. If his defense is that somebody else was driving or

something at trial, we would seek to introduce that statement. Then when Detective Garrick served him with arrest warrants, again it was not you've got the wrong person. It was somebody else. It was more you're a racist. Why are you arresting me, et cetera. So if his defense is what we expect it to be, we would attempt to introduce those statements.

THE COURT: Why don't we just go ahead and take that up at this time.

MR. McNAIR: Judge, as far as the lineups, they were identical photo lineups shown to the victim and it's my understanding that it was Detective Garrick who wanted an extra copy for his file so the same person picked out the same lineups, same everything.

THE COURT: But the identity that the witness identified, in other words, you're just using the one lineup for that purpose?

MR. McNAIR: Exactly. Yes, sir. They're identical.

THE COURT: Let's deal first with the statements. Let's go ahead and take up those matters.

MR. McNAIR: All right. Your Honor, the state calls Detective Todd Garrick.

Thereupon,

DETECTIVE TODD GARRICK

after having been first duly sworn, testified as follows,

THE CLERK: Once you're seated state your full name spelling your last on the record, please.

THE WITNESS: Detective Todd Garrick, G-a-r-r-i-c-k.

DIRECT EXAMINATION

BY MR. McNAIR:

Q. Detective Garrick, you were pretty much the lead investigator in this case; is that correct?

A. That's correct.

Q. All right. How long have you been with the Sheriff's Department?

A. Been with the Sheriff's Department almost nine years.

Q. Do you have any prior law enforcement experience?

A. I do.

Q. What did you do before the Sheriff's Department?

A. Worked with probation and parole for approximately ten years and then approximately five years with the Eleventh Circuit Solicitor's Office.

Q. Were you responsible for obtaining arrest warrants for armed robbery in this case?

A. Yes, sir.

Q. How did you first become involved in this case?

A. I was on day call on the 24th of January. My sergeant, Sergeant Lent called me and asked me to respond to Whetstone Road right outside of Swansea in reference to an

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incident.

Q. Why did you respond to Whetstone Road?

A. I was informed that there had been a traffic stop involving people that had been involved in an armed robbery in West Columbia.

Q. Where in West Columbia?

A. Yes.

Q. I said where in West Columbia?

A. It's called The Rock. It's a club in the West Columbia area.

Q. Was a BOLO put out after that robbery at the Mile High Club?

A. Yes.

Q. Had they stopped a vehicle fitting that description at Whetstone Road?

A. Correct.

Q. When you got to Whetstone Road, what was going on? Was the vehicle still there?

A. The vehicle was not there. There was a couple gentlemen being detained on the side of the road. Some of our officers were there basically holding them sitting with them until I got there.

Q. How many individuals were there at Whetstone Road?

A. Three.

Q. How many individuals were in the vehicle? Were you

aware of that?

A. Not until I started talking to the individuals over there.

Q. Can you identify the individuals on the side of the road?

A. Yes. It was Carlisle Jones, Iquawn Jones, and Patrick Johnson.

Q. And after speaking with those individuals, did you develop a suspect in the armed robbery?

A. I did.

Q. What was the name of that suspect?

A. Raphael Lamarr Pontoo.

Q. Where was the vehicle and where was Mr. Pontoo?

A. I was informed once I got there that the vehicle was wrecked further down Whetstone Road at the intersection of Whetstone Road and Highway 178.

Q. Did you go to the wreck site?

A. Eventually I did, but it was a good hour, hour and a half before I got down there.

Q. At some point did you learn who was in the driver's seat of the wrecked vehicle?

A. Yes, I did.

Q. Who was that?

A. Raphael Lamarr Pontoo.

Q. When did this occur?

A. The morning of January 24th, 2014.

Q. When was the first time you made contact with Mr. Pontoo?

A. Later that morning at the Palmetto Richland Memorial Hospital in Columbia.

Q. Where was he in the hospital?

A. He was in one of the emergency rooms.

Q. Did you go into Mr. Pontoo's room?

A. I did.

Q. What condition was he in?

A. He was in hospital gear or wardrobe, a gown it looked like and he was laying in the bed in the room.

Q. Was he awake?

A. He was.

Q. Was he alert?

A. He was.

Q. Did he appear to understand what was going on?

A. He did.

Q. Were they treating him at the time?

A. They were treating him. I can't tell you what they were doing, but it seemed medical persons were attending to him.

Q. Now, at the point you went to the hospital, was he under arrest?

A. He was not.

Q. If he was able to, would he have been free to leave the hospital?

A. He would have.

Q. Why was that?

A. Well, at the time I had just spoken to the witnesses there on Whetstone Road. I had not had a chance to speak to the victim Mr. Ruple at that point so I wanted to talk to Mr. Ruple before any warrants were gotten.

Q. Okay. Prior to asking Mr. Pontoo any questions or talking to him, did you Mirandize him?

A. I did.

Q. How do you Mirandize folks?

A. I always have a card on me that has the Miranda Rights on it.

Q. Did you use that card with Mr. Pontoo?

A. I did.

Q. Would you just read that card into the record?

A. You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to an attorney and have him or her present with you while you are being questioned. If you cannot afford to hire an attorney, one will be appointed to represent you before any questioning if you wish. You can decide at any time to exercise these rights and not answer any questions or to make any statements. Do you understand

each of these rights that I have explained to you? And having those rights in mind do you wish to talk to us now?

Q. And to the best of your knowledge did he appear to understand his rights?

A. He did.

Q. Did he ask you any questions about his rights?

A. No, sir.

Q. After reading those rights, did he indicate he was willing to speak with you?

A. He did.

Q. Did you ask him any questions?

A. I began asking him questions about the incident. Mr. Pontoo was very argumentative. Kept asking me why I was there. He didn't know anything. That went on for about a little more than five minutes.

Q. Okay. So he essentially said he did not remember anything about the accident?

A. Correct.

Q. Who all was present while you were questioning Mr. Pontoo?

A. Myself, Officer Brad White with the Sheriff's Department and hospital personnel that was in the room.

Q. Did anybody promise, coerce or threaten him to make a statement?

A. No. No, sir.

Q. Was he being deprived of any medical care while you were talking to him?

A. No, sir.

Q. And he didn't appear to have any mental or physical condition that prevented him from understanding what you were saying, did he?

A. No, sir.

Q. Were his answers in context with the questions you were asking him?

A. Yes, sir.

Q. To the best of your knowledge, were his responses voluntarily made?

A. Yes, sir.

Q. Now, after talking to Mr. Pontoo in the hospital, when is the next time you saw him?

A. I believe on the 20 -- Let met look back at my notes. It would have been the 29th at Palmetto Richland Health. When we went over to the hospital, he was being discharged and we were going over there to pick him up to transport him to the detention center.

Q. Did you serve warrants on him on that day?

A. Yes, sir.

Q. Did you Mirandize him again when you served the warrants?

A. I believe we did.

Q. All right. Well, at any rate, did you attempt to interrogate him or question him any further after you served those warrants on him?

A. No, sir.

Q. What, if anything, did he say to you when you were transporting him to the detention center?

A. Again he was basically just talking. He did make the statement at one point to the effect that I and Detective Sandy Black who was with who helped me transport him back to the hospital, that we could hit him and no one would look into it or believe him.

Q. He did not say anything about that he wasn't driving the vehicle? Did not deny driving the vehicle?

A. No, sir.

Q. Never mentioned Kewon Clemmons?

A. No, sir.

MR. McNAIR: Judge, that's the extent of what we seek to introduce.

THE COURT: All right. Mr. Mauldin, do you wish to cross the witness?

MR. MAULDIN: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. MAULDIN:

Q. When you went to see Mr. Pontoo in the hospital on the 24th, did he have a neck brace on?

A. He did.

Q. Okay. Did the hospital inform you whether or not he was under any kind of medication or anything?

A. They were just - they told me they were treating him, but they did not specifically tell me what medication they were giving him.

Q. And often when a suspect or people that are going to be charged are in the hospital, you put a hold on them so the hospital will notify you when to come pick them up; is that correct?

A. Correct.

Q. Did you do that in Mr. Pontoo's case?

A. Yes, we did.

Q. When you talk about the hospital people being present, was there security from the hospital there since law enforcement was involved?

A. No, sir. Nobody from hospital security was in the room.

Q. And your testimony is that the statement Mr. Pontoo gave was basically he asked you why you were there and then you talked about the armed robbery case or the failure to stop case?

A. I was asking him about the armed robbery case. I believe Officer White was asking him more about the traffic wreck.

Q. That's Officer White with the Sheriff's Office?

A. Yes, sir.

Q. And the statements regarding that was that he didn't know anything?

A. He just kept repeating why are you here? I don't know anything. Can't you see I'm in the hospital room? Why are you talking to me?

Q. Well, at any point did he say he didn't want to talk to you?

A. Yes, sir, at some point he became agitated and he stated he was through talking with me and at that point and he ended the conversation.

Q. Okay. And your testimony regarding the 29th is that you were transporting Mr. Pontoo from the hospital to the detention center and he said something to the effect that you and Detective Black could hit him and no one would believe him?

A. That's correct.

Q. And that's it?

A. That's it.

Q. Now, you said when you transported him, that you believed you gave him Miranda. Are you not sure that you gave him Miranda?

A. I'm not positive. I'm pretty sure that I did. I cannot remember that day if I did give him Miranda.

Q. And during the time of this transport you made him aware that he was being charged with crimes; is that correct?

A. Yes, sir. He already knew that he was being charged.

MR. MAULDIN: No further questions, Your Honor.

THE COURT: All right. Anything further from the state of this witness?

MR. McNAIR: Very briefly.

REDIRECT EXAMINATION

BY MR. McNAIR:

Q. When you were transporting him to the detention center, did you ask him any questions to elicit a response or he just volunteered that information?

A. I did not ask him any questions between the hospital and the jail.

Q. Okay. So that was just volunteered by him, correct?

A. Correct.

Q. In the hospital when he said he didn't want to talk to you anymore, did all the questioning at that point stop?

A. It did.

Q. Were you present when he was asked about driving the vehicle that wrecked? Was Mr. Pontoo asked whether or not he was driving the vehicle when it wrecked?

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A. I believe Officer White did ask him that.

Q. Do you recall what his response was to that?

A. It was either I don't remember or I don't know what you're talking about. Something along those lines.

MR. McNAIR: Thank you.

THE COURT: All right. Thank you very much. Step down. Anything further?

MR. McNAIR: That's all we have on that, Your Honor.

THE COURT: Anything other statements other than those?

MR. McNAIR: No. That's it, Your Honor.

THE COURT: Mr. Mauldin?

MR. MAULDIN: Yes, Your Honor. We would call Mr. Pontoo for the purposes of this hearing.

THE COURT: Mr. Pontoo, come around, please, sir and be sworn.

Thereupon,

RAPHAEL LAMARR PONTOO

after having been first duly sworn, testified as follows,

THE CLERK: Have a seat, please, sir. Once you're seated, state your full name spelling your last for the record, please.

THE WITNESS: My name is Raphael Lamarr Pontoo, P-o-n-t-o-o.

DIRECT EXAMINATION

BY MR. MAULDIN:

Q. Raphael, do you remember when Detective Garrick came to see you at the hospital on January 24th of 2014?

A. Yes, sir.

Q. Okay. When he was there, did he tell you that you had the right to remain silent?

A. No, sir.

Q. Or that anything you say could be used against you?

A. No, sir.

Q. Did he tell you anything about a right to an attorney or a right to an appointed attorney?

A. No, sir.

Q. Did he tell you anything about the right to stop any time during questioning?

A. No, sir.

Q. And when he was starting to talk to you, what was your response to him when he wanted to talk to you?

A. I didn't want to talk to him.

Q. And that's it?

A. That's it. Never stated anything else.

MR. MAULDIN: No further questions, Your Honor.

THE COURT: Any cross?

CROSS EXAMINATION

BY MR. GRAHAM:

Q. Mr. Pontoo, you have a conviction as a juvenile for assault and battery of a high and aggravated nature; is that correct?

A. Yes, sir. I have a question. I thought you can't go back that far with juvenile?

Q. I'm sorry?

A. You can't go back that far with juvenile.

Q. Well, that's a legal issue. That will be up to the Judge, not yourself.

THE COURT: And that's not an issue that we're dealing with at this point because the jury is not present.

BY MR. GRAHAM:

Q. The charges you're facing today carry serious time; is that correct?

A. Yes, sir.

Q. When did you first become aware that -- You've read your discovery, right?

A. Yes, sir.

Q. So you read Detective Garrick's report where he makes the claims that he read you your rights and that he interviewed you in the hospital and you said either I don't know or I don't remember; is that correct?

A. I never stated that.

Q. I understand you're testifying you haven't said that. But my question is you have read his reports that say that, correct?

A. Yes, sir. I read his reports, but I don't clearly remember everything about him saying he read me my Miranda Rights.

Q. You don't remember?

A. I don't remember clearly what he stated. My motion is big, about this big (indicating) and I don't remember exactly where it says he read me my Miranda Rights because there are so many --

Q. Are you saying you don't remember him reading you your Miranda Rights?

A. No. I know he didn't read them. I'm saying in my paperwork.

Q. Okay. In the paperwork you don't remember --

A. I don't remember seeing it. I don't remember seeing it in his report that he stated he read me my Miranda Rights because he never read them to me.

Q. Okay. When you read it though, didn't you tell your attorney this didn't happen?

A. I told him -- I told him when he first came to see me that I never got read my Miranda Rights.

Q. And you knew that he was going to make a claim that you had been read Miranda and that you made those statements,

correct?

A. I didn't know that.

Q. Well, you read your discovery, yes?

A. Yes. But I told my lawyer that before I got my discovery.

Q. When you read the discovery, you knew that he was lying, correct?

A. I told you I never seen or remember any paperwork in his statement saying that he read my Miranda Rights so I'm not going to say that, uhm, gonna say that he was lying because I never remember reading that he read me my Miranda Rights.

Q. But you're saying today that he's lying?

A. Yeah.

Q. And you read your discovery, but you don't remember that in your discovery?

A. There's so many police statements in the discovery I can't remember every police statement, sir.

MR. GRAHAM: Okay. Where is your report?

BY MR. GRAHAM:

Q. I'm going to show you a document and ask if you recognize this document? Start reading right here (indicating.)

A. (Witness complies.)

Q. Do you see in the report now where he talks about

coming to see you and reading you your rights and what you said? That first paragraph there. Does that look familiar to you now?

A. Yeah. I remember this report. I'm reading it.

Q. Do you remember the report now?

A. Yeah.

Q. Okay. So you remember reading the report where he talked about coming to the hospital and Mirandizing you and what you said now?

A. But I never -- Yeah. I understand that he said he came to do it, but he never read me my Miranda Rights.

Q. No. I understand you're testifying that he didn't read you your Miranda Rights. My question is, when you got your discovery and this report which you said you recognize, it talks about that he read you your Miranda Rights and you said you knew that was wrong when you read it, right?

A. Yes, sir.

Q. Okay. Once you read your discovery, did you file a complaint against Investigator Garrick with the Sheriff's Department for lying?

A. Talking about -- No. No, sir.

Q. You didn't?

A. No, sir.

MR. GRAHAM: Okay. Thank you.

THE COURT: Anything further?

MR. MAULDIN: Just something briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. MAULDIN:

Q. You were wearing a neck brace at that point in time; is that right?

A. Yes, sir.

Q. Did the hospital people say that you were able to leave?

A. No, sir.

Q. Why was that?

A. Because they said that I was in no condition to leave and that I couldn't leave.

Q. The hospital people said that?

A. Yes, sir.

MR. MAULDIN: No further questions.

THE COURT: All right. Thank you very much, sir. You may step down. Mr. Mauldin, anything further on these statements?

MR. MAULDIN: No further witnesses, Your Honor.

THE COURT: Okay. What's your position then?

MR. MAULDIN: Well, Your Honor, as to the statement on January 29th, the second one in time, I would first move that that statement is not relevant to the case. The fact that he said that officers could hit him and nobody would believe him, I don't think it goes to prove

any point or issue at all in the case. It's not relevant and the prejudice of it would outweigh any kind of probative value that it would have firstly. And secondly, the officer testified that he was in custody and he was being transported and they do not believe that Miranda was read to him; that they did tell him what his charges were. That could be an invitation to a response. Even though it's not a specific questioning, the fact that they talked to him and told him what his charges were could be seen as a statement designed to elicit some type of response. But first of all, I would say that it's not relevant and the prejudice outweighs the probative value. As to the first in time statement, Your Honor, it would be our position that he was unable to leave the hospital. The officer was there. He was wearing a cervical collar, a neck brace and he was not able to move or leave and that he technically was in custody and it's our position that Miranda was not read at that time and therefore that statement should not come in. And, of course, my Miranda arguments would be for the Fifth Amendment U.S., and Article 1 Section 12, the State Constitution. Of course, the Sixth Amendment U.S. and Article 1 Section 14 of the State Constitution, due process under the Fifth and Fourteenth U.S. and Article 1, Section 3 of the State Constitution.

THE COURT: All right, sir. Mr. McNair or Mr. Graham, whoever is going to argue it, let's go first, take them in the order that Mr. Mauldin brought them up. The second statement that was allegedly made during the transport, what relevance would that be in this case at all?

MR. McNAIR: I guess like I said at the beginning, Judge, at this time there may not be any, but depending on what his defense could be at trial, if it was like I didn't do this. It was not me. I wasn't driving. I think it goes to show his reaction at the time he's served these warrants. It's not like you got the wrong person. It wasn't me. It was somebody else. He's just like telling the officers, well, you can hit me and nobody would do anything about it. So I think it's kind of indicative of guilt in that sense. But I agree at this point it may not be, but depending on what his defense is I think it is relevant to show what his reaction was when he was served with the warrants.

THE COURT: Okay. How about the first one?

MR. McNAIR: I think the first one, the testimony was by Detective Garrick that he was not under arrest. He was not in custody at that point because he had not talked to the victim Mr. Ruple in the armed robbery. As far as the Miranda Warnings, I think that's just a

credibility issue. I think clearly he has more to lose than Detective Garrick in this. Detective Garrick has no reason to make up something in his report.

THE COURT: Let me ask this of Detective Garrick.

(DETECTIVE TODD GARRICK RECALLED.)

EXAMINATION

BY THE COURT:

Q. Detective Garrick, you're still under oath, sir.

A. Yes, sir.

Q. When you went to the hospital to talk with Mr. Pontoo, at the time you were speaking with him had there been any communications with the hospital that he was a suspect and that he was to be held or did that occur -- When did that occur? When did that conversation with the hospital occur?

A. That occurred a day or two after that. The 20 -- This happened the 24th. It would have been --

Q. When you met with him --

A. -- a day or two after the emergency room visit.

Q. So when you met with him on the 24th, at that point it's purely investigative?

A. Yes, sir.

Q. And when you left that day, if the hospital would have released him that evening, he could have gone home?

A. Yes, sir.

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THE COURT: Okay. All right. It doesn't appear that on the first, on the visit of the 24th that he was not under arrest. He wasn't in custody. I don't think Miranda is an issue. I don't think the statements are either inculpatory or exculpatory. If I understand them correctly, it was either I don't remember or I don't know on the heels of an accident. But in any case, I don't think there was any issue with regards to the Miranda in that situation. He's not in custody. He's not under arrest. As far as the second series of statements, again I tend to agree with Mr. Mauldin on the face, but I'm going to reserve a ruling on that as far as if there is any substance to it based on the facts and circumstances as they unfold throughout the trial so as to that -- And let me back up a little bit, too. In dealing with that statement, if it comes to that issue, at least for me, the issue is going to be relevancy in my opinion. Even though he was under arrest and was being transported, the statement, according to the testimony, was not in response to any questioning or any interrogation. It was just offered. So from that standpoint it would appear to be admissible in my opinion. But the issue that I find and agree with Mr. Mauldin at this point is the relevance of it. And it may be that in the context of the testimony and the

evidence that is presented that it may become relevant, but I think at this stage it's not and so I'm just going to withhold any ruling on that unless or until that becomes an issue, okay?

Any other statements, anything else that we're dealing with on statements?

MR. McNAIR: That's all from the state, Your Honor.

THE COURT: All right. Let's then move to the Neil v. Biggers and the photo lineup.

MR. McNAIR: The state calls Jonathan Ruple.

Thereupon,

JONATHAN RUPLE

after having been first duly sworn, testified as follows,

THE CLERK: Have a seat, please, sir. Once you're seated, state your full name spelling your last on the record, please, sir.

THE WITNESS: Jonathan Trey Ruple, R-u-p-l-e.

DIRECT EXAMINATION

BY MR. McNAIR:

Q. Mr. Ruple, where are you currently living?

A. I'm living in Nashville, Tennessee.

Q. How long have you been in Nashville?

A. Since June of 2014.

Q. Where did you live prior to moving?

A. West Columbia, South Carolina.

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Q. Is that where you're from as well?
A. Yes, sir.
Q. Were you living in West Columbia back on January 24th, 2014?
A. Yes, sir.
Q. Are you familiar with a club in West Columbia called the Mile High Club?
A. Yes, sir.
Q. Were you at that club on January 24th?
A. Yes, sir.
Q. Okay. What were you doing there that night?
A. I was hanging out with a friend.
Q. What was your friend's name?
A. His name is Nick.
Q. Was it a special occasion?
A. Yes, sir. He just got back from Saudi Arabia.
Q. Do you recall approximately what time you all got to the Mile High Club?
A. No, sir, I don't.
Q. Sometime that night?
A. Yes, sir.
Q. At some point while you all were there, do you meet some individuals you hadn't seen before?
A. Yes, sir.
Q. Okay. Did they introduce themselves?

A. One of them did. I can't remember if the other ones did or not.

Q. Okay. How many were there?

A. Five of them.

Q. Okay. Now, where are you when you meet these individuals?

A. I was standing at my car.

Q. Where was your car parked?

A. It was in front of the door of the club.

Q. Who is with you at your car?

A. Nick is.

Q. Where are these other individuals?

A. Two spots over in another car.

Q. So you all are outside at this point?

A. Yes, sir.

Q. How many individuals are at the other car?

A. I just recall two.

Q. Two. Okay. Did they walk up and introduce themselves?

A. They did.

Q. You said -- What was one of them names?

A. Los.

Q. Did you know what the other guy's name was?

A. I don't recall.

Q. What did you and Los and the other individuals start

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talking about?

A. Started talking about cars, music, girls, guns, stuff like that.

Q. At some point did you all show each other guns?

A. We did.

Q. Who showed who what gun?

A. I showed him a Hi-Point nine millimeter.

Q. Was that your weapon?

A. It was.

Q. Where was it?

A. It was in the trunk of my car inside of a book bag.

Q. Let me back up just a little bit.

A. All right.

Q. What were you talking about with Nick at your car when these individuals walked up?

A. That I had just bought a gun.

Q. Did you have that gun pulled out at that point?

A. I did.

Q. Where was it?

A. It was in my hand. I was at the back of the car.

Q. At your trunk?

A. Yes, sir.

Q. And you had the gun out?

A. Yes, sir.

Q. Showing it to your friend Nick?
A. Yes, sir.
Q. And is it at that point that the gentlemen named Los and the other guy walk up?
A. Yes, sir.
Q. And you mentioned you all started talking about rims and girls and then guns?
A. Yes, sir.
Q. Did you show them your gun?
A. I did.
Q. Did they have any guns?
A. They did.
Q. Well, who had what guns?
A. Los had a .22. It was a black gun, a little small revolver, hammer less.
Q. A black handleless .22 revolver?
A. Yes, sir. It had a red laser pointer on it. And then the other guy, I can't remember his name, he had a silver or a chrome .25 automatic with pearl handles on it.
Q. Did Los say anything about his gun?
A. Not really.
Q. Did he say where or when he got it?
A. He had said that had just gotten it that day. I remember that. But he didn't tell me where.
Q. Okay. How long do you think you all were outside by

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your car talking about guns and whatever else you all were talking about?

A. Probably about 10 to 15 minutes.

Q. And describe that area where that is. Is that right outside the bar?

A. Yes, sir. It's right there. The sidewalk is probably ten feet away from is.

Q. Are there any lights in that area?

A. There are lights by the sidewalk to light up that area.

Q. Did you get a good look at Los's face?

A. I did.

Q. When you were talking to him, how far away from you was he?

A. Two feet.

Q. You talked to him about 10 to 15 minutes?

A. Yes, sir.

Q. Could you tell what he was wearing as well?

A. Yes, sir.

Q. What was his hair style?

A. He had thin dreadlocks probably about shoulder length like gold tips.

Q. Okay. What type of clothes was he wearing?

A. He had, I remember had on a green puffy jacket and like a silver grayish pants.

Q. Were they jeans?

A. Yes.

Q. So grayish jeans, green puffy jacket. Do you remember anything about his shirt?

A. It was black.

Q. A black T-shirt?

A. Yes, sir.

Q. How did the other guy look that was with Los?

A. I just remember him wearing a hat I guess to hold his dreadlocks.

Q. Do you know if he had dreadlocks?

A. I never seen his hair. I just seen the hat.

Q. Why did you say to hold his dreadlocks then?

A. It's the kind of hat that they wear to hold the dreadlocks.

Q. What color was it?

A. It was red, green and yellow.

Q. A Jamaican style hat?

A. Yes, sir.

Q. Okay. Did you ever see his hair?

A. No, sir.

Q. So you don't whether he had dreadlocks or not?

A. I have no clue.

Q. Okay. Los had dreadlocks?

A. Yes, sir.

Q. You're certain of that?

A. Yes, sir.

Q. Do you remember any clothing items that the guy with Los was wearing?

A. I just remember he had on like a green striped shirt.

Q. Okay. In size how big was Los?

A. He was a little bit shorter than me, but we still could see kind of eye to eye. Kind of stocky.

Q. How tall are you?

A. I'm six foot one.

Q. So how much shorter than you would you say he was?

A. Maybe three to four inches.

Q. Okay. How much would you say he weighed?

A. I'm not exactly sure. If I had to guess, probably 180 pounds.

Q. Was he bigger or smaller than the guy he was with?

A. He was shorter than the guy he was with, but a little bit more stocky.

Q. Okay. So you say you all hung out there by your car outside the bar for 10 to 15 minutes?

A. Yes, sir.

Q. Okay. And the whole time are you talking with Los and his friend?

A. Yes, sir.

Q. And you're a couple feet away, correct?

A. Yes, sir.

Q. What happens after you all are done outside?

A. Me and Nick walked back into the bar and they walked back into the bar and me and Nick just kind of broke off to the left side of the bar for a little bit, had a few drinks.

Q. When you went back into the bar, where was Los and his other friend?

A. Whenever you walk into the door, he was on the right side by the pool tables and pinball machine and I was over to the left across the bar.

Q. Did you hang out with him anymore inside the bar?

A. Not really.

Q. You mentioned he had other friends with him. When did you meet those other folks?

A. Whenever me and Nick had walked back in, he briefly introduced us and then we separated.

Q. Okay. How much longer would you say you stayed inside the bar after you had been outside by your car?

A. Approximately two hours.

Q. Okay. Did you see the man you knew as Los inside the bar for that whole period?

A. I could see him from across the bar, yes.

Q. Would you occasionally talk to him or did you all

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pretty much split up at that point?

A. Pretty much split up at that point.

Q. Okay. How was the bar -- Was the bar well lit?

A. Over by the pool tables it was, but where I was at not really. It was kind of dim.

Q. Did you get a good look at him inside the bar as well though?

A. Yes, sir.

Q. Over the course of, I guess, two hours while you all were still in the bar, did you see him on multiple occasions?

A. I could see him from across the bar.

Q. All right. Now, I guess at this point you're at a bar. How much had you had to drink?

A. Honestly I couldn't tell you.

Q. On a scale of 1 to 10, how drunk would you say you were --

A. Five.

Q. -- 10 being the most?

A. Five.

Q. Five?

A. Five.

Q. Did you feel you were capable to drive?

A. I did after I stopped drinking for about an hour before I left.

Q. Okay. So you said you were in the bar, inside the bar for another two hours or so?

A. Yes, sir.

Q. At that point did you decide to leave?

A. Yeah. After about two hours I decided to leave.

Q. And you quite drinking for a period of time before you left?

A. Yes, sir.

Q. Tell us what happened when you leave the bar.

A. I walked with Nick back out to his car and kind of talked to him for about five to ten minutes, said our good-byes.

Q. Let's back up one second.

A. Okay.

Q. Before you leave the bar, do you see Los again?

A. I do.

Q. What, if anything, did he say to you and where do you see him?

A. He just asked me where I was headed and I just told him I was going home.

Q. Okay. So then you walked out. You said you went to your friend Nick's car?

A. Yes, sir.

Q. Telling Nick good-bye?

A. Yes, sir.

Q. How long do you think that takes?

A. Maybe five to ten minutes.

Q. So what happens after Nick leaves?

A. I go to my car and get in.

Q. And when you're walking back to your car, do you see Los again?

A. I do. He's standing out by the exit on the sidewalk.

Q. Was he by himself at that point or did you see other people with him?

A. I don't recall seeing anybody else.

Q. Okay. So what happened next?

A. After I got back into my car, he tapped on my window and asked me about some rims and stuff and, you know, told me like he wanted to hang out so I wrote down my number and gave him my number and, you know, we shook hands and then he said thank you and reached in and grabbed my bag.

Q. And took off?

A. Yeah. He started running off.

Q. What did you do?

A. I got out of my car and chased him.

Q. Did you catch him?

A. I did.

Q. Where did you catch him?

A. He was trying to get into another car that was

parked behind me.

Q. Was that the same vehicle you had seen them at prior?

A. Yes, sir.

Q. Earlier that night?

A. Yes, sir.

Q. Was that vehicle still parked?

A. It was backed up facing towards the exit ready to go.

Q. Were there people in that car?

A. Yes, sir.

Q. So what did you do when caught Los?

A. I grabbed him. Tried to grab my bag back. He hit me with my bag so I hit him several times with my hands and then after, you know, we scuffled around for a second or two, he pulled a gun out and stuck the gun in my face.

Q. Did you recognize the gun?

A. Yes.

Q. Was that the same gun you had seen earlier in the night?

A. Yes, sir.

Q. That was the .22 revolver?

A. Yes, sir.

Q. How far away is he when he was sticking that gun in your face?

A. Maybe three to five feet.

Q. What did you do at that point?

A. I held my hands up and told him he could take my bag. It wasn't worth my life, then I turned around and walked away. He got in his car and whenever they started peeling out, I turned around and got the tag number and called 911.

Q. What type of car did he get into?

A. Into a Grand Marquis.

Q. You got the tag number?

A. Yes, sir.

Q. And did you call 911?

A. I did.

Q. Did you provide 911 with that tag number?

A. I did.

Q. To this day do you remember part of that tag number?

A. Yes, sir.

Q. What were the last --

A. The last digits were 222.

Q. Do you recall after this incident being showed a photo lineup containing pictures of different people?

A. Yes, sir, I do.

Q. Where were you shown that lineup?

A. At the Lexington County police station.

Q. Who showed that lineup to you?

A. Mr. Garrick.

Q. Do you recall when that was?

A. The 27th of January 2014.

Q. Okay. And what, if anything, did Detective Garrick instruct you to do when he showed you that lineup?

A. He told me that the suspect may or may not be in it and just to use my best judgment.

Q. Did he in any way suggest, hint or point out who you should pick?

A. No, sir.

Q. When you looked at that lineup, what did you tell Detective Garrick?

A. I told him I picked two people, but I couldn't be fair as to which one I could choose because it was not a color picture. It was a black and white picture of black men and I couldn't distinguish between the tone of the skin and the hair.

Q. Okay. So you narrowed it down to two people?

A. Yes, sir.

Q. Were you one hundred percent certain it was one of those two people?

A. Yes, sir.

Q. But you just couldn't choose which one?

A. Yes, sir. That's correct.

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Q. Now, were you actually shown two lineups?

A. No, sir. It was the same lineup twice.

MR. McNAIR: These will be Court's exhibits.

(Whereupon, Court's Exhibit #1 and #2 marked for Identification.)

BY MR. McNAIR:

Q. Now, I'm going to show you Court's exhibits 1 and 2. Take a look at those and tell me if you recognize those?

A. Yes, sir, I do.

Q. Okay. Are those the lineups that you were shown by Detective Garrick on January 27th?

A. Yes, sir.

Q. And how do you recognize these? Are those your initials?

A. Yes, sir, they are.

Q. You circled number 2 on both of those, correct?

A. Yes, sir.

Q. Those are your initials beside number 2?

A. Yes, sir.

Q. And did you write 50 percent beside?

A. I did.

Q. Why was that?

A. Because I couldn't distinguish because it wasn't a color photo.

Q. What numbers were you in between?

A. Two and four.

Q. Two and number 4?

A. Yes, sir.

Q. And you felt that if you had seen these pictures in color, you could have picked the person out?

A. Yes, sir.

Q. Now, prior to seeing that photo lineup, did Detective Garrick or anybody show you a picture of the person who they arrested?

A. No, sir.

Q. Have you ever seen a picture of the person who was arrested for this armed robbery?

A. No, sir.

Q. Have you ever had an opportunity to see that person in person?

A. No, sir.

Q. Do you see that person in court today?

A. Yes, sir.

Q. Where is he sitting?

A. He's sitting right there (indicating.)

Q. You're pointing at the defendant?

A. Yes, sir.

Q. And how certain are you that that's him?

A. One hundred percent.

Q. Why are you so certain?

A. Because since that incident I got nightmares reoccur for the past year a few times a week.

Q. In fact, when you look at this lineup today, do you still think number 2 is the person?

A. No, sir.

Q. Why did you change? Who do you think it is as you sit here today?

A. Number 4.

Q. And did you think it was number 4 before you ever saw this man in court today?

A. Yes, sir.

Q. Why is that?

A. Because his face is burned into my brain.

Q. You feel like you have a picture of what his face looked like more clearly today than you did back then?

A. Yes, sir.

Q. You say you have dreams about his face?

A. Yes, sir.

Q. Did you think he was going to pull the trigger that night?

A. Yes, sir.

Q. Was that a traumatic experience for you?

A. It was. It still affects me.

Q. Do you know why you were shown two lineups? When I say that, two copies is what I mean. Not two lineups.

A. One for his photo.

Q. Did you do these back to back or was there some time period in between?

A. I don't recall.

Q. Do you recall after January 27th, did you ever go back to the police station?

A. I don't think I did.

MR. McNAIR: Okay. I think that's it, Your Honor.

THE COURT: All right. Mr. Mauldin.

MR. MAULDIN: Thank you.

CROSS EXAMINATION

BY MR. MAULDIN:

Q. Mr. Ruple, you have had an opportunity to speak with the police closer to the event about the description of the person that robbed you; is that correct?

A. Yes, sir.

Q. Didn't you tell one of them that you thought he was five five, 180 pounds?

A. Yes, sir.

Q. Okay. And then another time you told somebody you thought he was five eight?

A. Yes, sir.

Q. And 180 pounds?

A. Yes, sir.

Q. You just testified that you weren't sure what the

sequence was of what time between one and the other that you picked that number 2 out of the lineup?

A. Yes, sir.

Q. Had you already circled one and signed it before you got showed the second one?

A. Yes, sir.

Q. Or did they -- Okay. And you picked number 2 both times; is that correct?

A. Yes, sir.

Q. Now, you have attended bond hearings for Mr. Pontoo; isn't that correct?

A. I showed up for one and somebody had met me in the room and told me that I should walk outside with him and then he kind of talked to me and asked me a couple questions and he said I didn't have to come inside if I wanted to, I didn't have to attend. I could go ahead and leave and he would speak on my behalf.

Q. So you were never actually present for any bond hearing?

A. No, sir.

Q. But you were inside the courtroom; is that correct --

A. No, sir.

Q. -- before you got pulled out of the courtroom?

A. No, sir. I just walked into the lobby and I asked

the woman behind the counter where I needed to go. At that time an older gentleman come outside and greeted me and we walked out to the parking lot. I didn't step back foot into the building after that.

MR. MAULDIN: No further questions, Your Honor.

THE COURT: Anything further of this witness?

MR. McNAIR: No, sir, Your Honor.

THE COURT: All right. Thank you very much, sir. You may step down. Call your next witness.

MR. McNAIR: The state calls Todd Garrick.

THE COURT: Officer Garrick, you're still under oath, sir. Please come and take the stand.

(DETECTIVE TODD GARRICK RECALLED.)

DIRECT EXAMINATION

BY MR. McNAIR:

Q. Detective Garrick, when was the first time you went and met with Mr. Ruple?

A. That would have been January 27th.

Q. Where was that?

A. That was at the Sheriff's Department, 521 Gibson Road.

Q. And you showed him a photo lineup on that day?

A. I did.

Q. Prior to showing him a photo lineup, did he provide you with a description of the robber?

A. Yes. We did a statement beforehand.

Q. How did he describe the robber to you on January 27th?

A. A black man, dreadlocks, maybe five ten, black shirt, puffy green Jacket and white/silver pants.

Q. Okay. Did he describe anything about the other individual who was with the man he knew as Los?

A. Earlier he had said that he was, in a statement he said --

Q. We can move on.

A. At some point he did state that he had a green striped shirt on.

Q. Now, when you went to the hospital to meet Mr. Pontoo and you saw him January 24th, did you retrieve clothes that day that belonged to Mr. Pontoo?

A. I did.

Q. Okay. What kind of pants did you retrieve?

A. They were whitish gray. I believe they were --

Q. The color is fine.

A. Yes. Whitish gray jeans.

Q. Okay. Was that consistent with what Mr. Ruple told you?

A. It was.

Q. Okay. Did you retrieve a T-shirt?

A. I did.

Q. What color was that?

A. It was black.

Q. Did Mr. Pontoo have dreads?

A. He did.

Q. Was Mr. Ruple also able to provide a description of the vehicle and a tag number?

A. He was.

Q. Okay. Did that match the description of the wrecked vehicle?

A. It did.

Q. And was it the some tag number?

A. It was.

Q. Did they found items in the wrecked vehicle that fit the description of items that Mr. Ruple said were stolen from him?

A. They did.

Q. What did they find inside the vehicle?

A. A backpack and a nine millimeter.

Q. Okay. Did they find the weapon that Mr. Ruple described on Mr. Pontoo anywhere?

A. Not at the scene that didn't. Later on they did find - we did get that gun.

Q. Where?

A. At the hospital.

Q. Where did it come from?

A. It came from Mr. Pontoo's clothing.

Q. The folks at the hospital found it in his clothing?

A. Yes, sir.

Q. Where in particular?

A. I believe in his pants.

Q. Was that a black .22 revolver?

A. It was.

Q. I'm going to show you what's already been marked as Court's 1 and 2. Who generated these photo lineups?

A. Beverly Smith in our intel department.

Q. Are you familiar with how they're generated?

A. I am.

Q. And where are those pictures obtained from?

A. DMV database.

Q. Those are the originals and they're in black and white, correct?

A. Correct.

Q. Did you show Mr. Ruple those lineups?

A. I did.

Q. Who was present when you showed him?

A. Myself and Mr. Ruple.

Q. Okay. What, if anything, did you instruct Mr. Ruple to do before you showed him this lineup?

A. Before I showed him the lineup, I just told him to

take his time. The person that he was looking for may or may not be on that sheet of paper. Just take his time and look over it and if he saw the person, just circle it.

Q. Did he look at the lineups?

A. He did.

Q. What was his response?

A. He had it narrowed down between number 2 and number 4. I told him, I said, well, just take your time and look at them and he eventually circled number 2 and said that he was 50 percent because he had it down between 2 and 4.

Q. Was he certain it was one of those two individuals?

A. He was.

Q. Did you tell him just to initial beside the one he thought and put that 50 percent?

A. I did.

Q. And are those, in fact, his initials?

A. It is.

Q. Why did you show him two copies of the identical one?

A. I showed him the original and then I just got him to fill out a second one for my copy for my file in case the original had to go somewhere else.

Q. Did he do those at the same time?

A. He did.

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Q. Those were done on the same date at the same time, correct?

A. Yes, sir.

Q. Prior to showing him that lineup, had you shown him any other pictures of anybody?

A. I had not.

Q. And by the way, which number is actually Mr. Pontoo's picture on that photo lineup?

A. Number 4.

Q. He so he picked number 2?

A. Yes, sir.

Q. After he picked number 2, did you tell him whether or not he had picked the right person or not?

A. No, sir.

Q. Did you ever show him any pictures of Mr. Pontoo --

A. I did not.

Q. -- other than that photo lineup?

A. I did not.

Q. Mr. Ruple, has he ever been with you when the defendant was present, Mr. Pontoo was present?

A. No, sir.

MR. McNAIR: That's all from the state, Your Honor.

THE COURT: Mr. Mauldin.

MR. MAULDIN: Thank you.

CROSS EXAMINATION

BY MR. MAULDIN:

Q. Investigator Garrick, how tall is Raphael Pontoo?

A. I would have to look back at his DMV. I don't know for sure exactly how tall he is.

Q. Well, if you don't know, then you don't know if five eight or five five is an accurate description?

A. At that time I did not.

Q. How much does he weigh?

A. Again, I would have to have his DMV in front of me to know exactly what his DMV said.

Q. Now, when you went to the hospital and you got these clothes, who said that these clothes belonged to Mr. Pontoo?

A. The hospital staff there in the room.

Q. Do you remember who it was?

A. I do not.

Q. And they told you that they didn't have a weapon or anything for you to take, didn't they?

A. Correct. At that time they didn't.

Q. Although they supposedly found the weapon when they cut off his clothes?

A. Supposedly. I wasn't there when the clothes were cut off.

Q. Okay. Now, the backpack that you are talking about

was actually found in the car or outside the car after?

A. I believe it was outside the car, but I would have to look at the crime scene photos.

Q. So you're not sure where it was?

A. Not at this moment, no.

Q. Now, I'm a little confused. What's the purpose of -- I mean, you showed him the same lineup twice. What was the reason for doing that?

A. Again, I wanted those two copies for myself, one for the original in case, for the file, and number 2 for my file in case I had to give the original to the Solicitor's Office or something like that.

Q. Couldn't you have just made a copy of it?

A. I could have, but I had both - I had two - I had both forms in there in the room with me and just to save time just have him fill out both of them.

Q. And he filled them both out at the same time?

A. He did.

Q. So he was shown both and then circled both at the same time and then signed them?

A. He was shown the first one. He circled it, initialed it, I signed and dated it and then we filled out the second one for my copy.

Q. So that's not at the same time. One was after?

A. Right after the first one. I say the same time. It

was right after the first one was signed.

Q. Did you say, would you mind doing a second one for my file?

A. Correct.

Q. Is that how it went?

A. Yes.

Q. It's still -- Why would you have two separate ones instead of just making a copy? I don't understand. Had you lost one before? Has that been an issue in the past?

A. No, sir. I just -- I had two copies of the lineup with me so I got Mr. Ruple to sign both copies so that there would be two copies.

Q. And you did the same thing with the lineup regarding the gun; is that correct?

A. That's correct.

Q. Two separate ones for that, but the same procedure?

A. Yes, sir.

Q. Now, when you showed him that lineup, how sure was he when picked out the gun?

A. He circled it right away after looking at them. I can't -- He -- He just circled that gun. I don't think we went through how sure percentage wise he was.

MR. MAULDIN: Okay. No further questions, Your Honor.

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THE COURT: Anything further?

MR. McNAIR: No, sir, Your Honor.

THE COURT: Thank you, sir. You may step down. Any further witnesses?

MR. McNAIR: That's it's, Your Honor.

THE COURT: Mr. Mauldin.

MR. MAULDIN: Thank you, Your Honor. It's our position that the showing of the two separate lineups and both as far as the face lineup and the gun lineup that that is a suggestive process and we believe that they should be excluded under Mr. Pontoo's due process rights and the Fifth and Fourteenth Amendments and Article 1, Section 3 of the South Carolina Constitution, his right to a fair trial under the Sixth Amendment of U.S. and Article 1, Section 14 of the South Carolina Constitution. Your Honor, we believe the lineup showing demonstration was suggestive and it does not meet the standard and therefore they should be excluded and any in court identification of Mr. Pontoo and/or the gun should be excluded. Thank you.

THE COURT: Mr. McNair.

MR. McNAIR: Judge, I mean, obviously it wasn't suggestive. He picked the wrong person. I mean, just because there's two of them doesn't make it more suggestive.

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THE COURT: Just, and I may have missed something, is there a reason why you refer to one as the -- What did you refer to them as? One is a gun lineup?

MR. MAULDIN: There's a separate lineup of guns that was shown to him, Your Honor. There were two separate ones of that as well.

THE COURT: The guns.

MR. McNAIR: They did a gun lineup. I wasn't planning on introducing that.

THE COURT: Okay. That -- I was going to say that's not in front of me so I've just got this photo lineup; is that correct?

MR. McNAIR: Yes, sir. And they were duplicates so if one is not suggestive, I don't see how two are suggestive. He picked the wrong person on both of them.

THE COURT: Right. All right.

MR. McNAIR: Judge, I'm sorry if I didn't pass these up to you. I'll hand them up.

THE COURT: All right.

MR. McNAIR: (Proffering.)

THE COURT: All right. I'm going to overrule any objection to the photo lineups. I'm not -- I haven't heard anything that would lead me to believe that it was prepared in any suggestive manner. It was not presented in any suggestive manner. Obviously it's odd that you

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would have someone look at and sign two originals. I guess that's what you would consider that, but according to the testimony it was done at the same time and explained that it was to provide a copy for the file so there wasn't any, from what I gathered from the testimony, there wasn't any further suggestion to like, for example, look at this again and look more carefully. It was basically do another one for us and in both of them, you know, he selected number 2 and put 50 percent and it doesn't appear that there was anything inappropriate or suggestive so I'm going to overrule any objection to the admissibility of that. Now, those aren't marked.

MR. McNAIR: Yes, sir, they are.

THE COURT: We're they're marked for identification --

MR. McNAIR: Yes, sir.

THE COURT: -- at this point. All right. Anything else, Mr. Mauldin, with regards to any matters pre-trial or anything?

MR. MAULDIN: Not at this time as far as I'm aware of. Things could always come up during trial.

THE COURT: Absolutely and we'll deal with things as they do, but nothing that you are aware that we can take up at this point?

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MR. MAULDIN: No, Your Honor.

THE COURT: Anything further? Anything from the state at all at this point?

MR. McNAIR: No, sir, Your Honor.

THE COURT: Okay. We've got the jury coming back in at 9:30 as you are aware and we'll start then, but and I don't know if there would be and I'm just saying this now for you to just keep in mind. If you have any specific requested charge that you want us to consider, Lauren and I will be putting together a charge, but obviously we won't finalize anything until we get to the end of the case, but if you have anything specifically that you want us to consider, please e-mall that to us at your earliest convenience or when you can do that so that we can be considering it and putting it together, okay? All right. If there is nothing else, then we'll be at ease until 9:30 tomorrow morning. And that's regarding this case. Shawn, anything from the state besides this matter?

MR. GRAHAM: I don't believe so, Your Honor.

THE COURT: Okay. All right. Then if there's nothing else, then we will be adjourned until 9:30 tomorrow morning.

(Whereupon, court was adjourned for the day at 3:15.)

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January 27th, 2015

THE BAILIFF: Court is now in session. The Honorable Judge Tommy Russo presiding.

THE COURT: Thank you, ladies and gentlemen, and please have a seat. Is there anything we need to take up before we get started from the state?

MR. McNAIR: Not from the state, Your Honor.

THE COURT: Anything from the defense?

MR. MAULDIN: Your Honor, this morning I discussed with Mr. McNair and, in fact, I didn't move to sequester the witnesses. I told him that I would be moving to do that and he said that he wouldn't have any issue with doing that.

THE COURT: Okay. All right. So have we got the folks sequestered that need to be?

MR. GRAHAM: I don't think that will be a problem, Your Honor, and we ask that it would be reciprocal.

THE COURT: Sure. I think you listed one --

MR. MAULDIN: Yes. He's not --

THE COURT: All right. What about the folks from the state that are potential witnesses, are they sequestered?

MR. GRAHAM: I think everybody right now is over there. The armed robbery victim Mr. Ruple under the Constitution is allowed to be in here. He's not in here

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right now, but if he comes and goes, he's not subject to sequestration.

THE COURT: Sure. Okay. All right. Let's go ahead and bring the jury in then, please.

(The jury enters the courtroom.)

THE COURT: On the record. All right. Ladies and gentlemen, welcome back. I hope everyone had a good evening and are ready to start getting back to work here this morning. Let me just share a few things with you before I give you my opening remarks.

During the course of the trial, it's important that everyone is comfortable and paying attention to the testimony and the evidence so if at any time if you get too hot or too cold or whatever, if you will let us know, we can do some adjustment with the thermostat in here. If at any time -- Now, we'll take breaks at certain times, just at times during the course where it's natural that we can take a break, but we can take a break at any time any member of the jury panel needs one. So there are some things that we have no control over. If mother nature calls or comes a knocking, we've got to take a break and that's not an issue. So don't hesitate to let me know if you need to take a break. The last thing I want you to do is to sit there and to be uncomfortable and think, well, I'll wait until this

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witness is done. Well, sure enough, Murphy's Law, that will be the longest witness in the case and you will be so uncomfortable you're not going to be paying attention. So don't hesitate. Get my attention. Get Mr. Mills' attention and let us know that you need to take a break and we'll stop right where we're at and we'll take that break. We can always start back where we left off so that's not an issue, okay? If you can't hear a witness or if you can't hear one of the attorneys, please, let us know so we can get them to speak up or repeat what it is that they said. If at any time you can't see, if there is an exhibit or something that one of the attorneys is using and you can't see it very well, let us know so we can position it so you can see it. It's important that you see and hear everything that's presented, okay?

Now, also in the jury box there is really only a couple of assigned seats. The two alternates will always occupy the two back chairs there and at some point I'm going to ask one of you to serve as the foreperson and then whoever that person is will occupy this first seat. The rest of the chairs you just sit as you normally flow in and out. In other words, don't feel like you have to get to the seat you are in now and have to step over people if you didn't come in that way.

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Just go ahead and normally flow in and out as you normally would.

I'm going to turn it over at this moment to Ms. Frick and she's going to place you under your oath for your role as jurors in this trial.

THE CLERK: Please stand and raise your right hand.

(The jury was duly sworn by the Clerk of Court at 9:50 a.m.)

THE COURT: Ladies and gentlemen of the jury, we are about to begin the trial of the case of State of South Carolina versus Raphael Pontoo. Some things I want to share with you. First of all, I don't know how many of you have ever actually sat in on an actual jury trial. Most people don't have that opportunity. Most peoples' experience as it relates to jury trials is what they have seen in the movies or what they have read in books or what they have seen on television and obviously those trials are designed to entertain the listener or the reader. It's Hollywood and those cases tend to always be full of some type of high drama or intense action that you oftentimes would probably not see in a regular, in a real life setting.

Now, during the course of this trial while any number of those things could happen, what is important for you to understand is that this trial is not for your

entertainment. This trial is a fundamental part of our democracy. It is a search for the truth and oftentimes in searching for the truth it's slow. Sometimes it's very deliberate. It can actually be repetitive. In other words, it's very different from what you have seen in the movies or read in books or seen on television. This courtroom is a place of honor that is dedicated to the protection and to the preservation of citizens' rights through what many have called the greatest justice system ever created.

The lawyers that appear before you are advocates for the parties or the sides that they represent, but first and foremost they are officers of the court sworn to uphold the integrity and fairness of our judicial system. You should expect them to be professional, competent, and ethical in the representation of their client's interest.

Now, you have just taken an oath to try this case and to reach a fair and just verdict and so you are also expected to be professional, reasonable, and ethical in the performance of your duties which I have absolutely no doubt you will do and I want to thank you for excepting this role as jurors in our system of justice here in Lexington County.

Now, I'm going to share some remarks with you. At

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the close of the case I'm going to give you a charge on the law. This is not that, but what this is or what I hope this will be will basically just be some overview of the trial that we're about to begin and the procedures and the steps that we're going to follow so that you can better follow along with what's going on.

Mr. Pontoo is charged as I indicated earlier by an indictment that's been filed with this court and you heard yesterday that we called out what those alleged charges or those allegations are. He's charged with armed robbery and with failure to stop for a blue light resulting in death.

Now, the elements of those charges I will explain to you when I give you the charge on the law. As I told you yesterday, the indictment and those allegations, well, the indictment is basically those allegations in written form that bring this case into court and the indictment is not in any sense evidence of the allegations that it contains. To those allegations or to that indictment Mr. Pontoo has pled not guilty and the state therefore has the burden of proving each of the elements of the indictments beyond a reasonable doubt. It will be your duty, ladies and gentlemen, to decide whether or not the state has met that burden. Your purpose as jurors is to find and to determine the

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facts of this case. You are the sole judges of the facts in this case. If at any time during the course of this trial I make any comment about the facts or the evidence that's presented, you must disregard those comments because only you the jury can decide what the facts are in this case. You are to determine the facts from the testimony that you hear as well as any other evidence that may be introduced during the course of this trial. It is up to you to determine the inferences which you feel may be properly drawn from that evidence.

It is especially important that you perform your duty of determining the facts clearly, diligently and conscientiously because ordinarily there is no way that we can correct an erroneous determination of facts by a jury.

Now, on the other hand but with equal emphasis the same law that makes you the judges of the facts makes me the judge of the law. The law as given to you by this court is the only law that you may consider. You must accept and follow it even though you may disagree with it and I'm now allowed to tell you what I think about the facts of this case and you're not allowed to disagree with me about what the law is or what you think the law should be. Your job is to take the law as I give it to you, apply it to the facts as you find the

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facts to be from the testimony of the witnesses and any exhibits which may have come in during the course of the trial.

Now, until I advise you that it's appropriate to begin your deliberations you must not discuss this case with anyone and that includes your fellow jurors. It's important that, ladies and gentlemen, that throughout the course of the trial that you keep an open mind and that you do not decide any issue in this case until all of the evidence has been presented, the parties have made their closing arguments to you, and I have given you the instruction on the law. It is your solemn responsibility to determine the guilt or innocence of the defendant and your verdict must be based solely on the facts, the evidence as it is presented to you during the course of this trial and on the law as I instruct to you at the close of the trial.

Now, in just a moment I'm going to recognize the state for what we call an opening statement. In that opening statement the Solicitor will explain to you the issues in this case or at least what he believes the issues are in this case. Once he's concluded his remarks, then Mr. Mauldin will have an opportunity to address you on behalf of the defense if he chooses to do so. Although he's not required to make any opening

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statement. The important thing that you need to understand is this, ladies and gentlemen. What the lawyers tell you in their opening statements is not evidence. They are not under oath. They are not testifying. It is merely their contention as to what they believe the evidence in this case is going to show.

The evidence in this case will be presented to you by the testimony of witnesses who are placed under oath and who take the witness stand and who testify from this stand as well as any exhibits that may be introduced during the course of the trial.

Now, throughout the trial you may at times hear one of the attorneys say something along these lines. Judge, we have a matter of law we need to take up with the Court. Or, Your Honor, may we approach the bench? During that time as I told you I'm the judge of the law. You're the judge of the facts. If I can resolve a matter of law up here at the bench with the attorneys, I'll do that. But it may be that I need to go into a little bit greater discussion and if I would have to do that, I may ask you to step back into the jury room while I do that. If I do ask you to do that, the only reason I would would simply be for this reason. There are times when I'm dealing with a matter of law that it requires me to make some comment about some testimony

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that was given or some exhibits or some facts that have been presented in connection with that ruling. As I told you earlier I'm not to have any influence over you about the facts in this case so to protect you from those comments I may have to ask you to step back into the jury room while I take up that matter of law. Once we've resolved that matter of law, I will then bring you back in and then we would proceed from that point on.

Ladies and gentlemen, in determining what the true facts are in this case you're going to have to decide whether or not the testimony of a witness is believable. It's going to be my responsibility to rule as a matter of law whether certain testimony is allowed into this trial at all or not. But once testimony is allowed into this case whether or not you believe it is solely up for you to decide.

In deciding whether to believe a witness you have the right to consider the interest of a witness, the bias of any witness, the opportunity for that witness to have seen the matters and the things about which that witness testifies, the way the witness acts on the witness stand. You have the right, ladies and gentlemen, to consider anything that is in this record that will assist you or help you in evaluating the testimony of the witnesses. That means it's very

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important that you listen very carefully to the witnesses. Observe them as they testify. Watch the witnesses. Listen carefully to the attorneys as well as to the Court. Please do not let your thoughts wander but pay strict attention to all of the evidence as it's presented during the course of this trial so at the close of the evidence after all of the evidence has been presented, the attorneys have had an opportunity to address you with their closing remarks, and I have given you the charge on the law, after all of that occurs, you will then be in a position to go back into the jury room and begin your deliberations, discuss the case, discuss the evidence, discuss the law, apply the law to those facts as you find them to be in arriving at a verdict.

So that's basically an overview of what we're going to do over the course of the next day or so. But before I turn it over to the attorneys, let me first inquire of the State, are there any objections or exceptions to the Court's opening remarks?

MR. GRAHAM: No, Your Honor.

THE COURT: Anything from the defense?

MR. MAULDIN: No, Your Honor.

THE COURT: All right. Folks, if you would, please listen very carefully as the attorneys address you with their opening remarks. Mr. Graham.

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MR. GRAHAM: Thank you, Your Honor.

Today is January 27th, 2015. One year ago today Alexander Kewon Clemmons passed away. He died. And he died because of the choices that that man sitting over there in that chair made a couple of days before.

The night of January 23rd, the early morning hours of January 24, 2014 at a bar, a nightclub known as The Rock, recently changed the name to the Mile High Club, it's over by the airport in Lexington County, that's where two different groups of people came together by fate and by chance.

There were two different celebrations that were going on that night. Jonathan Ruple, the man sitting over there in the suit, had a friend coming home from the military who had been in Afghanistan. They were having a welcome home party and he was there with his friend and they were drinking and they were having a good time welcoming him back to the United States. Mr. Pontoo was there for a different celebration.

Mr. Clemmons was there for a different celebration. Kewon as he's known by his family and his friends. His birthday was on the [redacted]th so on the night of the 23rd Kewon was with a friend of his Iquawn and he was with a friend of his Mr. Pontoo. He was with a cousin of his Pat, and he met up with his uncle Carlisle. So the five

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of them met up and they decided to go out and celebrate Kewon's birthday that was coming up on the [redacted]th. They end up at the Mile High Club. They are all there for different reasons. Celebrating a birthday. Celebrating coming home. But one person brings them together and the person that brings them together is the defendant. He's in there. Mr. Clemmons is 23, getting ready to turn 24 and because of his choices Kewon never reached 25. He had short hair. Carlisle Jones, his uncle works in a nearby plant. That's his bar. That's where he goes after work. That's why he suggested they go there. He has short hair. Pat Johnson, Patrick, Kewon's best friend and his cousin. He works at Amazon at the time and he's got to go to work the next day, but he's out with his friends celebrating Kewon's birthday. He had short hair. Iquawn Jones is a friend of Kewon and I think a cousin of the defendant. He had short hair.

Mr. Pontoo goes by Ralf for Raphael. He goes by Polo as a nickname and he goes by Los as a nickname. He's there and just like today with his dreadlocks he's the only one of those five who had dreadlocks that night.

At some point during the night Mr. Ruple is talking to his friend Nicholas Howard who had gotten back from Afghanistan and Jonathan tells him I've got a gun. I

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just a new gun. I want to show it to you. So he steps out into the parking lot with Nicholas Howard, his friend, and goes to his car and he pulls out a nine millimeter Hi-Point, the semi automatic pistol that he just got and he's showing his friend Nicholas. As he's doing that, the one person out of those five in the other group overhears it and he sees it. He sees an opportunity. He comes over, introduces himself and spends time talking to Mr. Ruple and asking him what he's doing. Well, he shows him his gun. This is my new nine millimeter. I got it. Mr. Pontoo, Los, says, well, I've got a gun, too, and he pulls out a small .22 caliber revolver. And you're going to see the guns and you'll see the difference of them. He even let's Mr. Ruple touch it and let's him handle it and I believe he let's the defendant handle his nine millimeter.

There's another individual that comes over at the time. He's got a .25 caliber semi automatic in his pocket. Mr. Ruple sees that, too. You're going to hear about all of those guns. They ended up chatting for a few minutes. Maybe 15 or 20 minutes. Everybody goes back inside. Kind of goes back to doing their own thing.

At some time because of that encounter in the parking lot, at some time a plan comes into Mr. Pontoo's

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mind. And we can't read his mind, but you can tell from his actions what happens. Mr. Ruple goes to leave and he's going to tell you that Mr. Pontoo as he was walking out the door he asked him where he was going and he said he was getting ready to leave. He goes out. He walks his friend Mr. Howard to his car. There's a girl with him as well. He says good-bye to Mr. Howard. Mr. Howard is leaving. He goes to get in his car and as he's doing this, what does he see? He sees a predator waiting. He sees Mr. Pontoo waiting up at the door of the club watching him. He gets in his car and as soon as he gets in his car there's a knock on the passenger side. He rolls down the window and the defendant talks to him and engages him in conversation some more looking him straight in the face seeing his dreadlocks talking about buying rims for a car. Talking about people in the music industry that they might know.

Mr. Pontoo goes to shake his hand, but it's not in friendship. It's not a handshake of friendship. As he's reaching out to shake Mr. Ruple's hand, he reaches in and grabs the bag, a Swiss army book bag that Mr. Ruple put the nine millimeter back in that Mr. Pontoo, that Los knew about. He grabs it out of the vehicle. Mr. Ruple comes out. They get into a tussle. Mr. Ruple hits him because he's not going to let go of his gun.

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He's not going to let go of his bag. He's not going to let go of his stuff. At that point Mr. Pontoo pulls out that .22 revolver. He points it right at Mr. Ruple. There's a laser on it and the laser comes on and he's afraid he's going to die. He puts up his hands. It's not worth it. Go ahead and take it and that's exactly what Mr. Pontoo does. That's what Los does. He gets in his car with the four other people and they drive off.

Well, Mr. Ruple does what anybody would do hopefully in that situation have the presence of mind, he gets a description of the car and he gets the tag number and he calls 911. He tells the police I just got robbed. Here's where it happened. Here's which way they drove off. Here's a description of the car. Here's the tag number. The person that robbed me. His name is Los. Might be going to Wagener because that's where he told me he was from. Help me.

911 calls out and they radio Lexington County Sheriff's Department, the Highway Patrol, all the agencies in the area. And you're going to hear about the Highway Patrol officers. They heard that BOLO, that be on the look out for that came over the radio for that car description. One of them has the forethought thinking he said something about being from Wagener. I'm going to head that way. So he positions himself

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between where the Mile High Club and on the way to Wagener. And there's really only one or two highways that are going to take you from that location and you all will see the maps that will show you that.

The officer goes out with the highway patrol, a young trooper. He sees the car. He radios in. It's an armed robbery so they're going to do what they call a felony car stop. It's not just a regular traffic stop. We've got guns in that car. We've got somebody who just robbed somebody. He needs backup. So he's going to wait for another police officer to come with him. When the other police officer comes up, the lights come on, that car immediately pulls over. It's Carlisle Jones' car. He's in his regular bar. He's the driver. He's a little bit older. He's got a job. He immediately pulls over, stops the car and they start taking people, the police start taking people out of the car. And you're going to hear how they take them out, hands up, jackets come off, raise your shirt, make sure you don't have any guns, back up toward me slowly.

Mr. Jones gets pulled out of the car and he gets cuffed and gets put down on the ground. You're going to hear about the front seat passenger side getting taken out. That's going to be Iquawn. He gets taken out, hands up, backing up, cuffed, down on the ground. The

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trooper is going to tell you that during the course of him pulling people out, the back driver's side door pops open multiple times and he has to order that door to be shut and go back in. You're going to hear that's where Mr. Pontoo, Los, was sitting. The third person comes out of the car, Pat Johnson. That's Kewon's cousin. He gets brought out hands up, back up, cuffed and down on the ground. Two people left in the car, Kewon and the defendant.

At that time the defendant jumps over into the front seat and takes off in the car because he just robbed somebody. He's got a stolen gun and he doesn't want to get caught. So another trooper had arrived on the scene. He gets in his car and he takes off and then the other trooper who made the original stop follows behind him and they take off and there's car chase. The defendant is driving the car and Kewon is in the car. 104, 108 miles an hour, several miles down the road continuing to head towards Wagener over there in Aiken County.

At some point Mr. Pontoo loses control of that car. The car goes around a curve. He hits a pole up on a building. He becomes airborne at an intersection. He was getting ready to run a stop sign at an intersection across two highways. You're going to hear about a

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Lexington County officer who was coming who saw that car cross over the road, go into a ditch, hitting trees and crushing the car. The choices that Mr. Pontoo made.

Officers arrive on scene. They secure the scene. They find the nine millimeter handgun, but it's not in the bag. It's not in the bag that he stole. It's on the seat beside the driver. The officers secure that weapon and get it out. And who is behind the wheel? The man with the dreads. The only man with the dreadlocks. The defendant. He's trapped in there. There's a tree through the windshield. Air bags have deployed and the other person in the car is Kewon, and Kewon is in the back seat laid out unconscious.

Police officers get the nine millimeter out. They secure the scene. EMS and fire services come down. Fire services come down and they cut the door off the back. Mr. Pontoo is alive and he's awake. He's screaming for help behind the steering wheel. There is no noise coming from the back. The firefighters cut the door with the jaws of life. EMS comes in and they bring him out. And you're going to hear about his condition. Never regained consciousness. They life lined him out and take him to the hospital. You're going to hear he's taken to the hospital brain dead and he dies one year ago today.

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We're here because of the choices. Choices that everybody made that night. The illegal choices were made by the defendant, Mr. Pontoo. He's a predator. He saw an opportunity and he seized it. Thought it was an easy mark. I'll take that gun. I'll get away. Or if I need to, I'll pull my gun and point it at you choosing to do that. He gets in his car. He gets stopped. He doesn't want to be arrested. He chooses to jump over, get in the front seat and drive with his friend in the car with him. He chooses to run away from the police at 104, 108 miles an hour losing control of the car, wrecking the car, causing his friend Kewon to die.

It's all about choices. Choices that he made. Choices that brought you all here today, that bought all of us here today. The choices that the evidence will show that Raphael Lamarr Pontoo is guilty of armed robbery. He's guilty of failure to stop for a blue light. Ladies and gentlemen, only the guilty run. Raphael Lamarr Pontoo is guilty and ran.

THE COURT: Thank you, Mr. Graham. Mr. Mauldin.

MR. MAULDIN: Thank you, Your Honor.

Raphael is innocent of these charges. That should be your mind set through this entire trial. Your mind set should be why are we here? He's innocent because he's presumed to be innocent throughout this whole case.

When you go in, he's innocent. Why are we here? Because it's easy to jump to conclusions. We often do it. Everybody does it. Read a news article in the paper. More often today on the Internet you see a headline, paragraph, mug shot, you automatically just assume, well, that person did it. Blase blah.

That's not what this process is about. This process is for you to look at all the information because the mind set is Raphael is innocent. And in not jumping to conclusions you should keep an open mind. Keep in mind about the situation. You have a bar in a strip mall well past midnight in West Columbia. Guns are going around. There's talk of rap groups. Rims. That kind of thing. Keep an open mind. There's more to the picture because your mind set should be that Mr. Pontoo, Raphael is innocent of these charges because the state has the burden of proof. It's beyond reasonable doubt and that means there would be no real possibility that Mr. Pontoo is innocent and your mind set should be that he is innocent. If you don't jump to conclusions and carefully listen to the evidence and you keep an open mind even after your deliberations you will determine that Mr. Pontoo is innocent. Thank you.

THE COURT: Thank you, sir.

(Side bar off the record.)

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THE COURT: We need to take up a matter of law involving some witnesses before we get started. If you all could just step back into the jury room. Have no conversation about the case. If you need anything while you're back there, just let Mr. Mills know and we'll get you whatever you might need.

(The jury goes into the jury room.)

THE COURT: On the record. All right. We will be at ease for a few minutes.

(Short recess.)

THE COURT: Back on the record. All right. Is the State ready to proceed?

MR. McNAIR: The State is ready, Your Honor.

THE COURT: Is the defense ready?

MR. MAULDIN: Yes, Your Honor.

THE COURT: All right. Bring the jury back in.

(The jury returns to the courtroom.)

THE COURT: Back on the record. Thank you, folks, for that courtesy while we took care of that witness issue. We're ready to proceed now and recognize the State for your first witness.

MR. McNAIR: Thank you, Your Honor. The State calls Trooper Brandon Lee.

Thereupon,

TROOPER BRANDON LEE

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after having been first duly sworn, testified as follows,

THE CLERK: Please have a seat and state your name for the record spelling your last name.

THE WITNESS: Yes. I am Trooper Brandon W. Lee. Last name spelled L-e-e.

DIRECT EXAMINATION

BY MR. McNAIR:

Q. Trooper Lee, how long have you worked with the Highway Patrol?

A. I've been on the Highway Patrol approximately two years.

Q. What's your position over there now?

A. I'm a trooper.

Q. Do you have any prior law enforcement experience?

A. Yes. Prior to being hired by the Highway Patrol, I worked for the City of Anderson for approximately two years and prior to that I was a military police officer at Fort Jackson.

Q. Okay. Were on you patrol January 24th, 2014?

A. I was.

Q. What shift were you working that night?

A. I was working the midnight shift. The night shift.

Q. Okay. At some point that night did you receive what's known as a BOLO?

A. That's correct.

Q. What's a BOLO?

A. A BOLO is a broadcast to -- Well, BOLO stands for be on the look out for a vehicle or persons.

Q. Okay. So what was that BOLO in reference to that night?

A. That night the BOLO was in reference to an armed robbery suspect. The vehicle was a Mercury. They gave a South Carolina tag with it as well.

Q. Okay. Did you know where the robbery had occurred?

A. The BOLO was originated from Boston Avenue and 302 which is in the Cayce area and Springdale area of Lexington County.

Q. Do you recall what type of vehicle you were looking for?

A. A Mercury Grand Marquis.

Q. Were you given a color?

A. Yes. I believe it was blue or silverish in color.

Q. Okay. And you said you were provided with a tag number as well?

A. Yes, sir. The tag number they provided us with was JPT222.

Q. Where were you when you received that BOLO?

A. As I was tagging an abandoned vehicle on I-26

westbound near Interstate 77.

Q. What did you do after you heard that BOLO?

A. After I heard the BOLO, Lance Corporal Snider which was the other trooper on shift that night had our dispatch run that tag and the tag came back to a vehicle out of I believe it was North, South Carolina and from where the BOLO came out was 302 we believed that the possible route to travel from 302 to the house was 321 which was just one exit off from where I was at so I then traveled up the interstate westbound to 321 and then headed 321 southbound towards Gaston or the Swansea area.

Q. And did you locate what you thought to be the vehicle?

A. Yes, sir. I did. I did locate the vehicle on 321 just right outside of Swansea.

Q. Okay. Heading towards Swansea?

A. That's correct.

Q. Was the tag number the same as what you had been provided on the BOLO?

A. Yes, sir. I was traveling northbound. The vehicle passed me southbound. I turned around. The vehicle was traveling approximately 55 miles an hour. I turned around on the vehicle and got close enough to verify the tag and then once I verified the tag, I then created some distance from the vehicle.

Q. Okay. Why did you do that?

A. Well, the BOLO was for armed robbery suspects with a weapon and I knew that I was going to have to conduct a felony car stop on that vehicle since the tag was verified and I wanted as much distance from the vehicle in case they did stop or pull over. You know, in a shooting scenario distance is something that I would want on my side that night.

Q. Okay. It wasn't a traffic stop for a speeding ticket?

A. No. It was not a typical traffic stop.

Q. So it was something you were waiting on backup?

A. That's correct.

Q. Now, does your car have a camera system on it?

A. Yes, sir. It's an in car video system.

MR. McNAIR: This is State's 1 and 2.

(Whereupon, State's Exhibit #1 and #2 marked for Identification.)

BY MR. McNAIR:

Q. Now, does your system also record GPS coordinates?

A. Yes, sir.

Q. Now, I'll show you what's marked as State's number 1. Is that a -- What is that?

A. Yes, sir. This is a picture of a screen shot of my camera the night of that incident and what's highlighted is

the GPS coordinates after I spotted the vehicle and then backed off.

Q. Okay. And State's number 2?

A. Yes, sir. This is the GPS coordinates the same as the camera and that actually places me where I spotted the vehicle at on 321 near Charlie Rast Road.

Q. The mark on that map indicates, that corresponds with the GPS coordinates on your video?

A. Yes, sir.

Q. Does that accurately represent where you got behind that vehicle that night?

A. Yes, sir.

MR. McNAIR: Your Honor, we move to admit State's 1 and 2 into evidence.

MR. MAULDIN: No objection.

THE COURT: Without objection State's 1 and 2 are in evidence.

BY MR McNAIR:

Q. This is hard to see, but is this a still shot from your incamera system?

A. Yes, sir, it is.

Q. And this outline is just your GPS coordinates on your camera system?

A. Yes, sir.

Q. And what this is, 321, is that correct, where that

blue dot is?

A. Yes, sir.

Q. And that's where you initially got behind the suspect vehicle?

A. Yes, sir. Well, that's after I activated my camera. Yes, sir. That's where I got behind the vehicle.

Q. Okay. And are you traveling south or north?

A. Traveling north. Or should be traveling south towards Swansea.

Q. South towards Swansea. Now, how far do you follow the vehicle without turning your lights on?

A. I followed the vehicle from the spot you just saw which was near Charlie Rast Road into Swansea, then we turned onto Whetstone Road and that's when a Swansea PD unit was, or my dispatch contacted a Swansea PD unit and it was behind me and that's when I did initiate a traffic stop.

Q. So you went all the way through Swansea?

A. Yes, sir.

Q. Who arrived to back you up at that point?

A. Swansea PD officers.

Q. When you first got behind the vehicle, do you recall what speed it was going?

A. Yes. The speed of the vehicle was approximately 55 miles an hour whenever I first - the vehicle passed me.

Q. Okay. When you got behind the vehicle and before

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you turned on your blue lights, did their speed change?

A. Drastically changed, sir.

Q. In what way?

A. Down. They were probably traveling approximately 25 to 30 miles an hour. It was an abrupt change in speed.

Q. And did that continue all the way through Swansea?

A. Yes, sir. The speed limit does drop in Swansea, but the drastic change in speed was when it was still 55 miles an hour.

Q. Now, you said it was Lieutenant Bennett who backed you up?

A. Yes. Lieutenant Bennett from Swansea PD.

Q. When he got behind you, what did you do at that point?

A. At that time I advised my dispatch I was conducting a felony stop via the radio and I then turned on my blue lights. The vehicle pulled over and then I --

Q. Did it immediately pull over?

A. Yes, it did.

Q. When you turned on your blue lights?

A. Yes, sir.

Q. What did you do at that point?

A. I then cantered my vehicle in accordance with how I was trained to do a felony car stop.

Q. Will you explain to the jury what a felony car stop

is?

A. A felony car stop is a high risk traffic stop and at that time you, after you initiate the traffic stop, you order all occupants out one at a time. When you order the occupants out, you remove all outer garments and you want to make sure there are no weapons on any of the occupants and you order them back to the vehicle or back towards your patrol vehicle one at a time and then you handcuff them separately.

Q. And is your weapon drawn?

A. Yes, sir, my weapon is drawn.

Q. Who did remove first out of the vehicle?

A. The first occupant that I ordered out of the vehicle was the driver.

Q. Okay. You had him step out and did you have him remove his jacket?

A. Yes. I remember before whenever I was identifying myself as a state trooper and, you know, ordering the occupants out, I ordered the driver out of the vehicle first and the driver's rear door opened and I remember, you know, telling the passenger shut the door and I had to focus my attention back on the driver.

Q. So before the driver exited, the back driver's side door opened?

A. Yes, sir. If you numbered seats in a vehicle, one

would be the driver. If there's a seat in the middle, that would be two. The passenger would be three, and behind the driver would be four. The number 4 door which would be the driver's passenger or the driver's rear door opened.

Q. And that's not who you instructed?

A. That's not who I instructed.

Q. So when the driver got out, what did he do?

A. The driver complied with all of my instructions. I ordered him to take off all clothing and walk back towards the sound of my voice.

Q. And did you handcuff him?

A. Yes. I handcuffed him.

Q. Who came out next then?

A. The next occupant I ordered out, I worked in clockwise motion to the passenger which would be the number 3 seat.

Q. Did he comply as well?

A. He complied with all my directions as well.

Q. So he removed his jacket and he was handcuffed as well?

A. Yes, sir.

Q. Who was after that?

A. The next occupant that was ordered out would be the number 6 passenger so which would be behind the passenger's rear door.

Q. Okay.

A. He was ordered out. I remember whenever between ordering those, between ordering the passenger out and the rear passenger out, the driver's side rear door opened again and I had to, you know, instruct the passenger to shut the door and then I ordered out the number 6 passenger.

Q. Okay. That's the same door that opened the first time?

A. Yes, sir.

Q. What happened after the third rear passenger got out?

A. The third rear passenger was ordered out, complied, and was handcuffed and then after that passenger was out, the door was still, that number, the passenger rear door which I'll refer to as the number 6 door based off of seating arrangement, that door was still open. The vehicle then took off, or the vehicle left the scene with the door --

Q. Were you aware how many people were left in the vehicle at that point?

A. I had -- I'm not sure.

Q. So you removed three people and the vehicle took off?

A. Yes, sir.

Q. What did you do at that point?

A. At that time Lance Corporal Snider, he was, he just

arrived on scene to back me up and so it was me, Swansea PD and Lance Corporal Snider. Once that third passenger was handcuffed, I looked at the Swansea PD officer to make sure that he was okay and then I - Lance Corporal Snider pursued the vehicle and then I jumped in as a secondary as a pursuit.

Q. Did Lance Corporal Snider have his blue lights when he started pursuing the vehicle?

A. Yes. He had his blue lights on and siren activated.

Q. Did you ever catch up with him?

A. No, sir. I was able to keep Lance Corporal Snider's blue lights in sight. With the jump I just couldn't catch up, sir. I was trying my best but I couldn't.

Q. So when was the next time that you saw that vehicle?

A. The next time I saw him was if you travel down Whetstone there's a four way stop beside an old country store and that's when I saw Lance Corporal Snider's patrol vehicle pulled off to the side and I heard over the radio advise that the vehicle is 1050 which is 10 code for collision and that's when I saw Lance Corporal Snider.

Q. So you initiated a stop on Highway 3, correct?

A. Yes, sir.

Q. That's in Lexington County?

A. That is in Lexington County.

Q. And the four way stop, what roads meet at that intersection?

A. Uhm, it's US 178 and SC 3.

Q. Okay. That's also in Lexington County?

A. Yes, sir, it is.

Q. And are both of those roads public roadways of this state?

A. Yes, sir, they are.

Q. So what happened when you got to where Corporal Snider was and where the vehicle had run off the road?

A. At that four way intersection there's a little patch of woods, as I was coming up to Lance Corporal Snider, a little patch of woods in front of me to the right and with the traveling of the vehicle on the roadway I assumed that it was in that area so I drove my vehicle around the backside of that little patch of woods and then I got out and searched for the vehicle.

Q. Could you locate the vehicle from the direction it appeared to have gone in?

A. From the original direction we were traveling we couldn't see the vehicle. It traveled into the brush a little bit.

Q. How did you get to it?

A. I drove around the backside of the brush which would

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be on SC 3. I just drove through the stop sign approximately, you know, maybe 500 feet and then there's a driveway and I drove around it and I saw the tracks when I drove around so I knew that no vehicle traveled through there so I then stopped my car and I walked around the back side of the trees.

Q. Okay. Were you able to get to the vehicle?

A. Yes. I was the first one that saw the vehicle.

Q. How was it positioned?

A. The vehicle was positioned with the front of the vehicle facing towards Whetstone or SC 3 with it perpendicular to US 178 and it was damaged from the collision colliding with the trees.

Q. Were you able to get to the driver's side of the vehicle?

A. No. There's a lot of trees and just debris from the collision on the driver's side. I was able to approach it from the passenger side.

Q. Okay. How many occupants were in the vehicle?

A. At that time there was two occupants.

Q. Did you see the driver?

A. Yes, I did see the driver.

Q. How was he positioned?

A. The driver was positioned in the driver's seat of the vehicle. There was a tree limb through the vehicle and

it was pinning the driver into the driver's seat.

Q. Was it coming through the windshield?

A. It was coming through the windshield into the back of the vehicle so it was pinning the driver into the vehicle beside the door.

Q. Was the airbag deployed as well?

A. The airbags, both front airbags were deployed.

Q. Was he sitting upright?

A. Yes, sir.

Q. Okay. What kind of condition was he in? Was he conscious?

A. He was conscious, but at this time I had my weapon drawn again and I was ordering them to show me their hands and not to move and the driver was just moving back and forth, I guess, trying to get out.

Q. Was he saying anything?

A. At this time he wasn't saying anything to me.

Q. Okay. What about the other guy in the vehicle?

A. Complete -- From what I could see completely unresponsive. Moving around, but just not even saying anything or, you know, at first I didn't even see the passenger to begin with until I was looking at the driver. I looked down and I saw what was the passenger just moving up and down from breathing.

Q. Okay. But pretty much unconscious?

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A. Yes, sir.

Q. Did you get close to the driver?

A. I was at the passenger rear tire of the vehicle kind of using the apex of the right there between the door, the back windows as cover in case I was fired on so I was from that passenger rear tire to the front seat from the driver.

Q. Okay. What type of hair did the guy in the driver's seat have?

A. Dreadlocks.

Q. How long were they?

A. Shoulder length.

Q. Did you get a good look at his face?

A. Yes, sir.

Q. Do you see him in court today?

A. Yes, sir.

Q. Where is he?

A. He's seated to my left with the white shirt on with a goatee.

Q. The defendant?

A. Yes, sir.

Q. Okay. Did you mention where the passenger was located in the vehicle?

A. The passenger was in the seat directly, it would be the number 6 and 5 seat kind of slouched over.

Q. So that would be, I guess, the middle towards --

A. The middle.

Q. -- towards the rear driver's side?

A. Towards the middle towards the rear. More towards the middle of the car.

Q. In the back seat, right?

A. Yes. He was in the back seat.

MR. McNAIR: That's all the questions I have. Please answer anything Mr. Mauldin has.

THE WITNESS: Yes, sir.

CROSS EXAMINATION

BY MR. MAULDIN:

Q. Trooper Lee, you mentioned when you pulled over the car a lot of numbers and you were talking about a number 6 passenger. You mean there were six people in the car?

A. No, sir. I'll be more than happy to show you how I number the seats.

Q. Well, if you could tell us. What number would the driver be?

A. The driver would be in the number 1 seat and if there is a seat for - the number 2 seat would be right beside the driver and then the number 3 seat is the passenger, front passenger and the number 4 seat is directly behind the driver, 5 seat would be behind in the middle in the back seat and 6 would be the passenger rear.

Q. Okay.

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A. That's just how we number occupants in collision reports.

Q. And the Solicitor showed you a still from your in car video system; is that correct?

A. That's correct.

Q. But your video system actually went down and the actual, the video, the visual part of it kind of broke down and you don't have any visual of the stop or your actions thereafter; is that correct?

A. That is correct. It did, however, still record audio.

MR. MAULDIN: No further questions, Your Honor.

MR. McNAIR: Nothing further, Your Honor.

THE COURT: All right. Thank you very much, Trooper. Any objection to Trooper Lee being excused?

MR. MAULDIN: No, Your Honor.

THE COURT: Thank you very much, sir. You're free to go. You may call your next witness.

MR. McNAIR: The State calls Trooper Jason Snider.

Thereupon,

TROOPER JASON SNIDER

after having been first duly sworn, testified as follows,

THE CLERK: Have a seat over there. Once you're seated, state your full name spelling your last for the record, please.

THE WITNESS: Jason Gregory Snider, S-n-i-d-e-r.

DIRECT EXAMINATION

BY MR. McNAIR:

Q. Trooper Snider, how long have you worked for the Highway Patrol?

A. Seven years.

Q. What's your position there now?

A. I'm a Lance Corporal.

Q. Do you patrol a particular area of the state?

A. Yes, sir. Lexington County. Troop 1, Post C.

Q. Do you have any prior law enforcement experience?

A. No, sir. After college I did five years in the U.S. Coast Guard.

Q. How did you first become involved in this case?

A. On the 24th of January 2014, I was working routine patrol in Lexington County when they gave out a BOLO of a possible armed robbery and the vehicle was tagged. Once another trooper got in behind the vehicle I proceeded to his location and --

Q. Was that Trooper Lee?

A. Yes, sir.

Q. Did you respond to assist Trooper Lee?

A. Yes, sir.

Q. Where did you first meet up with him?

A. I was at 321 and 21 split or between Star Mountain

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Road on 321 near Blanchard Cat checking on an abandoned vehicle. Trooper Lee had indicated at that time that he was coming into Swansea on 321, was possibly behind the vehicle we were looking for in the armed robbery. At that time I went ahead and initiated my lights and siren, started down 321 southbound towards Swansea and Gaston area because he can't conduct a traffic stop of that nature without having another vehicle present.

Q. Okay. What was going on when you got to that location?

A. I took 321 down to SC 3. Once I pulled up on scene he had another officer out there from Swansea PD. When I pulled up, they were at that time getting three gentlemen out of the vehicle. There were two people still in the vehicle conducting a felony traffic stop which we call one person back at a time to clear the vehicle. While they were doing that, I approached the rear, I believe, of Trooper Lee's car. As I approached, I was there maybe 15 seconds or so, and that's when one of the subjects jumped into the driver's seat and took off. At that time I ran back to my patrol car and then I had to catch up with them and then begin a pursuit.

Q. Okay. Did you have your blue lights and your sirens on?

A. Yes, sir, per policy.

Q. Did that vehicle slow down?

A. No, sir. He, as a matter of fact, he wound up passing two cars over a double yellow proceeding on down Highway 3. At that time I was in pursuit and in speeds in excess of a hundred miles an hour.

Q. I was going to ask you, how fast did you all get up to?

A. I don't recall the exact maximum speed. I know I was around 120 to catch up and then once I got in behind him we leveled off at about 108, 110 miles an hour.

Q. Okay. You said there were some other cars in front of you all that night?

A. I think I recall passing one or two cars.

Q. Was that on a double yellow line?

A. Yes, sir. There's a couple straightaways on that road. At one point we did make the pass. From what I recall it was double yellow.

Q. How long would you say you pursued them for?

A. I don't know the exact minutes. Maybe anywhere between five to eight minutes.

Q. Okay. Well, did you ever get close to them?

A. Yes, sir. I finally closed the gap because I had to run back to my vehicle so he had a little bit of a jump on me. Once I caught up with him, we leveled out and I was safe enough off of him where I could avert any kind of collision or anything that might have happened in front of me, but at

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one point I got close enough to where I could see inside the vehicle.

Q. How can you see inside the vehicle?

A. When I run my blue lights, I have my take down lights as well. They flash. And they pretty much light a vehicle up so I can see.

Q. Are those like spotlights?

A. Yes, sir.

Q. Could you see the profile of the individuals inside the vehicle?

A. Yes, sir. I could tell whoever was driving the vehicle had dreadlocks, not a shaved head. There's a silhouette of that. I didn't know at the time if it was a female or a male.

Q. Right. But you could tell the driver had long hair?

A. Long hair. Yes, sir.

Q. Did you see anybody else in the vehicle?

A. Uhm, I thought at times I could see somebody in the back seat, but I wasn't a hundred percent, but I do remember the person driving the vehicle a vision of that from the back.

Q. Okay. Well, how did the pursuit end?

A. As we were coming down Highway 3 to 178, it's a four way stop intersection, there's a bad sharp curve that comes

into that. I knew going at the speeds we were at in excess of a hundred, I couldn't take that. I couldn't chance taking that curve at that kind of speed. That's when I started backing off because I knew the curve was coming up so I backed down to probably about 80 miles an hour and that's when the back tires go out on it. He goes sideways through what I thought was like a telephone pole or a pole of some type. At that point they're sliding off, start wrecking. I'm looking to make sure nothing is going to fall on me and then they basically go into the wood line across Highway 178 at the four way stop and I lose sight for a few seconds of the vehicle.

Q. How far would you say it was from when they went off the road to when they went into the woods?

A. Probably at least a hundred yards or so.

Q. Okay. When you got to the point where they went into the woods, what did you do?

A. Well, I immediately started looking for the vehicle and then another, by this time other law enforcement agencies started converging on the same location. I believe it was me and a Lexington County deputy started looking through the woods trying to see where the entry point was at, but it was blocked by all the trees that had fallen down. I returned to my car to turn the siren off. That way we can kind of hear each other better and I believe at that point somebody said

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there was an entrance on the backside of where the car went in. There's a house and there's actually an entry point into the woods and we wound up going around the tree line and coming through the back side and that's where we located the vehicle.

Q. So were you the first ones to get to the vehicle?

A. Probably either the second or third, yes, sir.

Q. Who was with you at that time, do you remember?

A. Brandon Lee and then deputy -- I can't remember his last name.

Q. Okay. How many occupants were in the vehicle that you could tell?

A. First all I saw was the driver or the person behind the driver's seat. The airbag was deployed and there was a tree pretty much pinning him into the driver's seat. We demanded him to show us his hands because obviously we have an armed robbery so we're worried about weapons in the vehicle.

Q. Was he conscious?

A. Yes, sir.

Q. Was he talking?

A. Mumbling and just kind of -- I don't recall any words being said, but he was conscious, yes, sir.

Q. Okay. And what position was he in? Was he upright?

A. He was upright pretty much like this (indicating.)

Because of the way the tree was and the airbag, his hands were pretty much pinned up.

Q. Could he move?

A. He could move his arms. That was about it. And then at that time I noticed -- Sorry.

Q. Go ahead.

A. At that time as we're trying to clear the car I noticed there was another subject in the back seat face down with short hair.

Q. Was he conscious or unconscious?

A. No, sir. He actually had kind of death gurgles is what we call them. I have been around numerous people passing in the car or in the process of dying in a car in a collision and they kind of gurgle and he was kind of basically in that position.

Q. And you said he had short hair?

A. Yes, sir.

Q. And when you saw the driver, what kind of hair did he have?

A. I guess longer, I guess, dreadlock type hair.

Q. Okay. Do you see him in the courtroom here today?

A. Yes, sir.

Q. Will you point him out?

A. (Indicating.)

Q. You're pointing to the defendant over there?

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A. Yes, sir.

Q. Okay. Now, where you initiated this pursuit, where this pursuit ended, was all that in Lexington County?

A. Yes, sir.

Q. Those are all public roadways, correct?

A. Yes, sir.

Q. Did you see any guns in the vehicle?

A. Uhm, the only gun I came in contact with was one in the passenger seat.

Q. Did you see it?

A. Yes, sir. It was a black gun. It had like I think either a flashlight or a laser sight on it.

Q. Okay. It was in the passenger seat?

A. Yes, sir. Me and the deputy at that point we normally don't like to reach in the car, but obviously because of the situation we had our guns trained on him and we made the decision, he reached in and secured the weapon while I kept my gun in the direction of the subject in the vehicle.

Q. Now, your car has an in car recording system?

A. Yes, sir. It's a Watch Guard digital DVD.

Q. Was it operating that night?

A. Yes, sir.

(Whereupon, State's Exhibit #3 marked for Identification.)

BY MR. McNAIR:

Q. Have you previously watched a copy of your video from that night?

A. Yes, sir.

Q. Did that copy accurately reflect things as they happened on January 24th, 2014?

A. Yes, sir.

Q. Is State's 3 a copy from your camera system?

A. Yes, sir.

Q. Okay. How do you recognize that?

A. First of all, it's got my name on it in print and it's got my initials on the bottom.

Q. So this is a copy you watched previously?

A. Yes, sir.

MR. McNAIR: Your Honor, we move State's 3 into evidence.

MR. MAULDIN: No objection, Your Honor.

THE COURT: State's 3 is in evidence without objection.

(Playing video.)

BY MR. McNAIR:

Q. Trooper Snider, do you recognize the individual in the video?

A. That's me.

Q. You just pulled up to where Trooper Lee was?

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A. Yes, sir.

(Playing video.)

BY MR. McNAIR:

Q. Now, real quick. Your camera system reflects time as well?

A. Yes, sir. The top would show the time and date which is January 24th, 2014 at 04:38 hours. Underneath that that's my map log with my location. The bottom shows my speed off the GPS. A91 was my call number at the time and then LSM stands for lights, siren and microphone.

(Playing video.)

BY MR. McNAIR:

Q. Okay. Is that the suspect vehicle in front of you?

A. Yes. The one that just passed on the double yellow line.

(Playing video.)

BY MR. McNAIR:

Q. Just passed another vehicle?

A. Yes, sir.

(Playing video.)

BY MR. McNAIR:

Q. Now, I guess even though you can't really tell in this video, can you see inside the vehicle at this point?

A. Yes.

Q. Are you close enough to see inside the vehicle?

A. Yes, sir, because the video don't show how bright actually the lights and stuff are and plus on top of that the camera sits back inside of your patrol car so it has to go through the windshield and out where you're driving it's kind of sitting.

Q. Are you closer than it appears on video?

A. Yes, sir.

(Playing video.)

BY MR. McNAIR:

Q. Now, are you able to get to the vehicle from this side?

A. No, sir.

Q. You had to go around to the left?

A. To the left on the Highway 3 side because on that side it's pretty thick, but we couldn't even tell exactly where the car went in at at that point. We just knew --

Q. Did the vehicle flip?

A. It appeared to have flipped. Like I said, whenever I was approaching the intersection, when I saw him start going sideways through the pole, that's when I kind of looked to make sure nothing was going to get me so I started looking to the left and then by the time I looked back up it had pretty much went over 178 and that's the last time I saw it before it got sucked into the trees.

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Q. So based on that video it appeared -- You at one point got up to 128 miles per hour?

A. Yes, sir.

Q. But when you're behind the vehicle you get up to 108?

A. Yes, sir.

(Whereupon, State's Exhibits #4 through #17 marked for Identification.)

BY MR. McNAIR:

Q. All right. Your camera system records GPS coordinates as well; is that correct?

A. Yes, sir.

Q. Let me show you State's 4 and 5 and ask you if you can tell us what that represents?

A. Number 4 shows where Trooper Lee pulled the vehicle over just on SC 3 up on 321. That's where I first, you see me pull in behind his vehicle. I'm the next vehicle to approach.

Q. That corresponds with GPS coordinates obtained from your camera system?

A. Yes, sir. It's 33 degrees 42.9 and then west 81.

Q. What is exhibit 5?

A. I'm sorry.

Q. What is exhibit 5?

A. Exhibit 5 basically shows my camera system with the

lat and long and it corresponds with the lat and long for SC 3.

MR. McNAIR: Your Honor, we would offer State's 4 and 5 into evidence.

MR. MAULDIN: No objection, Your Honor.

THE COURT: 4 and 5 are in evidence without objection.

BY MR. McNAIR:

Q. I show you State's 6 and 7. What does State's 6 represent?

A. Where the collision actually occurred at the end of the video where you see it happen 178 and SC 3 and it has the GPS coordinates. Those GPS coordinates correspond with my dash cam. It shows the route the vehicle plotted.

Q. And State's 7 is a still shot from your video system?

A. Yes, sir.

MR. McNAIR: Your Honor, we would offer State's 6 and 7 in evidence.

MR. MAULDIN: No objection, Your Honor.

THE COURT: Without objection 6 and 7 are in evidence.

BY MR. McNAIR:

Q. I show you State's 8 through 17. Take a look through these.

A. (Witness complies.)

Q. Do all of those photographs accurately represent the way things appeared on January 24th, 2014?

A. Yes, sir.

MR. McNAIR: Your Honor, we would offer State's 8 through 17 into evidence.

MR. MAULDIN: No objection, Your Honor.

THE COURT: Without objection State's 8 through 17 are in evidence.

BY MR. McNAIR:

Q. All right. State's 4, you said this represents where you initially pulled behind Trooper Lee, correct?

A. Yes, sir. That's where he was conducting a felony traffic stop at.

Q. On Highway 3?

A. Yes, sir.

Q. State's 5 you said is a still shot from your camera system?

A. Yes, sir. That's my call number on the bottom right A91 and lat and long is at the top.

Q. What time did you arrive?

A. Appears about 04:38 a.m.

Q. Okay. State's 6?

A. That's where the collision ended or where the collision occurred and the chase ended at that point, 178 and

SC 3.

Q. State's 7 is again from your camera system?

A. Yes, sir. Call numbers on the bottom right and the same as lat and long.

Q. So the pursuit ended at what time?

A. 04:41.

Q. Okay. Now, State's 4, that's already in evidence, when Trooper Lee first spotted the vehicle what time is reflected on his camera system? Can you tell?

A. I can't see, sir. 04:27.

Q. Okay. So he spotted the vehicle at 04:27 picked up on his camera system, then you got there at 04:38?

A. Yes, sir.

Q. The pursuit ended at 04:41?

A. Yes, sir.

Q. This is State's 8. What does that reflect? It's hard to see, but there's some orange marks here on the pavement.

A. Yes, sir. That would have been put down probably by Lexington County in order to investigate a collision any time we are involved.

Q. Is that approximately where the vehicle went off the road?

A. Yes, sir, in that vicinity.

Q. Okay. State's 9, what is this building here on the

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right?

A. I'm sorry, sir.

Q. What is that building that's reflected on the right side of that picture?

A. It's an old, I guess, gas station that's been there for probably 70 years or so. It's an abandoned building.

Q. Did the suspect vehicle appear to travel through that parking lot?

A. Yes, sir. There's a little porch overhang that had some wooded poles that come down and it appears with those marks that they would be from the tires sliding across the pavement and went directly through the path of where the building was at.

Q. It's hard to see this, but State's 10, does that show - is that - are we looking at --

A. That should be --

Q. -- 178?

A. 178, yes, sir.

Q. Okay. So that's what the vehicle crossed. State's 11?

A. That would be where he entered into the wood line and that mark right there with the orange would show where it left the roadway.

Q. Okay. State's 12?

A. Another - that's the same - it's a little bit closer

version of where the vehicle went in and struck the sign and where it went through the woods.

Q. Okay. And you couldn't get to the vehicle from this direction?

A. No, sir.

Q. State's 13, this appears to be the other side?

A. Yes, sir. Because there's a clearing. This is these people's yard per se. We had to basically -- The last picture is showing the entry where the vehicle went through the woods. If you're looking at the woods from where my car is at and go to the left, you had to wrap back around towards the back side of the woods so if you could see through those woods, you would be looking at the front of my patrol car.

Q. Okay. So is this the way you had to get access to the vehicle?

A. Yes, sir.

Q. State's 14, I guess about the same thing?

A. Yes, sir. You get a better visual of the car. That's a vehicle bumper. This is where we had to enter through to get access to the vehicle.

Q. A close up of the vehicle?

A. Yes, sir. Obviously that's the passenger side facing us.

Q. Okay. Now, when you first got there, was the roof cut open like that?

A. No, sir. That was done by the fire department for extrication.

Q. Okay. Could you get around to the driver's side from this?

A. No, sir. We had to approach from the passenger side.

Q. Okay. Why couldn't you get to the driver's side?

A. There was trees. In particular one larger tree that was kind of wedged around where the driver's side door is at.

Q. Okay. So all entry into the vehicle had to come from this side?

A. Yes, sir.

Q. A picture of the tag number of the vehicle?

A. Yes, sir.

Q. Now, this is a picture of the driver's side, correct?

A. Yes, sir.

Q. Okay. Did they have to cut any trees down to even get to that?

A. Uhm, I know they did on the passenger side. Uhm, I don't know because I didn't really watch them cut down. Once they started extrication I didn't get a chance to see all they cut down from the driver's side.

MR. McNAIR: That's all we have at this time.

Please answer any questions Mr. Mauldin has.

THE WITNESS: Yes, sir.

CROSS EXAMINATION

BY MR. MAULDIN:

Q. Trooper Snider, let's just make it clear. Those photos were taken after Raphael and the passenger were airlifted to the hospital; is that right?

A. Yes, sir.

Q. Okay. And the chase in the video you said it began at 4:38 and ended at 4:41?

A. Yes, sir.

Q. Okay. So that's closer to three minutes, not eight minutes, correct?

A. Yes, sir.

Q. Okay. And you prepared a couple of reports. You typed out a couple of reports regarding this case, did you not?

A. Yes, sir.

Q. And in none of those reports you said that during the chase you were able to see in the vehicle or see the driver or anything like that, did you?

A. In any reports did I put that?

Q. You didn't indicate that you were able to see in the vehicle during the chase and saw long hair?

A. No, sir, I didn't put it in my report.

Q. Those were two reports that you prepared?

A. It's two reports, but it's the same narrative for both.

MR. MAULDIN: No further questions.

MR. McNAIR: Nothing further, Your Honor.

THE COURT: Any objections to the Trooper being excused?

MR. MAULDIN: No, Your Honor.

MR. McNAIR: No, Your Honor.

THE COURT: Thank you very much, sir. You are free to go. Thank you.

MR. McNAIR: Your Honor, the State calls Officer John Mishoe.

Thereupon,

OFFICER JOHN MISHOE

after having been first duly sworn, testified as follows,

THE CLERK: Have a seat, please, sir. Once you're seated state your full name spelling your last on the record, please.

THE WITNESS: John Mishoe, M-i-s-h-o-e.

DIRECT EXAMINATION

BY MR. McNAIR:

Q. Officer Mishoe, how long have you worked for the Sheriff's Department?

A. Since August of 2011.

Q. Do you work a particular area of the county?

A. Yes, sir. I work in the south region. We cover Swansea, Horses Neck, Pelion, Fairview area.

Q. You're actually from Swansea, aren't you?

A. Yes, sir. Born and raised.

Q. You know that area?

A. Yes, sir.

Q. And were you on duty January 24th of last year?

A. Yes, sir, I was working night shift.

Q. And were you called out to Highway 3 and 178 that night?

A. Yes, sir, I was.

Q. What was that call in reference to?

A. I believe there was a armed robbery earlier in the night in our north region and the call I was made aware of was Highway Patrol had gotten behind a vehicle that was a suspect vehicle in the armed robbery down in the Swansea area and I was called as a back up unit to start going that way to assist them.

Q. Okay. Was the pursuit still going on by the time you got there?

A. Well, initially when I was made aware of the call, there wasn't a pursuit. I believe they were in the Swansea area. I think they were about to stop the vehicle. While I was headed that way down Highway 178, I was located in the

Pelion area they attempted to stop the vehicle. I believe they had stopped the vehicle and at one point a chase ensued going down Highway 3.

Q. Okay. What direction are you coming from towards that intersection of SC 3 and 178?

A. Highway 178 it comes from - from the area I was coming, I was coming from Pelion going down towards Highway 3. I'm headed, I guess it would be like southeast approximately and we actually intersect with Highway 3 down at the very bottom part of the county. I believe that's south roughly, southwest.

Q. Take a look at this map represented as State's 6. Now, this blue dot, that's the intersection of Highway 3 and 178, correct?

A. Correct, sir.

Q. Okay. So were you coming from down 178 from this direction (indicating)?

A. Yes, sir.

Q. All right. And describe for us what you saw as you approached that intersection.

A. Okay. As I'm coming down 178, I believe the last road before you get to the intersection is Pooles Mill Road. Once you pass Pooles Mill there's a sharp left hand curve. Right as I'm getting into the curve or coming out of the curve, I notice taillights from a vehicle just kind of

disappearing coming from my left going to my right just disappearing off in the distance.

Q. Did those taillights appear to be on the ground or elevated?

A. Elevated. I mean, they weren't like sky high, but it happened quick. All I saw was a flash of red and I recognized it as taillights, but I didn't know exactly what was going on at that point other than just something quick from left to right.

Q. How far away were you would you say from that point when you saw that?

A. Maybe 150 yards, something. Not very far considering that I'm traveling probably 65, 70 miles an hour at that point rounding that curve. I got to the intersection pretty quick. As it happened we're talking maybe three to five seconds from me being at that intersection to where I was.

Q. I got you. Is this the sharp curve you're talking about kind of right before the intersection?

A. Yes, sir.

Q. That's a short distance away, is it not?

A. Correct, sir. There's a little patch of water that goes up under the road so there's little guardrails right there in the curve and as I'm coming out of that curve passing the guardrails is when I actually noticed the

taillights.

Q. Okay. What did you do when you got to the intersection?

A. As I'm approaching the intersection is when I noticed the trooper's vehicle and I noticed Trooper Snider actually with his gun drawn going left to right crossing over the road in front of me. It actually took me a split second longer than it should have just because as soon as I saw him running out on the road, I immediately backed off and kind of tried to figure out what's going on at that point. I ended up stopping. I had another officer behind me. We got out at that point and just like I said, I drew my weapon. Hey, man, was that the vehicle? What's going on? And at that point is when I realized that that vehicle was in the wood line. It was actually disappeared from sight. We couldn't see it from 178 so we just started scanning the area trying to locate the vehicle in the woods.

Q. Were you present when they found the vehicle?

A. Yes, sir, I was. I ended up staying on the 178 side of the wood line. Me and another officer we were going back and forth and I believe another trooper showed up. They ended up going down the Highway 3 side right there at the intersection. They located the vehicle and I could hear them yelling, calling verbal commands to, I guess, the occupants of the vehicle. I remember I said something like, Highway,

have you got them? Or something like that. Yeah. So that's when we run around the wood line and actually found where they went in the woods and went up to the car with them.

Q. How many occupants were in the vehicle? Did you see them?

A. There were two. There was one in the driver's seat and then there was one in the passenger, I want to say it was the passenger rear seat. When I actually went up to the vehicle, the one in the back seat was slumped over. I could see basically this side of him. He was kind of turned away from me. He was slumped over laying in the back seat.

Q. Was he unconscious?

A. Both of them were unconscious. Neither one of them were responding to me or Highway Patrol while I was there at the car. The driver, I think he was sitting kind of like this (indicating) slumped over and then like I said the guy in the back was slumped over to his left.

Q. Did you see the hair of the guy in the back?

A. The guy in the back had short hair.

Q. What about the driver?

A. He had long hair. I think dreadlocks or some sort of locks. He had long hair.

Q. Did you go up to vehicle?

A. Yes, sir. When I initially made my way back to where Highway was, they were still yelling commands. I

waited because at that point they are the contact. I'm trying not to get in their way. After a brief moment when I'm not seeing any movement, I told them, guys, we need to make contact to see what's going on in the car. I approached on the passenger side. Had to kind of pick my way through some brushes and trees. Actually had one of the troopers was covering me because I couldn't do it one handed. I had to break limbs and stuff to climb up to the car. When I got up to the car, like I said, I saw the driver and the passenger and neither one of them were conscious at the time.

Q. Did you see anything else in the car that concerned you?

A. Yes, sir. As I looked over, I was looking in the passenger front, there's a handgun, a nine millimeter handgun laying down in the passenger seat. It's a couple inches away from the driver's hand where he was kind of laid back and to the right. There's a gun here. Immediately told them, hey, guys, I got a gun. I'm going to reach in because I need to at least secure it or bring it away from the occupants because medical isn't going to come near them while there's unsecured guns.

Q. So you said his hand was outstretched on the passenger seat?

A. Yes, sir. Kind of laid over to the passenger side.

Q. And that gun was inches from his hand?

A. Yes, sir. I mean, it's not far.

Q. You grabbed the gun?

A. Yes, sir. I reached over, grabbed the gun. The magazine was not in it. The magazine was either right there in the seat with it or it might have been between. It was right there in plain sight. I reached in and grabbed the gun. I just kind of told them, heads up and I just kind of reached back and tossed it away from the car.

Q. Did you clear it before you tossed it?

A. I did not. I just tossed it immediately because we were still - I didn't know if one of them is waking up or the guy in the back seat, you know, he appeared to be unconscious. I don't know if he's faking or what's going on with him. I just immediately discarded the gun away from the car and brought my focus back to the occupants.

Q. Did you ever discover if that gun was loaded?

A. Yes, sir. Once we got more people to the scene where I felt comfortable getting away from the car, I immediately went back to where I discarded the gun and there was round in the chamber. I, you know, unchambered it. We basically picked up the gun, the round and the magazine and turned it over to the trooper.

Q. All right. Can you describe what the weapon looked like?

A. Yes, sir. I believe it was a Hi-Point nine millimeter. It's a little bit larger brand of handgun that had some sort of light or maybe a laser attached to it just underneath.

Q. What color was it?

A. I believe it was black.

(Whereupon, State's Exhibit #18 marked for Identification.)

BY MR. McNAIR:

Q. I'm going to show you what's been marked as State's exhibit number 18. Do you recognize that?

A. Yes, sir. That's the weapon.

Q. That's the weapon you retrieved from the passenger seat of that vehicle that day, that night?

A. Yes, sir. I picked it up with my hand around the trigger guard so I'm not actually near the trigger, picked it up between that and the slide and tossed it. Yes, sir. That's the same one.

MR. McNAIR: Your Honor, we offer State's 18 in evidence.

MR. MAULDIN: No objection.

THE COURT: Without objection State's 18 is in evidence.

BY MR. McNAIR:

Q. Now, the device under the barrel is what you're

referring to some type of laser site or something?

A. Yes, sir. I didn't look at it close enough to know if it was a light or a laser, but yes, sir, typically that's where those attachments go.

THE COURT: Is that the nine millimeter?

THE WITNESS: That's the nine millimeter.

BY MR. McNAIR:

Q. That's the nine millimeter Hi-Point?

A. Yes, sir. Hi-Point should be the name brand. And also just by the way it's shaped that's consistent.

Q. And the magazine was separate from the actual pistol?

A. Yes, sir. It had been ejected.

Q. Were there bullets in the magazine as well?

A. Yes, sir. I did never count the actual bullets in the magazine, but there was at least one showing at the top.

Q. And one in the chamber?

A. Yes, sir. There was one that I also cleared from the chamber. I don't know the specific number, one or two that I saw like on the floor board.

MR. McNAIR: That's all the questions I have at this time.

THE COURT: Mr. Mauldin, any questions of this officer.

CROSS EXAMINATION

BY MR. MAULDIN:

Q. Deputy Mishoe, you said when you were able to observe the occupants in the car, they were both unconscious and slumped over; is that correct?

A. Yes, sir.

Q. And they were unresponsive?

A. Yes, sir.

Q. Did you do any kind of stimulus?

A. No. I called out to them, hey, buddy, are you okay? Something like that and I never got a response from either of them.

Q. Now, the driver was pinned in by a tree limb or something like that --

A. Yes.

Q. -- is that correct?

A. Some sort of limb. It pierced the windshield.

Q. So that was kind of between him and the gun at the time you got it?

A. Yes, sir. It's actually sitting a little higher. I believe his arm might have been under the limb.

MR. MAULDIN: No further questions.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. McNAIR:

Q. You testified that his hand was outstretched on the passenger seat, right?

A. Yes, sir. I saw his hand and then his arm.

Q. So that limb wasn't blocking his hand from being where the gun was?

A. No. Like I said, from where it penetrated it was sitting up higher somewhere around his shoulder area.

Q. When Mr. Mauldin asked you if he was slumped over, he was upright in the driver's seat, correct?

A. Yes, sir. He was upright. He was kind of like leaning back and to the right kind of just like laying like this and his arm out.

MR. McNAIR: Okay. Thanks.

THE COURT: All right. Thank you very much. Any objection to this officer being excused?

MR. MAULDIN: No, Your Honor.

THE COURT: Thank you, sir. You're free to go. Will both of you step up real quick.

(Side bar off the record.)

THE COURT: On the record. Call your next witness.

MR. GRAHAM: The State calls Amanda Sucher.

Thereupon,

AMANDA SUCHER

after having been first duly sworn, testified as follows,

THE CLERK: Have a seat right up there, ma'am. Once

you're seated, state your full name spelling your last on the record, please.

THE WITNESS: My name is Amanda Marie Sucher, S-u-c-h-e-r.

DIRECT EXAMINATION

BY MR. GRAHAM:

Q. Ms. Sucher, where are you employed, ma'am?

A. Lexington County EMS Public Safety.

Q. And how long have you worked for Lexington County EMS Public Safety?

A. Two years and ten months.

Q. And what do you do there?

A. I'm a paramedic.

Q. What is a paramedic?

A. We're responsible for responding to 911 calls and taking care of critically ill and injured patients, tending to their needs and transporting them to the proper destination for definitive care.

Q. In the early morning hours of January 24th, 2014, were you working that morning?

A. Yes, sir.

Q. Did you receive a call to respond to a motor vehicle accident?

A. Yes, sir.

Q. What time did that call come into you?

A. Approximately -- Well 4:46.

Q. And where did you go?

A. We got dispatched to 3998 Pooles Mill Road which is right up there at the corner of 178 and Highway 3 where they intersect.

Q. And you say we. Was there somebody else with you?

A. My partner.

Q. What's his or her name?

A. Neal Price.

Q. What time did you arrive there?

A. 4:58.

Q. When you got on scene, can you tell the jury what was going on?

A. When we arrived on scene, there was officers already there. Fire department was there. We pulled up basically to car in the middle of a bunch of trees. There was a ditch on one side and the tress all around the car and the car was really damaged.

Q. Were you able to approach the car right then?

A. We were able to got close enough to look into the vehicle, but we were not able to get right up to the vehicle.

Q. What could you see from that point looking in the vehicle?

A. We could see two occupants in the vehicle. One of

which was in the front driver's seat pinned in and the second one was laying in the back seat.

Q. Physical description wise were you able to tell anything about the person in the front seat?

A. Uhm, just basically he was pinned into the front seat between a branch and like the steering wheel, had kind of long hair, and at that point he was just saying he was hurt.

Q. So he was conscious at that time?

A. Uhm, yes, he was conscious.

Q. How about the back seat passenger?

A. Uhm, no, he was not. We were able to see that he was - he was kind of laying slumped over on his left side on the back seat with his face towards the seat, but we were able to watch his back and see that he was taking respirations, but he would not respond to anything that we were doing.

Q. What had to happen before you could go treat people in the car?

A. Uhm, before we could go treat people in the car, the fire department had to basically cut a path back into the car so we could get our equipment and stuff back in there and they had to cut the back door off the vehicle for us to be able to access the patient in the back seat.

Q. And why were you treating the patient in the back

seat versus the front seat?

A. Because he was unresponsive with respirations that we don't consider adequate respirations. They were only eight per minute. They really should be between 12 and 18 per minute and the passenger in the front seat was verbally speaking so we knew that his airway was okay at that point.

Q. So after the fire services were able to cut the back passenger door and give you access to the individual in the back, what did you do?

A. Uhm, we immediately - we put him in what we call C spine precautions which we basically control their head and their neck to make sure that no big movements are made in case they have a spinal injury. We put a device called a C collar which is a collar that goes around their neck also to hold it in place and we were able to maneuver the patient onto a long spine board which is basically just a big long hard board that we lay somebody on again to protect their spine and moved him out of the vehicle onto our stretcher and into our ambulance.

Q. What do you remember about the hair style of the individual in the back seat?

A. All I remember is that it was short, kind of fuzzy. That's about it.

Q. And the individual in the back seat from your report that's Alexander Clemmons; isn't that correct?

A. Yes, sir.

Q. Once you got Mr. Clemmons on the board with his neck collar on, what did you have to do next?

A. Uhm, we - basically we do what's called a rapid trauma assessment. We basically look head to toe for anything that is going to cause the patient immediate death which would be any severe bleeding, any respiratory problems which we did identify. Also during this we reidentified and were able to place him on some oxygen and we look for any major bones sticking out, any major penetrating trauma to the chest cavity or anything that, basically anything that would cause him immediate life threatening problems.

Q. And what did you notice when you did that?

A. We just noticed that his respiratory rate was slow. We also noted that his pupils weren't reacting quite as quickly as they would in a normal person, uhm, and we also, uhm, he was not responsive to any kind of what we call stimuli. What we do, we have verbal stimuli which is where when you walk up on somebody and their eyes are closed and you talk to them, they open them and look back at. Painful stimuli is when you cause some kind of pain response. Usually we take our knuckles and rub them right here on their chest and usually if they respond to that, they'll either moan, groan, or look at you, and then we have what's called unresponsive which means we do all those things and they

don't react at all and he was unresponsive.

Q. When Mr. Clemmons was unresponsive, what did you do next?

A. We immediately loaded him into the ambulance and due to the condition that they were in when we got on scene, we already had helicopters coming to transport them to the hospital. So we basically put them in the back of the truck and went ahead and started moving towards the hospital or, I'm sorry, towards the landing zone.

Q. Had you started taking vital signs at this point?

A. We got our first set of vital signs like as soon as we got into the truck which you will see here in my record and that's when we started, basically started our care. I mean, he went straight from the car onto the stretcher into the truck within a matter of probably a minute, two minutes tops.

Q. And how long did it take you to go to the fire station where the landing zone was?

A. I think it was about two minutes. Yeah. Two minutes. Then we waited on the helicopter for approximately, six minutes waited for the helicopter.

Q. During that time that you were with Mr. Clemmons, can you tell the jury about his blood pressure and his respirations and recordings and what they meant to you?

A. Uhm, if you look at his record, we started off, we

have a set of vital signs that, uhm, is what we consider normal in a patient which would be just anybody walking and talking with no medical problems, that's what sets the normal range that we look at. His first set of vitals that we took, if you look at them, his blood pressure was 98 over 74. That's a little bit low and that can be indicative of shock or bleeding. His pulse rate was 86 and regular which means he had a regular heart rate. His respiratory was 8 which was low so we assisted him by putting a mask on his face and giving him additional - we let him breath 8 times a minute, but we also would give him a few extra breaths in between.

Pupils at that time were equal, but he was unconscious. We had him on oxygen and this to me is indicative of he's been in a major trauma. He could have a bled so we got an IV started and started running normal saline. It's basically sterile water that we put through an IV catheter into their vein to help raise their, you know, put, replace the volume that's being lost or what they might be bleeding out and help keep that blood pressure up.

If you look at my second set of vitals are pretty much the same, but if you look at my third set, uhm, got a blood pressure of 100 over 80. It came up some. Uhm, and everything else was within normal range at that point. And then if you notice, the next two set of vitals his blood pressure plummets. Generally that's indicative of a later

sign of shock which basically means we are not replacing fluids fast enough. He's bleeding out faster than we can put it in. Basically his vital signs to me, you know, as we got them in training is saying that this guy is going down hill at this point. I mean, time is of the essence with this.

Q. When you get to the landing zone and you're waiting for the helicopter, what are you doing as far as treatment at that point?

A. Uhm, treatment at that point we generally will go back over the patient and do what we call a secondary assessment. That's when we go back and look a little more detailed at things. We generally will cut the clothes off the patient at this point and make sure that they don't have any bones sticking out anywhere and it's standard in any trauma basically to get someone completely naked so that we can visualize everything and make sure that we don't miss anything that could be causing them a life threat.

(Whereupon, State's Exhibit #19 marked for Identification.)

BY MR. GRAHAM:

Q. I'll show you this and ask you if you recognize this.

A. That would be the jacket that I cut off the patient.

Q. How are you able to identify this?

A. I remember it from the fuzz around the hood and the orange, and plus one of the things we learn in school is to always do things with a routine, that way we don't forget anything in the heat of the moment and one of the things that I adopted a long time ago is a specific way of cutting clothes off a patient and that's how I cut clothes.

Q. Let me show you a photo and ask if you recognize that as being a fair and accurate photo of the jacket that we just discussed?

A. Yes, sir.

MR. McNAIR: Your Honor, the State would offer that photo into evidence.

MR. MAULDIN: No objection, Your Honor.

THE COURT: That's State's 19 in evidence.

BY MR. GRAHAM:

Q. So Mr. Clemmons had a jacket on that you had to cut off?

A. Yes, sir.

Q. Do you remember anything about the pants that he was wearing?

A. I remember that they were dark in color. They were jeans. And again I cut things off the same way every person every time so I would have a specific way of cutting it.

Q. His jeans needed to be cut off as well?

A. Yes, sir. We expose everything. We cut everything

off.

Q. When you cut off the jeans, what, if anything, did you notice?

A. We found weapon, a gun underneath his left knee.

Q. Let me show you a handgun. It has a safety lock on it because I know you're not too excited about guns. Do you recognize that gun?

A. Yes, sir.

Q. Okay. Is that the gun?

A. Yes, sir.

Q. So this gun was found when you cut off the dark jeans that Mr. Clemmons was wearing?

A. Yes, sir.

MR. McNAIR: Your Honor, the State would offer this into evidence at this time.

MR. MAULDIN: No objection, Your Honor.

THE COURT: Without objection, that's State's number 20 received in evidence.

BY MR. McNAIR:

Q. Ms. Sucher, after you got Mr. Clemmons' jacket and his jeans off, what did you notice about his physical condition at that time?

A. He had some, it's called abdominal distention. Basically what happens is everybody's abdominal cavity is soft and when you bleed into your abdominal cavity, there's

nowhere for it to go except for into that space so it makes the abdomen get bigger and it makes it become rigid or harder to the touch and we noticed that that had started to happen with Mr. Clemmons, that he was starting to get some distention and the stiffness in his abdomen.

Q. Did you notice anything called posturing?

A. When we were taking the patient - after -- Okay. When the helicopter landed, the helicopter crew took over care of that patient while we were still in the back of the ambulance. Once they take over care, my job is to assist them in getting that patient to their helicopter. Uhm, as we got the patient out of the back of the truck and started walking towards the helicopter, uhm, the patient did start to what we call posture. Uhm, when this happens it's generally indicative of a brain injury or traumatic brain injury and what I mean by posturing is it almost looks very, very similar, it looks very similar to a seizure in the aspect of their arms will either curl in and get very, very stiff and their feet included or they'll flex completely out like this (indicating) including their neck and flex back and that's what we call posturing. He did that on the way to the helicopter, yes.

Q. And you said that was indicative of what?

A. A traumatic brain injury or a head injury. A severe head injury.

MR. GRAHAM: Thank you, Ms. Sucher. Please answer any questions the defense has.

THE WITNESS: Yes, sir.

CROSS EXAMINATION

BY MR. MAULDIN:

Q. Ms. Sucher, it's been about a year since this happened; is that correct?

A. Yes, sir.

Q. And you must have responded to maybe a couple of hundred calls since then; is that correct?

A. Yes, sir.

Q. And when you do these calls, you often do reports; is that right?

A. Yes, sir.

Q. Okay. Basically for every call you have to do a report?

A. Yes, sir.

Q. Now, your report for this one did you - you notate a lot of things, but do you notate the hair styles and the clothing of anybody that you --

A. No, sir.

Q. You don't?

A. No, sir.

Q. So after hundreds of calls you're saying that you remember the particular clothes and descriptions of these

people?

A. Yes, sir.

Q. Okay. And it was your understanding that when you're treating the fellow, that he was a front seat passenger that landed in the back?

A. There was some talk on scene that, uhm --

MR. GRAHAM: Objection, Your Honor. Hearsay.

THE COURT: Sustained as to any hearsay.

MR. MAULDIN: No further questions, Your Honor.

MR. GRAHAM: Nothing on redirect, Your Honor.

THE COURT: Thank you very much, ma'am. You may step down. Any objections to this witness being excused?

MR. GRAHAM: No, Your Honor.

THE COURT: David, any objection?

MR. MAULDIN: No. No, Your Honor.

THE COURT: Okay. Thank you very much. All right. Folks, we're going to break at this time for lunch. I'm going to ask you, if you would, to be back in the jury room by 2:00. That gives you a couple hours for lunch and if you, please, continue to adhere to the instructions to have no conversation about the case with anybody. Don't allow anyone to talk with you. When you come back, we'll get started back at 2:00. Everyone else please remain seated while the members of the jury

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are excused.

(The jury was excused for lunch.)

THE COURT: All right. We'll then start back at 2:00, and we'll resume with the State's case at that time.

(Whereupon, there was a luncheon recess.)

THE BAILIFF: All rise. Court is now in session.

THE COURT: Okay. Please keep your seats.

All right. Anything from the State before we bring the jury out?

MR. GRAHAM: No, Your Honor.

THE COURT: The Defense?

MR. MAULDIN: No, Your Honor.

THE COURT: All right. Let's bring them out, please.

(The jury returns to the courtroom.)

THE COURT: All right. Folks, I hope everyone had a good lunch break and are ready to get started back. If you recall, we were on the State's case when we took the lunch break and so we'll pick up there with the State's next witness.

MR. GRAHAM: Thank you, Your Honor. The state calls Neal Price.

THE COURT: Sir, if you please come around to be sworn.

Thereupon,

NEAL PRICE

after having been first duly sworn, testified as follows,

THE CLERK: Would you please have a seat up here and state your full name spelling your last name for the record please.

THE WITNESS: Neal Price, P-r-i-c-e.

DIRECT EXAMINATION

BY MR. GRAHAM:

Q. Neal, were are you employed?

A. Lexington County EMS.

Q. Is that a full time job or a part-time job?

A. I'm part-time.

Q. And how long have you had that job?

A. August of 2010.

Q. What do you do for Lexington County?

A. I serve as an advanced EMT.

Q. You also have another job as well?

A. I do.

Q. What is that?

A. I work as a medical representative at V.C. Summer Nuclear Plant.

Q. In your job -- What's an advanced EMT?

A. I serve just as a basically as an assistant to the paramedic. I'm a crew member on an ambulance. Assistant to

the paramedic.

Q. January 25th of 2014 who was the paramedic that you were working with?

A. Amanda Sucher.

Q. And did you and Amanda have an opportunity to respond to a motor vehicle accident down in the Swansea area of the county?

A. We did.

Q. Do you remember that call?

A. I do.

Q. Do you have your run sheet with you?

A. I do, yes.

Q. What time did you get there, you and Amanda get there?

A. Let's see. We arrived on scene at 4:58 in the morning.

Q. As the EMT, do you get to drive or do you get to ride?

A. That morning I drove.

Q. What was unusual about this call?

A. It was the, probably in the amount of resources that were used on this call. Responding to that call. I'll just start from the beginning. As we were sitting in Swansea, I remember Highway Patrol zooming past us and then whenever we actually got the call at 4:46 in the morning, we arrived on

scene to find a lot of Highway Patrol officers there and then my captain had also responded and then also putting two people on a helicopter.

Q. As a part time advanced EMT have you had a lot of calls like that?

A. Uhm, I have only flown two people out in my career since then, since August of 2010 so I haven't actually put that many people on a helicopter and then that was a serious, you know, injured, the patients were quite injured in that call so...

Q. When you and Amanda got down there, were you able to immediately get into the vehicle?

A. No. When we first arrived there, we parked on the first stretch like it's a four way stop there so we parked and then we followed the fire department in and we had to go around the woods and we arrived at the vehicle that was in the collision and so what I had to do is I kind of - I let my partner kind of look in the windows and see if she could see the patients and then my perspective was to kind of look to see how I could gain access inside the vehicle so I circled the vehicle looking for a way into it to help the occupants.

Q. Were you able to find a way in?

A. Uhm, after I circled it a couple times and we found the first access on the back rear door, back rear passenger

door.

Q. Did the fire services help you gain access through there?

A. They did.

Q. Once you an Amanda had access, what did you all see inside the back?

A. Uhm, we found a, uhm, black male lying on his side and he was unresponsive.

Q. And that's Alexander Clemmons? That's the individual you and Amanda were treating?

A. That's correct.

Q. You put a C collar on him and you got him out. What was your job during that time?

A. Uhm, I worked on just getting him -- Once we got that door open and I made access to that patient, we put him on a long spine board and then we just began care and got him onto the stretcher and into the ambulance.

Q. Do you remember what your job was in providing care to Mr. Clemmons?

A. Yes. Uhm, as I - as we got him out, my partner began just assessing him and then I remember that he was barely breathing and in Amanda's notes it says he was breathing eight times a minute so I remember ventilating the patient and so my job was pretty much to maintain his airway.

Q. When you say ventilate and maintain an airway, can you tell the jury what you mean?

A. Right. What happens, you know, when a person is not breathing normally or adequately, you have to ventilate them using a bag valve mask. It's literally a bag with a valve and you squeeze it and we had it hooked up to oxygen so we were giving him a hundred percent oxygen by ventilating him or giving him the breaths because he couldn't do it himself.

Q. So you're up there working around his face and his head?

A. Right. I was behind him. I was behind the patient.

Q. What do you remember about the hair style of Mr. Clemmons as you were providing care to him?

A. Mr. Clemmons' hair style was the frizzy fro type, shorter hair, black hair.

Q. Do you remember anything about the driver of the vehicle?

A. When I was working on Mr. Clemmons, I was in the back seat so as I was looking forward I remember the driver was, he was yelling to get him out of the vehicle and as far as features, uhm, it's just from the back seat view forward it was just his hair style and it was dreads.

Q. Do you remember how long they were?

A. I don't.

Q. As you took Mr. Clemmons, you and Amanda took him in the ambulance over to the fire station and waited for the helicopter and then got him ready for the helicopter, were you present when his jacket and pants were cut off?

A. I was present, yes.

Q. When his pants were cut off, what did you all see?

A. When Amanda cut his pants off, we found a pistol underneath his left leg.

Q. Let me show you what's been marked as State's exhibit number 20 and ask you if you recognize that pistol?

A. That's the pistol that we found.

MR. GRAHAM. Neal, I appreciate you answering the questions. If you could answer any questions that Mr. Mauldin has. Thank you.

MR. MAULDIN: I have no questions for this witness, Your Honor.

THE COURT: All right. Any objections to this witness being excused?

MR. MAULDIN: No, Your Honor.

THE COURT: Thank you very much, sir. You're free to go. Thank you for being here. You may call your next witness.

MR. McNAIR: The State calls Jeff Berry.

Thereupon,

JEFFREY BERRY

after having been first duly sworn, testified as follows,

THE CLERK: Please, come up here and state you full name spelling your last name for the record.

THE WITNESS: Jeffrey Berry, B-e-r-r-y.

DIRECT EXAMINATION

BY MR. McNAIR:

Q. Mr. Berry, where do you work?

A. I work for Lexington County Fire Service.

Q. Where are you based out of?

A. Swansea.

Q. Okay. Now, on January 24th, 2014, did you respond to a wreck at the intersection of South Carolina Highway 3 and 178?

A. Yes, sir.

Q. What is the fire department's role in a situation like that?

A. Our role is to secure power, secure the vehicle, and then to extricate patients and assist EMS with getting them to where ever they need to go.

Q. What was going on when you got to the vehicle?

A. When I got to the vehicle, it was heavily into the woods. We had to take a chain saw and cut trees out of the way to get back to the vehicle. Then when we found the two patients inside the vehicle, one in the front seat, one in

the rear, then we began extrication of the vehicle to get the patients out.

Q. Who did you all begin to try to extricate first?

A. We always go for the more critical patient which was the guy in the back seat.

Q. What did his condition appear to be?

A. His condition, he was unconscious, in and out of consciousness at that time, mainly unconscious.

Q. Okay. How about the driver?

A. The driver was alert and conscious and screaming in the front seat.

Q. What was he talking about?

A. He was saying I can't breathe the whole entire time.

Q. Okay. Now, as far as a description of the individuals in the vehicle, what do you remember about the driver?

A. The one who was in the driver seat had longer hair, something like dreads.

Q. Okay. Who were you dealing with primarily?

A. Uhm, I was primarily, uhm, we went for the guy in the back seat first. Uhm, I did not help with extrication. They popped the door on the back seat which is simply placing the spreaders on the C post and popping the door open and then we got him out and I helped get him on the spine board

and loaded him up in the ambulance and I drove the ambulance to the landing zone.

Q. What do you remember about the physical description of the rear passenger who you were dealing with?

A. Uhm, he had shorter hair. Uhm, it was kind of, uhm, I guess an afro. Short afro.

Q. He didn't have dreads?

A. No, sir.

Q. Do you remember anything about his clothing?

A. Uhm, he had - the only thing I remember is that he had dark, darker jeans on.

Q. When you say dark, like dark blue, black?

A. Uhm, they would have been more of a dark blue.

Q. Okay.

(Whereupon, State's Exhibits #21 through #23 marked for Identification.)

BY MR. McNAIR:

Q. I'll show you what's been marked as State's number 21 through 23. Take a look at those.

A. (Witness complies.) That's where the first patient was that we transported from the back seat.

Q. You're referring to State's 21?

A. Yep, State's 21.

Q. What's 22?

A. State's 22, that would be the C post where we

inserted our spreaders to pop the door on that one to get him out. And then 23 would be the whole car.

Q. Do all these pictures accurately reflect the way things looked on January 24th, 2014?

A. Yes, sir.

MR. McNAIR: Your Honor, we would offer State's 21 through 23 into evidence.

MR. MAULDIN: No objection, Your Honor.

THE COURT: Without objection State's 21 through 23 are in evidence.

BY MR. McNAIR:

Q. All right. This is State's 21. What does this show?

A. That would be the back seat where we got the first patient out of. He was laying face down on the seat.

Q. Which side was his head facing?

A. His face was facing into the seat. He was unconscious.

Q. Was he leaning one way or the other?

A. No. He was laying face down.

Q. Okay. All right. State's 22. Was the roof like that when you all first got there?

A. No, sir.

Q. Is that what the fire department did?

A. Yes, we did.

Q. Did you have to do that to get access to the rear passenger?

A. I was personally not involved when they did that. To do that for the rear passenger? No. We just popped the door for the rear passenger.

Q. Okay. Again, the fire department cut the beam in between the front and the rear and popped the roof off of it?

A. Yes. There's three posts, but that did not happen until we got the driver out.

Q. Okay. Once you got that rear passenger out, where did you take him?

A. I took him to Mack Edisto Fire Department where we had a helicopter coming in to pick him up.

Q. Okay. Were you with Amanda Sucher and Neal Price?

A. Yes. I was driving them.

Q. Okay. You drove the ambulance?

A. (Witness nodding head.)

Q. Okay. Were you present when Mr. Clemmons' clothes were removed?

A. I was not.

Q. Okay. Do you recall seeing anything they found in Mr. Clemmons' clothes at the LZ?

A. Yes. They found a gun on him.

Q. Did you see the gun?

A. Yes, per I touched it. They handed it to me.

Q. I show you State's 20. Is that the gun that you remember seeing?

A. Yes, that is.

MR. McNAIR: That's all the questions I have for you. Thanks.

MR. MAULDIN: I have no questions for this witness, Your Honor.

THE COURT: All right. Thank you very much, sir. Any objections to this witness being excused?

MR. MAULDIN: No, Your Honor.

THE COURT: Thank you very much, sir. You're free to go. Call your next witness.

MR. McNAIR: The State calls Matthew Roulette.

Thereupon,

MATTHEW ROWLETTE

after having been first duly sworn, testified as follows,

THE CLERK: Have a seat, sir, and once you're seated state your full name spelling your last name on the record, please.

THE WITNESS: Matthew Rowlette, R-o-w-l-e-t-t-e.

DIRECT EXAMINATION

BY MR. McNAIR:

Q. Mr. Rowlette, where do you work?

A. Lexington County Fire Service.

Q. Do you work with Mr. Berry who just testified?
A. Yes, sir.
Q. How long have you been with the fire department?
A. Five years.
Q. Do you have a particular position there?
A. I'm an apparatus operator.
Q. What does an apparatus operator do?
A. I operate the apparatus. I'm in charge of driving the truck and operating the pump on the truck.
Q. Now, on January 24th of last year did you respond to a wreck at the intersection of 178 and SC 3?
A. Yes, sir.
Q. What was your involvement in that?
A. My involvement was support. I was the third apparatus on the scene. I provided myself and manpowered the assist with patient care.
Q. What was going on at the scene when you got there?
A. Extrication of the first victim and the packaging and loading of that first victim.
Q. When you say the first victim, where were they situated in the vehicle?
A. The rear seat, back seat.
Q. Okay. Did you help extricate with that individual?
A. Uhm, I helped load him. I packaged him onto the

spine board and moved him to the ambulance.

Q. Do you recall the physical description of that person?

A. African American male, short hair. Nothing else.

Q. Okay. Did you also deal with the driver?

A. I did, yes, sir.

Q. Okay. What was his condition when you got on scene?

A. The driver?

Q. Yes.

A. Was conscious. He was talking. He was pinned in the front seat, but he was conscious and talking.

Q. Were you able to get to the driver to get him out?

A. He was pinned in by a tree, but we did have to extricate him out of the vehicle.

Q. How were you able to extricate him?

A. Uhm, my role in it was to help get tools to the scene or to the actual vehicle. Uhm, the doors had to be removed on the passenger side of the vehicle and roof had to be removed and also trees had to be cut.

Q. Did you have to remove the roof in order to get to the driver?

A. Yes, sir.

Q. All right. Do you recall anything about the driver?

A. I do recall that he had dreadlocks and light in color jeans. That was about all.

Q. Okay. Light as in whitish color? Grayish color?

A. Light blue denim.

MR. McNAIR: That's all the questions I have for you. Thanks.

MR. MAULDIN: I have no questions for this witness, Your Honor.

THE COURT: Thank you very much, sir. You're free to go.

MR. GRAHAM: The State calls Mike Phipps.

Thereupon,

MICHAEL PHIPPS

after having been first duly sworn, testified as follows,

THE CLERK: Once you're seated, state your full name spelling your last on the record, please.

THE WITNESS: Michael Phipps, P-h-i-p-p-s.

DIRECT EXAMINATION

BY MR. GRAHAM:

Q. Mr. Phipps, where are you employed?

A. Lexington County Sheriff's Department.

Q. How long have you worked there?

A. Just over 17 years.

Q. In your most current job, what do you do now?

A. Assigned to the crime scene unit, but currently

working in computer forensics, digital forensics.

Q. The computer and digital, when you say digital forensics, what does that mean?

A. Taking a device that has information on it whether it's a computer, cell phone, a memory card, and trying to extract that information off of it.

Q. Back in January of last year in addition to doing digital forensics did you also have a more active role in responding to crime scenes?

A. Yes, sir. Being with the crime scene unit I'm also responsible for responding to an incident location where evidence needs to be documented and collected and I was called out on this incident as far as the traffic collision is concerned.

Q. Let me show you a stack of photos and ask you do you recognize those?

A. Yes, sir, I do.

Q. In fact, you took those photos?

A. I did.

Q. Let me show you another stack and ask you if you recognize those as being photos that you took as well?

A. Yes, sir, I took these photographs.

MR. McNAIR: Your Honor, the state would offer all of these photos into evidence, I believe, without objection.

MR. MAULDIN: No objection, Your Honor.

THE COURT: They are numbered what through what? The next one I believe is 24 so we'll start with 24?

MR. GRAHAM: Yes.

THE COURT: So how many do you have?

MR. GRAHAM: 24 through 44, Your Honor.

THE COURT: All right.

(Whereupon, State's Exhibits #24 through #44 received.)

BY MR. GRAHAM:

Q. Now, Mr. Phipps, when you arrived on scene, what did you find the condition of that vehicle to be and what was your job to be there?

A. I responded at the request of our traffic unit. Our traffic unit is trained on accident reconstruction and crash investigation and the crime scene unit has always been a support unit for them during their investigations. They requested that I respond for the purpose of photographing key features that they designated as well as collecting evidence. On arrival I was briefed by one of the traffic units and shown the vehicle. It was still in the tree line and it was heavily damaged.

Q. In addition to collecting evidence for the traffic wreck, were you also looking to preserve evidence related to an armed robbery?

A. Yes. I was also informed that this incident spawned from a earlier incident that occurred of an armed robbery and there was potentially a link between the two and therefore we were also looking for anything that might be involved with that earlier incident.

Q. So when you arrived on the scene knowing that information, what do you do?

A. After I was briefed by our traffic division, I also do a survey of the scene to see if I observe anything that they missed because they have been on the scene for quite some time and I have a little bit more time to pick out key features and items so because of the amount of destruction to the vehicle there was some stuff, debris that had been strewn about so not everything was still in the vehicle and being it was still dark I wanted to make sure that we identified those items and secured them so that they wouldn't get trampled or further damaged.

Q. Let me ask. This is State's number 15 on the overhead. Do you remember recognize that?

A. I do. That's the vehicle in the tree line.

Q. In the bottom left corner do you recognize that object?

A. It's a book bag.

Q. Did you actually photograph that in a close up on State's 24?

A. Yes, sir, I did.

Q. And then later did you have an opportunity to go through and look at the contents of that bag?

A. Yes. Initially the bag was just collected on scene. Uhm, later when we get back to our headquarters in the lab we'll, in the process of packaging that evidence we'll itemize the contents of the book bag.

Q. Let me show you State's 25 and ask you if you recognize that?

A. I do. That's a shirt that was found.

Q. State's number 26, do you recognize that?

A. Yes. It's a little dark. I think that's the -- Okay. That's the thermal, sort of a thermal underwear top.

Q. Where was that item at?

A. In was the book bag.

Q. State's number 27?

A. Some sweat pants that were also in the book bag.

Q. State's number 34, what did you find there?

A. A cell phone that's in the, I believe, right rear floor board area of the vehicle. It's an LG. Looking at the back of it there on the back it's missing.

Q. Later on did you have an opportunity to actually do a digital forensics analysis on that phone?

A. I did. I was given search warrants for several electronic devices that were recovered in this incident

including that one.

Q. What is a digital forensic analysis?

A. With cell phones we use hardware and software by a manufacturer that works closely with cell phone companies to extract the information in a forensically sound manner and when we hook the phone to it, we're not adding anything to that phone and we are recovering what you would see on the phone as well as potentially anything that may have been deleted from the phone.

Q. Let me show you a photograph and ask if you recognize that photograph?

MR. MAULDIN: Which one is that?

MR. GRAHAM: (Proffering)

BY THE WITNESS:

A. I do, yes, sir.

MR. MAULDIN: Your Honor, I have a matter of law to take up.

THE COURT: All right. Ladies and gentlemen, I'll ask you if you would, please, step back into the jury room while we take up this matter of law and we'll get you right back out. Have no conversation about the case.

(The jury goes into the jury room.)

THE COURT: All right. Mr. Mauldin, happy to hear from you, sir.

MR. MAULDIN: Thank you, Your Honor. I believe as part of the State's case they intend to introduce through this witness photos taken of one of the phones in particular are photos of text messages that were sent out of the phone. I believe one of them says, damn, bro, I just got a nine. And the second one says, and this is Ralf. Our objection to those would be that those are hearsay statements; that they are intended to be admitted for the truth presented. They intend to put in the fact that somebody has just gotten a nine millimeter gun and the second one is saying this is Ralf and they intend to say that's Raphael Pontoo. Your Honor, I don't think they can say for certain if he was actually the one that sent these messages. I think that they are speculative, but they are statements that are being introduced to prove the truth of the matter asserted and we believe that they are hearsay and should not be allowed.

THE COURT: Okay.

MR. GRAHAM: Your Honor, Mr. Phipps took the phone that was found on the floor. Because of the condition of it he wasn't able to fingerprint or get DNA off of it. It is a Tract phone, a minute phone. He connected it up, downloaded messages, photographs. He cannot say whose phone it is. It was in the car where Mr. Pontoo

has been placed. He couldn't download this one. He actually had to photograph it screen by screen and he went into the last sent messages and there are two messages that the State would like to introduce, Your Honor. One was sent at, actually both were sent at 4:27 a.m. to the same number so the time is the same for the first two messages. The quote is, it says, damn, bro, I just got a nine. And the last text sent right after that the same minute was, and this is Ralf. I think it is what it is. It's --

THE COURT: Hearsay?

MR. GRAHAM: I'm sorry.

THE COURT: Hearsay?

MR. GRAHAM: No, sir. I don't think it's hearsay at all.

THE COURT: Why is it not? How does it not fit the definition of hearsay?

MR. GRAHAM: It's no different than anything else. It's a picture of what's there. I think it's circumstantial evidence that the jury can draw off of. And the fact that it says and this is Ralf is indicative that it was his client who sent it. I don't think it's different than any other --

THE COURT: All right. It's an out of court statement, correct? And you're offering it for the

truth of the matter asserted. This is Ralf. What exception does it fit under?

MR. GRAHAM: I don't know that it's an out of court -- I don't know that it's a statement. It's a photograph of a text message that's sent. I don't believe that that makes it a statement. It's not repeating what somebody said. The under liability -- This message was sent. It's a real message that was sent. I think circumstantially it can be attributed to the defendant because of the signature, and this is Ralf. If it is hearsay, Your Honor, it's the State's contention the fact that it says and this Ralf would be no different than a statement against interest so it would fall under the exception of a statement by a party proponent.

THE COURT: Well, that's a real stretch because there's nobody that has attached this phone to Mr. Pontoo other than it was in the vehicle he was in along with five other guys.

MR. GRAHAM: None of those individuals are named Ralf. He's the only one that's named Raphael. I think it's circumstantial.

THE COURT: I'm trying to get -- I'm trying to think in terms of -- You seem to be saying that because it's a photograph of a text message that it's not hearsay, but

then what you're telling me is that words in a document can never be hearsay if you photograph them and that's clearly not true. I mean, I'm not --

MR. GRAHAM: If there was a diary that was found that was signed by the person, I believe that it would be admissible. I think it would circumstantial evidence that it would be a statement against interest by that person and I believe that it would be admissible. Now, I agree that it would be stronger if the writing was identified, but there is no way to identify the writing on this one. I mean, I can't --

THE COURT: Let me see it.

MR. GRAHAM: (Proffering.)

THE COURT: I'm going to sustain the objection. I think it is hearsay. I don't think it fits under any exception. I think it is clearly an out of court statement. I think it's clearly hearsay. I'm not aware -- This gentleman's name is Raphael. This says this is Ralf. My name is Thomas. Everybody knows me as Tommy and no one knows me as Tom. So I mean, the phone is in the vehicle. It might be different if he had some way to link this phone to this individual through an account, that the phone was purchased by him. But it's a phone found in a vehicle with five individuals. It's extremely speculative and it's just too much of a reach.

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I just don't -- That's already been testified to.

MR. GRAHAM: I was going to say I don't know - there will be witnesses who will say that that's his nickname that he goes by. If it would make a difference, I could recall them. I don't know if that's going to change Your Honor's opinion.

THE COURT: I don't know that it does either.

MR. GRAHAM: But our argument then for the record, Your Honor, would be that if it is hearsay, then it's a statement by a party opponent with him saying and this is Ralf which be will be identified later as being his nickname. He was present in the vehicle when it was sent because it was right before the, if you look at time, it's at 4:27 and I can't remember the Highway Patrol time when they activated it, but that would have been the time between when the robbery occurred and it would have been right before the Highway Patrol would have activated their blue lights. So it puts him and those four other people in that vehicle when that phone was being used and being sent. And then we would argue that the last text, and this is Ralf, would go to identify the defendant. And like I said, we do have other witnesses that will say that that's his nickname.

THE COURT: Just give me a second.

MR. GRAHAM: Judge, maybe what we could do is, or I

would suggest at this time is you could take it under advisement and I'll just recall this witness and we can just go ahead and move forward with other testimony and then we can put up the people who will identify that nickname and that will give all of us time to do some research for you.

THE COURT: All right. I'll do that. Do you need these?

MR. GRAHAM: No.

THE COURT: I mean, if you do, if you need them, I'll --

MR. GRAHAM: No. I won't need them until that time, Your Honor.

THE COURT: Okay. All right. I'll hold onto these. So let's go ahead and bring the jury back in.

MR. MAULDIN: Your Honor, could I just step out to the bathroom?

THE COURT: Yeah. That's a good idea, David. While the jury is out let's take just a short little break. If anyone needs to use the restroom, go ahead and do that. Sir, if you need to step down, that's fine. Just don't have any conversation about your testimony with anybody, okay?

THE WITNESS: Yes, sir.

(Short recess.)

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THE COURT: Back on the record. Everybody ready? Keep in mind, I just want to make it clear where I feel at this time it's not admissible is the connection to this defendant, okay? So that if, you know, and I understand that you would intend then to put in testimony identifying the defendant as Ralf and matching that up, but there were five people in the vehicle so you will need to -- In other words, right now the concern that I have is there's nothing at this point connecting that phone to Mr. Pontoo and so that's what I think is necessary to overcome, okay?

MR. GRAHAM: The only, at this time the only evidence that I know that we could offer on that would be people who would identify his name and then I think after Mr. Ruple gets up and testifies, he's going to state that the defendant actually stole the nine millimeter handgun and so I think that that would go into the statement that says, damn, bro, I just got a nine as well as using that as identification.

THE COURT: Right. But I don't think there's any testimony in the record currently as to the identity of the individuals in the car.

MR. GRAHAM: Not at this time, no. Right, Your Honor.

THE COURT: And so that would need to be clarified

obviously. And let's say I'm in a car and I happen to be in a car with you, Shawn, you, Robby, and you, David, and another guy named Tom, and me, Tommy. Then that doesn't clarify anything because there's a Tom in the car.

MR. GRAHAM: Right.

THE COURT: So you see what I'm saying?

MR. GRAHAM: Yes, sir.

THE COURT: It's going to be as far as from my purposes as far as it fitting under an exception it's going to have to be linked to this individual. So, I mean, you understand what I'm saying?

MR. GRAHAM: I do, Your Honor. When we get to that point and whatever evidence we have to offer on that is offered, I'll bring it back up outside the presence of the jury and we can discuss it at that point.

THE COURT: All right. So at this point I'm going to sustain the objection and I'll let you continue with this witness with whatever else you've got.

MR. GRAHAM: Yes, sir.

THE COURT: Okay. Let's bring them back in.

(The jury returns to the courtroom.)

THE COURT: All right. Mr. Graham, you may continue with your direct examination.

MR. GRAHAM: Thank you, Your Honor.

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BY MR. GRAHAM:

Q. In addition to the phone that you found on the floor of that vehicle, did you also take photographs of the interior of the car and collect all the adult sized clothing that you could find?

A. I did, yes, sir.

Q. Looking at State's number 37, what do we see there?

A. That's the rear passenger area of the vehicle and there's two or three outer winter type coats piled in the back seat.

Q. State's number 38, that's after the coats had been removed and it looks like they may have actually been put on the head rest of the passenger seat?

A. Yes, sir. We moved them out of the way. At that point you can see some smears, reddish stains, smears on the back upholstery.

Q. The jackets that you found in that vehicle, let me show you State's 43. Is that one of the jackets that you found?

A. It is. Yes, sir.

Q. State's 44?

A. Yes, sir.

Q. And is that a black and gray fleece I believe?

A. That's how I described it when I put it into

evidence, yes, sir.

Q. State's number 39, what is that?

A. A black winter type coat.

Q. Let me show you a couple other pictures as well. State's number 40?

A. Camouflaged ball cap.

Q. State's 41?

A. I just described that as a hat or cap with ear flaps.

Q. State's 42?

A. That one I would have to look at. I can't quite --

Q. (Proffering.)

A. Oh, that's a knitted cap.

Q. All those clothes we looked at were clothes that you found and collected from the vehicle?

A. Yes, sir.

Q. State's number 39, which is, I believe, a black winter jacket with zippers on the left and the right breast pockets?

A. Yes, sir.

Q. Did you have an opportunity to look in those pockets on State's 39?

A. I did in the process again like I described when we get back to headquarters we package the evidence and during that process I found two additional cell phones.

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Q. So there was one cell phone in one pocket and one in another?

A. Yes, sir.

Q. Let me show you two photographs and ask you if you recognize these?

A. Yes, sir, I do.

Q. And those fairly and accurately depict the phones that you found in the pockets of that jacket?

A. They do.

MR. GRAHAM: Your Honor, the State would offer these into evidence.

MR. MAULDIN: No, objection, Your Honor.

THE COURT: Without objection they are in evidence. That's 45 and 46.

BY MR. GRAHAM:

Q. And did you look at these phones as well?

A. I did.

Q. Now, these phones, were you able to use a different system to look at the information that was on them?

A. Yes, sir.

Q. What is that? Can you just briefly describe what that is?

A. The device that we have at our department is called - it's manufactured by a company called Cellebrite and it's a forensic version of what you may have seen if you went to

a company, a cell phone company and purchased a new phone and they ask you if you want your contacts moved over. That same company produces hardware for law enforcement and forensics that instead of just taking information and just moving it to your new phone, it extracts all of that information off of it.

Q. Let me show you a document and ask you if you recognize that document?

A. I do.

Q. Is that a photograph that you were able to retrieve off of a media card on one of those phones?

A. Yes, sir.

MR. GRAHAM: Your Honor, the State would offer this into evidence at this time.

MR. MAULDIN: No objection, Your Honor.

THE COURT: Without objection State's 47 is in evidence.

BY MR. GRAHAM:

Q. Looking at State's 47, that's a photograph that you were able to take off of a media card on one of the phones, correct?

A. Yes, sir. That's off of the blue Samsung phone that was recovered from the left breast pocket of the black coat.

Q. That's the phone in State's 46?

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A. Yes, sir.

Q. There is a date and a time that is printed below that photograph. Do you recognize that date and time?

A. Yes, sir, I do.

Q. What is the date and time that's on there?

A. November 13th, 2013 at 3:14:44 p.m.

Q. So when you located this picture on the media card that was on the blue Samsung in 46, are you able to determine when that picture was taken?

A. Yes, sir. That's the time stamp that was on the media for that image.

Q. So that picture was taken on November 13th, 2013 at 3:14 with 44 seconds p.m.?

A. Correct. I would have to look at the original report to see if that was corrected for time zone meaning some things are stored on the phone in what's called UTC time which is a universal time and you have to correct back for that for eastern standard time.

Q. So the time may be off by an hour or two, but the date is going to be substantially correct?

A. Yes, sir.

Q. It would be no more than a day one way or another?

A. Right.

MR. GRAHAM: Thank you, Mr. Phipps. Please answer any questions the defense has for you.

CROSS EXAMINATION

BY MR. MAULDIN:

Q. Thank you. So you found three jackets in the back of the car; is that correct?

A. Yes, sir.

Q. A green and tan athletic jacket; is that right?

A. Yes, sir.

Q. A black what you called a winter coat and a black and orange winter coat?

A. Yes, sir. That's how I made the distinction between one was all black and one had an orange liner.

Q. And those three hats you found, one was a black knit cap?

A. Yes, sir.

Q. And one was a black cap that had ear flaps and some fur around it?

A. Yes, sir.

Q. Some white fur or whitish gray fur and the other one is the camouflaged ball cap; is that correct?

A. Yes, sir.

MR. MAULDIN: I have no further questions.

THE COURT: Anything further?

MR. GRAHAM: Your Honor, just Mr. Phipps is subject to recall. Other than that, no, Your Honor.

THE COURT: All right. Thank you very much, sir.

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You may step down. You're still under your subpoena but you're excused at this time.

MR. GRAHAM: The State calls Xavier Perdue.

Thereupon,

XAVIER PERDUE

after having been first duly sworn, testified as follows,

THE CLERK: Have a seat, please, sir, and once you're seated, sir, state your full name spelling your last on the record, please.

THE WITNESS: Xavier Worthington Perdue, P-e-r-d-u-e.

DIRECT EXAMINATION

BY MR. GRAHAM:

Q. Is it Sergeant Perdue?

A. Yes, sir.

Q. Where are you employed, sergeant?

A. Palmetto Health Richland.

Q. What do you do for Palmetto Health Richland?

A. Shift supervisor which is the security.

Q. Security for the hospital and the buildings around it?

A. Yes, sir.

Q. Prior to -- And how long have you worked there?

A. Two years.

Q. Prior to that, what did you do?

A. Military for 22 years.
Q. What did you do in the military?
A. Operations.
Q. Were you present and working at the hospital on January 24th in 2014?
A. Yes.
Q. Did you have occasion to go, I believe, to a triage room?
A. Yes.
Q. What is a triage room?
A. It's a trauma bay where emergency victims come in and they provide them immediate care. It could be surgery or whatever else to keep the person alive.
Q. What brought you to that room that day?
A. Any time we get a penetrating or GSW which is a gunshot wound victim, we move them in there. I as a supervisor go in there and make sure that it's safe for the patient and the staff. Make sure they don't have nothing that can harm somebody. Make sure nobody is going to try to go into the room while they're providing care.
Q. Were you present when the medical staff was taking clothes, cutting the clothes off of a patient at approximately 6:25 a.m. in the trauma room at Palmetto Richland?
A. Yes, sir.

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Q. What happened when you were there?

A. When the staff was cutting, removing the clothing, when they turned him over to pull the clothing off, a weapon had fell to the floor, staff stepped back, I came up, retrieved the weapon and cleared it and secured it.

Q. So you were actually present?

A. Correct.

Q. And saw the weapon go off the table and onto the floor?

A. Yes, sir.

Q. Let me show you a gun and ask you if you recognize this gun?

A. Yes.

Q. Did you secure the weapon?

A. Yes.

Q. Ultimately what did you do with it?

A. Once I checked it to make sure it was clear, I took it down to the office and put it in - wrote down all the information on the weapon and put it into the safe.

Q. And then at some point did you turn it over to the Lexington County Sheriff's Department?

A. Correct.

Q. Let me show you the gun and ask you if you have a serial number on that gun?

A. Yes, it does.

Q. Does that match with the records that you kept of the gun that you seized on January 24th from that trauma bay?

A. Yes.

Q. What is the serial number?

A. 54873066.

MR. GRAHAM: Your Honor, the State would move this firearm into evidence at this time.

MR. MAULDIN: Your Honor, I object. I have a matter of law to take up.

THE COURT: All right. Folks, let me get you to step back into the jury room. Please have no conversation about this case.

(The jury goes into the jury room.)

THE COURT: Yes, sir.

MR. MAULDIN: Thank you, Your Honor. My objection is based on relevance. The testimony here is that he was present and the gun was taken off the patient. He didn't say who the patient was or what connection they might have to this case. There's been absolutely no testimony linking the events that he's observed to this case other than he was in the ER and they were cutting clothes off a patient and that he saw the gun.

MR. GRAHAM: My next question would have been to do that. Yes. I can ask the question. You can hear the

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answer, Your Honor.

THE COURT: Let's proffer it while the jury is out.

(PROFFERED TESTIMONY OF XAVIER PERDUE.)

DIRECT EXAMINATION

BY MR. GRAHAM:

Q. Sergeant, did you fill out a form related to the recovery of this weapon?

A. Yes.

Q. In addition to putting the serial number, did you also put the patient number of the individual that the weapon came off of?

A. Yes.

Q. What is that patient number?

A. 016219759.

Q. Have you been able to verify who that patient number belongs to?

A. Yes.

Q. Who is it?

A. Raphael Pontoo.

Q. Pontoo?

A. Pontoo.

THE COURT: And that was taken off the defendant in the ER?

THE WITNESS: Yes, Your Honor.

THE COURT: Does that resolve your objection?

MR. MAULDIN: Your Honor, they haven't established the foundation of that at this time. They were just talking about a patient.

THE COURT: No. No. I agree with you, but I'm saying with that proffered testimony, I guess what I'm asking is --

MR. MAULDIN: Let me ask him a question.

THE COURT: Absolutely.

CROSS EXAMINATION

BY MR. MAULDIN:

Q. You said you verified the patient number belonged to Mr. Pontoo. How did you do that?

A. Okay. When they come in, they get a trauma number so they can be expedited to do the blood work and so forth. And then the admissions fill out the information on the sheet for later on and it prints out a face sheet or admission form and it has all the information.

Q. So you went and looked at some paperwork and determined that that number was associated with Mr. Pontoo?

A. Correct.

Q. You don't specifically remember Mr. Pontoo himself?

A. No.

MR. MAULDIN: I would still object, Your Honor. The foundation that he's laying is based on hearsay as far

as what other people wrote in the report and that that number is associated with Mr. Pontoo. I would say the proper foundation has not been laid.

THE COURT: What were those records you referred to?

THE WITNESS: The admission form, sir. The form has the patient number.

THE COURT: Yes. All right. Thank you, sir. I'm going to overrule the objection. I think it would satisfy that question. It's clearly subject to cross examination as well as argument, but I think as far as admissibility I think it's good. All right. Let's bring the jury back in. Wait a minute. Hold up. Guys, let me to talk to you all about this before lunch break. Let's try to do this with every case you all have. We need to pre-mark exhibits. It just takes so much court time in front of the jury. If all these exhibits had been pre-marked, then you could refer to them as State's exhibit this, move it into evidence, and then we don't have to stop and wait and then Steve has to go through everything he's got to go through to mark it in. Do we have a lot of other exhibits we are going to be dealing with? Because if we do, let's pre-mark them because they're not in evidence, but they can at least be marked so that Steve has done what he needs to do and so then if you go to move it in, it's just a matter of, Judge,

we move State's this or, Judge, we move Defendant's this in and then we would move it in and we don't have to stop and go through that process.

MR. GRAHAM: I think for the next two witnesses we only have four pictures, Your Honor. After that there's probably maybe five more pictures and that's probably it.

THE COURT: Let's just, while the jury is out, pre-mark them and if you don't use them, it's okay. You don't have to use them, but at least -- Steve, does that work better for you?

COURT REPORTER: Yes, sir.

THE COURT: And that way they're marked, we don't have to stop, you don't even have to, at this point you don't even have to show them to Mr. Mauldin. Just get them marked and then we'll deal with them as they come up.

(Whereupon, State's Exhibits 48 through 60 marked for identification.)

THE COURT: Let's bring the jury back.

(The jury returns to the courtroom.)

THE COURT: All right. Thank you, ladies and gentlemen. I have overruled the objection. The State's 48 is in evidence over objection. You may proceed.

MR. GRAHAM: Thank you, Your Honor.

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DIRECT EXAMINATION CONTINUED

BY MR. GRAHAM:

Q. Sergeant Perdue, when you were present and saw this weapon and you collected it, you filled out a sheet regarding your seizure of it; is that correct?

A. Yes, sir.

Q. The patient number that was associated with that gun that you found was who?

A. Raphael.

Q. Who did that patient number belong to?

A. Raphael Pontoo.

Q. Pontoo. The gun that's now in evidence, what kind of a gun is it?

A. .22 Luger.

Q. Is it a semi automatic or a revolver?

A. Revolver.

Q. What's the difference between a semi automatic and a revolver?

A. A revolver rotates and the automatic cocks back.

Q. So if we look at State's number 20, is that a semi automatic or a revolver?

A. Semi automatic.

Q. So this is a semi automatic and what you collected off of Mr. Pontoo's was a revolver?

A. Correct.

Q. And you said this was a what caliber?

A. .22.

MR. GRAHAM: Thank you, sergeant. Please answer any questions the defense has.

CROSS EXAMINATION

BY MR. MAULDIN:

Q. You don't specifically remember the identity of the patient other than looking in the hospital records; is that correct?

A. Correct.

MR. MAULDIN: No further questions.

THE COURT: All right. Thank you very much, sir. You may step down. Any objection to this witness being excused?

MR. GRAHAM: No, Your Honor.

MR. MAULDIN: No, Your Honor.

THE COURT: Thank you very much, sir.

MR. GRAHAM: The State calls Dr. Janice Ross.

Thereupon,

JANICE ROSS, M.D.

after having been first duly sworn, testified as follows,

THE CLERK: Please, have a seat and state your full name spelling your last name for the record.

THE WITNESS: Janice Edwards Ross, R-o-s-s.

DIRECT EXAMINATION

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BY MR. GRAHAM:

Q. Dr. Ross, what do you do for a living?

A. I'm a forensic pathologist in Newberry, South Carolina.

Q. What is a forensic pathologist?

A. A pathologist is a doctor. I have an M.D. Went to medical school and then training in the field of pathology which trains us how to diagnose diseases such as cancers. It also - we are trained in how to do an autopsy to find a cause of death. A forensic pathologist does further training to identify patterns of injury pertaining to homicides, suicides, accidents and a lot of cases of unnaturals.

Q. Did you have an opportunity to perform an autopsy on Alexander Clemmons?

A. Yes.

MR. GRAHAM: Your Honor, I can go into, if the defense wants, but I'm going to offer Dr. Ross as an expert in forensic pathology.

MR. MAULDIN: I have no objection to her qualifications, Your Honor.

THE COURT: Thank you very much. We'll proceed. Dr. Ross is certainly qualified as an expert in the field of forensic pathology.

BY MR. GRAHAM:

Q. Alexander Clemmons, you performed an autopsy on him,

correct?

A. Yes.

Q. In general terms can you describe how you do an autopsy?

A. The body is brought to us in a body bag at the morgue at Newberry County Memorial Hospital. We open the bag. Do photographs and inventory any clothing or personal effects. We then do a sequential autopsy including looking at each organ to identify injuries or natural diseases.

Q. What was the medical history that you received because that's also part of your autopsy; isn't that correct?

A. Yes, sir.

Q. What did you receive regarding Mr. Clemmons as far as when he was hospitalized and the treatment he received?

A. I understood that he was in a motor vehicle collision. He was a back seat passenger and unrestrained and didn't have a seat belt on. The accident occurred on January 24th, 2014. He was pronounced brain dead on January 26th. I'm sorry. Yeah. January 26th, 2014, and died on the 27th of that month.

Q. And then you performed your autopsy the next day on the 28th?

A. Correct.

Q. External examination of Mr. Clemmons, what did you

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find?

A. Generally mostly just a head injury. We found that the left side of his head had been shaved. There was a surgical incision there which we further identified that a surgeon went in to take out the part of the calvarium which is the top part of the skull in order to relieve pressure in the brain.

Q. Were you able -- What about Mr. Clemmons height and weight?

A. We measured him at 70 inches in height which is five feet ten inches, and we don't have a scale in the morgue, but we estimated him to be about 150 pounds.

Q. You said that part of his scalp had been shaved; is that correct?

A. Correct.

Q. The remainder of his hair that was on his head, how would you describe that?

A. Short, black and curly.

Q. You said there was evidence of a closed head injury; is that correct?

A. Correct.

Q. What evidence did you find? What did you mean by that?

A. Closed head injury is an injury of the head being hit by something or the head hitting something without

fracturing the skull and without opening the skull. The blunt force injury in this case caused hemorrhage around the brain.

Q. Once you're done with your physical, your external examination, do you do an internal examination?

A. Yes.

Q. Briefly describe what that process is.

A. We just look at all the organs in the chest and abdomen and the neck organs and to look for any kind of injuries or natural diseases.

Q. On Mr. Clemmons when you performed the internal examination, what did you discover?

A. No evidence of any kind of significant injury. He did have heavy lungs, pulmonary edema. That's from the brain death a secondary result of.

Q. So to a reasonable degree of medical certainty as a forensic pathologist what is your opinion as to what killed Mr. Clemmons?

A. It was a blunt force injury of the head due to the motor vehicle collision.

Q. And that blunt force injury to the head caused what?

A. It caused hemorrhage around the brain. The brain is in a closed area and any extra blood or any extra hemorrhage takes up space and causes the brain to swell and it also

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causes pressure on the brain stem which is the center for breathing and for heartbeat so it closes off that part of the brain.

Q. So as the brain swells in that confined space, what happens?

A. Then you lose heartbeat and respiration.

Q. Now, I believe that there was evidence that medical personnel at the hospital had tried to relieve that pressure; is that correct?

A. Yes, that was the surgery.

Q. What would that have been? What did you find evidence of?

A. They opened the, took off the skin and took part of the skull off.

Q. And the purpose of that would have been to do what?

A. To let the brain swell without that pressure.

Q. But that treatment was unsuccessful, correct?

A. Correct. It was too late.

MR. GRAHAM: Thank you, Dr. Ross. Please answer any questions the defense has for you.

THE WITNESS: Thank you.

MR. MAULDIN: I have no questions for this witness, Your Honor.

THE COURT: All right. Dr. Ross, thank you very

much, ma'am. Any objections to Dr. Ross being excused?

MR. GRAHAM: No, Your Honor.

MR. MAULDIN: No, Your Honor.

THE COURT: Thank you very much, ma'am. You're free to go. You may call your next witness.

MR. McNAIR: Your Honor, the State calls Detective Todd Garrick.

Thereupon,

TODD GARRICK

after having been first duly sworn, testified as follows,

THE CLERK: Once you're seated, state your full name spelling your last please.

THE WITNESS: Todd Garrick, G-a-r-r-i-c-k.

DIRECT EXAMINATION

BY MR. McNAIR:

Q. Detective Garrick, how long have you worked for the Sheriff's Department?

A. Approximately nine years.

Q. How long have you been in major crimes?

A. I have been in major crimes right at two years now.

Q. Okay. Now, were you assigned to investigate an armed robbery at the Mile High Club on January 24th, 2014?

A. Yes, I was.

Q. Where is the Mile High Club?

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A. It's around the Boston Avenue 321 area.

Q. Is that near Airport Boulevard?

A. Yes, it is.

Q. Is that in Lexington County?

A. Yes, it is.

Q. What's the first thing you did in this case?

A. I received a phone call from my sergeant, Sergeant Ruckland, I was at home, asking me to go to the Whetstone Road area. I was informed that there was an armed robbery incident that occurred at the Mile High Club and then later on a vehicle that was reported in the BOLO from that armed robbery was stopped on Whetstone Road which is Highway 3 right outside of Swansea.

Q. Did you go to where that traffic stop had occurred?

A. I did.

Q. What was going on when you got there?

A. When I got there, there were three individuals in handcuffs on the side of the road.

Q. Was the car that had been stopped there?

A. No, it was not.

Q. Did you talk at with the individuals who had been removed from the vehicle at that time?

A. I did.

Q. Did you identify who they were?

A. I did.

Q. What were their names?

A. Carlisle Jones, Iquawn Jones and Patrick Johnson.

Q. Okay. Did any of those individuals have dreads?

A. They did not.

Q. Were you able to determine who was actually driving the vehicle or who owned the vehicle before it took off?

A. I did.

Q. Who was that?

A. Carlisle Jones.

Q. Now, after talking to those individuals, did you develop a suspect in the armed robbery?

A. I did.

Q. Who was that?

A. Raphael Pontoo.

Q. Now, did you actually go to the wreck site as well?

A. I did.

Q. Okay. Did you see anything at the wreck site or do anything at the wreck site?

A. I looked around for a few minutes. They were in the process of trying to get the car out and was in the process of trying to collect whatever evidence that was there.

Q. Did you learn who was in the driver seat of the vehicle at the wreck site?

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A. I did.

Q. Who was that?

A. Raphael Pontoo.

Q. Were you made aware of anything that was recovered there at the wreck site?

A. I had some highlights. I knew that a book bag had been recovered there and a pistol.

Q. What was the significance of those items?

A. That was what was taken from the victim at the club.

Q. Okay. After the wreck site, where did you go next?

A. I went to Palmetto Health Richland.

Q. Who was there?

A. That was where Mr. Pontoo was transported to and Mr. Clemmons.

Q. All right. Now, did you go to Mr. Pontoo's room in the hospital?

A. I did.

Q. Did you obtain clothing belonging to Mr. Pontoo at the hospital?

A. I did.

MR. MAULDIN: Objection, Your Honor. Foundation.

THE COURT: Go ahead and question him about that.

BY MR. McNAIR:

Q. I'm going to show you what's been marked as State's 49 and 50. Do you recognize those pictures, what those pictures are of?

A. I do.

Q. Where did you obtain that clothing?

A. From the hospital room that Mr. Pontoo was in.

Q. Where was it located in his room?

A. At the foot of his bed.

Q. Was it loose? Was it in a bag?

A. I can't recall. I want to say it was in a bag, but I can't recall at this time.

Q. Did you speak to staff in Mr. Pontoo's room?

A. I did.

Q. Did they indicate that was the clothing that was removed from him?

MR. MAULDIN: Objection, Your Honor. Hearsay.

THE COURT: Sustained as to any hearsay.

BY MR. McNAIR:

Q. Okay. So this was at the foot of Mr. Pontoo's bed?

A. Correct.

Q. Was there any other clothing in that room?

A. No, sir.

MR. McNAIR: Your Honor, we still move to offer State's 49 and 50.

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MR. MAULDIN: I object on foundation, Your Honor.

THE COURT: Overruled. I'll allow it in evidence.

BY MR. McNAIR:

Q. State's 49, what does this depict?

A. Light colored jeans.

Q. These were the pants that were removed from Mr. Pontoo in the hospital?

A. Correct.

Q. State's 50 is pretty dark. What is that a picture of?

A. A black T-shirt.

Q. Okay. And that was with the pants in Mr. Pontoo's hospital room?

A. Yes, sir.

Q. Okay. Did you also obtain clothing belonging to Mr. Clemmons from the hospital?

A. I did.

Q. Where did you obtain that clothing from?

A. From the hospital staff.

Q. Let me show you what's been marked as State's exhibit 51 and 52. Do you recognize these items of clothing?

A. I do.

Q. Is that the clothing you obtained from the hospital belonging to Mr. Clemmons?

A. It is.

MR. McNAIR: Your Honor, we would offer State's 51 and 52 into evidence.

MR. MAULDIN: Again, Your Honor, foundation.

THE COURT: All right. You want to lay a foundation on that?

BY MR. McNAIR:

Q. Where did you obtain this clothing from?

A. From the hospital staff on the floor where Mr. Clemmons was.

Q. You obtained it from Mr. Clemmons' room?

A. Not from his room. From the staff.

Q. Where was Mr. Clemmons?

A. Mr. Clemmons was actually in surgery at the time.

Q. So you obtained it from somebody at the hospital?

A. Yes, sir.

Q. And it was represented to you as being Mr. Clemmons' clothing?

A. It was.

MR. MAULDIN: Objection, Your Honor. Hearsay.

THE COURT: Overruled. I'll allow it in.

BY MR. McNAIR:

Q. What is this?

A. I believe it's a white, green and brown striped Polo type shirt, a black T-shirt. I believe it was a gray

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T-shirt.

Q. Okay. And are these the pants that you obtained from the hospital belonging to Mr. Clemmons?

A. I did.

Q. What color are those pants?

A. They are blue.

Q. What condition was Mr. Clemmons in when you got to the hospital? Were you able to talk to him at all?

A. I was not. Like I said earlier, he was in surgery.

Q. What about Mr. Pontoo?

A. He was in the emergency room triage room.

Q. Did you actually lay eyes on Mr. Pontoo?

A. I did.

Q. Was he awake and alert?

A. He was.

Q. Now, at some point did you meet with the victim of the robbery at the Mile High Club?

A. I did.

Q. What was his name?

A. Jonathan Ruple.

Q. When did you first meet with him?

A. I first met with him on the 27th of January.

Q. I neglected to ask you, but when did you go to the hospital and see Mr. Pontoo and get the clothes?

A. It would have been the morning of the 24th.
Q. So right after the wreck?
A. Yes, sir.
Q. So you met with Mr. Ruple the victim on January 27th?
A. Yes, sir.
Q. Where did that meeting occur?
A. At the Sheriff's Department, 521 Gibson Road.
Q. Did he provide you with a description of the robber at that point?
A. He did.
Q. And did he actually give you a written statement?
A. He did.
Q. After he provided you with that information, did you show him a photo lineup?
A. I did.
Q. What is a photo lineup?
A. It's a sheet of paper that has six individuals' pictures on it all close to the description of the person that was described as part of the armed robbery.
Q. Are the pictures in color or are they in black and white?
A. They are in black and white.
Q. How are those photos generated?
A. I was given -- I gave the information on Mr. Pontoo

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to our intel department and they generated the photo lineup. What they do is they go into, for this case they went into a DMV data base and put in the particulars that we were looking for and produced a lineup.

Q. All right. Who was present when you showed the lineup to Mr. Ruple?

A. Just myself and Mr. Ruple.

MR. MAULDIN: Your Honor, I'm going to object to this line of questioning based on the prior motion.

THE COURT: All right. Overruled. I'll allow you to continue with the questioning. I note your exception.

BY MR. McNAIR:

Q. Prior to showing Mr. Ruple the photo lineup, what were your instructions to him?

A. I told Mr. Ruple, I was getting ready to show him a photo lineup. I wanted him to take his time to look at the pictures carefully. The person that he was looking for may or may not be on that sheet of paper, but just take his time and if he saw the person, to point it out to me.

Q. Did you show him any photos prior to showing him the photo lineup?

A. I did not.

Q. I'm going to show you what's been marked as State's 59 and 60. Are those the photo lineups that you showed Mr.

Ruple on January 27th?

A. It is.

Q. Okay. And how did you -- Are those his initials on there?

A. It is.

Q. All right. Is Mr. Pontoo contained in that lineup?

A. He is.

Q. What number is he?

A. He's number 4.

Q. What number did Mr. Ruple select?

A. Mr. Ruple selected number 2.

Q. Okay. And those 59 and 60, they look identical. Did you show him two lineups for some reason?

A. I did not. I showed him one lineup. He made his selection and then I had the second lineup with me and I just told him to basically copy what he had done on the first copy for my records so I would have that in my file.

Q. So were those lineups done back to back or at the same time?

A. They were.

MR. McNAIR: Your Honor, we would offer State's 59 and 60 into evidence.

MR. MAULDIN: Subject to prior.

THE COURT: Yes, sir. Admitted.

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BY MR. McNAIR:

Q. Now, how certain was Mr. Ruple of his pick?

MR. MAULDIN: Objection, Your Honor. Hearsay.

THE COURT: Sustained.

BY MR. McNAIR:

Q. You indicated Mr. Ruple initialed this photo lineup?

A. He did.

Q. Did Mr. Ruple also write this 50 percent beside number 2?

A. He did.

Q. Why did he write that?

MR. MAULDIN: Objection, Your Honor. Hearsay.

THE COURT: Well, yeah. I don't think he can testify as to why somebody did something so...

BY MR. McNAIR:

Q. Did you instruct Mr. Ruple to write 50 percent beside number 2?

A. I did.

Q. Why was that?

MR. MAULDIN: Objection, Your Honor. Hearsay.

THE COURT: He's objecting to anything Mr. Ruple told him as hearsay.

MR. McNAIR: I understand.

THE COURT: Mr. Ruple is going to testify. He can

testify to whatever he testifies to.

MR. McNAIR: Okay.

BY MR. McNAIR:

Q. After Mr. Ruple did this lineup, did you tell him whether or not he had picked out the right person or not?

A. I did not.

Q. Since this lineup, have you ever showed him a picture of Mr. Pontoo?

A. I have not.

Q. To your knowledge has Mr. Ruple ever scene Mr. Pontoo in person since this?

A. Not to my knowledge.

Q. Of course, when you showed him this lineup, he picked out the wrong person. You didn't suggest or hint to him who he should pick out, did you?

A. No, sir.

Q. Did you ever try to process anything in this case for fingerprints?

A. Yes, sir.

Q. What was that?

A. It was the nine millimeter Hi-Point.

Q. Okay. That would be State's 18?

A. Correct.

Q. Okay. Are you aware if they were able to obtain any fingerprints from that?

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MR. MAULDIN: Objection, Your Honor. Hearsay.

THE COURT: Sustained.

BY MR. McNAIR:

Q. At some point did you serve warrants on Mr. Pontoo for armed robbery and failure to stop for a blue light resulting in death?

A. Yes, sir. Warrants were.

Q. What date did you severe those warrants?

A. The warrants were secured on the 28th. They were served on Mr. Pontoo on the 29th.

Q. Why were they served on the 29th?

A. Mr. Pontoo was currently in the hospital at the time and he was being released on the 29th.

Q. So Mr. Pontoo was released from the hospital, I guess, several days after this incident?

A. Yes, sir.

Q. Was he walking?

A. He could walk, but he was transported via a wheelchair from his room to my vehicle.

MR. McNAIR: Okay. I have no further questions at this point. Please answer any questions Mr. Mauldin may have.

THE COURT: Mr. Mauldin.

MR. MAULDIN: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. MAULDIN:

Q. Is it investigator or detective?

A. Either one.

Q. Either one. So you went to the hospital on the morning of January 24th and you say you picked up some clothes from Mr. Pontoo's room; is that correct?

A. That's correct.

Q. And that included a pair of jeans and a black T-shirt in the picture. And those items were cut up, weren't they?

A. From what I recall I believe so.

Q. As far as there were slits up the sides of them --

A. Yes, sir.

Q. -- that had been cut off. And when you were at the hospital, you made your presence known to the hospital staff?

A. Yes, sir.

Q. That you were there to see Mr. Clemmons and Mr. Pontoo?

A. Yes, sir.

Q. And at no point in time did anybody try to give you a gun related to the case?

A. No, sir.

Q. You had no information about any gun being found?

A. Not when I went in the morning.

Q. Not when you went to the hospital and picked up the cut off clothes?

A. Correct.

Q. Now, when you obtained Mr. Clemmons' items, they had certain items that they showed you in the pictures. Weren't there some other items that weren't shown to you in the pictures here today?

A. I believe there were other items, yes, sir.

Q. There was like a couple of lighters?

A. I would have to look at the list. I don't know exactly -- I know he had other things. I couldn't tell you right now exactly what they were.

Q. Wasn't there a pair of gloves in there?

A. I did not have any gloves, no, sir.

Q. He didn't have any or you don't recollect him having any?

A. I don't recollect any gloves.

Q. Were there any other pants found, like sweat pants and things that you put in the box in evidence?

A. There were other clothes. I can't recall without seeing a list exactly what I put in that day.

Q. So you can't recall whether or not you put a pair of gloves in the box with Mr. Clemmons' items?

A. I don't recall that, sir.

MR. MAULDIN: No further questions.

REDIRECT EXAMINATION

BY MR. McNAIR:

Q. Detective Garrick, based on your investigation, were the gloves, the condoms or the lighters significant to your investigation?

A. No, sir.

Q. Were the sweat pants?

A. At the time I was just told I was looking for --

Q. And all that stuff is sitting back here in a box in evidence; is that correct?

A. Correct.

THE COURT: That it?

MR. MAULDIN: I have no further questions.

THE COURT: Thank you very much, sir. You may step down. Call your next witness.

MR. McNAIR: The State calls Jonathan Ruple.

THE COURT: Mr. Ruple, come around to be sworn, sir.

Thereupon,

JONATHAN RUPLE

after having been first duly sworn, testified as follows,

THE CLERK: Have a seat, please, sir. Once you're seated, state your full name spelling your last please.

THE WITNESS: Jonathan Ruple, R-u-p-l-e.

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DIRECT EXAMINATION

BY MR. McNAIR:

Q. Mr. Ruple, where do you currently live?

A. Nashville, Tennessee.

Q. How long have you been in Nashville?

A. Since June.

Q. Do you work?

A. Yes, sir.

Q. What's your job?

A. I work at Publix as a grocery clerk.

Q. All right. Is that why you moved to Nashville?

A. I moved there just to get a fresh start.

Q. Where are you from originally?

A. I'm from West Columbia, South Carolina.

Q. Where did you go to high school?

A. I went to Airport High School for a little bit.

Q. Were you living in West Columbia back in January 2014?

A. Yes, sir.

Q. Now, back on January 24th, where did you go that night?

A. To the Mile High Club.

Q. Where is the Mile High Club?

A. It's off Airport Boulevard.

Q. And did it used to be known by something else?

A. It used to be known as The Rock.

Q. Okay. So some people still call it The Rock?

A. Yes, sir.

Q. But now it's the Mile High Club?

A. Yes, sir.

Q. Is that bar in Lexington County?

A. Yes, sir.

Q. Why did you decide to go to the Mile High Club on January 24th, 2014?

A. My regular spot and my friend had just got back in from being out of the country and celebrating him coming home.

Q. What is your friend's name?

A. Nick Howard.

Q. So you were hanging out with Nick?

A. Yes, sir.

Q. At some point in time did you go outside to show Nick something?

A. Yes, sir.

Q. What was that?

A. I purchased a gun while he was out of the country and me and him are both into guns and so I decided to show him my pistol I had just got.

Q. What type of gun had you purchases?

A. A Hi-Point nine millimeter.

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Q. Where was your gun?

A. It was inside of a book bag in the trunk of my car.

Q. So where are you and Nick having this conversation?

A. At the trunk of my car.

Q. And where is your car parked?

A. In front of the Mile High Club like right up by the door.

Q. Okay. As you were standing by your car showing Nick your gun, are you approached by some other individuals?

A. Yes, sir.

Q. How many?

A. Two.

Q. Black or white?

A. They were both black.

Q. Male or female?

A. Both of them males.

Q. Did either one of them introduce themselves?

A. One person did.

Q. What did he say his name was?

A. He said his name was Los.

Q. Okay. What did Los say?

A. He just kind of overheard us talking so he just walked up there and introduced himself and kind of asked us

what we were doing.

Q. Did you have your gun out at that point?

A. I think I did.

Q. Well, what do you and Los talk about?

A. Guns, of course, cars, girls, music. Just regular guy stuff.

Q. Well, at some point do you all, does anybody show you their gun or do you show them your gun?

A. They could already see my gun and they had mentioned or Los had mentioned that he had a gun, too, and he showed me his gun and the guy that was with him also said that he had a gun and he pulled his gun out and showed me his gun.

Q. Did Los tell you anything about where he had gotten his gun?

A. No, sir. He just said he had gotten it that day.

Q. He had gotten it the same day?

A. Yes, sir.

Q. I'll show you State's exhibit 48. Do you recognize that gun?

A. Yes, sir.

Q. Who had that gun?

A. Los.

Q. What caliber is it?

A. It's a .22.

Q. Was there anything special about it that you

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recall?

A. Just the laser pointer.

Q. Where is that?

A. Right there as you hold the grip and start to get onto the trigger.

Q. Okay. What type of gun did the guy with Los have?

A. He had a .25 automatic.

Q. What did it look like?

A. It was chrome plated with pearl handles.

Q. This is State's exhibit 20. Does that appear to be the gun the other fellow had?

A. Yes, sir.

Q. Now, when you were talking to Nick at your car, did you see who you later knew as Los and that other individual nearby before they walked up to you?

A. Yeah. Where my car was parked like two spots over they were at a car getting some beer out of the trunk.

Q. Were they there while you were talking to Nick and showing Nick your gun?

A. Yes, sir.

Q. Now, when they walked over and talked to you, did you all hang out for a while?

A. Yes. We sat there for about 10 or 15 minutes just talking.

Q. About guns? You said rims?

A. Yeah, rims, cars, girls, music.

Q. Did you all have a beer together?

A. Yes, sir.

Q. When you all finished I guess hanging out outside, where did everybody put their guns?

A. I stuck mine back in my book bag. Instead of putting it in my trunk, I locked it up in the car in the front seat passenger side.

Q. Was Los present when you put your gun up?

A. Yes, sir.

Q. Where did he put his gun?

A. In his pants.

Q. What about the other fellow?

A. In his pants as well.

Q. And the other guy, he never - you don't remember his name?

A. I'm sorry, I don't.

Q. Okay. Now, when you were hanging out with them behind your car, was that a fairly well lit area?

A. Yes, sir.

Q. Did you get a good look at Los' face?

A. Yes, sir.

Q. Did you see his face from multiple angles?

A. Yes, sir, I do.

Q. When you're talking to him, how far away is he from

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you?

A. Approximately two feet.

Q. You said you all hung out about 10 or 15 minutes?

A. Yes, sir.

Q. What type of hair did Los have?

A. He had dreadlocks.

Q. Could you tell what type of hair the other guy had?

A. I could not. He had a hat on.

Q. What kind of hat?

A. Like a Rastafarian hat.

Q. What color was it?

A. It was like red, green and yellow.

Q. Okay. Like a Jamaican Rastafarian style hat?

A. Yes, sir.

Q. But you couldn't tell what his hair style was?

A. No, sir, I couldn't.

Q. Can you describe the clothes that you recall Los wearing?

A. He had on like a green puffy jacket, a black T-shirt and like light silver color looking jeans.

Q. Okay. What about, do you recall any clothing that the other guy was wearing?

A. The other gentleman I just remember his hat and like a green striped shirt.

Q. Okay. Let's talk about their size.

A. Okay.

Q. How big did you think Los was?

A. I'm not exactly sure on his height. He was just a little shorter than me.

Q. How tall are you?

A. Six foot one.

Q. How much shorter than you do you think Los was?

A. Maybe three to four inches.

Q. What would you guesstimate his weight at?

A. Possibly 180. Maybe a little bit more.

Q. What about the other guy with Los?

A. The other guy, he was about - he was a little bit taller. I could he see him more eye to eye, but he was smaller.

Q. Like skinnier you mean?

A. Yes, skinnier.

Q. Okay. So I guess you would say Los, was he more built than the other guy?

A. Yeah. He was a little bit more bulky.

Q. Okay. Well, after you all finished hanging out outside, where did you all go next?

A. We started to walk back in. As we walked back in, you know, he kind of introduced me to some of the people he was with and then we just kind of split up from there. I

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went to the other side of the bar. He stayed towards the exit.

Q. Okay. Did any of the other people he introduced you to have dreads?

A. No, sir.

Q. Do you remember how many people he introduced you to?

A. I'm pretty sure it was four people.

Q. Okay. So once you all get in the bar, do you kind of go your separate ways?

A. Yes, sir.

Q. Do you continue to see him in the bar, the gentleman you know as Los in the bar?

A. Yeah. It's an open bar so you can see straight across and I could see him over by the pool tables.

Q. How much longer would you say you stayed at the bar after you went inside after from being outside?

A. Maybe an hour or two.

Q. Was Los in the bar pretty much the whole time you were there?

A. Yes, sir.

Q. So I guess you saw him on multiple occasions, correct?

A. Yes, sir.

Q. Did you ever talk to him again?

A. Not really until I was leaving.

Q. What happened when you were leaving?

A. He pretty much just asked me where I was going. I told him I was calling it a night and I walked with Nick outside to his car to go say good-bye to him.

Q. Okay. How long did you stay at Nick's car?

A. Approximately ten minutes.

Q. Then what do you do?

A. I go back to my car and get in my car to leave.

Q. As you're walking back to your car from Nick's car, do you see Los anywhere?

A. I do. He's standing by the exit.

Q. Outside?

A. Yes, sir. Probably about ten feet away from my car.

Q. By himself?

A. I don't recall anybody with him.

Q. Okay. Did you get in your car?

A. Yes, sir.

Q. What happened next?

A. He approached the passenger side of my car and knocked on the window and I rolled down my window and we're still kind of talking about cars and stuff and I mentioned some rims and he said he wanted to come look at them so I wrote down my number and I gave him my number and he told me

he would get in touch with me and stuck his hand out so I went to shake his hand and whenever I shook his hand, he said thanks. I said for what? He just reached down and grabbed my bag and took off running.

Q. What did you do?

A. I got out of the car and chased him. He was trying to get into another car in the parking lot to leave.

Q. Okay. Was that the same car you had seen him standing beside when you first saw him that night?

A. Yes, sir, it is.

Q. Was that car still in its parking place?

A. No, sir. They had actually backed up and were angled towards the exit.

Q. All right. Did you catch Los?

A. I did. Somebody tried to open the door for him, but whenever I tackled him up against the car, it closed the door.

Q. What happened then?

A. I tried to grab my bag and I couldn't really grab my bag so I just grabbed him and hit him a couple times and he hit me with my bag and we both kind of fell to the ground and then whenever I jumped up, tried to get him again, he pulled out that revolver right there and stuck it in my face.

Q. The same revolver you had seen earlier that night?

A. Yes, sir.

Q. No mistaking it?

A. No mistaking it.

Q. What did you do at that point?

A. Threw my hands up and told him it wasn't worth my life and turned around to walk away and as the car drove off, I turned around and got the tag number.

Q. When he pointed that gun at you, how far away was he from you?

A. 10 to 15 feet.

Q. After you had just tackled him against the car?

A. Yes, sir. Because we had hit the ground.

Q. Okay. Did you see anything on you when he pointed the gun at you?

A. Yes, sir. I had a red laser dot on me.

Q. What were you thinking at that point?

A. I was going to die.

Q. Did you know whether that gun was loaded or unloaded?

A. I had no clue.

Q. Were you scared?

A. Yeah.

Q. As far as you were concerned was that a deadly weapon?

A. Yes.

Q. When he pointed it at you, did you continue to look

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at him or what did you do?

A. I just turned around because I didn't want to get shot in the face.

Q. Did you turn back around at some point?

A. Yeah, after I heard the door to the car close and it accelerate off.

Q. Okay. Did you get a good look at the vehicle?

A. I did.

Q. You actually got the tag number?

A. Yes, sir.

Q. To this day do you remember part of that tag number?

A. I remember the last three digits.

Q. What are those?

A. 222.

Q. All right. What kind of vehicle was it, do you remember that?

A. It was a Mercury Grand Marquis.

Q. What color?

A. Like a silverish color.

Q. Okay. Now, do you recall after this incident meeting with Detective Garrick at the Sheriff's Department?

A. I do.

Q. And did he show you a photo lineup at that time?

A. Yes, sir, he did.

Q. That was after you provided a description of the robber; is that correct?

A. Yes, sir.

Q. When you looked at that lineup, what did you tell Detective Garrick?

A. I told him I wasn't real sure. That I had just narrowed it down to two people.

Q. When you say you're not sure, were you not sure that the person was on there, period, or you were just not sure it was those two people that you had narrowed it down to?

A. I knew the person was on there, but it was one of the two people.

Q. And so is it fair to say you were a hundred percent certain it was one of those two people that you had narrowed it down to?

A. Yes, sir.

Q. I'll show you State's 60. Do you recognize that?

A. Yes, sir, I do.

Q. Is that the lineup that Detective Garrick showed you?

A. Yes, sir, it is.

Q. And are those your initials?

A. Yes, sir.

Q. Now, prior to showing you that lineup, what did he instruct you to do?

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A. He just told me to take my time. He said the person may or may not be on this paper. Just to really just take my time and look at it.

Q. Okay. Had he shown you any pictures of any suspects prior to this photo lineup?

A. No, sir.

Q. Had you ever seen the defendant since the incident prior to seeing this photo lineup?

A. No, sir.

Q. How long did it take you to pick out number 2?

A. I'm not exactly sure.

Q. Would anything have helped you make a better pick do you think?

A. Yes, sir.

Q. What did you tell Detective Garrick?

A. I told him I couldn't be a hundred percent sure if it was number 2 or number 4 because it was a black and white photo of black men and I couldn't distinguish between the hair colors and the skin tones.

Q. So you felt that if you could see a color photo of those folks, you could have picked him out?

A. Yes, sir.

Q. Sitting here today would you change your pick?

A. Yes, sir.

Q. Why is that?

A. Because whenever I was asked to pick this lineup, I was still pretty much in shock and it's been a year now and I have had time to think about it and every night I go to bed I got the same dream over and over of this man putting a gun in my face and not knowing what's going to happen. All I could see is his face so that face is burned into my brain.

Q. So as you sit here today what number would you pick?

A. Number 4.

Q. Now, obviously did Detective Garrick suggest to you or hint to you who you should pick out when he showed you this lineup?

A. No, sir.

Q. Did he ever tell you whether or not you had actually picked out the right person or not?

A. No, sir.

Q. Since the incident, have you ever scene a photo of who was arrested for this?

A. No, sir.

Q. Have you ever had an opportunity to see who was arrested in person since the incident?

A. I saw him yesterday.

Q. That was the first time you had seen him since the incident?

A. Yes, sir.

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Q. What did you think when you saw him for the first time in person?
A. I wanted to throw up.
Q. Do you see him here today in the courtroom?
A. Yes, sir, I do.
Q. Where is he?
A. He's sitting right there (indicating.)
Q. Are you pointing at the defendant?
A. Yes, sir, I am.
Q. How certain are you about that?
A. A hundred percent.
Q. Other than your nine millimeter, what else did you have in the bag that was stolen?
A. I had a pair of sweat pants, a Fox racing shirt, blue thermal shirt, a box of condoms, some cologne. I'm not sure what else was in the bag.
Q. I'll show you what's been already admitted as State's exhibit 24. Do you recognize that bag?
A. Yes, sir, I do.
Q. Is that your bag?
A. Yes, sir.
Q. State's 25?
A. Yes, sir. That's my shirt.
Q. That shirt was in your bag?
A. Yes, sir.

Q. This is kind of hard to see. State's 26. Do you recognize that shirt?

A. Yes, sir. That's my blue thermal shirt.

Q. Okay. That was in your bag as well?

A. Yes, sir.

Q. State's 27?

A. My sweat pants.

Q. Did you give any of this stuff to the man you knew as Los?

A. Sir?

Q. Did you give any of this to the man you knew as Los?

A. Only once I had a gun in my face.

Q. I'm going to show you State's exhibit 54. What is this?

A. That's my pawn slip for whenever I bought the gun from the pawnshop.

Q. Did you buy the gun from the pawnshop?

A. Well, I bought it from an individual and he took it to the pawnshop, that way it could be transferred into my name.

Q. Okay. So you just did the transfer at a pawnshop?

A. Yes, sir.

Q. Does that receipt -- What date was that?

A. October 9th, 2013.

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MR. McNAIR: Judge, we would offer State's 54 into evidence.

MR. MAULDIN: No objection.

THE COURT: Without objection State's 54 is in evidence.

BY MR. McNAIR:

Q. Does that pawn slip contain the serial number of your nine millimeter?

A. Yes, sir, it does.

Q. What's the serial number of that gun?

A. P210464.

Q. I'll show you State's 18. Do you know where the serial number is on this gun?

A. (Indicating.)

Q. All right. Will you read that?

A. It says P210462.

Q. Okay.

A. I'm sorry. That's a 4, the last digit.

Q. Okay. Do you recognize this gun?

A. Yes, sir.

Q. All right. Let's go back to talking about the two individuals you met, Los and the other guy who you didn't know what his name was.

A. Yes, sir.

Q. Did one of those appear to be, for lack of a better

word, the leader of the two?

A. Yes, sir.

Q. Did one appear to be or did one talk more than the other?

A. Yes, sir.

Q. Was one more assertive than the other?

A. Yes, sir.

Q. Who was that?

A. That was Los.

Q. How would you describe the guy with Los?

A. Very quiet, reserved and kind of timid.

MR. McNAIR: I believe that's all the questions I have at this time.

THE COURT: Mr. Mauldin.

MR. MAULDIN: Thank you.

CROSS EXAMINATION

BY MR. MAULDIN:

Q. Now, when you were at the Mile High Club, that's a bar in kind of like a strip mall type place?

A. Yes, sir.

Q. Okay. And you had parked in front of it?

A. Yes, sir.

Q. And your car was facing the club away -- You know, your back end was toward the street and your front end was toward the bar?

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A. Yes, sir.

Q. And you had gotten there well after midnight; is that correct?

A. I'm not sure what time I got there.

Q. Well, you got there after you got off work at Platinum Plus, right?

A. I was not working that night.

Q. You testified yesterday that you had been drinking and you didn't remember how much you had to drink; is that correct?

A. Yes, sir.

Q. And that on a scale of 1 to 10, 1 being sober and 10 being falling down drunk, you thought you were about 5?

A. Yes, sir.

MR. McNAIR: Objection, Your Honor. That's a mischaracterization of the question he was asked. Nobody said 10 was falling down drunk.

THE COURT: Sustained. On a scale of 1 to 10, 10 being drunk, his response is a 5.

MR. MAULDIN: Yes, sir.

BY MR. MAULDIN:

Q. Now, as far as any of the black men that you saw associated with this robber, you didn't know any of them; is that correct?

A. That's correct.

Q. Okay. And during your conversation with some of these people, you realized you knew kind of the same people at a place called Heartless Entertainment?

A. Yes, sir.

Q. That's kind of like they do rap music or that kind of thing?

A. It's just a music label.

Q. At some point during the conversation, did you ever discuss trading guns with any of the individuals?

A. Not trading. Talked about possibly buying.

Q. What about trading guns for rims for cars?

A. Yes, sir. The .22 for the rims.

Q. And you said that one of the individuals had - you had described in one statement as a dreadlock hat. Does that mean that he had dreadlocks? What do you mean by that?

A. I never saw his hair. It was just the type of hat that somebody with really long dreadlocks might wear.

Q. And you said it was green, yellow and red; is that correct?

A. Yes, sir.

Q. At any point in time when you were talking about being behind your car and people are showing each other their guns and that sort of thing, did you see who you eventually realized to be the driver of the car kind of come out and observe it for a little bit and then go back in?

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A. I didn't see anybody but the four people at my car.

Q. Do you recollect talking to Kyle Taylor around June 2nd, 2014?

A. I'm not sure.

Q. He said he was an investigator and he talked to you about the case and had you sign a statement?

A. Okay.

Q. Did you tell him that you recollect seeing that person come out while you were showing each other your guns?

A. I don't remember.

Q. You don't remember? Do you remember telling him that when the robber came and knocked on your window, that you gave him your phone information and he put your information into his phone?

A. I don't remember that.

Q. Part of the things stolen from you is $200 in cash; is that right?

A. I'm not exactly sure if it was 200 because I only had so much money in my bag and I kept going back to my bag to get money.

Q. But it was some amount of money?

A. Yes, sir. There was some money.

Q. Over 100 but less than 200 depending on how much you

spent that night?

A. I know that at the beginning of the night I had $200 in my bag.

Q. Now, when the person was talking to you at the window, did you notice anybody getting into this Grand Marquis?

A. I did not. My attention was focused on the person talking to me.

Q. Did you see anybody in the Grand Marquis before they came up to you?

A. Like I said, my attention was focused on the person talking to me.

Q. But you say when you chased the person to this Grand Marquis, that it was filled up with people?

A. I said that the car was backed up facing the exit.

Q. Okay. Now, did it have its front pointed toward the road?

A. Yes, sir.

Q. And you said the chase was about 10 to 15 feet? Is that what you said?

A. I'm not sure how far away the car was from mine. I know that they were about two spots over the first time I saw them, and then whenever he took my bag, I chased him back to the car that was pointed towards the exit.

Q. Okay. So if your car is pointed toward the club and

the other car is pointed toward the exit, did you chase him around the front of the car or the back of the car?

A. He took off from the passenger side straight back to the vehicle. I got out of my driver's seat and ran down the driver's side of the car, met him at the back of my car while he was trying to get into the other car.

Q. Now, did the robber run to the driver's side of the car or the passenger side?

A. He ran to the driver's side because somebody tried to open the door for him.

Q. Okay. And during the course of this, did somebody say shoot him and let's go?

A. Yes, sir.

Q. And you believe that to be the driver of the vehicle?

A. Yes, sir.

Q. And he had glasses on?

A. I don't recall.

Q. He had a black jacket on?

A. I don't recall.

Q. But he wasn't driving the vehicle?

A. Yes, sir. It was the person in the driver's seat.

Q. Did he get out of the car to say that --

A. Yes.

Q. -- or did he yell it. And during the struggle, you

punched the robber in the face several times; is that correct?

A. Yes, sir.

Q. And you had punched him such that you say you injured your hand; is that correct?

A. Yes, sir. I sprained my left hand.

Q. Punching him several times in the face?

A. Yes, sir.

Q. Do you recall perhaps talking to any of these people inside the bar before you came out to your car to show Nick the gun?

A. No, sir.

Q. Now, you haven't seen a color version of the photo lineup they have showed you, have you?

A. No, sir, I haven't.

Q. So you wouldn't know what the skin tone of number 2 was?

A. No, sir.

Q. And that's the one you picked out?

A. That's correct.

Q. And that was three days after the Mile High Club?

A. Yes, sir.

MR. MAULDIN: No further questions.

THE COURT: Anything on redirect?

REDIRECT EXAMINATION

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BY MR. McNAIR:

Q. Mr. Ruple, you were asked how much you had to drink. On a scale of 1 to 10, you said a 5?

A. Yes, sir.

Q. Now, at the time that you were leaving, did you feel like you were able to drive?

A. Yes, sir. I stopped drinking probably about 45 minutes before I decided to actually leave.

Q. Okay. And the person who grabbed your bag was the same person who you had been hanging out with earlier in the night, correct?

A. Yes, sir.

Q. Looked the same way?

A. Yes, sir.

Q. Now, as far as this gentleman named Kyle Taylor who came to talk to you, did he tell you he was a paid private investigator working for the defense?

A. He just said that he was a private investigator and just wanted to make sure the right person got charged.

Q. What were you doing when he came out to talk to you?

A. I was working on a four wheeler.

Q. How long did he stay out there with you?

A. Maybe two hours just asking me a bunch of questions over and over and over.

Q. Did he keep asking you the same questions over and over?
A. Yes, sir, I think so just in different variations.
Q. Okay. Did he not like the answers you were giving?
A. I'm not sure.
Q. About the money you had in your bag, you said it was $200 cash?
A. At the beginning of the night, yes, sir.
Q. Were you buying somebody other than yourself drinks as well?
A. Yes, sir.
Q. Who?
A. My friend Nick and one of the girls at the bar.
Q. Okay. So you started the night with $200 in cash?
A. In my bag, yes, sir.
Q. You don't know how much was left when it was stolen, do you?
A. No, sir, I don't.
MR. McNAIR: That's all I have. Thanks.
THE COURT: All right. Thank you very much, sir. Step down.
MR. McNAIR: Judge, can we approach?
THE COURT: Yes, please.
(Side bar off the record.)
THE COURT: Back on the record. All right. You may

call your next witness.

MR. McNAIR: Your Honor, the State calls William Bennett.

Thereupon,

WILLIAM BENNETT

after having been first duly sworn, testified as follows,

THE CLERK: Once you're seated, please state your full name spelling your last name, please.

THE WITNESS: Lieutenant William Bennett, B-e-n-n-e-t-t.

DIRECT EXAMINATION

BY MR. McNAIR:

Q. Lieutenant Bennett, you're with the Swansea Police Department; is that correct?

A. That's correct.

Q. How long have you been with Swansea?

A. Going on 11 years.

Q. Are you actually from that area as well?

A. Well, I'm from Pelion.

Q. Okay. Now, how did you become involved in this incident on January 24th, 2014?

A. I got dispatched for - they told me Highway Patrol was behind a vehicle they believed was involved with an armed robbery and the Highway Patrolman was waiting for another officer to come back him up before he made a traffic stop on

that vehicle so they were coming through my jurisdiction and I ended up getting caught up to him and assisted them with the traffic stop.

Q. Where were they when you caught up with them?

A. They had just turned onto Highway 3 which is Whetstone Road just off of Savannah Highway which is Highway 321.

Q. Okay. Had they made it through Swansea at that point?

A. They had already came through the main part of town, yes, sir.

Q. Okay. When you got behind -- Did you know who the trooper you were assisting, do you know what his name was?

A. I did not. I never got his name.

Q. Okay. Well, when you got behind him, did he then initiate a traffic stop?

A. Once you saw me come up behind him, yes, sir, he initiated a traffic stop.

Q. What was your role at that point?

A. I was just a back up officer. Once I got out of my car, he was kind of performing a felony traffic stop ordering the occupants out of the vehicle and what I was doing was I was handcuffing each occupant as they got out.

Q. Okay. How many people did you all get out?

A. We got three out. We got the driver and two

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passengers.

Q. What happened then?

A. Once we got those three individuals out, I could see some movement in the car and the car drove away. There were two more passengers in the vehicle. One got in the driver's seat and drove off.

Q. Okay. Other than you and the trooper that you were backing up, had anyone else arrived on scene at that point?

A. I believe there was another trooper just pulling up as all this was happening.

Q. Who took off after the vehicle that took off?

A. The trooper that initiated the traffic stop.

Q. Okay. So at that point were you left on scene by yourself?

A. Yes, sir. I was left with the three occupants who had already been handcuffed.

Q. Were you able to identify those individuals?

A. I was. I was able to get their names from them.

Q. Okay. Did you check their driver's licenses as well?

A. I didn't get all that then. I just got ID.

Q. Do you recall if any of those individuals had dreadlocks?

A. Uhm, no.

Q. Do you have a video system in your car?

A. Yes, I do.

Q. Was it working that night?

A. It was working.

Q. Audio and video?

A. Just the video. The audio portion was not working.

Q. Now, have you previously reviewed a DVD from your video that night?

A. I didn't until I came up here and met with you all to review the case. That's the first time I watched it.

Q. I'll show you State's Exhibit 53. Do you recognize that disk?

A. That's a copy that we made for you all.

Q. Okay. Are those your initials on that disk?

A. Those are my initials.

Q. And is this and accurate recording from your video system that night?

A. Yes, sir.

MR. McNAIR: Your Honor, we offer State's 53 into evidence.

MR. MAULDIN: No objection, Your Honor.

THE COURT: Without objection State's 53 is in evidence.

(Playing audio recording.)

BY MR. McNAIR:

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Q. So is this the trooper's car in front of your vehicle?

A. Yes, sir, that's it.

Q. Where are you in this video?

A. That's me standing at the rear of the trooper's car.

Q. Where is in the Highway Patrolman?

A. He's in the door frame on his knees using that as cover with his weapon drawn.

Q. Who is backing up now in front of him?

A. That's the driver of the vehicle.

Q. Did you all have him remove his jacket?

A. Yes, sir. He did take it off once he got out of the car.

Q. What's happening at this point?

A. At this point I was placing the driver in handcuffs.

Q. Was the time accurate on your system at that time?

A. Yes, it was.

Q. What time is it based on your recording?

A. It's 4:34 a.m.

Q. Who was the next person ordered out?

A. I don't -- It was one of the passengers. I don't recall his name.

Q. Did somebody else arrive on the scene?

A. I believe that's the other Highway Patrolman.

Q. What happened at that point right there?

A. That's when the car drove off and they were getting in their vehicles.

Q. Are you on scene by yourself with the three individuals that you all had removed at that point?

A. Yes, sir, I was.

Q. Where are the jackets that were removed?

A. It's hard to see them in that video, but they are up where the vehicle was when the traffic stop was made.

Q. Did you actually collect those jackets or did another deputy?

A. The Sheriff's Department once the county deputy arrived on scene, he actually picked those jackets up.

Q. Do you recall his name?

A. That was Deputy Smith.

Q. Did you have any other involvement in this case?

A. No, I did not.

MR. McNAIR: I'm sorry, Your Honor. One more exhibit.

(Whereupon, State's Exhibit 61 marked for identification.)

BY MR. McNAIR:

Q. Let me show you State's Exhibit 61. Now, is that just a still photo obtained from your video?

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A. That is.

MR. McNAIR: Your Honor, we would offer State's 61 into evidence.

THE COURT: Any objection?

MR. MAULDIN: No objection, Your Honor.

THE COURT: Without objection State's 61 is in evidence.

MR. McNAIR: I don't have any further questions. Thank you.

THE COURT: Any cross?

MR. MAULDIN: I have no questions for this witness, Your Honor.

THE COURT: All right. Thank you very much, sir. You may step down. Any objection to the deputy being excused?

MR. MAULDIN: No, Your Honor.

THE COURT: Thank you, sir. You're free to go.

MR. GRAHAM: I have a ten minute witness, Your Honor.

THE COURT: All right. I will hold you to it.

MR. GRAHAM: The State calls Samuel Smith.

Thereupon,

SAMUEL SMITH

after having been first duly sworn, testified as follows,

THE CLERK: Once you're seated state your full name

spelling your last name, please.

THE WITNESS: Corporal Samuel Smith, S-m-i-t-h.

DIRECT EXAMINATION

BY MR. GRAHAM:

Q. Corporal Smith, where are you employed?

A. Lexington County Sheriff's Department.

Q. What do you do there?

A. I'm assistant patrol supervisor south region patrol division.

Q. You wear a uniform and drive a car with a siren on it, right?

A. Yes, sir, I do.

Q. January 24th, 2014, what did you do at that time?

A. I was responding to a assist other agency call where a Highway Patrol and Swansea police department stopped a vehicle believed to be suspect vehicle in an armed robbery that occurred earlier in the evening.

Q. By the time you got there, the Highway Patrol was in pursuit of the vehicle and when you arrived on scene, I believe Lieutenant Bennett from Swansea was there with the people in the handcuffs; is that correct?

A. Yes, sir, that's correct.

Q. And you came on scene to assist him?

A. Yes, sir, that's correct.

Q. When you got there, how many people did Lieutenant

Bennett have in custody?

A. He had three.

Q. Were you able to determine the identification of the three people that he had in custody?

A. By names and date of birth and DL's. I can't identify them without my report.

Q. Let me show you a report and ask you if you recognize it as being your report?

A. Yes, sir. This is my report.

Q. Looking at that report does it refresh your memory as to the identification of the three individuals that you encountered then?

A. Yes, sir. A Patrick Johnson, a Carlisle Jones, a Iquawn Jones.

Q. Looking on the overhead projector at State's Exhibit number 60, that's a copy of Lieutenant Bennett's video camera. Have you had an opportunity to look at that?

A. Yes, sir. I have seen it before.

Q. At some point in the video further past this point when you arrived, what does that video show you doing?

A. You will see me doing a cursory inspection looking for contraband or items that might have been thrown from the vehicle as well as picking up several jackets that were left behind.

Q. Do you remember how many jackets that you retrieved

from the road in front of where those individuals are right now in the video?

A. I retrieved three jackets, sir.

Q. Do you remember, were any of those jackets a green puffy jacket?

A. No, sir, they were not.

Q. Looking at the video and using your memory, what do you remember those jackets to be?

A. Dark in color, but none green and puffy.

Q. Of the three individuals there, Carlisle Jones, Patrick Johnson and Iquawn Jones, who did you have the most contact with?

A. The gentleman I had the most contact with is going to be the horizontal striped Polo shirt identified as Carlisle Jones.

Q. Do you remember the hair style of any of those three individuals?

A. I believe Mr. Jones was very short haired, him being the one that I had the most contact with as well as glasses, I believe.

MR. GRAHAM: I believe that's all the questions I have. Thank you, Deputy Smith.

THE COURT: Any cross?

MR. MAULDIN: Thank you.

CROSS EXAMINATION

BY MR. MAULDIN:

Q. Deputy Smith, you didn't document in your report how many jackets you seized or what color they were, did you?

A. No, sir. I did not.

MR. MAULDIN: No further questions.

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

MR. GRAHAM: Your Honor, if we can approach?

THE COURT: Yes, sir, please.

(Side bar off the record.)

THE COURT: Back on the record. Okay. Ladies and gentlemen, we are going to adjourn for the day. Please continue to do everything that you can do to protect your ability to be fair and impartial and to shield yourself from any improper contact. You can let your family, friends and loved ones know that you're still under an order not to discuss the case and that you do need to be back tomorrow, but just ask for their patience. When it's all over, you will be able to share everything that you would like to share with them, but for them to just continue to be patient if they would please do that. I'm going to ask you -- I was going to start a little earlier tomorrow, but I have got some matters not associated with this case, some other matters that I need to take up first thing in the

morning so I'm going to ask you to be back at 9:30 again tomorrow if you would and we'll get started at 9:30. I have got these other matters coming in earlier so I will take care of them and then we'll get started at 9:30, okay? So everyone please remain seated. Jury, we'll see you back at 9:30, folks.

(The jury was excused for the day.)

THE COURT: All right. I do have some matters that I am going to take up at 9:00 that don't involve this case, but we'll start at 9:30. But any estimate of how long --

MR. GRAHAM: We'll rest tomorrow morning, Your Honor.

THE COURT: Sometime prior to the lunch break?

MR. GRAHAM: Yes, sir.

THE COURT: Okay. Well, then, David, obviously this evening you can talk with Mr. Pontoo about what the defense intends to do and we'll talk about that tomorrow. Hope, let's just -- Oh, I know what I was going to ask. Shawn, do you have any idea about the next case behind this one? Anything about it at all?

MR. GRAHAM: I can double check. What I remember hearing, Your Honor, is that Suzanne Mayes has the next case; is that right, Your Honor?

THE COURT: I was told, but I don't know anything

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about it and I don't know how much time they are going to need.

MR. McNAIR: Judge, I talked to Suzanne yesterday. If she can't start tomorrow by lunch, she can't fit her trial in so I think what's next is a CDVHAN with Shannon. Kate's trial has fallen through now, too, for some reason. I think it's like a day long.

THE COURT: Do you know if there is anyone still down in your office?

MR. GRAHAM: If you can give me ten minutes, I'll go figure that out, Judge.

THE COURT: Let's do that. Do we need to take up anything else about this case before we adjourn for the evening.

MR. McNAIR: No, Your Honor.

MR. MAULDIN: No, Your Honor.

THE COURT: We'll start back at 9:30 with this case and, Shawn, I'll just wait to hear back from you.

(Court was adjourned for the evening at 5:00 p.m.)

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* * * * *

THE COURT: All right. Is the State ready to proceed then?

MR. GRAHAM: The State is ready, Your Honor.

THE COURT: The defense ready? Do we need to take up anything?

MR. MAULDIN: No. We are ready, Your Honor.

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

(The jury enters the courtroom at 9:50 a.m.)

THE COURT: All right. Good morning, folks. I hope everyone had a good evening and ready to get started. I apologize. You know, I have been doing this job for about ten years, and you would think I would get better at it. I apologize for the late start this morning. I had a matter that I was going to hear before we got started and then I did what the airlines always do, I double booked and had another matter come in and it just took longer than I thought it would take. So I apologize that we have been delayed getting started. Let me take up a matter before we get any further. Mr. Temple, would you be so kind to serve as the foreman of the jury for me please?

MR. TEMPLE: Sure.

THE COURT: I'm going to get you and this gentleman to swap chairs and while they are doing that, let me address the panel with regards to that issue as far as the foreperson. Folks, any time you have a group of people, it's just, time has just proven that it's better and it's easier I should say that there is one person that addresses or speaks on behalf of the group. The foreperson's main role is to be the communicator between the jury panel and the Court so that if any time during the course of the trial there is any, if any of you have any questions about anything, then the foreperson would just write out that question and pass it out to me. Depending on the question, I may just respond back in writing or I may bring you out as a panel and respond to the question. But that's the main role of the foreperson so that if I need to communicate with the jury and if I need all of you out here to do that, we'll do that, but there are some times that I can just communicate through Mr. Temple and he will pass it onto the rest of you. That's the first thing.

The other thing that the foreperson does, if need be, is to start and stop the deliberations. What I mean by that is that any time you deliberate once you have this case for your consideration I will instruct you that everyone must be present and have the benefit of

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the discussion. So that if anyone needs to excuse themselves to use the restroom or something of that nature, then the foreperson would then ask that the conversations stop until that person returns and then you would start back the deliberations.

I have talked to jurors in the past an it's a rare occasion that this happens, but usually from what I'm told by most juries is once they get the case and the judge says, okay, it's appropriate to begin your deliberations, I would say 99 percent of the time the juries I have spoken with state that the conversation just starts and it just starts flowing. There is that rare occasion though that I have heard them say, you know, we have got word from the bailiff that we could begin deliberations and everybody just stood there and just stared at each other. No one said a word. Well, if that happens, then, Mr. Temple, as the foreperson you need to got the ball rolling so to speak, okay? But like I said, that's a rare occasion when that happens.

What is important for you to understand though is this. Your verdict in this case and in all cases tried before this court must be unanimous. You must all agree on the verdict whatever it may be. So having said that to you that tells you that the foreperson's vote, the foreperson's opinions carry no more weight than anyone

else. The foreperson has no more authority than anyone else. You're all equal members of the jury. Your vote or your decision in this case must be unanimous. Everyone must be in agreement. So no one person has any more authority or any more credence than anyone else.

I tell juries all the time, I think it's your duty to enter into deliberations with an open mind and listening to everybody and considering everybody's thoughts and opinions in making that discussion. So you are all equal members of the jury. It's just that, you know, it's easier to have one person to communicate with from your side to me and from me to you, okay? So thank you for your willingness to serve in that capacity, sir.

Folks, we adjourned yesterday and we were still on the State's case and so I will recognize the State for their first witness for today.

MR. GRAHAM: The State calls Carlisle Jones, Your Honor.

THE COURT: Sir, come around here to be sworn, please.

Thereupon,

CARLISLE JONES

after having been first duly sworn, testified as follows,

THE CLERK: Please state your full name spelling your last name for the record.

THE WITNESS: Carlisle Jones, J-o-n-e-s.

DIRECT EXAMINATION

BY MR. GRAHAM:

Q. Carlisle, where are you employed?

A. Akebono.

Q. And what is that?

A. A company that make brake pads.

Q. Brake pads?

A. Mm-hmm.

Q. Where is that company located?

A. Platt Springs Road.

Q. How long have you worked there?

A. Five years.

Q. Let me mention some names and you tell me what your relationship is and how long you have known them, okay?

A. All right.

Q. Iquawn Jones?

A. Just a friend in the neighborhood. Known him all my life.

Q. When you say the neighborhood, what neighborhood are you talking about?

A. Neighborhood Chapel Hill on the outside of North.

Q. Pull the microphone a little bit closer to you.

A. Neighbor on outside of North called Chapel Hill.

Q. And that's over in what County?

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A. Orangeburg.

Q. Orangeburg County. And you have known Iquawn all your life?

A. Mm-hmm.

Q. The night of January 23rd and the morning of the 24th of last year, was Iquawn with you?

A. Yes, sir.

Q. Let me show you State's number 57 and ask you if you recognize the photo on there?

A. Yes, sir.

Q. Do they fairly and accurately depict the way that Mr. Jones looked that night, that Iquawn looked that night?

A. Mm-hmm.

MR. GRAHAM: Your Honor, the State would offer what's been previously marked as 57 into evidence.

THE COURT: Any objection?

MR. MAULDIN: No objection, Your Honor.

THE COURT: Without objection State's 57 is in evidence.

BY MR. GRAHAM:

Q. The picture shows Iquawn with short hair. Is that the way that he looked that night?

A. Yes, sir.

Q. Patrick Johnson, was he with you that morning of the night of the 23rd and the morning of the 24th as well?

A. Yes, sir.

Q. He goes by Pat; is that right?

A. Pat, yes, sir.

Q. How long have you known him?

A. All my life.

Q. Are you actually related to him?

A. Yes, cousin.

Q. Your cousin?

A. Mm-hmm.

Q. Roughly what's the age difference between you two?

A. Basically I'm the oldest. I think Patrick like 22 or 23.

Q. And how old are you?

A. I'm 31.

Q. What did you call Patrick or what do you call Patrick?

A. Nephew.

Q. Because of the age difference?

A. Mm-hmm.

Q. Let me show you another photograph previously pre-marked as State's 56. Do you recognize that?

A. Yes. That's Patrick.

Q. And that's the way Patrick looked that night?

A. That's the way he look now.

MR. GRAHAM: Your Honor, the State would offer that

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into evidence at this time.

MR. MAULDIN: No objection, Your Honor.

THE COURT: What number is that?

MR. GRAHAM: 56, your Honor.

THE COURT: State's 56 is in without objection.

BY MR. GRAHAM:

Q. So this is your cousin who you call nephew and his name is Patrick?

A. Patrick. Pat.

Q. The hair shows him having short hair, close to his scalp. Is that the way he wore the night of the 23rd and the morning of the 24th?

A. Yes, sir. Same way.

Q. Let me show you what's been marked State's 55. Do you recognize that?

A. Yes, sir. That's me.

Q. That's you. Do you recognize both of those photos?

A. Yes, sir.

Q. Is that how you looked that night?

A. Mm-hmm.

MR. GRAHAM: Your Honor, the State would offer what's been previously pre-marked as State's 55 into evidence.

MR. MAULDIN: No objection, Your Honor.

THE COURT: Without objection 55 is in evidence.

BY MR. GRAHAM:

Q. Now, let me show you State's number 62 and ask you if you recognize that as a picture of Raphael Pontoo?

A. Yes, sir.

Q. And is that the way he looked like that night?

A. Yeah.

MR. GRAHAM: Your Honor, the State would offer what's been pre-marked as State's 62 into evidence.

THE COURT: Any objection?

MR. MAULDIN: No objection, Your Honor.

THE COURT: Without objection State's 62 is in evidence.

BY MR. GRAHAM:

Q. Now, he had dreadlocks that night; is that correct?

A. Yes, sir.

Q. What's your relationship with him?

A. No relationship.

Q. How long have you known him?

A. Probably about, say probably about - probably about two years now.

Q. How did you know him? Through who?

A. Through being in the neighborhood.

Q. Who was he friends with of the people you were with

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that night and that morning?

A. Alexander, Patrick and Iquawn.

Q. What nickname did you know him by?

A. Raphael.

Q. You know him as Raphael?

A. Raphael and hearing him calling him Polo.

Q. You heard other people call him Polo?

A. Yes, sir.

Q. Let me show you State's 47 and ask if you recognize that person?

A. Yes, sir.

Q. Who is that?

A. Kewon.

Q. Is that how Kewon looked that night?

A. Yes, sir.

MR. GRAHAM: Your Honor, the State would offer what's been pre-marked -- No. This is already in evidence, 47.

BY MR. GRAHAM:

Q. What's your relationship to Kewon?

A. Cousin. Basically call him my nephew.

Q. How long have you known him?

A. All my life.

Q. The five of you ended up being together the night of the 23rd and spending time together on the 23rd and on the

24th, correct?

A. Yes, sir.

Q. Do you see Raphael in court today?

A. Yes, sir.

Q. Where is he?

A. Sitting over there (indicating.)

Q. That's the defendant over there on the far end with the dreadlocks?

A. Yes, sir.

Q. That night the five of you together who is the only person that had dreadlocks?

A. Raphael.

Q. Of those five people, yourself, Pat, Iquawn, Raphael and your nephew Kewon, your cousin Kewon, do you know if anybody used the name Rav or Ralf?

A. The only person called him Ralf was me.

Q. I'm sorry?

A. The only person I heard call him Ralf is me. That's it.

Q. Calling him Ralf?

A. Yeah.

Q. Okay. But as far as other nicknames, Smoke didn't go by the nickname Ralf?

A. No.

Q. That's not your nickname?

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A. No.

Q. That's not Pat's nickname?

A. That's not his nickname.

Q. And that's not Iquawn's nickname?

A. No.

Q. Tell me how you ended up being together with him that night?

A. At that night I picked them up from Williston. He was at a friend house, Freddie Jackson.

Q. And Williston is where?

A. It's in Aiken County going through Springfield and basically I get to see him when everybody was there because there wasn't nothing to do in the neighborhood and I went down there to see what Kewon was gonna do for his birthday because his birthday was coming up and I was out of work because I had a broke ankle so since I was out of work, I was going to take him out for his birthday.

Q. So when you ended up over in Williston, how did you get there?

A. In my car.

Q. What kind of car was it?

A. It's a green Mercury.

Q. Green Mercury?

A. Mm-hmm.

Q. That's the car that ended up getting wrecked later

the next morning?

A. Yes, sir.

Q. When you got there, were Iquawn, Pat, your nephew Kewon and Raphael already there?

A. Yes, all of them was already there.

Q. After you all got together, what did you do?

A. I told him I would take him to a little spot in Columbia. We first went to Calloway's, but Calloway's was closed and I said I got one more place and I tried The Little Rock and it was open so we went to The Little Rock.

Q. Okay. And is that - that's a bar, nightclub over by the airport?

A. Yes, sir.

Q. And that's in Lexington?

A. Mm-hmm.

Q. Now, you said you know that place. How do you know that place?

A. Because me and a bunch of my co-workers go out there like on Thursday nights to shoot pool and have a drink and just to hang out.

Q. How many times do you think you have been there before that night?

A. Probably like 10, 20 times.

Q. People there knew you?

A. People there know me.

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Q. People who worked there knew you?

A. Uh-huh.

Q. So how do you all get from Williston to the bar?

A. In my car.

Q. Let me show you what's been pre-marked as State's number 58 and do you recognize that?

A. Yes, sir.

Q. Those are the photos that we just in a few minutes ago for everybody, right?

A. Uh-huh.

Q. The order that they are in on that diagram, does that show how they were sitting in the car?

A. Yes. That's how everybody was sitting from Williston all the way to Columbia.

Q. How about after you all left the bar there, was that the same?

A. Everybody was sitting the same way.

MR. GRAHAM: Your Honor, the State would offer this into evidence at this time.

MR. MAULDIN: No objection, Your Honor.

THE COURT: What number is that?

MR. GRAHAM: This is number 58 previously marked into evidence now, Your Honor.

THE COURT: State's 58 is in evidence without objection.

BY MR. GRAHAM:

Q. Can you explain to the jury how everybody was sitting in your Mercury?

A. Me and Iquawn in the front. Raphael sitting behind me. Alexander in the middle and Patrick, he was sitting behind Iquawn.

Q. Your car. You were driving, right?

A. Yes, sir.

Q. When you get to The Rock, the bar that you go to that's near your work, what do you all do there?

A. Basically they was shooting pool. Iquawn was shooting pool. Patrick was sitting down at the table and I was talking to some of my co-workers because I was out for a while. I hadn't seen them.

Q. So you saw people there that you knew?

A. Mm-hmm.

Q. And that's who you spent most of your time with?

A. Spent most of my time with.

Q. How long do you think you were there?

A. Probably two or three hours.

Q. Were you drinking?

A. No, sir.

Q. Why weren't you drinking?

A. I was on medication.

Q. You said something earlier about your foot. What

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was wrong? You said you had been out of work?

A. Yeah. I broke my ankle. I was on medication.

Q. Okay. Anything unusual happen in the bar, in the parking lot that caught your attention?

A. In the bar it really was just like everybody was getting along, you know?

Q. Okay. What was your nephew Kewon doing?

A. When we was in the bar, he was just standing around talking with Ralf and two other white guys.

Q. Did you know who those white guys were?

A. No, sir.

Q. How about your nephew Pat?

A. He was sitting at the table by his self.

Q. Was he drinking?

A. No.

Q. Was he awake or was he tired?

A. He was tired.

Q. Do you know why?

A. Yeah. He had to go to work.

Q. How about Iquawn? What was Iquawn doing?

A. He was shooting a game of pool against one of my co-workers.

Q. How about Ralf? What was Ralf doing?

A. He was over there talking to the white guy.

Q. So he and your nephew Kewon were talking in the bar

to, you say one white guy or two white guys?

A. Two white guys.

Q. Anything unusual?

A. No. It didn't look unusual to me. I thought maybe they knowed them or something.

Q. When they got -- At some point did you go outside?

A. Yes, sir. When we was getting ready to leave.

Q. Tell me about that. What was going on?

A. I seen Ralf. He was bent over in the passenger window of the white guy car talking and I told him I'm about getting ready to go.

Q. So when you're doing that, where is everybody else?

A. Everybody else, Patrick was already in the car. Everybody else was coming and getting in the car.

Q. So Iquawn is already back up in the front seat?

A. Yeah.

Q. Patrick you said was already, he's back in the back seat passenger side?

A. Patrick and Kewon.

Q. And Kewon was back in the middle of the back seat where he normally sat?

A. Mm-hmm.

Q. So what do you say to Ralf?

A. About to go.

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Q. What did he say to you?
A. He didn't say nothing.
Q. How close is your car to this other car?
A. I would say side by side.
Q. Okay. And what is he doing at that time?
A. Bent over talking to the white guy in the car.
Q. Is he on the driver side, Ralf, is he on the driver side or passenger side of that other car?
A. Passenger side.
Q. Do you know what they're talking about?
A. No, sir.
Q. Do you see what's going on other than him leaning in the window?
A. No. I seen him leaning in the window.
Q. Okay. What's the next thing that you noticed happening?
A. Well, after that I told him we about to go, I crank out and I'm abouts to pull out and Iquawn said hold. I forgot my jacket. So I pulled the car back in the parking lot and Iquawn went and got his jacket. Then he calm back out. I pulled back in, reverse about to back up and I seen Raphael snatch the bag out the car. Snatch the bag out the car and the white guy came around and he grabbed Raphael.
Q. When he grabbed Raphael, what happened?
A. They were tussling.

Q. You say a bag. Let me show you a picture which is State's number 24 and ask if you recognize that?

A. Yes, sir.

Q. Is that the bag?

A. That's the bag.

Q. So you saw the defendant struggling with a white guy over this bag?

A. Uh-huh.

Q. What's the next thing you noticed?

A. Well, they bumped up against the car and that's when I stopped. I seen Raphael did like this (indicating) and pull out a gun.

Q. Did you know that he had gun?

A. No, sir.

Q. Do you know what kind of gun it was?

A. No, sir. It was dark and my windows are tinted, but I knew it was a gun by the way he pointed it at him.

Q. What did the white guy do when Raphael pointed the gun at him?

A. He held his hands up.

Q. What were you thinking at that time?

A. To leave.

Q. Did you leave?

A. Yes. I was leaving, but I don't know how my back door came open 'cause my doors automatic lock once you put it

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in any type of gear.

Q. So you're going to leave and some how your back door comes open and you don't know how?

A. I don't know how.

Q. So what happens as you're trying to leave and the back door comes open and you see Ralf pointing the gun at the white guy?

A. He hurry up and jump in the car.

Q. When he jumped in the car, what did you do? What did you say?

A. I start cussing. I was mad. I told him to get out.

Q. Okay. You're cussing and mad. What are you mad about?

A. 'Cause number 1, you did something. You robbed somebody where a place I always come hang out at. That look bad on me.

Q. What did he say back to you?

A. Nothing. He wasn't saying nothing.

Q. So what did you do?

A. I just pulled off. I told him, okay, we get stopped, I'm just going to tell the police exactly who did it.

Q. Did he say anything back to you?

A. No. He didn't say nothing. Basically nobody didn't

say nothing.

Q. That bag that you saw in that picture, did he bring that bag into your car?

A. Yes.

Q. Do you know what was in that bag?

A. No, sir.

Q. Where did you all go? And let me ask. When he gets in the car, when Ralf gets in the car, he's in the seat that you --

A. Sitting right behind me.

Q. Okay. Where do you go? Where do the five of you go now?

A. We went to Wendy's and got something to eat.

Q. Who went inside to get something to eat?

A. Me, Iquawn and Patrick.

Q. So who stayed in the car?

A. Kewon and Raphael.

Q. Do you know what they did while you were inside?

A. No, sir.

Q. How long were you inside?

A. We were in there about a good ten minutes waiting on our food.

Q. Let's talk about the physical differences between your nephew Kewon and Ralf, okay? Are they the same height or is one of them taller, one of them shorter?

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A. I would say Kewon a little shorter than Ralf.

Q. How about build wise?

A. Ralf way bigger than Kewon.

Q. Ralf is way bigger than Kewon?

A. Way bigger.

Q. How would you describe their demeanor just in how they acted in general?

A. Kewon he was just a laid back person and loved to have fun.

Q. How about Raphael?

A. I really couldn't say. Just know he, through the neighborhood he always in trouble.

MR. MAULDIN: Objection, Your Honor.

THE COURT: Sustained.

MR. MAULDIN: Move to strike.

THE COURT: All right. I'm going to --

BY MR. GRAHAM:

Q. After you all were back in the car at Wendy's --

THE COURT: Hold on.

MR. GRAHAM: Oh, I'm sorry.

THE COURT: Strike that response from the record, please.

BY MR. GRAHAM:

Q. Where do you go after Wendy's?

A. I'm going on my way back home.

Q. And where is home?

A. Chapel Hill on the outside of North.

Q. What happens as you're driving home?

A. While we was on the way home coming down 321, got through Gaston, all of a sudden I just seen a car following me. I switched lanes and the car switched lanes, too. We got to the town of Swansea. I seen it was a Highway Patrol behind me.

Q. Did you tell anybody in the car that there was a cop behind you now?

A. No, sir.

Q. What's the next thing that happened?

A. We went through the yield part to get on Highway 3, we got on the road probably like a quarter of a mile that's when he turned his blue lights on.

Q. When he turned his blue lights on, what did you do?

A. Automatically pulled over.

Q. What was going on in the car when you pulled over?

A. Nothing.

Q. Did Ralf say anything?

A. No, sir.

Q. Okay. You pulled the car over. What happens next?

A. Highway Patrol got on the speaker and told the

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driver get out the car.

Q. Okay. So did you do that?

A. Yes, sir.

Q. As you're getting out of the car, what's the next thing that Highway Patrol tells you to do?

A. Take my jacket off and throw it on the ground and lift my shirt up.

Q. What kind of jacket were you wearing that night?

A. A Jack Daniels.

Q. Do you remember the color?

A. Black.

Q. You back up toward the Highway Patrolman, you get handcuffed and they detain you back there?

A. Yes, sir.

Q. What's the next thing that happens?

A. That's when he was calling the passenger on the driver's side to get out the car.

Q. And that would have been who?

A. Iquawn.

Q. Did Iquawn get out of the car?

A. Yes, sir.

Q. What happened with him?

A. He detained him and started ordering Patrick to get out the car. That would be the next person.

Q. So the same thing. Just like you, Iquawn, hands up,

jacket off?

A. Yeah. Jacket off. He lift his shirt up and turn around and walk towards his voice.

Q. And he was brought to the back of the car with you and handcuffed?

A. Yes, sir.

Q. And you said Patrick was next?

A. Patrick was next.

Q. Same thing with Patrick?

A. Same thing.

Q. So when Patrick gets pulled back, he gets handcuffed like you, correct?

A. Mm-hmm.

Q. Who is still left in your car?

A. Kewon and Raphael.

Q. And they're in the front seat or the back seat when you got out of the car?

A. They was in the back seat.

Q. Just like in that diagram we were talking about?

A. Yes.

Q. When the three of you, yourself, Iquawn and Pat were back at the trooper's car in handcuffs, what's the next thing that happened?

A. I just heard my car took off.

Q. Did anybody have permission to take your car?

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A. No. Nobody at all.

Q. Do you know whether Patrick or Iquawn had on jackets that night?

A. Uh, no. I know Patrick had on a black hoodie.

Q. Do you know whether anybody in your group was wearing a green puffy jacket?

A. No, sir.

Q. Do you know whether Ralf, Raphael had a phone that night?

A. No.

Q. No, you don't know, or no, he did not?

A. No. I don't know if he had a phone or not.

Q. How about Kewon?

A. No. I ain't even know if he had a phone or not.

Q. All right. So your car takes off. You're detained by the police and that's the last that you know about what happened, right?

A. Uh-huh.

Q. Let me show you some other photos and ask if you recognize any of these. State's number 19. There is a black jacket with an orange lining. Does that mean anything to you?

A. No, sir.

Q. You don't remember anybody wearing that jacket that night?

A. No. I don't remember who wear what.

Q. State's number 39, does that jacket mean anything to you?

A. No, sir.

Q. State's 40 is a camouflaged baseball hat picture, Mossy Oak. Does that mean anything to you?

A. Mmm-mmm.

Q. State's 41, do you recognize that hat?

A. That look like Raphael's.

Q. State's number 42 is a knit hat photograph. Do you recognize that?

A. That's Kewon.

Q. Do you know whether he was wearing it that night?

A. I can't remember was he wearing it that night, but done seen him with that hat on.

Q. State's 43 is a green athletic jacket. Do you recognize that one?

A. Yes. That's my jacket.

Q. That's your jacket. When did you get that jacket?

A. Earlier that day.

Q. Was it in your car?

A. Yes. Because me and my girlfriend just got back from the movies.

Q. Did you wear it that night?

A. Wore it that night.

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Q. Did you wear it at The Rock?
A. No. I just had left it in the car.
Q. Did you let anybody wear it?
A. No, sir.
Q. Do you know if anybody wore it?
A. I didn't see nobody with that on.
Q. State's 44 is a fleece black and gray jacket photograph?
A. That's Kewon.
Q. That's Kewon's as well. State's 50 is a black shirt. Does that mean anything to you?
A. That don't mean nothing to me.
Q. State's 49 is a photograph of a pair of light color jeans. Do you recognize those?
A. No.
Q. State's 51 is three shirts. Do you recognize any of those shirts?
A. One of them.
Q. Which one do you recognize?
A. The green one.
Q. The green striped one?
A. Uh-huh.
Q. Whose shirt do you recognize that as being?
A. That's my nephew Kewon shirt.
Q. State's number 52 is a pair of jeans. Do you

recognize those?

A. It have to be Kewon.

Q. The place you are calling The Little Rock, is that also the night club that's also known as the Mile High Club now?

A. Yes, sir.

MR. GRAHAM: Carlisle, I think that's all the questions that I have. Please answer any questions that Mr. Mauldin has for you. Thank you.

THE WITNESS: All right.

CROSS EXAMINATION

BY MR. MAULDIN:

Q. Mr. Jones, you testified about all the people in the car that you knew Raphael the least; is that correct?

A. Yes, sir.

Q. And that you knew that other people had called him Polo; is that right?

A. Yes, sir.

Q. Now, you called him Rav; isn't that correct?

A. Rav.

Q. R-a-v?

A. Yeah.

Q. That's the way you spell it --

A. Mm-hmm.

Q. -- when you refer to him. Not Ralf with an L?

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A. I just call him Rav.

Q. Rav, R-a-v?

A. Rav.

Q. Well, the way you spell it is R-a-v; isn't that correct?

A. Yeah.

Q. Okay. Now, this place Little Rock, Mile High Club, you went there often after work; is that right?

A. Yes, sir.

Q. And you knew the people there that worked there and went there; isn't that right?

A. Yes, sir.

Q. And you knew Mr. Ruple, too, didn't you?

A. Mr. who?

Q. You knew the white boy that Raphael was talking to?

A. No. I hadn't met him before.

Q. Didn't you tell Raphael and some of the others that you knew him from being in the bar before?

A. No. Never said that.

Q. Now, you say you saw Raphael talking to the white guys inside the bar; is that right?

A. Yes, sir.

Q. And he was with them inside the bar for a period of time; is that right?

A. Yes, sir.

Q. Did you ever see him with them outside the bar before you all were getting ready to leave?

A. They were standing out there right in the doorway.

Q. Didn't you go out some time and get some cigarettes from your car and see them talking to them and heard a clicking noise that sounded like a gun to you?

A. Yes, sir. That's when I got my cigarettes and came back in, then we left. That's when I told them to come on. We about to go.

Q. So you were outside during that conversation with the clicking noise; is that right?

A. Yes, sir.

Q. Okay. Now, when you were getting ready to go, you're in the parking space and you're faced towards the bar; is that right?

A. Yes, sir.

Q. And when you describe the bag being taken and everything, you hadn't pulled out of the spot or anything at that point in time. You were getting ready to?

A. Actually I was in the motion to back up.

Q. You weren't at the exit getting ready to leave?

A. No. I was backing up out of my parking spot.

Q. So you didn't have your car pointed toward the exit like you were getting ready to make a getaway or anything

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like that?

A. No, sir.

Q. Did you get out of the car and tell Raphael shoot him. Let's go?

A. No.

Q. You were driving the car, weren't you?

A. Yes, sir.

Q. Okay. Is there a TV in that car?

A. A TV?

Q. Yes, sir.

A. Yeah. My radio had a TV screen on it.

Q. In the dashboard?

A. Mm-hmm.

Q. Now, when you all were leaving, Patrick pulled out a nine millimeter gun, didn't he?

A. Patrick? No, sir.

Q. And you saw him with the nine millimeter gun, didn't you?

A. No, sir.

Q. And when you saw him with the nine millimeter, you told him since you got that nine millimeter, you got that nine, I can have the .25 that you've got?

A. No, sir.

Q. And you said that after you all left The Little Rock or The Mile High Club; is that right?

A. No, sir.

Q. Now, the State showed you exhibit 43 that you identified as your jacket; is that correct?

A. Brand new jacket, yes, sir.

Q. And that jacket is green, isn't it?

A. Yes, sir.

Q. And you were never charged in this incident, were you?

A. No, sir.

Q. And it's your understanding that you're not going to be charged; isn't that correct?

A. Yes, sir.

MR. MAULDIN: No further questions.

MR. GRAHAM: Nothing else, Your Honor.

THE COURT: Thank you very much, sir. You may step down. You need a short break? We're going to take just a short break, folks. Step back into the jury room. If you need anything, let us know, okay?

(The jury goes into jury room.)

(Short break.)

THE COURT: Back on the record. All right. Ready for the jury?

(The jury enters the courtroom.)

THE COURT: Ladies and gentlemen, ready to proceed. State call your next witness.

MR. GRAHAM: The State calls Patrick Johnson.

Thereupon,

PATRICK JOHNSON

after having been first duly sworn, testified as follows,

THE CLERK: Please, have a seat in the witness box and state your full name spelling your last name.

THE WITNESS: Patrick Johnson, J-o-h-n-s-o-n.

DIRECT EXAMINATION

BY MR. GRAHAM:

Q. Patrick, how old are you?

A. 23 years old.

Q. You go by Pat?

A. Yes, sir.

Q. Where are you working now?

A. Carmax.

Q. What do you do there?

A. I detail.

Q. Back a year ago at this time January of 2014 where were you working?

A. At Amazon.

Q. Let me show you State's number 47. Do you recognize that person?

A. Yes, sir.

Q. Who is that?

A. Kewon.

Q. What relation to Kewon are you?
A. That's by best friend.
Q. Are you also related by blood?
A. No, sir.
Q. Best friend. Do you know his full name?
A. Yes, sir.
Q. What's his full name?
A. Alexander Kewon Clemmons.
MR. GRAHAM: Your Honor, I'm going to ask the witness to write the full name across on State's 47.
MR. MAULDIN: I don't object to that, Your Honor.
THE COURT: All right. You have no objection or you do object?
MR. MAULDIN: No, I don't object.
THE COURT: Okay.
BY THE WITNESS:
A. (Witness complies.)
BY MR. GRAHAM:
Q. Did he have any nicknames?
A. Yes, sir.
Q. What was his nickname?
A. Kewon, Smoke and Chuck.
Q. Kewon, Smoke and Chuck. He's your best friend. How long had you all been friends?
A. Since we was little boys.

Q. State's 55, do you recognize that person?
A. Yes, sir.
Q. Who is that?
A. Carlisle.
Q. What relationship is Carlisle to you?
A. He's my cousin.
Q. You call him uncle?
A. Yes, sir.
Q. Kewon's picture that you looked at, the night of the 23rd and the morning of the 24th, what kind of hair did he have at that time?
A. He had the low haircut as the picture looks.
Q. How about Carlisle, your uncle?
A. Yes. Also a low haircut.
Q. Does Carlisle have any other nicknames that you know of?
A. They call him Birdman also.
Q. State's number 56, that's you?
A. Yes, sir.
Q. Is that how you looked that night?
A. Yes, sir.
Q. Low hair like you've got today?
A. Low hair, yes.
Q. How about your nicknames?
A. Pat. That's it.

Q. State's number 57, do you recognize Iquawn?
A. Yes, sir.
Q. What's your relationship to Iquawn?
A. Just neighborhood friend.
Q. Do you normally hang out with him?
A. From time to time.
Q. Is that how he looked that night?
A. Yes, sir.
Q. How about nicknames for him?
A. Iquawn, Rooster or Iq.
Q. State's number 62, do you recognize that?
A. Yes, sir.
Q. Who is that?
A. That's Raph.
Q. Do you see him in the courtroom today?
A. Yes, sir.
Q. Where is he?
A. Sitting over there (indicating.)
Q. You called him -- What was his nickname? What are the nicknames he goes by?
A. Los, Polo or just Raph.
Q. You're saying Raph. Where does the Raph come from?
A. From his name, Raphael.
Q. Raphael?

A. Yes.
Q. Have you ever heard him called Ralf?
A. No. No, sir.
Q. And is that the way he looked that night?
A. Yes, sir.
Q. I'm going to get you to write his other nicknames on there, Polo and Los.
A. (Witness complies.)
Q. Do you know where those names come from?
A. No, sir.
Q. Earlier the evening of the 23rd, you, your best friend Kewon, Iquawn and Raphael were all together where?
A. At Kewon uncle house Kenny.
Q. At some point did Carlisle come up?
A. No. Not --
Q. Not there?
A. No. No, sir.
Q. At some point before -- You did meet up with Carlisle at some point, right?
A. Yes, sir.
Q. Prior to meeting up with Carlisle, did any of the people you were with show you any handguns?
A. Yes, sir.
Q. Who showed you a handgun?
A. Raph.

Q. Are talking about the defendant sitting over there?

A. Yes, sir.

Q. What did he show you?

A. It was a black handgun. A revolver.

Q. Why did he show it to you?

A. He said just in case we have any problems.

Q. Let me show you State's number 48 and ask if you recognize that?

A. Yes, sir.

Q. Is that the gun that he showed you?

A. Yes, sir.

Q. Tell me how Carlisle met up with you all?

A. Well, we went to Freddie's house in Williston. Carlisle called me and asked what we had. What we was doing. I told him we was over there, but he wasn't sure if was going to come over but he decided to and that's when I met up with him.

Q. Once the five of you all got together, what was your plan?

A. My plan was to go home. I had to work the next morning.

Q. Where did you live at the time?

A. In Chapel Hill which is North, South Carolina.

Q. You were at Williston at the time the five of you

met up?

A. Yes, sir.

Q. How far is Williston from Chapel Hill?

A. 25 to 30 minutes.

Q. Is that the way it worked out?

A. Yes, sir.

Q. Now, is that the way you worked it out that you got to go home right then?

A. No, sir.

Q. Why not?

A. Carlisle decided to take Kewon out because his birthday was coming up.

Q. Where did you all end up going?

A. To a place called The Rock.

Q. Had you ever been there before?

A. No, sir.

Q. Did you have any guns on you?

A. No, sir.

Q. At that time did you know of anybody else other than Raph that had one?

A. No, sir.

Q. When you're traveling in the car from Williston to that bar, how was everybody seated?

A. Carlisle was the driver. Iquawn in the front passenger seat. Raph is behind Carlisle. Kewon is in the

middle, and I'm behind Iquawn.

Q. Of the five of you, who is the only person that had dreads?

A. Raph.

Q. How tall are you?

A. Five five.

Q. Is Raph taller or shorter than you?

A. He's taller.

Q. How much taller?

A. Maybe five or six inches.

Q. Is he bigger or smaller than you?

A. Bigger.

Q. How much?

A. Maybe 80 pound.

Q. How about Kewon, was he taller or shorter than you?

A. Taller.

Q. How much taller?

A. Three to four inches.

Q. Was he heavier or skinnier than you?

A. He was heavy.

Q. When you compare Kewon to Los, who is taller?

A. Raph.

Q. Who is heavier?

A. Raph.

Q. Is it a big difference?

A. In weight wise.

Q. Weight wise?

A. Yes, sir.

Q. What happens when you get to the bar?

A. We get to the bar. We go in. I sit at the table. As soon as you come into the door there is a table set off to the side by the jukebox. I'm sitting to that table. Carlisle is talking to his former associates at work. Iquawn goes to the second pool table and Raph and Kewon is standing back by the bathroom in the corner.

Q. How long do you think you stayed there?

A. Maybe a hour.

Q. Are you drinking?

A. No, sir.

Q. Anything unusual happen that you know inside?

A. No, sir. Everyone just shooting pool, just drinking and just standing around most of the time. But then I noticed Raph is gone. He went out of the bar maybe two times.

Q. Do you know who he went out with?

A. No, sir.

Q. Did he go out by himself?

A. At the time I seen him he went out by his self.

Q. How about you. Did you go outside?

A. No, sir.

Q. What were you doing in the bar?

A. I sat at the bar the whole time. When I'm saying the bar, at that table that I sat at coming in, I was at that table by myself the whole time.

Q. Did you have to work the next morning?

A. Yes, sir.

Q. How about your uncle Carlisle, what was he doing in there?

A. He was talking to former workers. I guess the guys he works with, a few of them. But he was just standing up the whole time also.

Q. How about Iquawn, what was he doing in there?

A. He was shooting pool at the second table with a couple.

Q. Raphael, did you see him talking to anybody inside?

A. No, sir.

Q. And then your best friend Kewon, what was he doing?

A. He was standing back there by the bathroom in the corner just standing up.

Q. Now, were you awake the whole time you were in the bar?

A. No, sir.

Q. What were you doing?

A. I had a -- I was smoking at the table by myself and then I kept putting my head down.

Q. Do you know whether Raphael had a cell phone?

A. No, sir.

Q. How about Kewon?

A. No, sir. The last one I know he had was I think he get it from like the food stamp place.

Q. Let me show you some pictures of clothes and ask you if you recognize any of them. State's number 43?

A. No, sir.

Q. Never seen it before?

A. No, sir.

Q. Did you see anybody wearing it that night?

A. No, sir.

Q. Did you see anybody with a green puffy jacket on?

A. No, sir.

Q. State's 44, do you recognize that?

A. Yes, sir.

Q. Whose jacket is that?

A. That's my best friend Kewon's jacket.

Q. Do you know whether Kewon was wearing it that night?

A. I'm not sure.

Q. State's 42 is a photograph of a knit hat. Do you

recognize that?

A. Yes, sir.

Q. Whose hat is that?

A. That's Kewon's hat also.

Q. Do you know whether he was wearing it that night?

A. I'm not sure.

Q. State's 41?

A. Yes, sir.

Q. Do you recognize that hat?

A. Yes, sir.

Q. Whose hat is that?

A. That's Raph's hat.

Q. Do you know if he was wearing it that night?

A. I'm not sure.

Q. Do you know if anybody was wearing it that night?

A. I'm not sure.

Q. State's 40, ball cap?

A. Yes, sir.

Q. Do you recognize that one?

A. Yes, sir.

Q. Whose hat is that?

A. That's Kewon hat.

Q. Do you know if he was wearing it that night?

A. No, sir. I'm not sure.

Q. State's 39, do you recognize that?

A. Yes, sir.
Q. Whose jacket is that?
A. That's Raph's jacket.
Q. Do you know whether he was wearing it that night?
A. I'm not sure.
Q. State's 19, have you ever seen that jacket before?
A. No, sir.
Q. Do you remember what you were wearing that night?
A. Yes, sir.
Q. What were you wearing?
A. I had on a black hoodie with a white T-shirt and some jeans and some black shoes.
Q. Do you remember what color the jeans were?
A. No, sir.
Q. So a black hoodie?
A. Yes, sir.
Q. With a T-shirt?
A. Yes, sir.
Q. Jeans and black shoes?
A. Yes, sir.
Q. How much do you weigh?
A. Maybe 140.
Q. So of the five people, of you and everybody else, who weighs the least?
A. Me. I'm the smallest.

Q. You're the shortest and the smallest?
A. Yes, sir.
Q. Let me show you State's number 49 which is a picture of a pair of jeans. Does that picture mean anything to you?
A. No, sir.
Q. State's number 50 is a black T-shirt. Does that mean anything to you?
A. No, sir.
Q. What, if anything, did you know at that time about Kewon having a .25 caliber semi automatic on him?
A. I didn't know anything about it.
Q. Did you even know that he had gun like that?
A. No, sir.
Q. State's number 52 is a pair of jeans with a green and white and a black looking design. Do you recognize those?
A. Yes, sir.
Q. Whose are those?
A. Those are Kewon's pants.
Q. Do you know whether he was wearing them that night?
A. Not sure.
Q. What is it about them that makes you know they're Kewon's?

A. Because I had seen him with them on. Like when he dressed, he dressed head to toe.

Q. He dressed what?

A. He dressed head to toe.

Q. Head to toe?

A. Yes, sir.

Q. Let me show you some pictures of shirts in State's 51 and ask you if you recognize any of those shirts?

A. Yes, sir.

Q. Which one do you recognize?

A. The black Tapout shirt and the green shirt.

Q. So the middle shirt, the black Tapout and the green shirt, that's the striped one?

A. Yes, sir.

Q. Whose shirts are those?

A. Those belong to Kewon.

Q. Do you know whether Kewon was wearing them that night?

A. No, sir. I'm not sure.

Q. When you said earlier he was dressed head to toe, what did you mean?

A. As far as in if he have on a red and black hat, for example, his shirt might have red and black and his pants might have red and black and his shoes also.

Q. He was color coordinated?

A. Yes, sir.

Q. What happened when it was time for you all to leave the bar?

A. Carlisle came and asked me was you ready to go. I said yeah. I went. We loaded up. Well, I went to the car first and I got in. I got in the back seat. I dozed my head off on the window and everybody is getting in, and Raph was talking to someone but I'm not sure. He was leaning in the car, and then - but I was sleeping and everything. So Carlisle said I'm about to leave you. He's backing out and then all of a sudden a boom hit the back of the car on the driver's side and that's when I woke up and I seen Raphael was tussling with someone and they got each other by the shirts or whatever, and then he gets in the car. Once he gets in the car, he's like he's putting something in his pants and he has a blue bag.

Q. Did you actually see him with him a gun at that time?

A. No, sir.

Q. You say -- You're making motions while you were testifying. What are you talking about?

A. Like he - when he's getting in the car, he's putting something under his shirt in this pants, but the bag is over, you know.

Q. All right. Let me show you State's 24. Do you

recognize that?

A. That's the blue bag.

Q. So you heard a boom and saw them tussling?

A. Yes, sir.

Q. And that's Raph?

A. Yes, sir.

Q. Who is he tussling with?

A. This guy right here (indicating.)

Q. You recognize him?

A. No, sir.

Q. Okay. So the person that night, that morning, what do you remember? Who was he tussling with? Was he white or black?

A. He was a white guy.

Q. Did you know him?

A. No, sir.

Q. When you say tussling, what were they doing?

A. They had grabbed each other and like the bag is between them so they're like reaching at each other, but they got each other like grabbing each other by the shirt.

Q. Did you see Raph pull out a gun at that time?

A. No, sir.

Q. How did the tussling stop?

A. I'm not -- I know that this guy right here, he had his hands up like this (indicating.)

Q. So after he put his hands up like that, you don't know why he put his hands up?

A. No, sir.

Q. And then what did Raph do next?

A. He's coming back to the car. When he gets in, like when he's going into the car, he's putting something under his shirt and he has the blue bag.

Q. Everybody else is already in the car?

A. Yes, sir.

Q. Looking at State's number 58, is that where everybody was sitting when you all left the club?

A. Yes, sir.

Q. So which door did Raph come in?

A. Behind the driver door. The driver passenger door.

Q. Going from low hair to shoulder length dreadlocks, how long does that take to grow out?

A. Maybe two to three years.

Q. So it takes a while?

A. Yes, sir.

Q. When Raphael gets back into the car making that motion where he's putting something in his waist and holding that bag in the other hand, what happens?

A. Carlisle basically he went off there cussing and he's cussing and basically kind of like arguing and he said I

should have left. I said this your car. You do what you want.

Q. Was Carlisle happy or mad?

A. He was mad.

Q. How mad?

A. He was basically cursing.

Q. At who?

A. At Raph.

Q. What was Iquawn doing during that time?

A. He was just sitting in the front seat.

Q. What were you doing?

A. Nothing. Sitting in the back seat where I was.

Q. How about Kewon?

A. He was in the middle also just basically, you know, we know why Carlisle is mad.

Q. When Carlisle was cussing at Raphael, did Raphael say anything back?

A. No, sir. I'm not sure.

Q. Where did you all go from there?

A. We stopped -- Carlisle, once we coming up -- Well, we were heading back home now as far as I know, but Carlisle stopped. He asked me did I still want to stop and get something to eat. I told him yeah. So we stopped to the local Pilot.

Q. Who went into the store?

A. Me, Carlisle and Iquawn went in.

Q. And it's a Pilot Gas Station. Is there a food place there?

A. Yes. Wendy's.

Q. Did you get something to eat?

A. Yes, sir.

Q. And Carlisle and Iquawn as well?

A. Yes, sir.

Q. When you got back into the car, how was everybody seated again?

A. The same way we came from Williston to The Rock and the same way we headed back.

Q. Where did you all go when you left?

A. We were headed home.

Q. Back to the Chapel Hill area?

A. Back to the Chapel Hill area.

Q. Anybody say anything about a robbery as you were going down the road?

A. No, sir. Everybody is quiet at this time.

Q. At some point you all get pulled over by a trooper?

A. Yes, sir.

Q. Tell me what happens?

A. Well, we get pulled over. When he pulls us over, he basically was on the walkie, you know, telling us how he was

gonna - say he had like his gun drawn. He will shoot. He ordered Carlisle, the driver, to get out first, and then Iquawn to get out, and then I was next and then after that the car pulled off.

Q. So the trooper pulled you out one at a time?

A. Yes, sir.

Q. First Carlisle?

A. First Carlisle.

Q. Do you remember whether Carlisle was wearing a jacket?

A. No, sir. I'm not sure.

Q. So he goes back and the four of you are still in the car, right?

A. Yes, sir.

Q. What are people talking about?

A. Nobody really saying anything.

Q. Then who gets out next?

A. Iquawn.

Q. Do you remember if Iquawn had a jacket?

A. I'm not sure.

Q. He got pulled out and went back?

A. Yes, sir.

Q. Anybody talking about anything while that happens?

A. No, sir.

Q. Did you see any guns in the car at that time?

A. No, sir. Just the one that I was shown earlier.
Q. But did you see it at that time?
A. I didn't see it.
Q. And then who gets pulled out next?
A. I'm pulled out next.
Q. Okay. And you're coming from the back passenger side, right?
A. Yes, sir.
Q. Are you wearing a jacket?
A. No, sir. I'm wearing a black hoodie.
Q. So as you're going back, what does the officer tell you to do as far as your clothes?
A. As far as my clothes? He tell me to get out. Take off my top layer of clothing, did that and I was told to hold my hands up and back up slowly all the way to the officer.
Q. You did that?
A. Yes, sir.
Q. And you got handcuffed?
A. Yes, sir.
Q. So after the three of you are handcuffed, who is still in the car?
A. Raphael and Kewon.
Q. Did you know that the car was going to go driving off?
A. No, sir.

Q. What's the next thing that happens when you're back there?

A. As I'm backing up, the cop as he's putting the handcuffs on me, the car sped off and then he ordered me to kneel down on the ground as Carlisle and Iquawn was.

Q. Did you give a statement to the police that morning on the 24th?

A. Yes, sir.

Q. What did you tell them?

A. I told them I was asleep, which I was, but I didn't know anything about what happened or what was going on.

Q. Was that the truth or a lie when you told them that?

A. It was a lie.

Q. Why did you tell them you didn't know anything?

A. Because my mother is associated with the defendant's uncle and that put me in the middle of either way it goes somebody is going to be mad with me and I was trying to protect her and protect my friend because I wasn't sure why he stayed in the car.

Q. What you're testifying to today, is that the truth?

A. Definitely the truth.

Q. Why are you telling the truth now?

A. Because I've had a son and I've changed and I don't

want him growing up telling lies and it was on my conscious, you know, to tell the truth. My best friend lost his life that night or that morning.

Q. When you came in to talk to me, I told you that we had no intentions of bringing charges against you; is that correct?

A. Yes, sir.

Q. Who's the one of you five that robbed that man that night?

A. Raphael.

Q. It wasn't Carlisle?

A. No, sir.

Q. It wasn't Iquawn?

A. No, sir.

Q. It wasn't your best friend?

A. Definitely not.

Q. Was it you?

A. No, sir.

Q. You didn't rob that man?

A. No, sir.

Q. Who had the gun?

A. Raph.

Q. Who robbed that man?

A. Raph.

MR. GRAHAM: Thank you, Patrick. Please answer any

questions they may have for you.

CROSS EXAMINATION

BY MR. MAULDIN:

Q. So you're saying that you lied on the night of the incident; is that correct?

A. Yes, sir.

Q. So you're admitting that you're a liar?

A. I'm not a liar.

Q. If you tell a lie, you're a liar, aren't you?

A. No, sir.

Q. No? Now, you all left Williston and you thought you were going to go home; is that right?

A. Yes, sir.

Q. And you fell asleep in the car and when you woke up, you were at the bar?

A. Yes, sir.

Q. You had no idea you were going there?

A. No, sir.

Q. As far as you knew that wasn't the plan. The plan was to go home?

A. That's what I think. We was going home, sir.

Q. And that's a bar that Carlisle visits; is that right?

A. Yes, sir.

Q. Now, the first time you noticed this blue bag was

after you got out of the Pilot, wasn't it?

A. No, sir.

Q. Do you remember talking to Investigator Kyle Taylor on May 20th of last year?

A. Yes, sir.

Q. Do you remember signing a statement?

A. Yes, sir.

Q. And didn't that statement say the first time you noticed the bag was after you got out of the Pilot?

A. I'm not sure.

MR. GRAHAM: Your Honor, I'm going to object at this time. He's asking him questions. He said that he signed a statement, but he hasn't shown the statement to the witness.

MR. MAULDIN: I was getting ready to do that, Your Honor.

THE COURT: All right.

BY MR. MAULDIN:

Q. Would looking at it refresh your recollection?

A. Yes, sir.

Q. (Proffering.) And in that statement you said that when you got to the Pilot, that's when you saw the blue bag in the car; is that right?

A. Yes, sir.

Q. Is that a lie, too?

A. No, sir.

Q. So the first time you saw that bag was after you got out of the Pilot?

A. That's the first time -- The first time I saw the blue bag was when we left The Rock.

Q. But that statement says that you noticed it when you got out of the Pilot?

A. Yes, sir. Like I said, I lied because my mother is involved with that family so I was coming to like, you know, trying to protect her just in case I knew this thing was gonna blow up basically.

Q. And your story didn't change until the Solicitors talked to you earlier this month; is that right?

A. That's when I decided myself to tell the truth. I came in myself.

Q. And they talked to you and they reassured you that they weren't going to charge you with anything; is that right?

A. Yes, sir.

MR. MAULDIN: No further questions, Your Honor.

THE COURT: Anything further for this witness?

REDIRECT EXAMINATION

BY MR. GRAHAM:

Q. When you came in and spoke with me, at that time the only thing that you had told the police was that you were

asleep, right?

A. I was asleep, yes, sir.

Q. If you would have stuck with that story, do you think you would be testifying today?

A. No, sir.

Q. Was it an easy thing to come in here today and testify --

A. Definitely not.

Q. -- and point the finger at somebody you knew?

A. No, sir.

Q. The easier thing would have been to say you were asleep?

A. Yes, sir.

Q. And you knew when you came in to speak to me that regardless of what you said, you weren't going to be charged with anything; is that right?

A. Yes, sir.

Q. You could have said that you robbed somebody and you weren't going to get charged, were you?

A. No, sir.

MR. GRAHAM: Thank you, Pat.

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

MR. GRAHAM: Your Honor, if we could take a short break and talk about the rest of our case?

THE COURT: All right, sir. Ladies and gentlemen, let me get you to step back to the jury room. Have no conversation about the case and we'll get started back.

(The jury goes into the jury room.)

THE COURT: All right. Let's take a few minutes.

(Short break.)

THE COURT: Back on the record. All right. Gentlemen, does the State have any additional witnesses?

MR. GRAHAM: No, Your Honor.

THE COURT: All right. So the State will be resting when the jury comes back out?

MR. GRAHAM: Yes, sir.

THE COURT: All right. So before the jury comes back out, if the State is going to rest, while the jury is out let's take up any motions at the close of the State's case so we can proceed before the jury comes out, okay?

MR. MAULDIN: Thank you, Your Honor. At this time on behalf of Mr. Pontoo I move for a directed verdict on both charges taking my prior objections and motions along with the evidence that's been presented by the State that there hasn't been a sufficient case to present to the trier of fact for the charges of armed robbery and failure to stop for blue light resulting in

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death.

THE COURT: All right. Thank, Mr. Mauldin. I'm going to respectfully deny that. I think it's a factual issue based on the evidence that's been presented as to what the jury would believe and I think it's an issue for the jury to decide. Anything further?

MR. MAULDIN: No, Your Honor.

THE COURT: All right. Have you talked with Mr. Pontoo about what the defense either intends to do or not do as far as the case?

MR. MAULDIN: Yes, Your Honor. I have discussed with him his right to testify and not to testify and it's my understanding that he intends to testify.

THE COURT: Mr. Pontoo, let me address that with you at this point, sir. Please stand. Place him under oath, please.

Thereupon,

RAPHAEL LAMARR PONTOO

after having been first duly sworn, testified as follows,

THE COURT: Mr. Pontoo, a person who is charged with a criminal offense has a Constitutional right to remain silent. They also have a Constitutional right to testify or to put up a case. Now, before I go any further with Mr. Pontoo, is there any prior history that might be the subject of any impeachment?

MR. GRAHAM: He has a 2007 juvenile adjudication, Your Honor, for assault of a high and aggravated nature. So if Your Honor admitted it, it would be subject to the balancing test about the probative value outweighing any prejudicial effect.

THE COURT: What year was that?

MR. GRAHAM: I believe it was in 2007 so seven years ago now.

THE COURT: Do you have a position on that, Mr. Mauldin?

MR. MAULDIN: Your Honor, our position would be that the assault of a high aggravated nature, that that crime is not necessarily indicative of dishonesty as far as affecting somebody's credibility and we think that the prejudice of admitting it especially as a juvenile conviction - or it's not a juvenile conviction but far outweighs the probative value.

THE COURT: Do you wish to be heard further on that?

MR. GRAHAM: I agree. It's not indicative of credibility. It does meet the statutory requirements. It's over a year. Carried a potential of over a year for that charge. It's not what he's charged with today so I don't think there is a prejudicial effect on that. And I would understand if it was an armed robbery and he's being tried for an armed robbery or something like

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that.

THE COURT: All right. I don't think -- I would not allow that. I don't think that it would be appropriate to -- I don't think it's necessarily fair for the jury to consider in a determination of guilt or innocence in this matter.

All right. Mr. Pontoo, going back to your right to testify or not testify, a person has a Constitutional right to remain silent. Do you understand that, sir?

MR. PONTOO: Yes, sir.

THE COURT: Okay. You have talked with Mr. Mauldin about this; is that correct?

MR. PONTOO: Yes, sir.

THE COURT: Okay.

MR. PONTOO: May I have like two or three more minutes to talk to him?

THE COURT: Yes. Go ahead.

(Defendant conversing with his counsel.)

THE COURT: Mr. Mauldin, you all may want to consider, as far as the ruling on the prior history, I was looking at the older rule, the old rule where it made a differentiation between the accused and a witness, but the current rule in South Carolina says that evidence of juvenile adjudication is admissible under this rule if the conviction of the crime would be

admissible to attack the credibility of an adult. So I'm changing my ruling. I think it would be subject to impeachment.

MR. MAULDIN: So my understanding of your ruling is that the probative value outweighs the prejudice?

THE COURT: I think -- I don't -- Yeah. I think it does, in fact, would be appropriate so, and the reason I said you may want to step back and talk because you may need to talk further with Mr. Pontoo about that. Off the record.

(Short recess.)

THE COURT: Back on the record. All right. Mr. Pontoo.

MR. PONTOO: Yes, sir.

THE COURT: Have you had enough time to talk with Mr. Mauldin about whatever it was that you needed to speak with him about?

MR. PONTOO: Yes, sir.

THE COURT: All right, sir. Now, going back to your decision as to whether or not to testify, it's been conveyed to the Court that you do intend to testify; is that correct, sir?

MR. PONTOO: Yes, sir.

THE COURT: All right. And I'll address that in just a moment, but let me just address the other side of

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that coin first. A person has a right to remain silent or to not testify and that is a right that you have under the Constitution. In other words, you don't have to prove anything in a case where you are accused of committing a criminal offense. The burden of proof is always on the State and so because you have the right to remain silent and not produce or not have to prove anything, if you chose to do that, I would instruct the jury when I gave them the instructions on the law that the State has the burden of proof in this case and in all criminal cases and that you don't have to prove anything and so the fact that you chose to remain silent is an exercise of that Constitutional right and that the jury cannot consider that at all in their discussions or their deliberations as to your guilt or innocence because it's not appropriate. I would instruct them that the fact that you chose to remain silent could not be discussed in the jury room at all. They're not to consider that. They're only to consider whether or not the State has carried their burden of proof.

Now, you do also have the right to testify. You have indicated that at this point you intend to do so. You understand though that if you testify, that you would obviously answer questions posed by Mr. Mauldin, but you would also be required to answer any questions

that the State's attorneys would ask you. Do you understand that, sir?

MR. PONTOO: Yes, sir.

THE COURT: Okay. Now, it is my understanding that there was a conviction or assault and battery of a high and aggravated nature?

MR. GRAHAM: It was an adjudication. It reflects on here, Your Honor, it says assault; assault of a high/aggravated nature. I think it's assault of a high and aggravated nature.

THE COURT: All right. That was back in 2007?

MR. GRAHAM: Yes, sir.

THE COURT: Mr. Pontoo, I don't know if Mr. Mauldin would choose to bring that out or if the State would choose to bring that out, but you understand that they would be allowed to ask you if you had been convicted of that offense. Do you understand that?

MR. PONTOO: Yes, sir.

THE COURT: Now, I would not allow them to go into any details. They're not allowed to go into any sentencing. They're not allowed to go into any further questioning about it. They would only be allowed to ask as to whether or not you were, in fact, convicted of that offense and that's the extent of the questioning as far as that goes. Do you understand that?

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MR. PONTOO: Yes, sir.

THE COURT: Okay. Now, understanding all of these things, is it still your intent to testify?

MR. PONTOO: Yes, sir.

THE COURT: I'm sorry.

MR. PONTOO: Yes, sir.

THE COURT: Okay. Now, that decision that you have made to testify, has that been your decision, sir?

MR. PONTOO: Yes, sir.

THE COURT: Has anybody forced you or threatened you or coerced you or made you make that decision?

MR. PONTOO: No, sir.

THE COURT: All right. Is that a decision that you have made after talking with your attorney and talking with anyone else that you need to discuss it with, is that a decision that you have made of your own free will, sir?

MR. PONTOO: Yes, sir.

THE COURT: All right, sir. And I would certainly respect that decision and we'll certainly proceed in that fashion. Anything else we need to take up before we bring the jury back out?

MR. GRAHAM: Not from the State.

THE COURT: Anything further, Mr. Mauldin?

MR. MAULDIN: No, Your Honor.

THE COURT: All right. Let's bring the jury out.

(The jury returns to the courtroom.)

THE COURT: Back on the record. Ladies and gentlemen, thank you for the courtesy. If the State will call it's next witness.

MR. GRAHAM: The State rests, Your Honor.

THE COURT: All right. Thank you very much, Mr. Graham. Folks, the reason that break took a little bit longer than anticipated was Mr. Graham was kind enough to let the Court know during the break that they evaluated their case, that they have reviewed it and that all the evidence they intend to present they have presented and that they would be resting and I appreciate that. Because of that reason by law once the State has rested their case, I'm required to take up matters of law before we proceed any further. So if we would have waited until you came out here now and then I recognized the State and they stood up and said the State rests, then I would have had to turn around and send you all back out and take up these matters of law, but because he gave me the heads up that the State would be resting, I went ahead and took up those matters of law while you were out. So we have done that and so now we're ready to proceed with the case and so we recognize Mr. Mauldin on behalf of the defense.

MR. MAULDIN: Thank you, Your Honor. The defense would call Raphael Pontoo.

Thereupon,

RAPHAEL LAMARR PONTOO

after having been first duly sworn, testified as follows,

THE CLERK: Please have a seat and state your full name for the record spelling your last name.

THE WITNESS: Raphael Lamarr Pontoo, P-o-n-t-o-o.

DIRECT EXAMINATION

BY MR. MAULDIN:

Q. Raphael, how old are you?

A. I'm 21 years old.

Q. How do you know Alexander Kewon Clemmons?

A. From childhood growing up.

Q. And how do you know him?

A. Friend of the family.

Q. How long have you known him?

A. Couple years.

Q. And how do you know Carlisle Jones?

A. Uhm, from my childhood also.

Q. And Patrick Johnson, how do you know him?

A. He's my cousin.

Q. And Iquawn Jones, how do you know him?

A. He's my cousin.

Q. Now, January 24th of last year, how did you end up

at the bar in West Columbia?

A. With Carlisle Jones.

Q. How did you get there?

A. With Carlisle's car.

Q. Okay. Did he drive?

A. Yes, sir.

Q. Where was it your understanding that you were going to go?

A. To Chapel Hill.

Q. So it was your understanding you were going back home?

A. Yes, sir.

Q. When you got to the bar, what did you do?

A. I got to the bar, I went in and was sitting at the table.

Q. What table are you talking about?

A. The same table that Patrick said he was sitting at.

Q. Who were you hanging out with at the bar?

A. I was by myself and Patrick and me was sitting at the table by ourselves at first.

Q. At any point in time did you notice Mr. Ruple, the white fellow?

A. Yes, sir. He was speaking with Mr. Clemmons.

Q. Where was that happening?

A. Uhm, in the corner by the bar.

Q. And what did you do when you saw that?

A. I seen Mr. - the white guy give Mr. Clemmons a cigarette. I walked up and asked to buy one.

Q. Did you get one off of him?

A. Yes, sir.

Q. Did Carlisle say anything about the white guy while you were standing at the bar?

A. He stated nothing about the white guy.

Q. What happened after you got the cigarette?

A. Patrick walked over and Carlisle walked over, too, standing right there speaking with the guy and then we left from right there and went our separate ways and the white guy went outside and said he was leaving. He went outside and said he was leaving.

Q. Now, did anybody have guns that night?

A. Yes, sir.

Q. Who had guns?

A. The beginning of the night Patrick had a .25.

Q. Is that the .25 with the pearl handles?

A. Yes, sir.

Q. That's Patrick Johnson you said had that?

A. Yes, sir.

Q. Who ended up with that gun?

A. When we went outside Alexander.

Q. So Alexander ended up with that gun?

A. Yes, sir.

Q. Now, on the way to the bar in West Columbia did you all stop anywhere first?

A. We stopped at the Little Crockett (phonetic) in Wagener.

Q. What did you do there?

A. Me and Iquawn went in and bought a case of beer.

Q. Where was that case of beer kept?

A. In the trunk of the vehicle.

Q. At any time over the night at the bar did you go out to the vehicle for the beer?

A. Yes, sir.

Q. What happened when that happened?

A. We stepped outside. Me and Alexander opened the door of the bar and as soon as we opened the door, we was going to get a beer, we noticed a red dot pointed directly at us, a laser.

Q. What did you make of that?

A. That somebody was pointing a gun. We stepped back and Alexander reached for his gun. We walked where the car was and they was parked right beside us.

Q. When you say "they", who do you mean?

A. The white guy.

Q. Was anybody else with him?

A. Another white guy.

Q. What happened next?

A. We was standing right beside each other because the car was right beside each other side by side. We went in the trunk and that's when Alexander went over there looking at the gun. He showed him the gun. That's when all the guns were shown to each other.

Q. What were you all talking about?

A. The white guy was trying to buy the gun, trade the gun for his gun and Alexander kept refusing. He kept trying to trade him. After that, we went back in the bar.

Q. After you went back in the bar, what did you do?

A. I started playing pool.

Q. Who were you playing with?

A. A lady from the bar. A female.

Q. Did you notice what the other people in your group were doing at that time?

A. No, sir.

Q. How long do you think you played pool for?

A. Like 10. 10 minutes. At the most 20.

Q. At some point in time somebody decided to go; is that right?

A. Yes, sir.

Q. How did that go down?

A. Carlisle stated he was ready to go.

Q. Okay. What happened after that?

A. Carlisle came out the bar. I followed. He was opening the door. When I come out the bar, the two white guys in the parking lot, it sounded like they were arguing.

Q. When you say "two white guys", who do you mean?

A. The white guy over there, him and his friend and the female.

Q. Did you hear what they were arguing about?

A. No, sir. I walked past them. They appeared to be arguing, in an altercation.

Q. Then what did you do?

A. I went to get in the car and got in the car. Carlisle had a movie on.

Q. What kind of car was it?

A. Grand Marquis.

Q. Okay. You said Carlisle had the radio on or something?

A. Movie.

Q. Was that on the TV in his dashboard?

A. Yes, sir.

Q. You and Carlisle were in the car. What happened next?

A. We were watching the movie and then like a couple minutes later Iquawn came out and got in the front seat and Kewon and Patrick come out, jumped in the back.

Q. Did you notice anything after they jumped in?

A. There was a bag between both of them after they jumped in.

Q. Did you see how they got that bag?

A. No, sir.

Q. You have no idea how they got that bag?

A. No, sir.

Q. Then what did you notice?

A. I noticed Patrick pull out a nine millimeter that I noticed was the same as the guy, had his gun that he showed me and Alexander outside his car.

Q. And was he showing it to everyone in the car?

A. He was showing it to everyone. And Carlisle stated since you got that nine, I can get the .25 now.

Q. Meaning Patrick's .25?

A. Yes, sir.

Q. The one with the pearl handles?

A. Yes, sir.

Q. Now, did you have a gun at any point during that evening?

A. I did have a weapon when I showed, when the guns was being showed at the back of the car, but I gave it to Alexander when I started playing pool.

Q. Why did you give it to him when you started shooting pool?

A. I had it in my pants and it wasn't fitting right. My pants wasn't tight enough to hold nothing.

Q. So you didn't want it to drop out while you were shooting pool?

A. Yes, sir.

Q. Now, after you all left the bar, where did you go?

A. To the Pilot.

Q. What happened at the Pilot?

A. Patrick, Iquawn, Carlisle get out to get something to eat. I stayed in the car smoking a cigarette, and Alexander, he got out and went into the Pilot also.

Q. Okay. Then you all left the Pilot?

A. Yes, sir. Everyone came into the car and we left the Pilot.

Q. What happened some time after you left the Pilot?

A. We get stopped by state trooper police on Highway 3.

Q. Who gets out of the car first?

A. Carlisle.

Q. Then who got out of the car?

A. Iquawn.

Q. Then who?

A. Then Patrick.

Q. What happened after Patrick got out of the car?

A. Alexander stated that he wasn't going to jail. That

it was his birthday and that he wasn't going to jail at all and he grabbed the nine millimeter, cocked it back and point the gun at me in his hand and demanded that I drive.

Q. What did you do?

A. I was in fear for my life. So many thoughts going through my head. I didn't know if he was going to kill me right then and there or shoot at the police, having a gun drawn and in the process of a gun fire fight or just go ahead and pull the trigger. So my first instinct was to drive.

Q. Do you have any prior knowledge of Kewon that would actually make you have a valid fear that he might do something?

A. Yes, sir. I have witnessed like when we go out, Mr. Clemmons go get into it with people, shoot at people, shooting at cars and all type of serious altercation that lead up to him shooting at people and him being a person that will get very aggressive.

Q. So based on that what did you do?

A. My first instinct was for my life. I drove.

Q. You just wanted to get out of there?

A. Yes, sir.

Q. And then what happened?

A. Well, I was driving. He keep telling me -- He was in the middle between the two seats with the gun. "Get us to Chapel Hill. Get us to Chapel Hill." When I was driving

there, he yanked the wheel. I don't know what reason for, but he yanked the wheel. That's the last thing I remember.

Q. Would you have driven off if he hadn't done that?

A. No, sir.

Q. Did you feel like you had any other choice at the time?

A. No, sir. I didn't have no other choice. That's how I felt.

MR. MAULDIN: I have no further questions. Please answer any questions the Solicitor has for you.

CROSS EXAMINATION

BY MR. GRAHAM:

Q. Your full name is Raphael Lamarr Pontoo?

A. Yes, sir.

Q. One of your nicknames is Polo?

A. Yes, sir.

Q. Also Los?

A. No, sir.

Q. You do not go by Los?

A. No, sir.

Q. How about Raph?

A. No, sir.

Q. You don't go by Raph?

A. No, sir.

Q. How about Ralf?

A. No, sir.
Q. R-a-l-f?
A. No, sir.
Q. Anybody in your group go by those names?
A. No, sir. Not that I'm aware of.
Q. Anybody in your group go by Los?
A. No, sir. Not that I'm aware of.
Q. So you don't use the name Los and nobody you know that was with you that night uses Los?
A. Not that I'm aware of, sir.
MR. GRAHAM: Your Honor, I would ask the defendant to take his rubberband off and let his hair down.
THE COURT: Okay.
BY THE WITNESS:
A. (Witness complies.)
BY MR. GRAHAM:
Q. How long have you had those dreadlocks?
A. About three year.
Q. It takes about two or three years to grow it that long?
A. Yes, sir.
Q. That night Carlisle had short hair, didn't he?
A. A bald head. Yes, sir.
Q. I'm sorry?
A. A bald head. But he had on a hat, yeah.

Q. But he didn't have dreadlocks though?

A. No.

Q. And you don't know of any reason why Carlisle would come in and lie to this jury, do you?

MR. MAULDIN: Objection, Your Honor. Pitting.

THE COURT: I'm sorry?

MR. MAULDIN: He's pitting witnesses, Your Honor.

MR. GRAHAM: The question was -- I'm sorry, Your Honor.

THE COURT: I didn't hear the question.

MR. GRAHAM: The question was do you know any reason why Carlisle would come in and lie?

THE COURT: All right. Overruled. I'll allow it.

BY THE WITNESS:

A. You say any reason he will come in and lie?

BY MR. GRAHAM:

Q. Yes, sir.

A. Because he clearly stated he doesn't deal with me like he deals with everyone else in the car.

Q. Because why?

A. He clearly stated he doesn't deal with me like he deals with everybody else in the car. He want to clear his name after the statements that he was involved.

Q. So he came in and lied about you doing a robbery because why?

A. Because the statement clearly states he was involved.

MR. MAULDIN: I continue to object, Your Honor. And he's also asking for speculation.

THE COURT: All right. Sustained as to speculation. He can't speculate as to why anyone would do something.

MR. GRAHAM: Thank you, Your Honor.

BY MR. GRAHAM:

Q. Patrick, you know him from Chapel Hill for years, right?

A. Yes, sir.

Q. You knew him as Pat?

A. Yes, sir.

Q. And that's how he looked that night, right, short hair?

A. Yes, sir.

Q. Didn't have dreads?

A. No, sir.

Q. Do you know any reason why he would come in and lie?

MR. MAULDIN: Objection, Your Honor. Speculation.

MR. GRAHAM: I'm asking if he knows, Your Honor, not if he's speculating.

THE COURT: If he knows, he can testify. If doesn't, he can say he doesn't.

BY THE WITNESS:

A. Because he stated that he was his good friend and he was involved in the charge himself.

BY MR. GRAHAM:

Q. I'm asking if you know a reason?

A. I don't. I just stated that because that was his friend and he was involved himself so that's the reason.

Q. Iquawn, he was with you that night as well, right?

A. Yes, sir.

Q. Is that what he looked like that night?

A. I'm confused with all of that right there.

Q. He didn't have -- It wasn't thick of facial hair?

A. Uh-uh.

Q. But his afro, he didn't have dreads either, did he?

A. No, sir.

Q. State's 47, that's Kewon, right?

A. Yes, sir.

Q. Do you recognize him?

A. Yes, sir.

Q. That's your friend, right?

A. I know him.

Q. Can you speak up louder, please?

A. I know him, sir. The front of that picture, can I see it clearer?

Q. (Solicitor hands picture to the witness.)
A. Okay.
Q. That's him?
A. Yes, sir.
Q. Is he your friend or you knew him?
A. I knew him. I knew him and he was like basically a friend of the family also.
Q. Okay. Was he somebody you would trust?
A. To be honest, no.
Q. I'm sorry?
A. No, sir.
Q. You would not trust him?
A. No, sir.
Q. If he didn't have a gun, would you have been afraid of him?
A. Uhm, honestly, probably so, but I'm not a violent type person, sir. I'm not.
Q. You're not a violent type person?
A. No, sir.
Q. Isn't it true that you have a conviction for assault of a high and aggravated nature in 2007?
A. Yes, sir. When I was 13 years old.
Q. How much do you weigh?
A. Right now at this moment?
Q. We can start there.

A. About 220 pounds. 216.
Q. January of last year how much did you weigh?
A. About 230.
Q. 230?
A. Yes, sir.
Q. Big and stocky?
A. I don't know about stocky. I was big.
Q. How tall are you? About five ten?
A. Five ten and a half, going on five eleven.
Q. Patrick is about five five, right?
A. Yes, sir.
Q. Weighs about 140, 150, correct?
A. About 150.
Q. So back then you were six and a half inches taller or five and a half inches taller and 50, 80 pounds heavier?
A. Yes, sir.
Q. Kewon, how tall was he? About the same height as you?
A. He's five ten and a half.
Q. He's five ten and a half?
A. Yes, sir.
Q. How do you know that?
A. Because I read it the same way you read it in his, uhm, by the driver's license picture and the height.
Q. I'm not asking you what you read. Just compared to

your height is he taller or shorter than you?

A. About the same height, sir.

Q. You would agree with you me that he was, back in January he was about 150 pounds, too? He was skinny, wasn't he?

A. I wouldn't say 150 pounds, sir.

Q. A lot skinnier than you?

A. I was 230. He was about 170, 165.

Q. Of the five of you there that night, Carlisle Jones, Patrick Johnson, Iquawn, Kewon and you, you were the only one that had dreadlocks, correct?

A. In my statement I understand that Alexander had dreadlocks. He had been growing dreadlocks before me and like the victim said, it was a hat with dreadlocks sticking up under it so therefore he never can state that I saw Alexander with low haircut.

Q. My question was you were the only one that had dreadlocks, correct?

A. Not to my knowledge because before we met up that night, before I - he kept a hat on the whole time and I never seen up under his hat. The whole time I remember he had dreads so therefore I'm not going to lie and say that he didn't have dreadlocks that night because the whole time I knew him he had dreadlocks, sir.

Q. So your testimony is that you don't know whether

Kewon had dreadlocks or not?

A. My testimony is he had dreadlocks the whole time I knew him before that night and everything so therefore I never noticed him cutting his hair since everyone is saying he didn't have dreadlocks.

Q. So he was wearing a hat. What kind of a hat was he wearing?

A. Like a knit. Like a little soft hat. It's soft.

Q. Do you remember the color?

A. At this moment, no, sir.

Q. State's 42, do you recognize that?

A. Was does that say on there?

Q. State's exhibit number 42. I don't know what the writing is on there. You can look at it closer if you want.

A. (Indiscernible.)

Q. Continue to speak up, please. Do you recognize the hat or you don't?

A. No, sir.

Q. And Kewon was wearing a hat or not wearing a hat that night?

A. He was wearing a hat.

Q. He was wearing a hat?

A. Yes, sir.

Q. And what color was the hat?

A. It was a year ago, Your Honor - sir. I can't be

Pacific (sic) on what color the hat was. I know it was a soft hat. He had on a hat.

Q. And because he was wearing a hat, it's your testimony you don't know whether he had dreadlocks or not?

A. Yes, sir. Because the whole time I knew him he had dreadlocks, sir.

Q. Prior to that day, that night, that morning, when was the previous time that you saw Kewon?

A. Talking about prior to --

Q. Prior to the night he died, yes.

A. About two weeks prior.

Q. Was he wearing a hat then?

A. He had dreadlocks then.

Q. He had dreadlocks then?

A. Yes, sir.

Q. So State's number 47 that was taken November 13th of 2013 that you said is Kewon, correct?

A. Yes, sir.

Q. And he doesn't have dreadlocks then, does he?

A. Uhm --

Q. Does he?

A. From that picture but --

Q. The question is did he have dreadlocks when this picture was taken?

A. Can I see it?

Q. (Proffering.)

(The witness conversing with the Court off the record.)

THE COURT: You can just answer that. That's the response you can give him. Go ahead and you can tell him that.

BY THE WITNESS:

A. He had his hair pinned back, sir. That's the same way my hair looks when I don't have it down as far as in. It look like the dreads sticking out right there at the top.

BY MR. GRAHAM:

Q. So it's your testimony that in State's number 47 he has dreadlocks?

A. He had dreadlocks the last time I seen him two weeks prior.

Q. Now, my question is in State's 47, this photograph, your testimony is that he has his hair pulled back and he has dreadlocks?

A. I say do he have his hair pulled back? I'm asking you a question.

Q. I get to ask the questions.

(The witness conversing with the Court off the record).

THE COURT: Well, then the response would be you don't know.

BY THE WITNESS:

A. I don't know, sir.

BY MR. GRAHAM:

Q. So you have no idea whether in this picture whether he has dreadlocks or not?

A. No, sir. I never seen that picture before.

Q. You have never known him to have short hair?

A. Uhm, no, sir.

Q. You have always known him to have dreadlocks?

A. Yes, sir.

Q. That night he had a hat on and you don't know whether he had dreadlocks or not?

A. No, sir. Because he had dreadlocks prior to that time.

Q. Two weeks before it's your testimony that he had dreadlocks, right?

A. Yes, sir.

Q. You admit that you had -- When that evening started out over at Williston, you had a gun?

A. Yes, sir.

Q. What kind of gun was it?

A. Revolver, sir.

Q. A .22 revolver?

A. Yes, sir.

Q. You carry that on your person?

A. You talking about that night?

Q. Yeah.

A. Or period?

Q. That night.

A. That night it was in the presence of me, yes, sir.

Q. Looking it State's 48, to you recognize that?

A. Yes, sir.

Q. Is that the .22 revolver that you are talking about?

A. Yes, sir.

Q. And you carried it on your person that night?

A. It was in my presence. It wasn't on me. It was in the car.

Q. It was in the car?

A. Yes, sir. And then when everyone decided they was gonna leave, uhm, it was in my presence when my ride left at that time. It was in my presence at that time.

Q. And it's your testimony that you gave this gun to who?

A. Alexander in the bar when I was shooting pool.

Q. You gave it to Patrick?

A. Alexander in the bar when I was shooting pool.

Q. You gave this to Alexander in the bar when you were shooting pool?

A. Yes, sir.

Q. Of the four people that were with you, Carlisle, Patrick, Iquawn -- Excuse me. Of the three other people besides you and Kewon, you were closest to Iquawn, right?

A. Yes, sir.

Q. But you didn't give the gun to your friend Iquawn, did you?

A. Because he was playing a game of pool himself, sir.

Q. You didn't go back out to the car and put it in the car, did you?

A. No, sir.

Q. So you bring out a gun in a bar and hand it to Patrick? Or excuse me. Kewon?

A. Yes, sir, when I was shooting pool.

Q. You don't hand it to Patrick. You don't hand it to Carlisle. You hand it to a person that you are afraid of that according to your testimony goes around shooting people and shooting guns; is that correct?

A. Correct. Because the bullet never had ammunition in it.

Q. The gun never had ammunition in it?

A. No, sir. It had -- No ammunition was never found in the weapon or anything, no, sir.

Q. So why were you carrying it around? Why did you take it into a bar?

A. Because like you said, I didn't trust it being in the car. Anyone could have ammunition in it, put ammunition in it. There's five people in the car with it.

Q. So you carried it into the bar for the safety of other people?

A. It could be of safety if it had no weapons in it, sir. I mean no bullets in it, sir.

Q. My question is, you took it -- Your testimony is that you took it into the bar for the safety of other people?

THE COURT: Hold on.

(Witness conversing with the Court off the record.)

THE COURT: He can continue to ask questions though. You have a lawyer that will watch out for that. He can ask the same question.

BY MR. GRAHAM:

Q. Your testimony is that you carried this gun unloaded into a bar for the protection of society as a whole so somebody wouldn't take the gun out of the car and put bullets in it and do something bad with it; is that right?

A. Yes, sir.

Q. And it's your testimony that you gave this gun, instead of putting it back in the car because you were afraid of that, of somebody stealing it and putting bullets in it and hurting somebody, that you gave it to the person out of all these people that you feared the most? That's your

testimony, correct?

A. Can I say something, sir?

Q. No. Answer my question.

THE COURT: You can answer his question and then you can explain your answer.

BY THE WITNESS:

A. I did give the gun to Mr. Clemmons. But to explain my answer is that I didn't deal with Carlisle either so therefore it's not that I feared them. They didn't deal with me on that type of level that me and Iquawn dealt with each other so therefore it wasn't like I just came up and decided to give him a gun just 'cause I'm feared of him. I just was right there and it happened at the time then that I was shooting pool, sir.

BY MR. GRAHAM:

Q. The question again is you gave this --

A. I answered your question, sir.

Q. No, you didn't. The question is did you give it to the person you feared the most in the group with you, yes or no?

A. Yes, sir.

Q. And this gun that you gave to him -- It's your testimony that Kewon and Pat are the ones who took that bag from that white man, right?

A. I didn't see them take the bag, but I know they got

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in the car with the belongings and a bag, sir.

Q. Did you know they stole it?

A. I didn't see them, any type of event take place. I just know they got in the car with the bag and the belongings, sir.

Q. You don't know how they got it, that's your testimony?

A. Yes, sir, that's my testimony.

Q. But you knew that that bag belonged to -- Do you recognize the bag in State's 24?

A. From the car but when they came in. But I didn't know that bag belonged to the white guy. I knew the weapon belonged to the white guy, sir.

Q. So you never saw -- It's your testimony that when, and correct me if I'm wrong, you and Kewon went over and talked with the white guy because you were pointing him out earlier, Mr. Ruple, and comparing guns, you didn't see Mr. Ruple put the nine millimeter back in this bag? That's your testimony?

A. Yes, sir.

Q. Now, you went out to talk with Mr. Ruple --

A. Can I stop you? Can I say something there? I didn't go out with intentions to talk to him. We went to the car to get a beer, sir, to clarify your question.

Q. When you went out to the car to get a beer, who was

with you?

A. Mr. Clemmons.

Q. Kewon?

A. Yes, sir.

Q. While you were out there getting a beer, did you and Kewon go over and talk with Mr. Ruple?

A. We was parked right beside each other so we was right there talking. Alexander, Kewon walked up first, started talking to the dude and that's when I joined in. We wasn't talking no longer than five minutes at the most.

Q. That was before you were playing pool or after you were playing pool? Had you played pool yet by the time you went outside to get a beer?

A. No, sir.

Q. So when you're outside getting the beer with Kewon, you see Mr. Ruple and his friend talking. They're talking about guns and your testimony is that you and Kewon go over there, correct?

A. We walked outside. We didn't, just to clarify, heard them talking about guns. We seen a red laser like I stated when we walked out the door, sir.

Q. You see a red laser. But at some point when you're outside you and Kewon walk over to Mr. Ruple and his friend, correct?

A. Alexander walks up there and right after I get my

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beer out, I join them, sir.

Q. When you go over there, Mr. Ruple has a nine millimeter handgun, right?

A. Yes, sir.

Q. With the laser sight, right?

A. Yes, sir.

Q. Do you recognize this gun? This is State's 18.

A. Yes, sir.

Q. And it's your testimony that you did not steal this gun, correct?

A. No, sir, I didn't.

Q. It's your testimony that who stole it?

A. Patrick and Alexander got in the car with the bag and Patrick had the gun in his hand, sir.

Q. So you saw Patrick pull the gun out of the bag in 24 inside the car?

A. Yeah. As soon as he got in he was showing everyone the gun and that's when Mr. Carlisle stated since you got that, I can get the .25 because that .25 auto was Patrick's gun.

Q. So the .25 auto which is State's 38, you recognize that?

A. Yes, sir. That's Patrick's gun. I have seen that before the night prior to the incident.

Q. That's Patrick's gun?

A. Yes, sir.
Q. Did you see that gun that night?
A. Uhm, in Williston, yes, sir.
Q. Well, you just testified you saw it the night earlier. Is that what you're talking about?
A. What that?
Q. You saw Pat with this gun the night before?
A. No. I just -- What I just stated was I have seen Patrick with that gun before, sir. That's his gun, sir.
Q. Did you see it that night?
A. Uhm, yes, sir. Patrick had his gun on him, sir.
Q. Patrick had his gun on him?
A. Yeah. When we was in Williston, he had his gun on him, sir.
Q. Okay. So you saw it when? Earlier that night or at the bar?
A. Earlier that night in Williston, sir, and then I seen it at the bar when Alexander had it in his belongings when we was outside, sir.
Q. Okay. So why did Patrick -- Do you know why Patrick gave his -- It's your testimony that Patrick gave the gun, the .25 to Kewon, correct?
A. Correct. But I can't answer the question on how someone else was thinking, why he gave him the gun because I can't determine what's going on in their head or what they

had going on, sir.

Q. Your testimony is that you brought the .22, it had no bullets and when you were playing pool, you gave it to Kewon, the person you feared most while you were playing pool, right?

A. I gave it to him, sir, but you keep stating the one that I feared most. I said that I just don't deal with Carlisle. I don't deal with anyone like I deal with Iquawn. So if that's the case, if you saying that I fear him the most, you should clear the statement that I fear - you should state that I fear everyone if I say that I don't deal with everyone, sir, because --

Q. So you fear everybody you don't know? Is that what you're saying about these people?

THE COURT: Answer his question.

BY THE WITNESS:

A. State that again, sir.

BY MR. GRAHAM:

Q. You fear -- Everybody that you -- You feared everybody you didn't know. You knew Iquawn. You didn't fear him. Carlisle, Patrick and your friend Kewon, you feared them because you didn't really know them? That's your testimony?

A. Can I state this?

THE COURT: Sure. Answer the question and then

explain your answer.

BY THE WITNESS:

A. Okay. I don't trust them. Like you asked me did I trust them. I don't trust them so therefore like --

BY MR. GRAHAM:

Q. So it was -- Go ahead. I'm sorry.

A. So therefore if I don't trust them, I wouldn't put my life in their hand and I wouldn't know what they are capable of because I don't trust them and like they say, they don't know me that well. Well, they knew me, but they claim they don't deal with me like they say, sir.

Q. So Patrick, you don't know him very well so you don't trust him. You wouldn't --

A. I didn't say, sir, I didn't say -- I said they claim they don't deal with me like that, sir, so therefore I wouldn't -- I never stated I didn't know Patrick, sir.

Q. Okay. Listen to my questions and answer my questions, please. Don't worry about what people said on the stand right now. Is it your testimony that that night you didn't know Pat very well and because you didn't know him very well, you didn't trust him? Isn't that true? That's what you're saying, correct?

A. Sir, what I just stated was --

Q. Would you please answer yes or no and then you can explain?

A. Can you state your question again, sir?

Q. That night, that morning, January 23rd, January 24th, is it your testimony that you did not know him very well and therefore you did not trust him, true or false?

A. I didn't trust him, sir.

Q. You did trust him?

A. I didn't trust him, sir.

Q. You did not trust him. And because you did not trust him, you wouldn't have given him a gun?

A. Because --

Q. Yes or no?

THE COURT: Then you can explain.

BY THE WITNESS:

A. No, sir. But then again the weapon was unloaded so therefore it wasn't -- I knew he had a weapon prior to his belongings and that he had a weapon himself and to state the fact that, uhm, that - that you're making -- I'll just let you keep going with your questions, sir.

BY MR. GRAHAM:

Q. The weapon was unloaded. You could have given it to him, right, and you chose not to?

A. Yes, sir.

Q. According to your testimony. And he was the one that had the .25 so he's already got an armed gun, right?

A. Yes, sir. He had the .25.

Q. Carlisle, you didn't know him very well and you didn't trust him very well, correct?

A. I didn't deal with Carlisle at all.

Q. Kewon you gave the gun to, correct?

A. Yes, sir.

Q. When did you get the gun back?

A. I never got the gun back.

Q. You never got the gun back?

A. No, sir.

Q. So this .22, you deny then that this .22 was found on you at the hospital?

A. Yes, sir, because I never had a gun on me, sir.

Q. Okay. Do you know any reason why Sergeant Perdue from Palmetto Richland would come in and lie about finding this gun on you?

MR. MAULDIN: Objection, Your Honor. Speculation.

THE COURT: He can answer if he knows. If he don't know, then that's the end of it.

BY THE WITNESS:

A. State that again, sir.

BY MR. GRAHAM:

Q. Do you know any reason why Sergeant Perdue would come into this courtroom and lie about finding this gun on you?

A. No, sir.

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(Witness conversing with the Court off the record.)
BY MR. GRAHAM:
Q. It's your testimony that the last time you saw that .22 that night was when you gave it to Kewon, correct?
A. Yes, sir.
Q. The last time you saw this .25 that night, who had it?
A. Kewon had the .25, sir, in the car.
Q. The gun that was put to your head according your testimony that you're saying that Kewon put to your head in the car and made you drive, right?
A. Can I say something, sir?
Q. Please answer my question.
THE COURT: Answer it and then you can explain it.
(Witness conversing with the Court off the record.)
THE COURT: All right. Rephrase your question. Rephrase it with the response that he gave earlier and if we have to play it back, we can go back and look.
BY MR. GRAHAM:
Q. The last time you saw the .25 Kewon had the gun; is that correct?
A. Yes, sir.
Q. The gun that was pulled out, according to your testimony that Kewon pointed at your head, was what gun?
(Witness conversing with the Court off the record.)

THE COURT: Tell him that.

BY THE WITNESS:

A. I never stated that he put the gun to my head or pointed it to my head. I said he pointed it at me so where does - where do you get that he put it to my head? I never stated that, sir. So why are - why are you keep saying that? Like what's the reason?

BY MR. GRAHAM:

Q. I'll ask the questions. The gun that he pulled --

(The witness conversing with the Court off the record.)

MR. GRAHAM: Judge, can he stop talking to you? I don't think it's appropriate for him to be --

THE COURT: You can object and I'll rule on the objection.

MR. GRAHAM: Okay.

BY MR. GRAHAM:

Q. What gun did Kewon put to your head? Excuse me. What gun did he point at you?

A. The nine millimeter, sir.

Q. Do you know whether that gun was loaded or not?

A. He did cock it right there in front of me, sir.

Q. Did he say anything to you?

A. He demanded me to drive, sir. He said he wasn't going to jail and that it was his birthday. He was going to

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spend his birthday out and he wasn't going to jail. He demanded me to drive.

Q. What was he worried about going to jail for?

A. Because of the crime that he and Patrick had like just committed when they came with the bag. I guess that's when the armed robbery took place. I didn't see it so therefore I can't tell you a armed robbery took place.

Q. You don't know -- Isn't it true from your testimony that you don't know that there had been any robbery at all; is that true?

A. Yes, sir.

Q. Yes, you did not know?

A. I did not know, sir.

Q. So you would have known of no reason why Kewon would have put a gun to - pointed a gun at you and told you to drive, would you?

A. That's why I stated it had to be because of their actions, I guess, he felt that him and Patrick had just committed. So therefore, like you right, I didn't know, but --

Q. You're guessing?

A. Yes, sir.

Q. He didn't tell you any reason?

A. No, sir. He just demanded me to drive.

Q. Did you ask him?

A. No, sir. I was in a state of shock and fear for my life and so many thoughts were running through my head, that was my first instinct.

Q. So from what you knew at the time according to your testimony that Kewon pointed the gun at you you didn't know any crime had been committed; isn't that true?

A. No, sir. I never seen a crime get committed, sir.

Q. So you would have known of no reason for him to pull a gun, point it at you and tell you to drive and talk about going to jail, correct?

A. Yes, sir.

Q. Yes, sir, you would have had no reason? You didn't know?

A. Correct, sir. Correct.

Q. And you didn't bother to ask him any questions according to your testimony, correct?

A. No, sir. Due to the fact that I was fear for my life and it happened so fast and I ain't never been in a situation like that before.

Q. State's 58, do you recognize all the people in there?

A. Yes, sir.

Q. That's a diagram of how everybody was sitting in Carlisle's car, correct?

A. Yes, sir.

Q. Carlisle was the driver; is that correct?
A. Yes, sir.
Q. Iquawn was the front seat passenger; is that correct?
A. Yes, sir.
Q. Pat was the rear seat passenger side behind Iquawn?
A. Yes, sir.
Q. Kewon was in the middle in the back seat, correct?
A. Yes, sir.
Q. And you were in the back on the driver's side behind Carlisle?
A. Yes, sir.
Q. Isn't it true that not once but twice during the traffic stop that you tried to bolt out of the back driver side door?
A. No, sir.
Q. You never opened --
A. Can I state something? No, sir. And due to that fact and the audio never stated or heard the officer tell anyone to shut the door.
Q. Do you know any reason why that trooper would come in and lie?
A. Uhm, to be honest, no, sir. But to be honest I feel like audio itself should show that if someone was trying to

open the door, he stated he told them to shut the door, why isn't it on camera or on audio and why is he the only one that see that out of everyone?

Q. It's your testimony that you did not try to open that door and get out of the car, correct?

A. Yes, sir.

Q. You admit that that's where you were seated though from the time that you left the Mile High Club, The Rock --

A. Yes, sir.

Q. -- until the time you got stopped?

A. Yes, sir.

Q. And it's your testimony that at the stop after Carlisle, Iquawn and Patrick were taken out of the car, at that time Kewon pulled the nine millimeter out, pointed it at you and told you to climb over into the front seat?

A. He demanded me to drive.

Q. And demanded that you drive?

A. He demanded me to drive. That's when my first instinct was fear for my life, I jumped into the driver's seat and left the scene, sir, not at my own will.

Q. So you did that because you were afraid of him?

A. I was at gunpoint, sir. I didn't know how you would reacted if you were at gunpoint in that situation and so many thoughts are running through your head. You feel fear for your life, you know --

Q. Do you know any reason why Kewon according to your story didn't just jump over and drive?

A. Because -- Uhm, I don't really know. I know he had a couple drinks, but I wouldn't state. I don't know why he wouldn't do it himself. Like I said, I stated I didn't know if his intention was to shoot me or shoot at the police or -- All that raced through my mind at the same moment so that was my first instinct and that was his demand to drive.

Q. When you say he pointed the gun, did he have the gun out and pointed it around or did he point it at you?

A. I was the only one in the car. He pointed it at me when he cocked the gun back, sir. He just had the trigger and said, bro, I'm not going to jail. It's my birthday. Uhm, I'm going to be out, bro. Drive.

Q. Did he say he was going to shoot you?

A. I feared he wouldn't have cocked the gun back and put one in the chamber if he wasn't going to attempt to shoot me or attempt to discharge the firearm.

Q. Did he ever threaten to shoot you?

A. In other words, no. He just demanded me to drive and when he cocked the gun back and pointed it at me, sir.

Q. So he stays in the back seat and you climb over into the front and you take off?

A. I was in the front. He was in the middle between the seats like sitting up in between the middle of the seats,

sir.

Q. He was in the back leaning between the seats?

A. Yes, sir.

Q. And you drove the car?

A. Yes, sir.

Q. And was it your testimony that the troopers caused the wreck? Is that what I heard you say?

A. I never stated that, sir.

Q. Now, tell me what happened when you lost control?

A. He grabbed - he grabbed the wheel of the car and that's the last thing I remember. He called my name. He said, Polo, and he grabbed the wheel of the car and that's when I lost control.

Q. You don't know why he grabbed the wheel?

A. No, sir. That's the last thing I remember. He grabbed the wheel and the car went straight into - straight off the road and that's the last thing I remember.

Q. Do you go by the nickname Ralf?

A. No, sir.

Q. Do you go by the nickname Raph?

A. No, sir.

Q. State's exhibit number 50, do you recognize those, that black T-shirt?

A. No, sir.

Q. You do not recognize it?

A. No, sir.
Q. Do you deny that you were wearing it --
A. Can I see it again, sir?
Q. Sure (proffering.)
(Witness conversing with the Court off the record.)
MR. GRAHAM: Your Honor, I'm going to object to him speaking with you.
BY THE WITNESS:
A. Is that the front of the shirt cut out? Is that part there cut out of the shirt? If you could just --
BY MR. GRAHAM:
Q. Do you recognize the shirt, yes or no?
A. I'm asking you because I'm not sure if it had something on it and it look like the front of the shirt is cut out. There's a part missing.
Q. I don't know. I would agree that it looks like it was cut. What kind of shirt were you wearing that night?
A. It was a black shirt with a red and silver like --
Q. Were you wearing --
A. -- red and silver like design on the shirt.
Q. So you were wearing a black shirt with red and silver design?
A. Yes, sir.
Q. State's 49, do you recognize that?
A. That's the pants they say they found on me, sir.

Q. So those are the pants that you wore that night?

A. I don't truthfully remember of the way it were. I can't say.

Q. Are they your pants?

A. I just stated I don't remember, Mr. Graham.

Q. So you don't remember what kind of pants you were wearing that night?

A. No, sir.

Q. The LG phone that was found on the floor board, is that yours?

A. No, sir. That - that would be particularly the cell phone the other witness said that is a food stamp phone that was provided that he knew that was Mr. Clemmons' phone. He stated that Mr. Clemmons had a food stamp phone and that's the food stamp phone he said was there, sir.

Q. I'm not asking you to repeat anybody else's testimony. I'm asking do you recognize this phone?

A. No, sir.

Q. State's number 51, do you recognize any of the shirts contained in there?

A. I recognize that green shirt.

Q. The green striped shirt?

A. Yes, sir.

Q. You recognize that shirt?

A. Yes, sir.

Q. Whose shirt is that?

A. That's Alexander's shirt.

Q. Is that the shirt that he was wearing that night?

A. From my recall I remember him having on a jacket, but he could have had it on along with - he could have had on any one of those shirts. They said they found three shirts on him so I can't recall. I can't recall, sir.

Q. You recognize the green striped shirt as being Kewon's. You don't know whether he was wearing it that night or not, correct?

A. Yes, sir.

Q. State's 52 is a pair of jeans with a design with a green, white and black stripes. Do you recognize that as belonging to Kewon?

A. No, sir.

Q. You do not recognize it as belonging to him?

A. I don't recognize them pants at all, sir.

Q. I'm sorry?

A. I don't recognize them pants at all, sir.

Q. You don't recognize the pants at all. State's 19, that's the jacket that Kewon was wearing that night, correct?

A. Yes, sir.

Q. State's number 43, do you recognize that jacket?

A. No, sir.

Q. State's 59, do recognize that jacket?

A. No, sir.
Q. What were you wearing that night?
A. I can't recall, sir. It was a year ago.
Q. It was cold, wasn't it? It was January.
A. I don't know if it was cold that night or what, sir. It's been a year. I can't recall the weather.
Q. Kewon was wearing that jacket that we looked at in 19. What kind of jacket were you wearing?
A. Me? I don't remember wearing a jacket, sir.
Q. Did you have on a green puffy jacket?
A. No, sir. There was never a green puffy jacket found or any type of green puffy jacket in the car.
Q. I'm not asking what the police found in the car. I'm asking you if you wore a green puffy jacket?
A. No, sir.
Q. Isn't is true that by the time you were cut out from behind the steering wheel, you had no jacket on; isn't that true?
A. Yes, sir.
Q. So you weren't wearing a jacket that night?
A. I don't recall wearing a jacket, sir.
Q. I'm sorry?
A. I don't recall wearing a jacket so, no, I wasn't wearing a jacket.
Q. So you did not have a jacket that night?

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A. No, sir.

Q. You admit you were driving the car. It's your contention that you only did it because you were afraid you were going to be shot, correct?

A. Yes, sir.

Q. It's your contention that Patrick and Kewon took that bag and you don't know how they took it, correct?

A. Yes, sir. The only thing I seen them was with the weapon and the bag when they got into the car.

Q. And at that time when they got into the car and any time after, the last time you saw the .22 who had it?

A. Alexander, sir.

Q. Kewon had the .22 --

A. Yes, sir.

Q. -- because you had given it to him and you never got it back, correct?

A. Yes, sir.

Q. And it's your contention that Patrick had the .25?

A. Uhm, when Iquawn -- When Kewon gave -- Uhm, when Kewon gave the .22 outside -- I know he had the .25 outside so therefore I didn't see him give Patrick the gun so therefore I'm not going to say Patrick had the gun because I never seen Alexander give him back the gun, sir, so therefore I'm not going to lie on the stand under oath that I seen him give him back the gun, sir.

Q. The last time you saw the .22 you gave it to Kewon and that was the last time you saw it, correct?

A. Yes, sir.

Q. The last time you saw the .25 Pat had it?

A. No, sir.

Q. Who had the .25 the last time you saw it?

A. I stated the last time I seen the .25 was outside at the white guy's car. Alexander had the .25, sir.

Q. So the last time you saw the .25 Kewon had it?

A. Yes, sir, at the car.

Q. All right. So now Patrick never had any gun, correct?

A. I stated he gave -- I don't know how -- Patrick had the gun in the beginning of the night in Williston, sir.

Q. And at some point, you don't know how he gave it to Kewon?

A. Yes, sir.

Q. So by the last time you saw the .22 and the .25 Kewon had both of them?

A. Yes, sir.

Q. It's your story that you did not commit a robbery, correct?

A. Yes, sir.

Q. It's your testimony under oath that Kewon and Pat came in with that blue bag and you don't know how they got

it?

A. Yes, sir.

Q. It's your testimony that after the troopers pulled out Carlisle, Patrick and Iquawn and you were left in the car, that Kewon pulled a gun and threatened you, pulled that nine millimeter and threatened your life with it and told you to drive?

A. Demanded me to drive, sir.

Q. And it's your testimony that you drove and at some point Kewon said your name Polo?

A. Yes, sir.

Q. Grabbed and yanked the wheel and then you crashed?

A. That's the last thing I remember.

Q. Do you remember talking to Investigator Garrick at the hospital on January 24th, 2014?

A. He came in and I stated I didn't want to talk to him.

Q. Isn't it true that you told him I don't remember?

A. No, sir. I just stated I didn't want to talk to him.

Q. You deny that you told him either that I don't know anything about this or I don't remember? You deny that?

A. I deny that. The only thing I stated is I didn't want to talk to him.

Q. That you did not -- All you said -- Your testimony

is all you said was you did not want to talk to him?

A. Yes, sir.

Q. You admit that you had the opportunity to speak with him and tell him the story that you testified to today?

MR. MAULDIN: Objection, Your Honor. Fifth Amendment.

THE COURT: I'm sorry. I was looking at something else. What was the question?

MR. GRAHAM: I asked him do you admit that you had the opportunity to tell that officer the story that day?

THE COURT: He can answer that.

BY THE WITNESS:

A. Uhm, I could have, yes, sir.

BY MR. GRAHAM:

Q. I'm sorry?

A. I could have, yes, sir, but I didn't want to talk to him, sir.

Q. Isn't it true that when you spoke with Mr. Ruple, you saw his nine millimeter handgun?

A. Uhm, he had it out as soon as we walked out the bar. When we walked up, him and his friend was --

Q. And isn't it true that you showed him your .22?

A. I showed him a .22, yes, sir.

Q. Your .22?

A. Yes, sir.

Q. And isn't it true that Kewon showed him his .25?
A. Patrick's .25, yes, sir.
Q. And isn't it true that you saw Mr. Ruple put that gun, his nine millimeter back in that blue bag?
A. No, sir. I stated to you earlier that I never seen the blue bag until they got back into the car.
Q. Isn't it true that as Mr. Ruple was leaving the bar you asked him where he was going?
A. That's not true.
Q. You deny that?
A. Yes, sir.
Q. Isn't it true that when he went outside, you walked outside and posted up outside the door to watch him?
A. That's not true.
Q. Isn't it true that as you saw him go back to his car you went over and you knocked on the window?
A. That's not true.
Q. You deny that?
A. Yes, sir. That's not true.
Q. Isn't it true that when he rolled down the window, you talked to him about rims, music and girls and things like that? Do you deny that as well?
A. I deny that as well.
Q. Isn't it true that you grabbed the bag out of the car?

A. No, I did not grab the bag.

Q. Isn't it true that he came out and got in a fight with you and punched you?

A. I deny that.

Q. You deny that?

A. Yes, sir.

Q. Isn't it true that at that point you drew that .22, you pointed it at Mr. Ruple and you activated the red laser beam on his chest? You deny that or admit it?

A. I deny that as well.

Q. You admit or deny that Mr. Ruple at that point put his hands up and told you to take it?

A. I deny that as well.

Q. Do you admit or deny that you came into the car with the blue bag?

A. I deny that as well.

Q. When you got stopped by the police, do you admit or deny that you tried to bail out of the back of that car?

A. You talking about --

MR. MAULDIN: Asked and answered, Your Honor.

THE COURT: Overruled. Go ahead.

BY MR. GRAHAM:

Q. Do you admit or deny that you tried to get out of the car?

A. Get out of the car?

Q. At the car stop that you tried to open the back door?

A. Yeah. I deny that. I never tried to open that back door.

Q. Isn't it true that you did the robbery, you had the gun and --

A. No, sir.

Q. -- you're the one that drove that car?

A. That's not true.

Q. Isn't it true that you ran driving that car of your own will at 104, 108 miles an hour to get away from the police because you didn't want to get caught with that stolen nine millimeter and that .22 on you?

A. No. I deny that, sir.

Q. Isn't it true that you caused the death of Kewon?

A. That's not true.

MR. GRAHAM: I don't have any other questions, Your Honor.

THE COURT: Answer any questions your attorney may have.

REDIRECT EXAMINATION

BY MR. MAULDIN:

Q. The Solicitor asked about whether or not Mr. Ruple had punched you several times; is that correct?

A. Yes, sir.

Q. Let me show you what's been marked as Defense exhibit 1. Does that fairly and accurately depict how you looked on the day of January 24th, 2014 at the hospital?

A. Yes, sir.

MR. MAULDIN: Move this into evidence, Your Honor.

MR. GRAHAM: At this point -- I have never seen the photo until this moment.

THE COURT: You need to look at it?

MR. GRAHAM: I would object based on relevance.

THE COURT: Okay. Deny on relevance. It's relevant.

BY MR. MAULDIN:

Q. Do you have any facial injuries in that picture that would indicate somebody striking you in the face several times?

A. No, sir.

THE COURT: That's Defense 1?

MR. MAULDIN: 1.

THE COURT: Defense 1 in evidence over objection.

MR. MAULDIN: No further questions.

MR. GRAHAM: Your Honor, I do have a question. I have got a photo that I'm trying to get, if I could have just a moment.

THE COURT: Sure. Do you want to show that to defense counsel and then we'll let you go and do what

you need to do?

RECROSS EXAMINATION

BY MR. GRAHAM:

Q. I'm going to show you a picture and ask you if you recognize that as being taken while you're wearing that collar brace the day or two after this incident? Is that you?

A. Yes, sir.

MR. GRAHAM: Your Honor, the State would offer this into evidence.

THE COURT: Any objection?

MR. MAULDIN: No objection, Your Honor.

THE COURT: All right. That will be State's exhibit 63, I believe.

MR. GRAHAM: Thank you, Your Honor.

BY MR. GRAHAM:

Q. State's number 63, that's the left side of your face, right?

A. Yes, sir.

Q. And you agree that this was taken a day or two after this incident happened, correct?

A. I can't agree. I can't tell you when that picture was taken.

Q. You've got your collar brace on, correct?

A. But understand, I can't tell you who took that

picture or when that picture was taken, sir.

Q. You don't know when this picture was taken?

A. No, sir. I never remember anyone taking no picture of me or anything like that, sir.

MR. GRAHAM: Your Honor, I would ask for the previous testimony. I think he admitted earlier that this was taken, that this was accurate for a day or two after this incident.

THE COURT: That's right. That was the testimony.

BY THE WITNESS:

A. Is that the same picture from -- Is that the same picture?

BY MR. GRAHAM:

Q. Just answer my questions.

A. Is that the same picture?

THE COURT: Clearly it's not the same picture.

BY THE WITNESS:

A. I stated -- That's the picture right there.

THE COURT: It's a different angle.

BY MR. GRAHAM:

Q. That is you, correct?

A. Yes, sir.

Q. You previously testified moments ago that this picture was accurate as of two or three days after this incident, correct?

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A. I never seen that picture. I never stated that picture - that picture right there was accurate, sir.

Q. You did on the stand a few minutes ago. You deny saying that?

A. I stated I seen that picture right there, sir. That picture right there.

Q. When I held this picture in front of your face, did you admit that this picture was accurate to the way you looked two or three days after the incident? Do you deny doing that?

A. You just asked me --

Q. Please answer my question and then you can explain.

A. I'm not --

THE COURT: All right. That's enough. Read back and look back at the testimony if that's what we need to do.

MR. GRAHAM: Your Honor, I'd ask that the court reporter pull that back up, please.

THE COURT: Steve, can you do that for me, please. Just read the testimony where Mr. Graham asked --

(The portion of the testimony requested was read back.)

THE COURT: Thank you. Let's move on.

BY MR. GRAHAM:

Q. The mark on your face, do you agree that there's a

mark on the left side of your face, correct?

A. The same kind of marks that's on my back still to this day, yes, sir.

Q. My question is the mark or your face.

A. Yes, sir.

Q. You don't have that mark on your face now, do you?

A. No, sir.

Q. Would you look straight ahead so the jury can see the left side of your face?

A. (Witness complies.)

MR. GRAHAM: That's all, Your Honor. Thank you.

THE COURT: All right.

BY THE WITNESS:

A. May I state that --

THE COURT: No, sir. You may step down. Call your next witness.

MR. MAULDIN: The defense rests.

THE COURT: All right. Folks, the defense has rested and at this point I will be taking up matters of law at the close of the defense's case and I'm going to excuse you to go to lunch. I would ask if you would, please be back, I'm going to ask if you would to make it a little bit quicker than we normally do. I'm going to ask if you would please be back at 2:15 so that gives you about an hour and twenty minutes if you leave right

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now. Please do that. Do not have any, allow anyone to talk with you about the case. Do not discuss the case with anybody and we'll see you back here at 2:15.

(The jury was excused for lunch.)

THE COURT: At this time I'll take up any motions at the close of the evidence.

MR. MAULDIN: Thank you, Your Honor. At this time I would renew my motions for directed verdict on behalf of Mr. Pontoo based on the same grounds as my prior motion and also with the extra evidence that's been presented.

THE COURT: All right. Thank you. Mr. Mauldin, I'm going to deny the motion. Again, I think this is clearly a factual issue for the jury to decide based on the testimony and the evidence that's been presented. So does the State have anything?

MR. GRAHAM: Your Honor, I was considering putting up Detective Garrick to reply to him denying -- I asked him. He said he didn't remember and he denied that and said that he didn't want to talk to him so I was going to put him up. I didn't know when you wanted us to do that.

THE COURT: Well, that would be after the jury comes back from lunch I would think. Anything further with regards to motions at the close of the State's case?

MR. MAULDIN: No, Your Honor.

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THE COURT: When you all sent us the requested charge, did you copy each other on that? Do you all have that?

MR. MAULDIN: I have a charge on duress that I sent after the defendant testified. I knew they would be in the courtroom. I do have a paper copy.

THE COURT: Okay. Go ahead and hand that to them then, David, so they can get that and we'll start back then at 2:15, okay?

(Whereupon, there was a luncheon recess.)

BAILIFF: Keep your seats. Court is now in session.

THE COURT: All right. Mr. Graham?

MR. GRAHAM: We have one short reply witness, Detective Garrick, and then we're ready for closing, Your Honor.

THE COURT: All right. Before we get -- Folks, if you all would come and get a copy of this. This is a draft of a charge. It's not in final form or anything like that. And then we can talk about it after you finish with your reply witness. All right. Let's bring the jury in, please.

(The jury returns to the courtroom.)

THE COURT: All right. Ladies and gentlemen, I have taken up the matters of law that I needed to take up and the State has indicated they have a short reply witness

and I'm going to recognize the State now.

MR. McNAIR: Your Honor, the State calls Detective Garrick.

THE COURT: All right. Detective Garrick, if you would please come around and, sir, you are still under oath from your earlier testimony.

THE WITNESS: Yes, sir.

(DETECTIVE TODD GARRICK RECALLED.)

REDIRECT EXAMINATION CONTINUED

BY MR. McNAIR:

Q. Detective Garrick, after the incident on January 24th, did you have the opportunity to meet with Mr. Pontoo?

A. I did.

Q. Where was that?

A. At the emergency room of Palmetto Richland Hills Hospital.

Q. What date was that?

A. The morning of January 24th.

Q. Prior to meeting with Mr. Pontoo, did you read him his rights?

A. I did.

Q. And how did you do that?

A. I have a card on me that I keep on me to read rights.

Q. Would you read that for the record, please?

A. You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to an attorney and have him or her present with you while you are being questioned. If you cannot afford to hire an attorney, one will be appointed to represent you before any questioning if you wish. You can decide at any time to exercise these rights and not answer any questions or make any statements. Do you understand each of these rights that I have explained to you? And having these rights in mind do you wish to talk to us now?

Q. All right. Did he appear to understand those rights?

A. He did.

Q. Did he have any questions about his rights?

A. He did not.

Q. Did he have any physical or mental condition that prevented him from understanding those rights?

A. No, sir.

Q. What, if anything, did you ask him at that point?

MR. MAULDIN: And, Your Honor, I would just restate my prior objection pre-trial.

THE COURT: All right, sir.

BY THE WITNESS:

A. I came in and introduced myself to him. Read him his rights and then just began to ask him what had happened

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that morning that caused him to be there or if he could tell me what happened.

BY MR. McNAIR:

Q. What, if anything, did he say about what happened?

A. He really didn't say anything. He was very argumentative. Just kept saying he didn't know anything. Didn't remember.

Q. Was he happy to see you?

A. He was not.

Q. Was he eager to tell you his story?

A. He was not.

Q. Did he mention anything about Kewon Clemmons putting a gun to his head?

A. He did not.

Q. Did he mention anything about anybody else being involved in an armed robbery?

A. He did not.

MR. McNAIR: Thank you.

THE COURT: Any cross?

MR. MAULDIN: No, Your Honor.

THE COURT: Thank you very much, sir. You may step down.

MR. GRAHAM: Your Honor, the State rests it's case in reply.

THE COURT: All right, sir. Okay. Folks, I have

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just a brief matter to take up with the attorneys. I hate to do this to you. I know you just got settled in and I know the life of a juror tends to be much like a yo-yo, in and out and up and down, but if you could please step into the jury room for just a moment. I need to take up a couple matters and then I'll bring you out and then we'll proceed.

(The jury goes into the room.)

THE COURT: All right. I'll give you all a moment to look through that and then we can talk about it.

Is there anything from the State regarding the charge?

MR. GRAHAM: I don't know that it matters but I don't know that there's any contention on the charge on expert witness. I don't know whether we -- It's not in there, but I honestly don't know that we need it. Since he's saying it was under duress, I don't think there is any contention that her testimony really, I guess, is not that important.

THE COURT: Yeah. You know, I forgot about Dr. Ross. Yes. I think you're right. I don't know that it's an issue.

MR. GRAHAM: The other issue that I say when looking through here, Your Honor, is the duress quote, I believe, is an affirmative defense and I think that the

defendant has to prove that by the preponderance of the evidence.

THE COURT: Is that not in there?

MR. GRAHAM: I have a copy out of the -- I think the language that the defense proposes is from Judge Anderson. I have a copy of the, I don't know if it's the Circuit Court bench book, but the bench book and under the duress language it has it is Constitutionally permissible to place the burden of proving affirmative defenses such as duress by a preponderance of the evidence on the defendant as long as the defendant is not required to negate an element of the defense which I think would apply in this case and it's citing a U.S. Supreme Court case Dixon versus The United States which is 126 Supreme Court 2437.

THE COURT: Let me tell you what I have got here. It says the defendant has raised the defense of coercion or duress. Coercion or duress is when a person makes another person commit a crime against someone else's person or property by the threat of immediate physical violence. The coercion or duress must be present, imminent and of the type to create a well grounded fear of death or serious bodily harm if the act is not done. The fear of injury must be reasonable. Coercion or duress is not a defense if there is any reasonable way

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other than committing the crime for the defendant to escape the threat of harm. The defendant must prove the defense of duress by a preponderance or greater weight of the evidence.

That's the charge that I have got here in the bench book. I used the one that -- Right. That's not what they've got because you used the one that Mr. Maudlin -- Right. As to that issue, Mr. Graham --

MR. GRAHAM: Yes, Your Honor?

THE COURT: -- satisfy the concern you had with the coercion or duress charge? In other words, I would propose to substitute what I just read to you for what's in there.

MR. GRAHAM: Yes, Your Honor. I think that would be appropriate. Thank you.

THE COURT: All right. Mr. Mauldin, do you want to be heard on that? I think what I have -- What's in the charge you have got is what you presented to the Court and Lauren put that in there or our bench book has that language, but it has the additional language that Mr. Graham mentioned.

MR. MAULDIN: Your Honor, I do believe that that is the law of South Carolina, however, I would still object that it is burden shifting and the defendant shouldn't have to prove anything and object to it as his right to

a trial under the Sixth Amendment and Article 1 Section 14 of the State Constitution and take an exception to Your Honor's ruling.

THE COURT: Okay. And I'm going to note your objection and your exception, but I am going to use that language. I think it is appropriate under our law. Was there anything else from the State regarding the charge as a whole?

MR. GRAHAM: No, Your Honor.

THE COURT: All right. Mr. Mauldin, I certainly have noted your objection on that situation. Is there anything else as far as the charge goes that we need to talk about or does it look okay?

MR. MAULDIN: The rest of it looks fine.

THE COURT: Okay. All right. Well, let's do this: I know we just started back, but any time the jury is out is a good opportunity. We'll take a short break. If anyone needs to step out and use the restroom or grab a drink of water, go ahead and do that and let's do it quickly and come back.

(Short break.)

THE COURT: Back on the record. Is the State ready to proceed with closing argument?

MR. GRAHAM: Ready, Your Honor.

THE COURT: The defense?

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MR. MAULDIN: Ready, Your Honor.

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

(The jury returns to the courtroom.)

THE COURT: Ladies and gentlemen, we have now reached a portion of the case where the attorneys are going to have an opportunity to address you with what we typically refer to as closing arguments. Now, what is important for you to understand is, you recall when we started this case I talked to you briefly about their opening statements and one of the things I told you about their opening statements was that what they tell you in their opening statements is not evidence because they're not under oath. They are simply conveying to you what they believe the evidence will show. Well, that same premise applies to their closing arguments.

The evidence in this case is closed. The evidence is what you heard here from the witness stand and the exhibits which came in during the course of the trial. That's the evidence in this case. But this is the opportunity for the attorneys to argue to you what they think or what they believe the evidence in this case has shown and so even though it's not evidence in the case, it's important that you listen carefully and give them your undivided attention as they give you their perspective as to what the evidence in this case has

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shown.

Once they have concluded their closing remarks to you, I will then give you the charge on the law which you will have with you in the jury room and you will then be in a position to have the case for your consideration, okay? So if you please would give each of the attorneys your undivided attention as they address you with their closing arguments.

Mr. Mauldin.

MR. MAULDIN: Thank you.

Where is the money? A lot of people talk about follow the money. Mr. Ruple said he had money taken from his bag. Well, where is it? Did they found it anywhere in the car? In the bag? At the hospital? It's just disappeared. It's disappeared like a lot of other things in this case. You hear talk about how the video with no visual. I got a video with no audio. It's disappeared just like this Rasta dreadlock hat. This green, red, yellow. You didn't see that in any of these pictures. Where is that? It's disappeared like this green puffy jacket that you hear about that the robber wore. The only green jacket they found in that car belonged to Carlisle. The only puffy jacket they found in that car belonged to Kewon according to the witnesses even you believe them. But he was sure there

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was a green puffy jacket and there is no green puffy jacket to be found.

The focus is on Raphael because of Kewon's death. There's some kind of disconnect here. Some officers testify that Raphael is unconscious, slumped over. You've got some saying that he's alert and talking. Who are we going to believe? What are we going to believe? You have these officers and these EMS personnel coming in and testifying about specific details of the people and they generated reports over a year ago. They didn't put any of these details in their reports. They have answered hundreds of calls since then, but here a year later they are able to do that. And they are wanting to help that State. They work for the State. I understand that. But you need to carefully scrutinize that and take what you can because the focus is on Raphael. It certainly hasn't been on Carlisle Jones or Patrick Johnson.

If you are believe Mr. Ruple, that car was positioned to be in a getaway. Mr. Jones got out of that car and said shoot him. Let's go, and somebody opened that door. Well, they didn't testify that any of that happened. And if they believe Mr. Ruple, they would have charged these people with some kind of accessory crime or something like that, but they didn't

get charged and they're not going to be charged. They're not going to be charged because the State spoon fed them a story because their focus is on Raphael. The focus is on him because Mr. Clemmons died.

One of them admits he's lied, but he's not a liar. The other one has been to that bar. Knows people in the bar. Ruple says he goes to that bar all the time. How do they not know each other if they're both in there all the time? Ruple says that the one that they assumed to be Clemmons is taller than Raphael. Everyone else says that he's shorter.

The stories are inconsistent with each other, Patrick's and Carlisle's and they're inconsistent with Mr. Ruple's because none of that happened. If the State believed Ruple, they would have charged these other people. Mr. Ruple had been drinking. He'll admit he was a five on a scale of ten. A lot of times you have people DUI they only say they've had two beers. They're not going to admit how much they have had to drink and how that affects their perception. He's drinking and messing around with a gun in the parking lot of a bar. He's talking about trading the gun for other guns or trading guns for rims. Talking about Heartless Entertainment and rap music.

He remembers Raphael because he had the only

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distinguishing characteristic out of them. He had the long hair and that's why he remembers him. He runs after a guy that he says takes his bag. He knows the guy has a gun and he runs after him? Does that make any sense? It doesn't. He just focused on the dreadlocks. He knew about the dreadlocks and they all talked about dreadlocks, dreadlocks, dreadlocks. But there is no green puffy jacket. There's no red, white and yellow hat, and there is no money. The State didn't believe them. They didn't charge these other people and you shouldn't believe them either.

Let's talk about trading guns for rims or other guns. I submit to you that he traded his stuff for some drugs or something in that club before they left. Traded with Patrick or Kewon or somebody.

MR. McNAIR: Objection, Your Honor. There's no evidence of that whatsoever.

MR. MAULDIN: It can be inferred from the evidence, Your Honor.

THE COURT: Sustained. You can't just argue facts that are not in evidence.

MR. MAULDIN: Something happened where Patrick and Kewon ended up with the guy's stuff. And then there's an argument outside the club. They're upset over something. It's a real possibility that that gun got in

that car by some other means and that is that Patrick brought it in the car. The focus is on Raphael because of Mr. Clemmons' death. And it is a tragedy that he died, but it is a tragedy of his own making. The State has presented no evidence whatsoever at all about what happened inside that car. They want you to speculate about what happened and that's not any kind of proof whatsoever. The only evidence about what happened in that car from the time it left to the time it crashed is what Mr. Pontoo said on the stand and that's all you have to go on.

They found the gun in the car. You heard that they tested the gun for prints, but they didn't have the print examiner come in and tell you what they found. You can infer from that that it's not good for them. If it was Mr. Pontoo's prints, you know they would have had an expert in here to testify that, yeah, I found the prints and they're Mr. Pontoo's, but they didn't do that. Mr. Pontoo felt like he had no other choice at the time. Mr. Clemmons pulled out the gun. He didn't know if he was going to be harmed. He knew from prior experience that Mr. Clemmons could be violent. Mr. Clemmons could have shot at the police. He didn't want to be in that situation and any reasonable person in that situation would have believed that the only

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thing they could do was to get out of there.

Alex had the gun in his hand. When the car went off the road into the woods, he dropped it in the front seat and they haven't shown you or proved anything different. Raphael felt like he had no other choice. And the State has offered nothing to disprove this.

Look at the evidence. Don't jump to conclusions. Keep an open mind and find Raphael Pontoo not guilty.

THE COURT: Thank you, Mr. Mauldin. Mr. McNair.

MR. McNAIR: May it please the Court.

Ladies and gentlemen, I had something I had planned to say to you all earlier this morning and then after hearing Mr. Pontoo testify earlier, I couldn't help but think about a saying that my dad used to have. He would say when somebody was trying to tell him a story that just didn't make sense, he would say the facts speak so loudly I can't hear what you're saying. Mr. Pontoo is as trapped by the facts of this case as he was in that vehicle that night. He can ignore them, he can try and distort them, he can try and twist them, but he can't change them. And what you heard coming out of his mouth was a figment of his imagination. That has no basis in the facts.

Ladies and gentlemen, a man that would risk his life and everybody else's life on the road that night to get

away, do you not think that type of man would tell a lie? What does a lie mean to a man like that? He'll do anything to get away. And who easier to blame than the one man who is no longer here to speak for himself. The man whose life he's responsible for taking. Everybody is at fault but him. Did you hear him get up there. I don't know who had what gun or who stole what. It was everybody but him. Everybody is lying but the one man who has the most to lose today in this courtroom. Him (indicating.) Is he believable? He'll do whatever it takes to get away. He's proven that with his actions that night. All he cares about is himself. He wanted that nine millimeter and he wanted to get away. That's all he cares about now.

There is not one person who came in this courtroom and pointed the finger at Kewon Clemmons or anybody else but him. Are you going to believe him over all these other people? EMS folks who didn't know him from Adam's house cat. Troopers. Law enforcement. Even the Palmetto Richland Hospital, they're in on this grand conspiracy he's thought up in his twisted mind. They planted the .22 on him they got off of him at the hospital. Are you kidding me?

Fairy tales don't belong in this courtroom. Facts do. Facts come from that witness stand. They don't

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come from somebody's imagination. What are the facts of this case? Jonathan Ruple said the robber had shoulder length dreads. He got the tag number of the vehicle that the robber got into. We know the robber is in that vehicle. Five people left in that vehicle from the Mile High Club. Five people were in that vehicle when it was stopped by Trooper Lee. Who is the only person in that car with dreads? He can wish Kewon Clemmons had dreads all day long, but he didn't. There is nobody that came in here and said that Kewon Clemmons had dreads. What about all those paramedics? Neal Price. Amanda Sucher. Officer Mishoe. Carlisle. Patrick. The firefighters. They all said Kewon Clemmons had short hair.

Everybody remembered the driver of that vehicle had dreads though, didn't they? I don't think anybody said anything different about the driver. That was consistent throughout. And that picture of Mr. Clemmons that's in evidence, you can look at it. That picture was taken in November of 2013. You think you can grow shoulder length dreads in a few months? Mr. Pontoo said it took him two or three years to grow his. Mr. Ruple said the robber's name was Los.

Let's go back to the dreads for one second. Trooper Snider got close enough behind that vehicle. He said he had those pursuit spotlights where he could see into the

vehicle. He could tell the driver had long hair. He saw the passenger poking his had up every now and then. He didn't see the passenger holding a gun to Mr. Pontoo's head. Now, ladies and gentlemen, if you seriously believe that, that Mr. Clemmons forced him to drive and pointed a gun at him, find him not guilty. Find him not guilty and we will give him back that brand new .22 revolver he had.

MR. MAULDIN: Objection, Your Honor.

THE COURT: What's the objection? Come on up.

(Side bar off the record.)

THE COURT: Back on the record. Sustained on that.

MR. McNAIR: Mr. Ruple said the robber's name was Los. Now, he got up there. Of course, he's read his discovery. He denied that was one of his nicknames. Why would anybody make that up? Patrick said he went by Polo, Los, Raph, Raphael. By his own admission there was nobody else in that car that went by the nickname Los. He was the only one with that nickname. Kewon Clemmons went by Kewon, Smoke and I think Patrick said Chuck. Why would Mr. Ruple make that up? Why would he say it was somebody other than who it was? He had no motive to frame Mr. Pontoo. He had never met him before in his life.

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Mr. Ruple said the robber had light silver color pants and a black T-shirt. What was cut off of Mr. Pontoo at the hospital? Those light color pants and a black T-shirt. But he can't remember his own clothes on the stand today? Give me a break. If one of you all saw an article of your clothes, wouldn't you remember you owned that? He doesn't have a memory of that? It's too long ago. It's a year. He'll say anything, ladies and gentlemen. It does not mean a thing for him to put his hand on that Bible and swear to tell the truth. He will do whatever it takes to get away.

You heard from the fireman Matthew Rowlette that when he pulled Pontoo out of that wrecked car, he had light color pants on. Kewon Clemmons had on dark pants. Those dark jeans. Patrick recognized them. Amanda Sucher, the paramedic. Jeff Berry the firefighter. Both of them testified Mr. Clemmons had on dark pants.

Mr. Ruple said the gun that was pulled on him was a .22 revolver with a laser sight, the exact same gun found in Mr. Pontoo's pants at the hospital. The exact same place Mr. Ruple said Mr. Pontoo put the gun after they showed each other their guns. The same place Patrick said he saw Mr. Pontoo putting the gun as he was getting back into the car. And are we to believe like I said earlier that Sergeant Perdue from Palmetto Richland

is in on this grand conspiracy to plant a gun on Mr. Pontoo? That's ridiculous.

Mr. Ruple said the robber stole his blue Swiss army book bag containing his clothing that he identified on the stand and his nine millimeter Hi-Point pistol. All that's found in the vehicle. I guess he's admitting that now. He's acknowledging, yes, that was in the vehicle. But, of course, he wasn't the one who took it. But isn't it ironic to you that that night after that car wreck that went airborne across an intersection, went through all those trees, that pistol, that nine millimeter is inches from his out stretched hand? Is that just bad luck? Or did he have that gun in his hand when he wrecked? Just fell out. What was he planning on doing with that gun? During that traffic stop when his door opened up twice, what was he planning on doing that night? How far was he going to take things to get away that night?

As far as fingerprinting that gun, what good would that do? If we found his fingerprints on it, all the defense would say is, oh, yeah, he touched it, but he didn't steal it. He handled it. That doesn't prove anything. Why do we need fingerprints? We've got so many people who saw him steal it.

What about that green puffy jacket? What's odd to

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me, you can watch the video if you want, when they pulled out Patrick, Carlisle and Iquawn Jones, they all had them remove their jackets. Their three jackets are on the side of the road. None of them were green. Kewon Clemmons' jacket that was cut off by Amanda Sucher was black with an orange liner. Who is the only man who didn't have a jacket on by his own admission? Isn't that funny? They stopped at McDonalds prior to getting stopped. If you had just committed armed robbery, wouldn't you want to get rid of the clothing that could identify you? It's the middle of January. He's the only man without a jacket.

What about Patrick Johnson, Carlisle Jones? Mr. Ruple wasn't the only witness to this. Carlisle Jones said the same thing from day one. He immediately from day one said that's the man right there. Didn't want him to get back in his car and he shouldn't have let him get back in his car, but they weren't charged. Patrick Johnson wasn't charged. Carlisle wasn't charged. And Patrick, he's in a real pinch. His mom is dating somebody related to the defendant. He's between two families. He was in a real bad spot. The last place he wanted to be was here testifying today because he's going to upset some people and that's why he didn't tell the truth initially. He didn't tell the truth because

he is also protecting his friend at the time, Mr. Pontoo. But I submit to you he has no motive to lie here today. What he did was a tough thing for him to do.

It's always ironic to me, too, when the defense tries to discredit people we call to the stand as witnesses. We don't choose witnesses out of thin air. We don't have that luxury. Our witnesses are chosen by defendants when they commit crimes. He wants to make it look like they're lying with us with and we pick them and they're State's witnesses. We don't pick our witnesses. Mr. Pontoo picked our witnesses that night. I submit to you, ladies and gentlemen, they were telling the truth because what they say is consistent. The only person who is not consistent, the only person whose story is not consistent is the man with the most to lose.

Ladies and gentlemen, this isn't a perfect world. There is no perfect case. You and I can see the same thing. We remember different things about it. Everybody has a little different perception and memory of things, but minor inconsistencies do not equal reasonable doubt. The big facts, the inescapable facts in this case point in one direction and that's towards the defendant. Don't lose the forest for the trees.

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Use your common sense. You all have a bunch, a multitude of life experiences that gives you a powerful ability to separate fact from fiction and determine what the truth is in this case. Use that. Use it to guide you just like you do in your every day life. Determine what's reasonable and what's not.

There is a decision making principle called Occam's Razor. I don't know if you all have ever heard of it. I think it originated in the 1800's. But essentially what is says is that when you are faced with competing explanations for how something happened, you should choose the explanation that requires you to make the fewest assumptions. We're not asking you to make many assumptions in this case. The defense is asking you to not believe anybody who has testified and just believe the words of that man right there (indicating.) Is that reasonable?

The Judge is going to instruct you on the law when I finish talking so I'll talk to you a little bit about it now. As you know, he's charged with armed robbery, failure to stop resulting in death. Armed robbery, it is what you think it is, but a legal definition is taking and carrying away the personal property of another person with the intent to deprive the owner of possession while armed with a deadly weapon or

displaying what the person being robbed perceives as a deadly weapon. It doesn't matter that the gun was loaded or not, if it was loaded or not. It doesn't matter if it was a toy gun, if Mr. Ruple perceived it as a deadly weapon. It doesn't matter if the gun even worked. And you heard him testify. He saw that laser beam on his chest and he thought he was going to die that night. He touched the gun earlier that night. To him he perceived that as a deadly weapon. And it doesn't matter if you pulled the weapon prior to taking the bag or it doesn't matter if you have to pull the weapon at some point in order to get away with the bag. It's all the same. It's still armed robbery.

Failure to stop for a blue light. That's pretty self explanatory, too. The defendant was driving a motor vehicle on a public roadway, Highway 3, 178, public roadways. He was signaled to stop by a law enforcement vehicle by means of a siren or flashing lights. You heard Trooper Snider. He had his sirens on and his flashing lights and his pursuit lights and he didn't stop. He just sped up. And the defendant did not stop and death resulted. You heard from Dr. Ross. Kewon Clemmons died January 27th as a result of trauma sustained from that motor vehicle collision. There's no doubt about that.

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We have the proof of the elements of this crime beyond a reasonable doubt. Everybody has heard that term, but a lot of people will have misconceptions about what that really means. What it does not mean is that we have to prove things to you to an absolute certainty. That does not exist in this world. We do not have to prove things to you beyond any and all doubt or to the exclusion of every possibility the defense may bring up. What it means is that you are firmly convinced of this defendant's guilt based on the evidence. Firmly convinced. And if you are firmly convinced he's guilty, you have taken an oath to find him guilty.

Ladies and gentlemen, just like Mr. Graham said in opening we are all here because of one man's choices. Because of one man's choices a family is going to be forever impacted by the loss of their son Kewon Clemmons. And Jonathan Ruple will probable always remember the day he thought he was going to die.

MR. MAULDIN: Objection, Your Honor. Appealing to the jury's passion. Prejudice.

THE COURT: Overruled.

MR. McNAIR: His choices have brought us all here. But ladies and gentlemen, the last choice is yours. All I can ask is that you speak the truth and you find him guilty. Thank you.

THE COURT: Thank you, Mr. McNair.

Folks, when we began the trial, I told you that you were the judges of the facts and so during the course of this trial while the attorneys have been presenting the evidence to you, it's been appropriate for me to be there on the bench out of the way and allow them to do that because you're the fact finders. But we have now reached the portion of this trial where you and I are in this together. You as the judges of the facts and me as the judge of the law and so I come down to be with you to give you the law that is applicable in this case. I'm going to read this verbatim so I don't misquote anything or leave anything out.

Mr. Foreman and members of the jury, you have heard the evidence and the arguments of both parties. I am now going to explain to you the law which applies to this action.

The indictments charge the defendant Raphael Lamarr Pontoo with the offenses of failure to stop for a blue light resulting in death and armed robbery. I remind you that the fact that the defendant was arrested, charged and indicted in this case is not evidence in this case and it cannot be considered by you as evidence of guilt nor does it create any presumption or inference of guilt. The indictments are simply the formal written

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instruments which contains the charges made against the defendant. They are the formal documents by which this case has been brought into court.

Now, I will give you a copy of these instructions in written form to have with you in the jury room. During your deliberations you may refer to these instructions to guide you in your decision making. However, you must consider these instructions as a whole and not follow some parts and ignore others.

Now, the defendant has pled not guilty to these indictments and that plea puts the burden on the State to prove the defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove him or herself innocent. I charge you that it is an important rule of law that the defendant in a criminal trial no matter what the seriousness of the charge may be will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt. This presumption of innocence does not end when you begin your deliberations, but it accompanies the defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt. The presumption of innocence is not a

mere legal theory. It's not just a legal phrase but it is a substantial right to which every defendant is entitled unless you the jury are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

So, what is a reasonable doubt in the law? Some of you may have served as jurors in civil cases where you were told that is it only necessary to prove that a fact is more likely true than not true such as by the greater weight or the preponderance of the evidence. In criminal cases the State's proof must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant'e guilt.

Now, there are very few things in this world that we know with absolutely certainty. And in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crimes charged, you must find the defendant guilty. If, on the other hand, you think there is a real possibly that the defendant is not guilty, then you must give the defendant the benefit of that doubt and find him not guilty.

I remind you that during this trial you and I have

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certain duties to perform. As the trial Judge it is my responsibility to preside over the trial of this case and I also have the duty to rule on the admissibility of the evidence offered during the course of this trial. I have the additional duty to charge you the law applicable to this case. It is your duty as jurors to accept and to apply the law as I now state it to you. If you already have any idea as to what the law is or what the law ought to be and it does not agree with what I now tell you that the law is, you must abandon your idea because you are sworn to accept the law and to apply the law exactly as I state to you.

As I told you at the start of this case, the jury is the sole and the exclusive judge of the facts in this case. The law does not allow me to have an opinion about the facts. This is a matter solely for you, the jury, to determine. As jurors it is your duty to determine the effect, value, weight and truth of the evidence presented during this trial. To determine the facts in this case you're going to have to evaluate the credibility or the believability of the witnesses. Credibility simply means that. It means believability. It becomes your duty as jurors to analyze and to evaluate the evidence and to determine which evidence convinces you of its truth. You the jury can believe as

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much or as little of each witness' testimony as you think is proper.

You should also assess the credibility of each of the witnesses. You may consider whether any witness has exhibited to you any interest, bias, prejudice or other motive in this case. You may also consider the appearance and the manner of a witness while on the witness stand. You do not determine the truth merely by counting the number of witnesses presented by each side. Throughout this process you have but one objective and that is to find the truth regardless of its source.

Now, there are two types of evidence that are generally presented during a trial. There is direct evidence and there is circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact such as an eye witness. Circumstantial evidence is proof of a chain of facts and circumstances which indicate the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or to circumstantial evidence. Nor is there a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in this case. If after weighing all of the evidence you are not convinced of the guilt of the defendant beyond a

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reasonable doubt, then you must find the defendant not guilty. If, however, after weighing all of the evidence you are convinced of the guilt of the defendant beyond a reasonable doubt, you would then find the defendant guilty.

Now, the indictments in this case allege two different offenses against the defendant. Those charges are failure to stop for a blue light resulting in death, and armed robbery. Each indictment charges a separate and distinct offense. You must decide each indictment separately on the evidence and the law applicable to it uninfluenced by your decision as to any other charge or indictment. The defendant may be convicted or may be acquitted on any or all of the offenses charged. You will be asked to write a separate verdict of guilt or not guilt for each indictment.

Now, he's charged in this case with failure to stop for a blue light resulting in death. In order to prove this crime the State must prove beyond a reasonable doubt that the defendant was driving the motor vehicle on a road, street or highway of this state; that the defendant was signaled to stop by a law enforcement vehicle by means of a siren and/or flashing light, and that the defendant did not stop. An official signal requiring a motorist to stop may be a siren or flashing

lights, but both are not required. An attempt to increase speed of a vehicle or in some other manner avoid the pursuing law enforcement vehicle when signaled by a siren and/or flashing light may be considered as evidence of failure to stop for a blue light. However, it is merely an evidentiary fact to be taken into consideration by you along with the other evidence in this case and is to be given whatever weight that you think it should receive. If you find that the State has proved beyond a reasonable doubt that the defendant failed to stop for a blue light and his actions resulted in the death of another, that would satisfy the elements of the offense of failing to stop for a blue light resulting in death.

Now, he is also charged with armed robbery and in order to prove this offense the State must first 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, could maintain or keep possession of that property. The State must also prove beyond a reasonable doubt that the defendant carried the property away intending to permanently deprive the owner

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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 the carrying away of the property must have been done with violence or by putting the owner of the property in fear of violence.

Now, the crime of robbery has occurred not only if the perpetrator uses force or intimidation to take the property, but also if force or intimidation is used to retain the property immediately after the taking or to carry away the property or to facilitate escape. A taking is not complete until the perpetrator has neutralized any immediate interference with his or her possession. The crime of robbery is not completed at the moment the stolen property is in the possession of the robbers but may be deemed to continue during their attempt to escape.

Finally, the State must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon or what reasonably appeared to be 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 dagger, a knife, a slingshot or metal knuckles. A gun may be a deadly weapon even if it's not operable.

Now, the defendant has raised the defense of coercion or duress. Coercion or duress is when a person makes another person commit a crime against someone else's person or property by the threat of immediate physical violence. The coercion or the duress must be present, imminent and of the type to create a well grounded fear of death or serious bodily harm if the act is not done. The fear of injury must be reasonable. Coercion or duress is not a defense if there is any reasonable way other than by committing the crime for the defendant to escape the threat of harm. The defendant must prove the defense of duress by a preponderance or greater weight of the evidence. A preponderance of the evidence is evidence which, when taken as a whole, shows that a fact is more likely to be proved than not proved.

Now, Mr. Foreman and ladies and gentlemen of the jury, as you retire to begin your deliberations I want to express to you the hope that each of you will be

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mindful of the importance of your responsibility. As a presiding officer of this Court I'm vitally concerned that whatever verdict you find will be the result of your going into the jury room and confining your consideration to the evidence and to the law that you have heard in this courtroom weighing it fairly and impartially as I have every confidence you will do. Your verdict in this case cannot be based on sympathy, compassion, prejudice or emotion or some other consideration that's not found in the evidence. Remember, your verdict in this case must be unanimous.

Now, Mr. Temple, the verdict form in this case will be in the front of the notebook here in the flap and the verdict form is simple. As I told you in the instructions, there are two indictments. There are two charges that you must consider and there is no significance to the order that I put them in. I just put them in the order of the indictment numbers. So the first I have on here is the failure to stop for blue light resulting in death. You will consider the evidence as it relates to that charge and you will write your verdict whether it be either not guilty or guilty. The same with the armed robbery. You will consider those two charges separately. You'll just, if you would, note the verdict of the jury for each of those

and it's just a matter of checking the selection. And then if you will sign it as the foreman. Once you have arrived at a unanimous verdict as to both indictments, if you will just knock on the door and let the bailiff know that you have reached a unanimous decision, we'll bring you out and receive your verdict.

Now, I'm going to ask you, if you would, when you step back into the jury room to not begin deliberations immediately. I'm going to send you out to the jury room. I'm going to discuss with the attorneys the charge to make sure that I didn't leave anything out. If I need to bring you back out to recharge you or to add anything, I'll do that. If the charge is good as is, we'll take the exhibits, this notebook and we'll send them back into the jury room. Your cue to begin deliberations is when you have received the evidence, okay? So if you would, please, step back into the jury room and await these items.

(The jury goes into the jury room.)

THE COURT: All right. Are there any exceptions or objections to the charge from the State?

MR. GRAHAM: No, Your Honor.

THE COURT: Mr. Mauldin, I certainly note your exception on the duress charge.

MR. MAULDIN: And I'm renewing that now, Your Honor.

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THE COURT: And you're going to renew that at this time and I want to note that objection and exception to that. Are there any other objections or exceptions other than that?

MR. MAULDIN: No, Your Honor.

THE COURT: Okay. Guys, if you all don't mind, if you would come up and get with Steve and make sure that everything that's supposed to be up here is here. I have got 63 State's exhibits and one defense exhibit. Just verify that.

(The jury commenced its deliberations at 3:57 p.m.)

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THE COURT: All right. If I can have your attention, folks. I've got - the foreman, Mr. Temple, sent this note out and I'll just read it verbatim. It says, "Jurors are requesting to see the video of car chase and vehicle running off the road. Mark Temple." So are we set up on that? Is it ready to go or do we need a warm-up?

MR. GRAHAM: I've got it.

THE COURT: The video is back there, I think.

MR. GRAHAM: I can cue the video before they come out. Otherwise we're just going to have to play through it until, or fast forward to it until we get to the point that they're looking for.

THE COURT: Do you have any idea where it's at?

MR. GRAHAM: I don't.

THE COURT: That's fine. Do me a favor, Dee. Go back there and tell them that we need them to pass out to us the video they want to watch and that we're setting it up. Steve, I'll just go ahead and ask you to mark this as a Court's exhibit, please.

(Whereupon, Court's exhibit number 3 marked for identification.)

MR. GRAHAM: Judge, we are ready.

THE COURT: Let's go ahead and bring the jury out,

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please.

(The jury enters the courtroom at 4:45 p.m.)

THE COURT: All right. Ladies and gentlemen, I got your message and I think we have the video cued up to where you had indicated and we'll start that now. Let me just say this: If at any time you want the video either rewound or stopped or whatever, you just let us know because we're here to accommodate you. Can everyone see over that podium? Is that podium in the way? Okay. All right. You want to dim the lights.

(Playing video.)

THE COURT: Is that good? All right. Thank you, ladies and gentlemen. You can return to your deliberations.

(The jury returned to the jury room to continue their deliberations at 4:53 p.m.)

THE COURT: All right. We'll be at ease while they continue their deliberations.

(Recess during jury deliberations.)

THE COURT: Back on the record. All right. Ladies and gentlemen, I have been informed that the jury has reached a verdict. I don't know what that is. I'm only told that they have a verdict. We don't know what the verdict is so I sit here just as you as far as being in the dark, but I do know this. Folks, I realize that

cases always carry emotional ties and I get that, but having said that, a jury's verdict in any case whether it be a case such as this or a civil case or any type of case, it deserves to be received in a professional manner. So if you think that you are unable to handle the verdict whether it falls the way you feel it should or whether it falls the way you feel it shouldn't, if you don't think you're going to be able to receive it in a professional manner without any outburst or any comments, then you need to step out of the courtroom because if there are any disturbances or any outbursts or anything that would cause this jury to not have their verdict received in a professional way, then that person won't be going home tonight because I will hold you in contempt of court. I'm giving you warning now that I will not tolerate any disturbances in court and so if you don't think you can handle that, whatever it may be, then you should step out. Now, is the State ready to receive the jury's verdict?

MR. GRAHAM: The State's ready, Your Honor.

THE COURT: Is the Defense ready?

MR. MAULDIN: Yes, Your Honor.

THE COURT: All right. Please bring the jury in.

(The jury returns to open court to report its verdict at 6:10 p.m.)

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THE COURT: All right. Mr. Temple, has the jury reached a unanimous verdict, sir?

MR. TEMPLE: Yes, we have, Your Honor.

THE COURT: If you would, please, pass that to the bailiff for me.

(The bailiff passes the verdict to the Clerk, the Clerk passes the verdict to the Court.)

THE COURT: Thank you. All right. Madam Clerk, if you would please publish the verdict of the jury.

THE CLERK: Indictment 2014-GS-32-1408 and 2014-GS-32-1409. The State versus Raphael Lamarr Pontoo. As to indictment 2014-GS-32-1408, charge, failure to stop for blue light resulting in death, we the jury find the Defendant Raphael Lamarr Pontoo guilty of failure to stop for blue light resulting in death.

As to indictment 2014-GS-32-1409, armed robbery, we the jury find the Defendant Raphael Lamarr Pontoo guilty of armed robbery. Both are so signed by the foreperson Mr. Temple dated January 28th, 2014. Mr. Foreman, ladies and gentlemen of the jury, if this is your verdicts, please indicate each of you by raising your right hand.

(All jury members raise their right hand.)

THE CLERK: All hands raised, Your Honor.

THE COURT: All right. Ladies and gentlemen, I want

to thank you for your service. It's not often as I said before that you get called to serve on jury duty and when you do get called, oftentimes it's even less odds that you actually get selected to sit on a panel so what you have done this week in your service to the community has been an honorable service, a great service, and it's one that many people will never have. I've said it before. I said it to a jury panel earlier today. I'm 59 years of age and I have never even been summoned for jury duty except for once and it was after I was already on the bench and obviously I couldn't serve. So I have never had the opportunity to do what you have done here this week and I regret that because it's something that I think would be interesting and would be a service to give. It's not easy work and you understand that having done it this week. This will conclude your service for the week. We have some other matters that we're going to take care of, but they don't involve the need for a jury. They're non jury matters and so we had the panel come in this afternoon for a case that we thought that we would be trying after this case, but that case has resolved so we have nothing left on the docket other than other non jury matters so your service is concluded. You don't have to call back. You don't have to come back. Madam Clerk has work excuses for you if

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you need those this evening and you will also receive a small check for your service this week. So in a moment I'm just going to excuse you and you're free to go, if that's what you choose to do.

I always tell members of the jury you're the ones who did the work and just in a moment we're going to proceed, but if you want to stay for sentencing, you're certainly invited to do that. Some folks do. Some folks don't. Some folks want to go home and so it doesn't matter. You're going to be free to go if you choose to, but if you want to remain, we're going to proceed to that in just a moment and you're welcome to stay for that. So I want to thank you again for your service this week. If you are going to be leaving, please, the badges that you have there, if you would please leave them with the bailiff before you head out. All right. Is the State ready to proceed with sentencing?

MR. GRAHAM: Yes, Your Honor.

THE COURT: Is the Defense ready? Do you have anything? We are going to get you, Mr. Temple, to sign the indictment as the foreman.

All right. Mr. Mauldin, I will be more than happy to hear from you on behalf of Mr. Pontoo and then obviously if Mr. Pontoo would like to address the Court

or anyone else on his behalf.

MR. MAULDIN: Yes, sir. First at this time I would make a motion for a new trial for Mr. Pontoo on the charges and I base that on my prior motions and objections both individually and taken accumulatively that he should have a new trial based on that.

THE COURT: All right. And I certainly note your motion. I'm going to respectfully deny it at this point. I think that the verdict is consistent with the evidence that was presented and would respectfully deny the motion. Yes, sir.

MR. MAULDIN: Thank you, Your Honor. Mr. Pontoo is 21 years old. Present in court at this moment is his mother Rosalind Pontoo and his uncle Freddie Portafield. He has had other members of the family here this week to support him. An aunt Mary Middleton, his father Marvin Jones and his fraternal twin brother Dariel. He's from the Gloverville area of Aiken, South Carolina originally. He attended Midland Valley High School. He did not graduate, but he has been going to Denmark Tech for a couple of years to get his GED in general management degree. He has worked in the past, Your Honor, at a gas station in West Columbia. That was in the 2011/2012 period of time. He does have one son, Malachi who is about a year and a half old now. His son

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and mother live in Orangeburg.

He's been in jail just one day shy of a year, Your Honor, 364 days. I have instructed Mr. Pontoo not to talk. We understand the jury's verdict. When you take a look at the facts of the case, obviously it is a very tragic case, but from the facts it doesn't appear that the individual involved actually went in with the intentions of pointing a gun at somebody and stealing even though it became an armed robbery after a confrontation and a gun was pulled, at least to the jury panel, but it wasn't somebody that went in and stuck a gun in somebody's face to get the property, but it eventually did and I don't think that there was any intention to cause the death of another individual although reckless behavior unfortunately did result in that. We would hope you would take that into consideration.

His age, I believe his prior record, other than the juvenile conviction that the Solicitor had mentioned earlier is a malicious injury to property, and his lack of a serious prior record. I believe his mother Rosalind wanted to address the Court as well.

THE COURT: Sure. I'm more than happy to hear from her or anyone else on his behalf. Yes, ma'am.

ROSALIND PONTOO: Thank you. I just want to say

that Raphael has been given an opportunity to correct his life. I mean, I know this has been a learning experience for him and I just ask the Court to take into consideration his age and the fact that he was trying to better himself and I'm sorry that, you know, the circumstances didn't allow him to continue onto what he originally started to do, but he do has family that do love him and would like to see the best for him and I just ask for leniency.

THE COURT: All right. Thank you very much, ma'am. Anyone else?

MR. MAULDIN: No. That's all, Your Honor.

THE COURT: All right. Solicitor?

MR. GRAHAM: Thank you, Your Honor. His prior record as his attorney said, Your Honor, was the juvenile conviction for assault of a high and aggravated nature in 2007. The only other conviction on his rap sheet is a malicious injury to personal property less than two thousand which was from June of 2013. The .22 caliber handgun that he had that night, Your Honor, at the bar and I guess that witnesses said that they saw earlier in the night, that gun was stolen that day on January 23rd, 2014 at 3:30 in the afternoon from a hardware store in Wagener, South Carolina. It was a black male and a black female that was in there and

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nobody has been charged with that. But however many hours later Mr. Pontoo has that gun with him, the gun that was used in the armed robbery.

Your Honor saw the video of the high speed chase. The speeds with which Mr. Pontoo chose to drive, over a hundred miles an hour, endangering people, passing double yellow lines, at least two cars he passed while he was driving. He was coming up, even if he hadn't lost control, he was coming up to a four way stop which the testimony showed there was an officer that was coming to that intersection in response to the pursuit, he didn't care and I just ask that you take all of those things into consideration. You have heard the case and give him an appropriate sentence. I know that on behalf of Kewon's family, his uncle Ricky wanted to address the Court.

THE COURT: All right, sir. Yes, sir.

RICKY CLEMMONS: My name is Ricky Clemmons. I'm Alexander Clemmons uncle and I just wanted to speak on his behalf just to inform you that he did went to high school and completed high school. He later then applied to Greenville Technical College and there he wasn't really focused, but he went back and reapplied at Greenville Tech and he did get accepted back after two weeks of his death and, you know, he was raised by my

mother along with my other sisters and brothers and he was not a violent type person, you know, as far as in the community. We never had no problems with him in high school getting in trouble or anything in the community.

THE COURT: All right. Thank you very much for being here.

MR. GRAHAM: I believe that's all from the State, Your Honor.

THE COURT: All right. Let me ask you all something real quick.

(Side bar held off the record.)

THE COURT: Back on the record.

This is always by far the hardest part of my job. To the family of the young man that lost his life I don't even know where to begin to tell you how sorry I am that you are here. The tragedy is that a young man lost his life and now another young man is going to lose a significant part of his. And then to Mr. Ruple, you know, an event that is so catastrophic in a person's life that it requires you to leave your home and move to another state, not that it required it, but it's something that you needed to do and you're haunted by it and will be for some time. It doesn't make any sense. It's all, you know, it's foolishness. It's silliness.

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It is what it is.

Mr. Pontoo, you're fortunate that other innocent folks were not hurt or killed or that you survived. But, ladies and gentlemen, sentencing is such a difficult task. We have sentencing ranges that state law gives us and I try to look at that when I impose sentence. I try to be thoughtful in my sentencing and not just give somebody a maximum sentence and be done with it unless it requires that. And so I look at a lot of factors when I decide on sentencing. I look at someone's prior record. I look at the facts and circumstances surrounding the various charges. I think when the legislature gives us a range, that there's a reason for that. I think we're supposed to consider those types of things.

If I have got a young man in Mr. Pontoo's case, he's got a minimal prior record. If Mr. Pontoo had a prior armed robbery in his past, a couple of burglaries and is someone who has just absolutely lived his life on the wrong side of the law, then I would feel like he deserves to be up at the upper end of the range if not the top of the range. So I take these types of things into consideration.

I explain that mainly for the family of the victim and for the victim who is here to just give you some

idea on how I arrive at the sentences that I decide on. It's not arbitrary and I tell folks all the time I don't expect you to necessarily agree with my sentence. All I can tell you is that it is what I think is appropriate and just under the circumstances here and that's one person's opinion and thought.

So having said that, with regards to indictment number 2014-GS-32-1409, that's the armed robbery charge, the sentence of the Court is that you be committed to the State Department of Corrections for a period of 10 years.

On indictment 2014-GS-32-1408, the failure to stop for a blue light involving a death the sentence of the Court is that you be committed to the State Department of Corrections for a period of 20 years. Those sentences are to run consecutive to each other and you're to be given credit for the 364 days that you have served. Good luck to you, sir.

Ladies and gentlemen, for those of you who aren't familiar with the justice system and sentencing, when you have more than one offense, the Court has the option to run matters concurrently or consecutively. Concurrently would be, for example, on the sentence that I imposed here would essentially be a 20 year sentence. It would be the 20 year sentence and a 10 year sentence

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but they would run together at the same time.

Consecutive is that, and I don't know what order Mr. Pontoo will have to do these sentences, but he'll be required to serve one sentence and complete that sentence before he then begins serving the second sentence. So in essence it's a 30 year sentence. Both of these are non parolable offenses and a non parolable offense simply means this, that it's not technically non parolable, but it essentially is in that an individual who is convicted under these charges is required to serve 85 percent of the sentence before they're eligible for consideration of early release. So that's just a brief explanation of the sentence that the Court imposed in this case. If you have any other questions, the family, there are plenty of folks that can answer those questions for you and for the victim.

Ladies and gentlemen of the jury, if you have any questions, I'll be happy to answer those, if you have any. But anyway, that's the sentence of Court and that concludes these matters so court will be in recess until 9:30 tomorrow morning.

(The jury was excused.)

END OF PROCEEDINGS AT 6:30 P.M.

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CERTIFICATE OF REPORTER

(STATE OF SOUTH CAROLINA)

(COUNTY OF LEXINGTON)

I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R., and Official Court Reporter for the Eleventh Judicial Circuit in and for the State of South Carolina, do hereby certify that I reported the proceedings in the before captioned case in the Court of General Sessions in and for the State of South Carolina on the 26th day of January through the 28th day of January, 2015.

I FURTHER CERTIFY that the forgoing 472 pages constitute a true, accurate and complete transcript of said hearing.

I FURTHER CERTIFY that I am neither related, counsel to, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand at Lexington County, this 3rd day of April, 2015.



Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

SCANNED DEC-11-2018

FORM 5

STATE OF SOUTH CAROLINA)
)
County of Lexington S.C.)
Raphael Ponton)
Full name and prison number (if any) of Applicant)
)
v.)
)
State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

2018CP3204205

APPLICATION FOR

POST-CONVICTION RELIEF

2018 DEC 11 AM 10:22
FILED
JEAN H. COVERT
CLERK OF COURT
LEXINGTON SC

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lexington County South Carolina

2. Name and location of Court which imposed sentence Lexington County S.C.

3. Name(s) of co-defendant(s) (if any) [redacted] N/A

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

   (a) 2014-GS-320-1409

   (b) 2014-GS-320-1408

SCANNED DEC-11-2018

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 01-28-15 30 years

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. S.C. Appellate Court

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Denied Relief

ii. _____

iii. _____

(c) the date of each such result:

i. 12/28/17

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. 2015-000323

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

SCANNED DEC-11-2018

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel 6 Amend

(b) Jurisdiction (Subject Matter and personem)

(c) Miranda Rights Violation

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Trial Counsel was ineffective and failed to Raise all issues

(b) Victims Death Certificate doesn't state the correct location of death

(c) Failed to properly Raise and present a Miranda Rights violation

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? Appellate Court

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. N/A

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. N/A

iii. _____

iv. _____

SCANNED DEC-11-2018

(c) the disposition thereof:

i. _____

ii. _____

iii. N/A

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. N/A

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. N/A

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. N/A

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. N/A

SCANNED DEC-11-2018

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective assistance of trial and Appellate Counsel

(b)

(c)

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. David Mauldin Trial Counsel

ii. Donald McCune Appeal Counsel P.O. Peroleau St. Charleston SC. 29401

iii.

(b) the proceedings at which each such attorney represented you:

i. David Mauldin Trial

ii. Donald McCune Appeal

iii.

SCANNED DEC-11-2018

19. State clearly the relief you seek in filing this application:

Any and all grounds for Relief

20. Are you now under sentence from any other court that you have not challenged?

N/A

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Lexington SC.)

I, Raphael L. Penton, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Raphael L. Penton

SWORN to and subscribed before me this 3rd day of December, 2018.

Yolanda T. Hawkins (L.S.)
Notary Public

My Commission Expires: 11/15/19

YALANDA T. HAWKINS
Commission Expires
11-15-2019
NOTARY PUBLIC
ID 114397
Coahoma County
STATE OF MISSISSIPPI

Revised 3/2003

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Raphael Pontoo, #362840, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2018-CP-32-04205 **RETURN, PARTIAL MOTION TO DISMISS, AND MOTION FOR MORE DEFINITE STATEMENT**

Respondent, making its Return to the Application for Post-Conviction Relief filed by Applicant on September 5, 2018, would respectfully show this Court:

I. Procedural History

Raphael Pontoo (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. During its May 2014 term, the Lexington County Grand Jury indicted Applicant for the crimes of failure to stop in a blue light resulting in death (2014-GS-32-01408) and armed robbery (2014-GS-32-01409). On January 26, 2015, Applicant appeared before a jury for trial with the Honorable Thomas A. Russo, circuit court judge, presiding. Assistant Public Defender David Mauldin represented Applicant at the trial. Assistant Solicitors Robert E. McNair, III, and David Shawn Graham, both of the Eleventh Circuit Solicitor's Office, prosecuted the case. At the conclusion of trial, the jury convicted Applicant as indicted. Judge Russo sentenced Applicant to ten years for armed robbery and twenty years for failure to stop for a blue light resulting in death, with both sentences running consecutively.

Applicant timely filed a notice of appeal. Donald L. McCune, Jr., Esquire, perfected the appeal on behalf of Applicant. In his appeal, Applicant argued that:

> [T]he circuit court erred by (1) giving jury instructions that shifted the burden of proof, (2) allowing the State to impeach him with his silence, and (3) permitting an in-court identification process that did not comport with due process.

State v. Pontoo, No. 2017-UP-467, 2017 WL 6618700, at 2 (S.C. Ct. App. Dec. 28, 2017).

The Court of Appeals affirmed in an unpublished opinion on December 28, 2017. State v. Pontoo, No. 2017-UP-467, 2017 WL 6618700, (S.C. Ct. App. Dec. 28, 2017). The Court of Appeals then issued a Remittitur on January 16, 2018.

II. Factual History

In the early morning hours of January 24, 2014, Jonathan Ruple was hanging out with a friend at the Mile High Club, a bar located in West Columbia, South Carolina, when he decided to show his friend his new Hi-Point nine-millimeter pistol. Tr. 36, 38, 218-19. The two then headed out to the bar's parking lot, and Ruple retrieved the pistol from a book bag stowed in the trunk of his car. Tr. 38, 219-20. At that point, two men, including one who had dreadlocks and was wearing a black t-shirt, light-colored jeans, and a green puffy jacket, approached Ruple and his friend, and the man with dreadlocks introduced himself as "Los" before striking up a conversation with the pair. Tr. 37, 40-41, 220-21, 224. During the conversation, Ruple and the others discussed a wide variety of topics, and Ruple showed the men his gun. Tr. 39, 221. In return, "Los" showed Ruple a .22-caliber revolver he indicated he had obtained earlier that day, and his companion showed Ruple a chrome-plated .25-caliber pistol. Tr. 39, 221-22, 228. The men then continued to converse with one another for roughly ten to fifteen minutes before Ruple put his pistol back into his book bag, secured the bag on the front passenger's seat of his vehicle, and re-entered the bar with his friend. Tr. 40, 222-23, 225-26.

Over the course of the next hour or two, Ruple socialized and drank with his friend inside

the bar while "Los" and four of his companions hung out by themselves nearby. Tr. 43, 225-26, 238. As the night wound down, Ruple decided to head home, and, as he walked towards the exit, "Los" stopped him and asked him where he was going. Tr. 45, 227. In response, Ruple told "Los" he was going home and then exited the bar, chatted outside with his friend for a few minutes, and got into his car to leave. Tr. 45, 227. At that moment, "Los" approached Ruple's car from the passenger's side, knocked on the window, and chatted with Ruple for a few moments about a set of vehicle rims. Tr. 227-28. Then, "Los" suddenly stuck his hand into Ruple's vehicle, grabbed the book bag that contained Ruple's gun, and took off running. Tr. 46, 228.

In response, Ruple speedily chased after "Los" and caught him as he tried to get into a vehicle parked nearby. Tr. 46-47, 228. The two then fought over the book bag for a few moments before "Los" pulled out his revolver and pointed it at Ruple's face. Tr. 47, 228. At that point, Ruple immediately threw up his hands in surrender, and "Los" got into the nearby vehicle and sped away from the area with Ruple's bag. Tr. 48, 229-30. However, as "Los" fled, Ruple took down the license tag number of the getaway vehicle, and he quickly reported the robbery to the authorities along with a description of the getaway vehicle. Tr. 48, 90-91, 107, 128, 229.

Shortly thereafter, Trooper Brandon Lee of the South Carolina Highway Patrol spotted a vehicle matching the description and license tag number of the vehicle involved in the armed robbery, and he pulled the vehicle over to the side of the road after it abruptly slowed down upon encountering him. Tr. 90-93, 95-96. He then drew his weapon, requested back-up from his fellow officers, and began ordering the occupants out of the vehicle one at a time starting with the driver. Tr. 93, 97. While he was doing so, an individual seated in the rear of the vehicle on the driver's side repeatedly opened his door and had to be commanded to remain in the vehicle. Tr. 98-99. That individual then remained in the vehicle while the driver, Carlisle Jones ("Carlisle"), and two of the

other passengers, Iquawn Jones ("Iquawn") and Patrick Johnson, exited the vehicle and were secured.[1] Tr. 97-99, 247-48, 254, 276, 279-81, 310-11, 334. At that point, one of the individuals remaining in the vehicle suddenly jumped into the driver's seat and sped off in the vehicle, and several officers at the scene quickly pursued. Tr. 99-100, 107-08, 248.

Over the course of the next few minutes, the driver of the vehicle led officers on a high-speed chase that reached speeds in excess of one-hundred miles per hour. Tr. 108-09, 125. The chase continued until the driver, who had dreadlocks that were visible to the pursuing officers, lost control of the vehicle as he approached the intersection of two separate highways, and the vehicle went off the road before crashing into a nearby wooded area. Tr. 101, 110-11, 117-18, 128-29. The pursuing officers then quickly exited their vehicles and ran to the crashed vehicle. Tr. 102, 131. When they reached it, they found Applicant, pinned into the driver's seat by a tree branch that went through the vehicle's windshield, along with another individual in a rear seat, Alexander Clemmons, who was unconscious and severely injured.[2] Tr. 102-04, 112-14, 136, 141-42. Additionally, the officers observed a black Hi-Point nine-millimeter pistol resting on the front passenger's seat in close proximity to Applicant's outstretched hand, and that weapon was quickly secured.[3] Tr. 114, 132, 134.

In the ensuing minutes, emergency medical personnel responded to the scene of the crash, and they rapidly transported Clemmons, who was unconscious and unresponsive, to a landing zone so he could be taken to a hospital by helicopter. Tr. 140-43, 155-57, 159-60. As they waited for the helicopter, Clemmons's condition began to deteriorate, and paramedic Amanda Sucher from

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1 Neither Carlisle, Iquawn, nor Johnson had dreadlocks at that time. Tr. 248, 267, 337-40.

2 At that time, Applicant had dreadlocks and Clemmons had short, frizzy hair. Tr. 104, 110, 131, 156, 159-60, 165-66, 198.

3 Later on, a book bag, a phone, and several winter coats were located at the scene of the crash, and each of the items was collected as evidence. Tr. 169-70, 180, 185.

Lexington County Emergency Medical Services removed his clothing, which included an orange jacket and dark jeans, to aid in the provision of medical treatment. Tr. 138, 144-146. Upon doing so, she discovered a handgun hidden behind Clemmons's left knee. Tr. 146-47, 157. Clemmons was then transported to the hospital by helicopter. Tr. 197.

Meanwhile, firefighters cut into the crashed vehicle to enable Applicant's removal, and Applicant was rapidly transported to the hospital once he was extricated from it. Tr. 158, 162. While Applicant received treatment at the hospital, a .22-caliber pistol fell out of his clothing. Tr. 187-88, 194. That gun was then secured and subsequently turned over to the Lexington County Sheriff's Office. Tr. 188. Likewise, officers also obtained Applicant's clothing from the hospital, which included a black t-shirt and light-colored jeans. Tr. 204-205.

Thereafter, on January 27, 2014, Clemmons succumbed to the traumatic head injuries he sustained in the crash and died. Tr. 197, 199-200. A few days later, Applicant was released from the hospital, and he was placed under arrest as he left the hospital for his involvement in the armed robbery and Clemmons's death. Tr. 214.

III. Current Application

In his Application for Post-Conviction Relief, Applicant alleges that he is being held in custody unlawfully based on:

1. Ineffective assistance of trial counsel
   a. "Trial Counsel was ineffective and failed to raise all issues"
   b. Trial counsel "[f]ailed to properly raise and present a Miranda Rights violation"
2. Ineffective assistance of appellate counsel
3. Lack of subject matter and person jurisdiction
4. Insufficient evidence
   a. "Victim's Death Certificate doesn't state the correct location of death"

Applicants prays for relief in the form of "[a]ny and all ground for Relief."

Attached to this Return and incorporated by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and Applicant's Post-Conviction Relief Application. Respondent reserves the right to amend this Return, Partial Motion to Dismiss, and Motion for Definite Statement upon its receipt of any relevant materials.

IV. Response to Applicant's Claims of Ineffective Assistance of Trial Counsel

Applicant asserts that his trial counsel was ineffective for failing to raise all issues and for failing to raise the issue of an alleged violation of Applicant's Miranda rights. Respondent interprets these allegation as a claim of ineffective assistance of trial counsel based on a failure to object to the introduction of evidence.

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry

v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

As to Applicant's claim of ineffective assistance of counsel for failing to object to the introduction of evidence, Respondent asserts that Applicant cannot satisfy either element of the Strickland test on this claim. However, the claim probably raises questions of fact that the record may not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve these issues. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

As to Applicant's claim of ineffective assistance of counsel for failing to raise all issues, Respondent has failed to allege with specificity the facts and circumstances upon which this claim is based. As such, Respondent is unable to address this claim, and moves later herein for a more definite statement.

V. Response to Applicant's Claims of Ineffective Assistance of Appellate Counsel

Applicant alleges the ineffective assistance of appellate counsel. A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). "For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy..." Jones, 463 U.S. at 754, 103 S.Ct. 3308.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

In this case, Respondent has failed to allege with specificity the facts and circumstances upon which this claim is based. As such, Respondent is unable to address this claim, and moves later herein for a more definite statement.

VI. Response to Applicant's Claims of Lack of Jurisdiction and Insufficient Evidence

Applicant asserts that the sentencing court lacked subject matter and personal jurisdiction. Additionally, Respondent interprets the following as allegations intended to be facts in support of Applicant's claim of insufficient evidence: "Victim's Death Certificate doesn't state the correct location of death."

Respondent submits that these claims should be summarily dismissed for failing to state a cognizable claim upon which relief can be based. See S.C. Code Ann. §17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

Because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the overwhelming majority of cognizable claims fall under the broad umbrella of "ineffective assistance of counsel," a contention under the Sixth Amendment to the Constitution of the United States. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) ("Allegations of trial court error are not cognizable on PCR."); State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494 499 (2005) ("Circuit courts obviously have subject matter jurisdiction to try criminal matters."). The post-conviction relief court cannot consider the sufficiency of the evidence against a convicted defendant. S.C. Code Ann. § 17-27-20(a)(6)(1985). The Uniform Post-Conviction Procedure Act is not a substitute for remedies that were available before and during the original trial or by review on motion for a new trial or on appeal. Irick v. State, 264 S.C. 632, 216 S.E.2d 545 (1975); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975). Therefore, the Court should summarily dismiss this ground for relief.

Applicant's allegations do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Therefore, pursuant to S.C. Code Ann. § 17-27-70(c) (2003), Respondent moves for summary dismissal of Applicant's claims of lack of jurisdiction of the sentencing court and insufficient evidence.

VII. Motion for a More Definite Statement

Respondent moves for a more definite statement as to Applicant's vague allegation trial ineffective assistance of trial counsel based on a failure to object and his allegation of ineffective assistance of appellate counsel. Applicant fails to set forth with specificity the facts and circumstances upon which these claim are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must ". . . specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

Applicant has failed to state with any specificity the specific facts giving rise to these claims. Additionally, these claims are not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of these claims. The Uniform Post-Conviction Procedure Act requires applicants to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief." Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

VIII. Denial of All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

IX. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the post-conviction relief hearing.

X. Conclusion

WHEREFORE, Respondent requests that an evidentiary hearing be held solely on the claim of ineffective assistance of trial counsel, requests that the Applicant be required to amend his Application in order to provide a more definite statement as to his claim of ineffective assistance of trial and appellate counsel, and requests that Applicant's claims of lack of subject matter jurisdiction of his sentencing court and insufficient evidence be summarily dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR SMITH
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 22, 2019

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON RAPHAEL PONTOO, #362840 Applicant, vs STATE OF SOUTH CAROLINA, Respondent,	IN THE COURT OF COMMON PLEAS **2018-CP-32-04205** CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return. Partial Motion to Dismiss and Motion for More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Overture E. Walker, Esquire
Stoney & Walker, LLC
1527 Blanding Street
Columbia, South Carolina 29201

DATED this the 22nd day of March, 2019.

Camille Henry

Camille Henry, Legal Assistant
For Respondent

ORIGINAL

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	ELEVENTH JUDICIAL CIRCUIT
RAPHAEL PONTOO,)	**CASE NO.: 2018-CP-32-04205**
)	
Applicant,)	
)	
v.)	**AMENDMENT TO APPLICATION FOR POST CONVICTION RELIEF**
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
)	

FILED
2021 JUN -7 AM 11:51
LISA
CLERK OF COURT
LEXINGTON COUNTY, SC

Applicant, Applicant, by and through his undersigned attorney, hereby amends his application for Post-Conviction Relief filed December 11, 2018. This amended complaint adopts and includes all grounds in the original application. Applicant further alleges as additional grounds regarding these his claim of ineffective assistance of counsel as follows:

1.Trial Counsel David Mauldin failed to object to leading question regarding the location of passengers in the car (page 139 line 25 to page 140 line 5).

2.Trial Counsel David Mauldin failed to object to leading question regarding the driver having long hair (p. 145 lines 15 and 16 and 17).

3. Trial Counsel David Mauldin failed to object to a leading question regarding police vehicle getting up to 128 mph (page 153 lines 1-2).

CLOCK IN ERROR

4. Trial Counsel David Mauldin failed subject to leading question to EMS worker regarding identity of the individual in the backseat as Alexander Clemens (page 176 lines 24,25).

5.Trial Counsel David Mauldin failed to object to hearsay and testimony regarding items not in evidence from EMS witness Amanda Sucher reading blood pressure and respiration readings from their record (page 178 line 25 to 179 line 11 and Page 179 line 5 to 8, line 20 to 22).

6.Trial Counsel David Mauldin failed to Object to leading question to Michael Phillips regarding "photograph you're able to retrieve off of a media card on one of those phones" (page 218 lines 10 to 12).

7. Appellate counsel Donald McCune Jr. and Robert M. Dudek, failed to appeal judge's decision to overrule trial counsel's objection to admission of a pistol, States Exhibit 48, into evidence based on a lack of foundation and hearsay testimony (p.226 Lines 24-25 to p. 227 Lines 1-8).

8.Trial Counsel David Mauldin failed to object to leading question regarding "these were the pants removed from Mr. Pontoo in the hospital" (page 241 lines 6-7).

9.Trial Counsel David Mauldin failed to object to leading question regarding is that the clothing you obtained from the hospital belonging to Mr. Clemmons p. 241, line 24 and 25.

10.Appellate counsel Donald McCune Jr and Robert M. Dudek failed to appeal judge's decision to overrule trial counsel objection to hearsay regarding statement by somebody at the hospital that clothing belonged to Mr. Clemens page 242 lines 17 to 21.

11.Trial Counsel David Mauldin failed to properly investigate an interview witnesses including Carlisle Jones, Patrick Johnson and Iquawn Jones and others.

12.Trial Counsel David Mauldin failed to object to solicitor misstating evidence by stating to the court that the defendant had identified himself in states Exhibit No. 63 (photograph), (page 418 line 5 to 8).

13.Trial counsel David Mauldin failed to Object to the jury instruction that failed to include instructions regarding expert testimony due to the testimony of Dr. Janice Ross.

14.Trial counsel David Mauldin failed to Object to the jury instruction for the charge of Failure to Stop for Blue Light Resulting in Death in S.C. Code Ann. Sec. 56-5-750 that failed to include the element of "in the absence of mitigating circumstances" and as a result this issue was not preserved for appellate review.

15.Trial counsel David Mauldin failed to raise the issue of the location of the victim's death and the recording of the victim's death in another county on the death certificate to challenge the validity of the indictment for Failure to Stop for Blue Lights Resulting in Death (2014-GS-32-01408) or to challenge the jurisdiction of the court.

16. Applicant's trial counsel, David Mauldin, failed to properly review the evidence with applicant to prepare for trial.

Furthermore, the Applicant requests that he be permitted to Amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See* Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,

OLA JOHNSON
Attorney for Applicant
P.O. Box 549
Lexington, SC 29071
803-360-8692 Phone
olajohnsonlaw@gmail.com

This 7 day of June, 2021.

FILED
2019 JUL 15 PM 12:11
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Raphael Pontoo, #362840, Applicant, v. State of South Carolina, Respondent.	Case No.: 2018-CP-32-04205 **ORDER OF CONTINUANCE AND ORDER DENYING THE SUBSTITUTION OF COUNSEL**

This matter comes before the Court by way of an application for post-conviction relief filed by Applicant on September 5, 2018. An evidentiary hearing into the matter was scheduled to be heard before the Honorable Brooks P. Goldsmith, IV, at the Lexington County Courthouse on June 25, 2019. Overture E. Walker, Esquire, was present on behalf of Applicant, and Assistant Attorney General Taylor Z. Smith was present on behalf of Respondent.

At the start of the hearing, Mr. Walker informed the Cour that Applicant was being housed in a private prison located in Mississippi, and that he had experienced difficulty in attempting to communicate with Applicant prior to the hearing due to the location of Applicant's incarceration. Additionally, Applicant had arrived at the Lexington County Detention Center in the early hours on the morning of the hearing, which deprived Mr. Walker and Applicant of the opportunity to sufficiently discuss and prepare for the hearing. Mr. Walker also informed the Court that he and Applicant were at odds over the best way to prepare for the hearing, particularly in regards to Applicant's desire to have Mr. Walker confer with an attorney in Georgia with whom Applicant and his family had been communicating.

Applicant was sworn and questioned about the issue by the Court. Applicant stated that he did not feel that he and Mr. Walker had been able to sufficiently discuss the case due to his housing in Missippi and his recent arrival in South Carolina after being transported from Missippi for the hearing, and he agreed with Mr. Walker's request for a continuance. Applicant further informed the Court that he was dissatisfied that Mr. Walker refused to ask the attorney from Georgia for aid in preparing for the hearing, and Applicant requested that the Court relieve Mr. Walker and appoint a different attorney in his place. Respondent had no objection to Mr. Walker's motion for a continuance, and took no position on Applicant's request to have Mr. Walker relieved and another attorney appointed in his place.

For good cause shown, this Court finds that this matter should be continued so that Applicant and Mr. Walker may have time to adequately prepare for the hearing. However, this Court will not relieve Mr. Walker as counsel for Applicant, and suggests that Applicant and his family have the Georgia attorney mail materials to Mr. Walker if they desire Mr. Walker to have anything in the Georgia attorney's possession, rather than asking that Mr. Walker confer with this other attorney.

IT IS THEREFORE ORDERED:

1. That this post-conviction relief matter shall be continued until the next regularly scheduled PCR term of court in the Eleventh Circuit;

2. That Applicant's motion to have Mr. Walker relieved and another attorney appointed in his place is denied; and

3. That Applicant shall be remanded to the custody of the State.



AND IT IS SO ORDERED this 13 **day of** July **, 2019.**

BROOKS P. GOLDSMITH, IV
Presiding Judge

_____, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP3204205

Raphael Pontoo		**South Carolina State of**	
PLAINTIFF(S)		**DEFENDANT(S)**	
Submitted by:		**Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

7/16/2019

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on **July 15th 2019**, and a copy mailed first class or placed in the appropriate attorney's box on **July 16th 2019**, to attorneys of record or to parties (when appearing pro se) as follows:

Overture E. Walker 1527 Blanding Street Columbia, SC 29201

Taylor Zane Smith PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Lisa M. Comer - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.