

VOLUME I OF II

STATE OF SOUTH CAROLINA IN THE SUPREME COURT

RECEIVED

May 13 2022

On Petition for Writ of Certiorari to Charleston County
The Honorable Bentley S. Price, Post-Conviction Relief Judge
The Honorable Clifton Newman, Trial Judge

S.C. SUPREME COURT

Appellate Case No: 2022-000028

ANTHONY MCCLAIN,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

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ATTORNEYS FOR PETITIONER

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

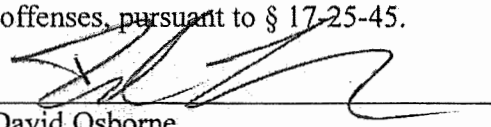
v.

ANTHONY MCCLAIN,

Defendant.

) IN THE COURT OF GENERAL SESSIONS
)
) FOR THE NINTH JUDICIAL CIRCUIT
)) INDICTMENT #: 2015-GS-10-05964, 2015-GS-
) 10-5966, 2015-GS-10-05967, 2015-GS-10-
) 05968, 2015-GS-10-05969
)) NOTICE OF INTENTION TO SEEK
) SENTENCE OF LIFE WITHOUT
) PAROLE
)**TO: ANTHONY MCCLAIN, DEFENDANT, AND AARON MAYER, ESQUIRE.**

PLEASE TAKE NOTICE that at the trial of the above entitled action to be scheduled on a date at least ten (10) days hence, of which you will be timely notified, the State will seek to have the defendant sentenced to a term of imprisonment for life without the possibility of parole, pursuant to South Carolina Code of Laws § 17-25-45. According to South Carolina Code of Laws § 17-25-45, "a person must be sentenced to a term of imprisonment for life without possibility of parole if that person has either (1) or more prior convictions for (a) a most serious offense; or (b) a federal or out-of-state conviction for an offense that would be classified as a most serious offense under this section." This notice is based upon the Defendant's prior convictions for the offenses of Armed Carjacking, Robbery-Street Weapon (Offense Date 03/20/1996) all classified as a "most serious" offenses, pursuant to § 17-25-45.


 David Osborne
 Assistant Solicitor
 Ninth Judicial Circuit

 Charleston, South Carolina
 Dated: February 17, 2017

 2017 FEB 17 AM 11:39
 JULIE ARMSTRONG
 CLERK OF COURT
 BY 

FILED

FILED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

2017 FEB 21 PM 4: 28

JULIE J. ARMSTRONG
CLERK OF COURT

BY MH

IN THE COURT OF GENERAL SESSIONS

NINTH JUDICIAL CIRCUIT

AFFIDAVIT OF SERVICE

versus

ANTHONY MCCLAIN

Defendant,

NOTICE OF INTENTION TO SEEK
SENTENCE OF LIFE WITHOUT PAROLE

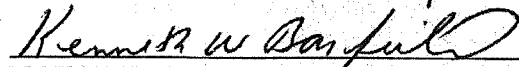
INDICTMENT(S): 2015-GS-10-05964, 2015-
GS-10-05966, 2015-GS-10-05967, 2015-GS-10-
05968, 2015-GS-10-05969

Investigator Ray Haupt, after being duly sworn, states that on **February 17, 2017 at 15:30 hours**, at the Sheriff Al Cannon Detention Center located at 3841 Leeds Avenue, North Charleston, SC 29405, personally served a certified copy of a **Notice of Intention to seek a sentence of Life Without Parole Trial** notice for above listed case upon the defendant, **Anthony McClain**.

During the visit with Mr. McClain I handed him his Certified Copy and advised him verbally of the notice. I then handed Mr. McClain his form to sign stating that he had received his notice but he handed it back without signing. I then completed the form and wrote above his name **Refused to Sign**.


Ray Haupt, Special Investigator
9th Circuit Solicitors Office

SWORN to and subscribed before me
this 17 day of February 2017.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 2-23 2025

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

v.

ANTHONY MCCLAIN,

Defendant.

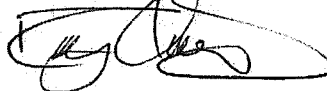
) IN THE COURT OF GENERAL SESSIONS

) FOR THE NINTH JUDICIAL CIRCUIT

) INDICTMENT #: 2015-GS-10-05964, 2015-GS-
10-5966, 2015-GS-10-05967, 2015-GS-10-
05968, 2015-GS-10-05969) NOTICE OF INTENTION TO SEEK
) SENTENCE OF LIFE WITHOUT
) PAROLE

Service of the Notice of Intention to seek a sentence of imprisonment for life without the possibility of parole acknowledged, and copies retained this 17 day of FEBRUARY, 2017, at Charleston, South Carolina.

REFUSED TO SIGN - L.V. R. ROBERT
Anthony McClain, Defendant



BY Julie J. Armstrong
CLERK OF COURT

2017 FEB 21 PM 4:28

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

Plaintiff,

CASE NO. K740358, K7405359, K740360,
2015A1010900433, 2015A1010900434

v.

ANTHONY MCCLAIN,

Defendant.

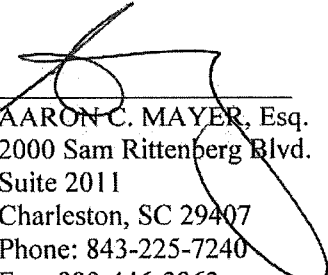
Motion to Set Aside LWOP Notice

NOW COMES the Defendant, Mr. McClain, by and through his undersigned counsel of record, and requests that the Court determine that the State's Notice of Life Without Parole is inadequate under the circumstances, given the Defendant's criminal record.

Charleston, SC

3/10, 2017

BY:


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FILED

2017 MAR 10 AM 9:53

JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

INDICTMENT #: 2015-GS-10-05967, 2015-GS-10-05968, 2015-GS-10-05969, 2015-GS-10-05964, 2015-GS-10-05966

WARRANT #: K740358, K740359, K740360, 2015A10109004332, 2015A1010900434

-versus-

CHARGES: Armed Robbery, Kidnapping,
Possession of a Weapon During the Commission
of a Violent Crime, Pointing and Presenting a
Firearm at a Person (X2)

Anthony McClain

STATE'S TRIAL BRIEF

Defendant

THE HONORABLE JUDGE R. MARKLEY DENNIS JR.
South Carolina Circuit Court Judge, Ninth Circuit

Appearances:

For the State: David Osborne, Assistant Solicitor
Alex Ginsburg, Assistant Solicitor
For the Defendant: Aaron Mayer

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BY Julie J. Armstrong
CLERK OF COURT

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I. PROCEDURAL HISTORY

On June 2, 2015 at about 0047 hrs., the Defendant (Anthony McClain) drove his vehicle up Morris St. from the King St. intersection. An individual identified as Will Cobb (Cobb) was in the passenger seat. As the Defendant neared the intersection of Coming St., he slowed his vehicle, spoke to a group of girls, and asked if he could take his picture with them. The individuals in the group were Hannah Lambert (Lambert), Morgan Osborne (Osborne), Sebastian Bedon (Bedon), and Kathryn Hemphill (Hemphill). One of the individuals in the group refused and made some kind of rude remark. The Defendant then exited his vehicle and approached Bedon and Osborne. He pressed the barrel of a handgun to the back of Osborne's head and then to Bedon's forehead. Both Bedon and Osborne took off running alerting Hemphill and Lambert to do the same. While they ran, Osborne screamed the subject had a gun. The group ran into a house where Lambert called 911.

The Defendant then drove his vehicle two blocks down Morris St. and turned right onto Smith St. He went one block on Smith St. and then turned right onto Cannon St. As he turned right on Cannon St., Jennifer Johnson (Johnson) was walking to her vehicle, which was parked in front of her residence at 76 Cannon St. Johnson left her residence to meet her boyfriend at the Silver Dollar, which was a bar on King St. The Defendant stopped his vehicle beside Johnson and asked directions to North Charleston. Johnson gave him the directions and the Defendant pulled his vehicle slightly forward and stopped just in front of Johnson's vehicle. The Defendant exited and approached Johnson who was now seated in the driver's seat of her vehicle. Before Johnson was able to close the door, the Defendant stood in the door jam and pointed a handgun at Johnson. The Defendant demanded money and Johnson gave him \$3. The Defendant walked back to his vehicle, then turned, and walked back toward Johnson. Before Johnson could crank up her vehicle, the Defendant walked back to Johnson's vehicle and approached the passenger side door. The Defendant demanded she open the door and let him in. The Defendant told her to not do anything stupid and drive him to the store. Jennifer complied and drove up Cannon St. headed toward King St. Jennifer would take the Defendant at his direction to various locations for approximately two hours. Many of the stops were recorded on surveillance video.

The last business the Defendant ordered Johnson to stop at was the Kangaroo Gas Station at 5302 Rivers Ave. While there, the Defendant told Johnson to withdraw money from an ATM. While Johnson searched for her card, she realized she had a spare key in her purse. Johnson withdrew \$100 from the ATM, which the Defendant took. When they left the Kangaroo, the Defendant drove Johnson's vehicle to Marson St. where he resided. Once

there, the Defendant exited and left Johnson alone in the vehicle. When Johnson had an opportunity, she slid over to the driver's seat, cranked up the vehicle, and sped from the area.

Since Johnson did not arrive at the Silver Dollar, her boyfriend, Justin Lawrence (Lawrence) became worried. He went to her home and spoke to Johnson's brother (Kevin Johnson). When they couldn't reach Johnson, they informed her mother (Patricia Johnson) who then called the police. While officers were on scene taking a missing person report, Johnson drove home. She sped up, exited her vehicle, ran up and hugged Lawrence, and said, "That motherfucker just kidnapped me."

Charleston Police Department investigated the incident and the next day identified the Defendant as a suspect. A photographic lineup was presented to Johnson who positively identified the Defendant as the perpetrator. Warrants were obtained to charge Johnson with armed robbery, kidnapping, and possession of a weapon during the commission of a violent crime.

On June 3, 2015, the Defendant was arrested. Post-Miranda and after several different stories, the Defendant finally admitted to having a confrontation with a group of college age kids regarding a photograph he wanted to take with them. He also admitted to being with Johnson and driving to various locations with her. However, the Defendant denied ever having possessed a gun. The Defendant said he and Johnson met a few months earlier and they regularly spoke on the phone. On that night, Johnson agreed to meet with him and everything she did that night was consensual. Based on the Defendant's statement and the totality of the evidence against him, the detectives additionally charged the Defendant with two counts of pointing and presenting a firearm at a person.

Assistant Solicitor David Osborne was assigned the case. Mr. Osborne observed the Defendant had the following arrest history:

NY:

1986: Disorderly Conduct
1987: Tampering with a witness & Robbery 2nd (1 yr. sentence)
1988: Petty Larceny

SC:

1989: Disorderly Conduct
1990: Burglary 3rd (5 yrs. suspended to 6 months confinement)
1992: Grand Larceny (10 yrs. suspended to 5 years and 2 years probation)
1995: Armed Robbery & Carjacking

DEFENDANT PLED TO:

Aiding and abetting in carjacking (150 months)
Aiding and abetting in the interference of commerce by threats or violence (150 months concurrent)
Felon in possession of a firearm (150 months concurrent)

Aid and abet in using and carrying a firearm during and in relation to a crime of violence (60 months consecutive)

DEFENDANT RECEIVED A TOTAL SENTENCE OF 210 MONTHS

WHILE ON PAROLE:

2011: Armed Robbery, Kidnapping, Criminal Sexual Conduct 1st

(ALL CHARGES WERE PLED DOWN TO A&B 1st; HIS FEDERAL PAROLE WAS REVOKED. HE WAS RELEASED FROM FEDERAL INCARCERATION ON 1-2-14)

2014: Solicitation of Prostitution

The Defendant was represented by Public Defender John Kozelski. Based on the Defendant's extensive violent criminal history, Mr. Osborne extended an offer for a guilty plea to all charges with a negotiated range of 20-25 years. The plea was heard on the record on June 9, 2016 in front of the Honorable Judge Carmen Mullen. At the plea, Mr. Osborne informed the Court as well as the Defendant, in exchange for the plea the State would not seek to enforce a life without parole sentence. Mr. Osborne acknowledged the convictions that would enhance the Defendant were federal convictions and he wasn't positive the Defendant was eligible to be enhanced. The Defendant rejected the offer.

On May 20, 2016, an order of substitution was filed and Aaron Mayer then represented the Defendant. On October 28, 2016, the original offer was once again presented to the Defendant. On November 9, 2016, the Honorable Judge Roger Young heard a bond modification request by the Defendant. During the hearing, Mr. Osborne once again stated the plea offer with his position concerning life without parole. Once again the Defendant rejected the offer.

On February 17, 2017, Investigator Ray Haupt with the 9th Circuit Solicitor's Office served life without parole notice to the Defendant who refused to sign for the notice. On February 22, 2017, Investigator Haupt served Mr. Mayer with life without parole notice.

II. FACTUAL SUMMARY

On June 2, 2015 at about 0047 hrs., Charleston Police Department received a 911 call from Lambert who reported a subject just pointed a gun at two of her friends as Morris and Coming St. Within minutes, officers arrived on scene and met with Lambert, Osborne, Bedon, and Hemphill. All relayed the same basic account of the incident, which was as follows:

The four individuals had been at the Silver Dollar that night drinking alcoholic beverages. At about 0030 hrs., they left the bar and walked to a friend's house on Morris St. Hemphill and Lambert walked just ahead of Osborne and Bedon who were behind them. As they walked up Morris St. and neared the Coming St. intersection, an unknown

individual said something about taking a picture with one of the girls. Someone in the group made a rude comment to the individual. The person then approached Bedon and Osborne. He pressed a handgun to the back of Osborne's head then to Bedon's forehead.¹ Osborne ran away from the subject toward Hemphill and Lambert telling them to run as well. Osborne was visibly upset and yelled the subject had a gun. Everyone in the group ran inside a home where Lambert called 911.

Osborne and Bedon said the subject exited the driver's side of a vehicle.² They both described the subject as being a black male, about 5'8", and late 20's to early 30's. Both stated he appeared to be under the influence of narcotics. Bedon added the subject was wearing a white shirt.

At about 0218 hrs., Patricia Johnson called the 911 and reported her daughter, Johnson, was missing from 76 Cannon St., which was their residence. Officers arrived on scene within minutes to take a missing person report. Officers learned Johnson had left her home around 0100 hrs., to meet her boyfriend, Lawrence, at the Silver Dollar. When Johnson didn't arrive, Lawrence became worried. He called Johnson numerous times but she didn't answer. This was very unusual and not like Johnson. Lawrence went to Johnson's residence and alerted her brother and Patricia.

At about 0240 hrs., Johnson drove up at a high rate of speed and stopped her vehicle in front of her residence. She quickly exited the vehicle, ran up to Lawrence, and said in a loud voice, "That motherfucker just kidnapped me." Officers spoke to Johnson on scene and later took a more detailed video recorded interview. Johnson's account of the incident can be summarized as follows:

On that night, she left her residence to meet her boyfriend at the Silver Dollar. As she was about to enter her vehicle, an older red vehicle turned right on Cannon St. from Smith St. and stopped beside her. The driver asked for directions to North Charleston and she gave them to him. The driver pulled slightly forward then exited his vehicle. As she was about to close her door, the subject approached, pointed a handgun in Johnson's direction and demanded she surrender her money. Johnson surrendered \$3 and the subject made a comment saying he couldn't believe she didn't have more since she lived downtown. When Johnson said that was all she had, the subject walked back to his vehicle. Before Johnson could leave, the subject came back and this time approached the passenger side door. The subject told Johnson to let him in. She initially refused and the subject then said he had gun and she had to let him

¹ During a trial preparation meeting, Osborne said the gun was pressed to her head so hard it caused a bruise the next day.

² Bedon believed the vehicle was red in color.

in. Johnson opened the door and subject sat in the vehicle. When Johnson made a rude comment to the subject telling him to leave her alone, the subject pressed the gun against Johnson's jaw. The subject then told Johnson to drive him to the store and buy him a beer. Johnson agreed and drove up Cannon St. and passed the red vehicle. ³

Johnson drove up Cannon St. and stopped at the corner store at Cannon St. and King St. She pulled in front of the store but the subject told Johnson he didn't want to go there because there were too many people around. At the subject's direction, Johnson then drove to the Exxon at 420 Meeting St. Johnson exited the vehicle and went to the window and purchased a Miller High Life. ⁴ At that time the Exxon was locked and only open to walk-up service at the window:

After making the purchase, the subject ordered Johnson to drive toward North Charleston. While headed down Meeting St., Johnson tried to talk to the subject to keep him calm, so she told him her vehicle sounded odd. The subject told her to pull into the Family Dollar parking lot and he would look under the hood. Once in the parking lot, the subject tried to lift the hood but the latch was broken. ⁵ The subject then told Johnson to continue on Meeting St. toward North Charleston.

The subject directed Johnson to drive to the River's Mart at 3255 Rivers Ave. Once there, the subject told Johnson to back into a parking space at the rear of the lot, which she did. ⁶ He then told her to go into the store with him and once inside he had her purchase a loose cigarette for .50 cents. They then went back to the vehicle and subject directed her to keep driving up Rivers.

The subject then directed Johnson to drive to the rear of the Stay Over Lodge at 2070 McMillan Ave. Once there, the subject took the keys to the vehicle and Johnson's cell phone and exited the vehicle. ⁷ The subject then knocked on the door to room 141 and another individual answered. The subject then ordered Johnson to get out of the vehicle, then go back inside. The subject went inside the apartment and after a few minutes, came back out. The

³ City surveillance cameras show Johnson's vehicle at the King St. Market at 0056 hrs. Although this time was not verified as being accurate.

⁴ The Exxon surveillance camera showed the Defendant hanging out the window while Johnson made the purchase. The time on the video showed Johnson's vehicle pull up at 0057 hrs. Johnson left at 0058 hrs. This time was verified to be about seven minutes fast, which would mean Johnson's vehicle arrived at the Exxon at 0050 hrs. just three minutes after Lambert called 911.

⁵ Detectives later viewed the Family Dollar external video and noted it appeared to point to the ground thus no usable video was recovered.

⁶ The Rivers Mart surveillance video showed Johnson's vehicle arrived there at about 0028 hrs. Johnson left at 0032 hrs. Detectives verified this time was about an hour slow.

⁷ The Stay Over Lodge surveillance video showed Johnson's vehicle arrived there at about 0130 hrs. The vehicle left at 0147 hrs. Detectives verified this time was about seven minutes fast.

subject then told Johnson to not go anywhere and he walked off into the motel. The subject was gone for several minutes and when he returned, he told Johnson to drive off again.

The subject then directed Johnson to drive to Railroad Rd. and pull to the side of the road. Railroad Rd. is located in the Ferndale subdivision in North Charleston. While pulled over, the subject told Johnson she had two options. She could either give him more money or "fuck me." Johnson said she would give him more money. The subject directed her to drive to the Kangaroo at 5302 Rivers Ave.⁸ Once there, Johnson said she needed to find her credit cards. She had earlier hid them under her driver's seat so the subject wouldn't find them. She searched her purse looking for the cards, then under the seat. While she searched her purse, she found her vehicle's spare key. She forgot she kept a spare key to the vehicle in her purse. After she found the credit card under the seat, both the subject and Jennifer went into the gas station. While inside, Johnson withdrew \$100 from an ATM and the subject took the money. The subject then bought a beer and they went back to the vehicle. The subject then pulled up to a gas pump and told Johnson to go inside and pay \$10 for gas. Johnson then went back inside the store. While she paid, the cashier asked, "Are you ok?" Before Johnson could answer, the subject entered the store. After paying, they went back to the vehicle and the subject drove to a trailer park in the Ferndale subdivision.

Once they got to the trailer park, the subject pulled over and parked. He exited and talked to several people outside. Johnson's phone and keys remained with the subject. When Jennifer had the opportunity, she slid over to the driver's side, cranked up the vehicle with the spare key, and sped from the area.

Jennifer described the subject as being a black male, slender build, late 40's to early 50's, and wearing a white dingy Newport t-shirt. She added he had a tattoo on his left arm. The subject's vehicle was described as being an older model red sedan. She also said that at some point while driving around, the subject said he had been in prison for 21 years but didn't say what his charges were.

Officers canvassed the area of Ferndale that night looking for the subject's vehicle but did not locate it. The next day detectives went to the Stay Over Lodge and spoke to individuals in room 141. They quickly developed a suspect by the name of Anthony who dated a person named Elizabeth Tisdale. Anthony drove an older red sedan with a broken front windshield. Detectives then went to the trailer park in Ferndale and located a vehicle that matched the description. The vehicle was driven by Elizabeth Tisdale. Detectives spoke to Ms. Tisdale and learned

⁸ The Kangaroo surveillance video showed Johnson's vehicle arrive there at about 0205 hrs. and leave at about 0219 hrs. Detectives verified this time was about seven minutes fast.

her boyfriend's name was Anthony McClain. She said the Defendant often stayed with her at her trailer at 1917 Marson St.

That same day, June 2, 2015, Detective Paul Krasowski met with Johnson. He presented her a six person photographic lineup with the Defendant. Johnson immediately positively identified the Defendant as the person who robbed and kidnapped her. Warrants were obtained to charge the Defendant with armed robbery, kidnapping, and possession of a weapon during the commission of a violent crime. Detectives also prepared a search warrant to search 1917 Marson St. for a firearm, white Newport t-shirt, Johnson's keys, and her cell phone.

On June 3, 2015, Detectives arrived at 1917 Marson St. and spoke to Ms. Tisdale. Based on information provided by Ms. Tisdale, officers located the Defendant about a mile away and placed him under arrest. Detectives Dane York and Eric Tuttle executed the search warrant and located a white Newport t-shirt in a dirty clothes hamper next to Ms. Tisdale and the Defendant's bedroom.

The Defendant was transported to the Charleston Police Department Investigations Office where Detectives Jason Jarrell and Sergeant Craig Kosarko interviewed him. The interview began at about 1:33 pm. Detective Jarrell advised the Defendant of his *Miranda* warnings read from a *Miranda* warnings card, which the Defendant indicated he understood and signed accordingly. The Defendant told varying accounts of his whereabouts and activities on the night of the incident. His first story was that he met up with Cobb and they drove to the gas station at Rivers and Reynolds at about midnight. After buying cigarettes and beer, Cobb dropped him off on Marson St. and it was Cobb who had his vehicle for the remainder of the night. He denied ever going downtown. His story changed as detectives confronted him with additional evidence, which included surveillance images of him and Johnson. The Defendant's last story was that he met Johnson about 2-3 months ago and they exchanged phone numbers. He spoke to Johnson on the phone 1-2 times per week. He didn't know her name but thought it was Julie or Jennifer. He knew she had a boyfriend named Justin and an infant child.⁹ He called her twice on the day of the incident. Once earlier in the day from "Ant" or "Anthony's" phone and again about 15-20 minutes prior to meeting Johnson.¹⁰ The Defendant did not know Johnson's phone number but said he had it written down on a business card on a night stand at his trailer. He met Johnson at the Exxon. He got in her vehicle and Cobb drove off in the Defendant's

⁹ Johnson said she made small talk with the Defendant and told him she had a child. However, her child was three years old and she never told him that. Also, Lawrence called her numerous times and his name showed on her phone as Justin Lawrence. He called so many times the Defendant told her to turn off the phone.

¹⁰ Ant or Anthony was located and his name was Anthony Williams. Williams' phone number does not appear on Johnson's phone records.

vehicle. After going to various businesses, they went to the area of his trailer. They hung out with some of his friends and after a while Johnson left. The Defendant added Johnson sped off. Everything Johnson did that night was consensual and he never forced her to do anything.

When asked about an encounter with college aged kids, the Defendant said he did see a "gorgeous" girl and asked if he could take a picture with her. The girl's friend said no. This made the Defendant mad so he told the friend to "Shut the fuck up." The Defendant denied ever having a gun that night.

Based on the Defendant's admission involving the first incident, detectives additionally charged the Defendant with two counts of pointing and presenting a firearm at a person.

III. STATE'S MOTION JOIN BOTH SETS OF CHARGES IN ONE TRIAL

The State hereby moves this Court to order both the pointing and presenting of a firearm charges and the charges which stemmed from Johnson's incident be tried together. South Carolina Courts have routinely held offenses charged in separate indictments may be tried together where they:

1. arise out of a single chain of circumstances;
2. are proved by the same evidence;
3. are of the same general nature; and
4. no real right of the defendant has been prejudiced.

A. Arise out of Single Chain of Circumstances

This case is factually similar to *State v. Simmons*. In *Simmons*, the defendant was charged with attempted burglary and burglary and those crimes were committed by the same defendant at two separate locations and two separate times.¹¹ The Court found joinder of the charges was proper because the two break-ins occurred in close time and proximity to each other and the suspect was similarly described in both incidents.¹²

Here, the first incident occurred minutes, if not seconds, before Johnson was abducted and about three blocks away. The Defendant himself admitted to both encounters so identification is not at issue. Of course, he denied ever being in possession of a firearm. Therefore, like *Simmons*, this case arises out of a single chain of circumstances.

B. Proved by the Same General Evidence

¹¹ *State v. Simmons*, 352 S.C. 342, 573 S.E.2d 856 (2002).

¹² *Id.* at 51.

In *State v. Caldwell*, the defendant was indicted and tried for three separate incidents of eavesdropping or peeping tom. ¹³ The defense in that case argued the individual charges could not be proven with the same evidence since each charge required separate victim testimony. ¹⁴ The Court disagreed and found that while the alleged crimes did involve three separate victims, which did necessitate some individual evidence as to each of the charges, much of the evidence produced at trial pertained to each of the separate charges. ¹⁵ The Court concluded, “[w]e find the fact that some additional evidence from the individual victims may be necessary to prove the individual crimes is not fatal to the joinder of the charges.” ¹⁶

This case is factually similar in that, the evidence against the Defendant in both cases is the same with the exception of each victim telling their own individual story. The photographs of the Defendant’s vehicle, the map of the area, the Defendant’s t-shirt, and the Defendant’s statement would all be the same for both incidents. The only different evidence is each victim’s account of the incident and that alone does not prevent joinder of the two incidents.

C. Are of the Same General Nature

By his own admission, both of these incidents involve the Defendant talking to young, attractive women. Both of these incidents began with the Defendant speaking to these women while seated in the driver’s seat of his vehicle. The victims from both incidents reported the Defendant was armed with a handgun. Both of these incidents escalated to the Defendant pressing a handgun to the heads of his victims when the victims made rude comments to him. Both incidents occurred in downtown Charleston within seconds and blocks of each other.

D. No Real Right of the Defendant Has Been Prejudiced

Prejudice may occur to the defendant when charges are jointly tried resulting in admission of prior bad act evidence that would have otherwise been inadmissible. ¹⁷

In *State v. Beekman*, the defendant was convicted of criminal sexual conduct with a minor and lewd act upon a child involving the defendant’s two stepchildren. ¹⁸ On appeal the defense raised several arguments. In particular, the defense argued the defendant was prejudiced by joinder of the charges because the State would not be

¹³ *State v. Caldwell*, 378 S.C. 268, 662 S.E.2d 474 (2008).

¹⁴ *Id.* at 479, 480.

¹⁵ *Id.*

¹⁶ *Id.* at 480.

¹⁷ *State v. Cutro*, 365 S.C. 366, 374, 618 S.E.2d 890 (2005).

¹⁸ *State v. Beekman*, 405 S.C. 225, 746 S.E.2d 483 (2013).

able to show common scheme or plan under 404(b).¹⁹ In addition, the defense argued the prejudicial effect of joinder of the charges substantially outweighed any probative value.²⁰ The Court found no error in the trial court's decision that the probative value of the prior bad act evidence outweighed the danger of unfair prejudice to the defendant under SCRE 403.²¹ Furthermore, the court found "[w]hen the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b)."²²

In this case, there is no prejudice to the Defendant by jointly trying the charges because evidence of the second act would be admissible in a trial for the first act and vice versa under SCRE 404(b). Under 404(b), evidence of other crimes is not admissible to prove the character of a person, but it is admissible to show motive, identity, existence of common scheme or plan, absence of mistake, or intent.

If tried separately, the State would be allowed to introduce evidence of the prior bad act to show existence of a common scheme or plan, absence of mistake, motive, or intent. First, the prior bad act evidence would be allowed to show existence of a common scheme or plan because the similarities between the two incidents far outweigh any dissimilarity. The Defendant was driving in a vehicle during both incidents, he was armed in both incidents, the victims were similar, and as previously mentioned he behaved similarly in both incidents.

Second, the prior bad act evidence should be allowed to motive. During the Defendant's statement, he said he went downtown to meet with Johnson and met her at the Exxon. When asked if he was ever on Cannon St., he adamantly said no and added he used to date someone who lived on Cannon St. and was very familiar with that area. The first incident clearly shows the Defendant's intention in going downtown was not to meet with Johnson on a date at the Exxon. He had an armed encounter with victims on Morris St. just seconds before encountering Johnson on Cannon St. The first incident coupled with Johnson's testimony shows a clear path the Defendant took, which did not include meeting her at the Exxon. Furthermore, the two incidents tried together show the Defendant's motive that night in going downtown was to commit armed crimes not go on a date.

Lastly, the prior bad act evidence should be allowed to show intent. By introducing both incidents into evidence, the State will show the Defendant clearly kidnapped Johnson by armed force.

¹⁹ *Id.* at 230.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 232, citing *State v. Wallace*, 384, S.C. 428, 433, 683 S.E.2d 275, 277-278 (2009).

IV. EVIDENTIARY ISSUES

A. *Jackson v. Denny*

The State intends to offer evidence regarding the Defendant's video recorded statements to law enforcement. A statement obtained as a result of a custodial interrogation is inadmissible unless the suspect is advised of and voluntarily waives his rights under *Miranda*.²³ After he was arrested, the Defendant was advised of his *Miranda* rights by Detective Jarrell who read each right from a standard *Miranda* warnings card. The Defendant indicated he understood his rights and signed the card accordingly. Throughout the next three hours, the Defendant is given bathroom breaks and water. The Defendant was not promised leniency or threatened in any way. By all accounts, the Defendant voluntarily waived his *Miranda* warnings and his subsequent statement was given without coercion. Therefore, the Defendant's statement should be admitted into evidence.

B. SCRE Rule 404(b) and *Lyle* Generally

"Evidence of prior crimes or misconduct is inadmissible to prove the specific crime charged unless the evidence tends to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the proof of the other; or (5) the identity of the person charged with the present crime."²⁴ When offered for one of these enumerated purposes, it is up to the trial judge to gauge the prior bad act's logical relevance to the particular purpose for which it is sought to be introduced.²⁵ "If there is any evidence to support the admission of prior bad act evidence, the trial judge's ruling will not be disturbed on appeal."²⁶ Evidence of prior bad acts offered under one of these exceptions may still be excluded if the danger of unfair prejudice effect substantially outweighs the probative value.²⁷ "Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one."²⁸ "A trial court's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances."²⁹

²³ *State v. Aleksey*, 343 S.C. 20, 30, 538 S.E.2d 248, 253 (2000).

²⁴ *State v. Tutton*, 354 S.C. 319, 324-325, 580 S.E.2d 186, 189 (Ct. App. 2003); see also, *State v. Lyle*, 125 S.C. 406, 416, 118 S.E. 803, 807 (1923); Rule 404(b), SCRE.

²⁵ *State v. Fletcher*, 363 S.C. 221, 241-242, 609 S.E.2d 572, 582 (Ct. App. 2005) (reversed on other grounds).

²⁶ *Id.* at 242, 609 S.E.2d at 582-583.

²⁷ Rule 403, SCRE; *State v. Garner*, 304 S.C. 220, 403 S.E.2d 631 (1991).

²⁸ *State v. Cheeseboro*, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001).

²⁹ *State v. Caldwell*, 378 S.C. 268, 287, 662 S.E.2d 474, 484 (Ct. App. 2008).

There must be a logical relevance between the acts in question and the purpose for the introduction.³⁰ If the evidence is logically pertinent in that it reasonably tends to prove a material fact in issue, that evidence should not be rejected simply because it incidentally proves the defendant guilty of another crime.³¹ The prior bad act need not be "necessary" to prove the State's case in order to be admissible.³² A legal connection must exist between the crime charged and the act. The connection must show that the act tends to establish the crime charged or some essential fact in issue.³³ The evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy.³⁴ If the court does not clearly perceive the connection between the extraneous criminal transaction and the crime charged (its logical relevancy), the defendant should be given the benefit of the doubt and the evidence should be rejected.³⁵ A witness with direct knowledge of the prior bad act may satisfy the clear and convincing standard.³⁶

1. Defendant's Comments Regarding Drug Usage

During the Defendant's statement to detectives, he makes several comments regarding his drug usage.³⁷ Some of the comments were made to explain his activity on the night of the incident where others were made to justify his actions.

FIRST COMMENT: When the Defendant gave his first account of the night of the incident he said he drove around in Ms. Tisdale's vehicle. He said he "drives around a lot." At 1:47:51, he explained his general habits on any given night:

"If you ride up and down River's like to the Church's is at. By the little store. Tiger Mart right across from there. A lot of people tell you I be there a lot at night. I be there just sitting there.... I'm talking about Rivers and Reynolds. With the store there. I be there a lot. I also be down there because I get high. You know I ain't going to lie to you. You know I get high. You know what I'm saying. So, there's a lot of drug activity as y'all know it that

³⁰ *State v. King*, 344 S.C. 504, 514 S.E.2d 578 (1999).

³¹ *State v. Lyle*, *supra*.

³² *State v. Bell*, 302 S.C. 18, 393 S.E.2d 364 (1990).

³³ *State v. Gamble*, 247 S.C. 214, 146 S.E.2d 709 (1966); *State v. Barroso*, 320 S.C. 1, 462 S.E.2d 862 (Ct. App. 1995).

³⁴ Rule 401, *State v. Cheeseboro*, *supra*.

³⁵ *State v. Davenport*, 321 S.C. 134, 467 S.E.2d 258 (Ct. App. 1996) (sexual assault of two different women under similar circumstances); *State v. Carter*, 323 S.C. 465, 476 S.E.2d 916 (Ct. App. 1996) (sale of crack to same confidential informant).

³⁶ *State v. Aiken*, 322 S.C. 177, 470 S.E.2d 404 (Ct. App. 1996).

³⁷ The State has tried to list every mention of drug usage, but it should be noted it is often difficult to hear exactly what the Defendant is saying.

neighborhood. I go there to buy my drugs and I'll be around there just getting high....I wasn't getting high there. I got other spots to do that, but that's where I go to cop my drugs. I'll be there for a little while. I might pick up a girl."

SECOND COMMENT: At the 2:10:30 mark, the Defendant asked if the Detectives found anything in his trailer during the execution of the search warrant. He added:

"Ok. Now y'all got a search warrant for my house. What did y'all find? Nothing. Probably a little crack stem."

THIRD COMMENT: At the 12:13:00 mark, the Defendant further explained his whereabouts and activities on the night of the incident:

"You a hater. I don't know why you hatin. I just want to take a picture of the girl. Whatever, whatever. Then I got back in and left. Shot back uptown. Back in North Charleston. I talk in New York terms....I was in the Escort....Will was driving... We came from downtown then stopped at the Kangaroo. I mean. Uhh. The. Gas Station. After that we went around. Got us something to smoke. On the Macon. Got us something to smoke. Right around there because like I told you there is a lot of drug activity. We parked. Got high. Rode around. Then shot back to the trailer park."

FOURTH COMMENT: At the 2:36:20 mark, the Defendant has already changed his story and admitted to riding around with Johnson.³⁸ He tells the detective Johnson didn't know the area of North Charleston very well:

"We just rode around. Rode around North Charleston. There's a lot of places. She don't even know too much about North Charleston. I rode her around. Showed her some things. We went to the gas station. That is true. On Reynolds. We chilled for a while. Me and her. Me and her went there. I showed her as a little trophy piece. No force or nothing. Anybody will tell you. We rode up, we rode off. We went through the hood. I went and did what I had to do. Got in the car and rode around.

Jarrell: What do you mean, did what you had to do?

Defendant: Drugs. Got my drugs. She don't know nothing about that. She don't even know I use drugs. You know what I'm saying."

³⁸ When detectives asked the Defendant the name of the girl he was with, the Defendant laughed and said, "Julie or Jennifer or something."

FIFTH COMMENT: At the 2:40:43 mark, Detective Jarrell is confused as to how the Defendant was able to purchase drugs when he didn't have any money and the following exchange occurred:

Defendant: I didn't have no money.

Jarrell: Well what did you buy your drugs with?

Defendant: What you mean earlier? I don't have to buy it. (laughter) I don't need no money.

Jarrell: Credit?

Defendant: Something like that. Something like that. I know a few. A few. A lot of people like that.

Jarrell: You know enough people where you can get it on credit?

Defendant: Yeah. Trust me.

Jarrell: I know how credit works.

Defendant: No you don't. Trust me. No you don't. I'm a good person. I get high and all that. (inaudible) I do works.

SIXTH COMMENT: At the 3:54:45 mark, Detective Tuttle entered the room with Detective Jarrell and together they tried to provide the Defendant with an excuse for his behavior by talking about his drug addiction:

Tuttle: Sounds like been on the up and up for a little while. And then, I don't know what happened back in January, you fall back and like. Did you go back to crack or something? You had a crack problem recently?

Defendant: Yeah. I was an addict.

Tuttle: That's fine. Well addiction is a disease.

Defendant: Yeah it is.

Tuttle: Your wits are not always with you when your high.

Defendant: That's true.

The State intends to offer the first, third, fourth, and fifth comments made by the Defendant into evidence at trial to prove both motive and intent. The Defendant has been charged with kidnapping. In order to prove the Defendant kidnapped Johnson, the State will need to show the Defendant had knowledge he wrongfully deprived Johnson of her freedom by any means whatsoever.³⁹ The Defendant claimed to have spoken to Johnson on the phone several times over a 2-3 month period. He claimed Johnson willingly rode with him and he forced her to do nothing.

³⁹ *State v. Tucker*, 334 S.C. 1, 512 S.E.2d (1999).

During the first comment, the Defendant said he often went to the Tiger Mart at Rivers and Reynolds to "get high."⁴⁰ This comment proves Johnson did not drive to the Rivers Mart of her own volition and also shows the Defendant's motivation to direct Johnson to that specific location. Johnson is unfamiliar with that area of North Charleston and she only went to that location because the Defendant ordered her to drive there and he did so while armed with a handgun. This comment coupled with the surveillance video also explains the Defendant's motive and intent as to why he directed Johnson the way he did.

When Johnson pulled into the Rivers Mart, the Defendant directed her to back into a space in the rear corner of the lot. There appeared to be spaces to park, which would have been much closer to the business. After Johnson parked, the Defendant waited in the vehicle for about 3 minutes before he exited. This peculiar parking location coupled with waiting in the vehicle for minutes, is consistent with an attempted narcotic transaction. The Defendant's comment that he often went to the Rivers Mart to purchase narcotics corroborates this evidence. However, without the Defendant's comment admitted into evidence, the jury could question and the defense could certainly argue, Johnson willingly parked in that location so she could have a romantic moment with the Defendant.

The State seeks to admit this comment to establish a legal connection between the crime charged and an essential fact at issue, which is consent. Furthermore, the Defendant having purchased and used narcotics at the Rivers Mart in the past is not unfairly prejudicial and does not have the tendency to suggest a decision on an improper basis. If there is any unfair prejudice to the Defendant by his statement, it is substantially outweighed by the probative value in explaining his motivation to direct Johnson the way he did.

The second comment regards the Defendant's statement in which he asked if detectives found a crack stem in his trailer during the search. If the defense requested, the State has no opposition to redacting this comment if requested.

The third comment regards the Defendant giving one of his initial accounts of the night where he said he and Cobb "got high" in the Macon before Cobb dropped him off at his home. This comment helps corroborate Osborne and Bedon's description of the Defendant when he pressed a gun to their head. Both victims said the Defendant appeared high and by his own admission he was high. Furthermore, this comment helps explain the Defendant's seemingly irrational behavior that night. Many times during the interview the Defendant said it wouldn't make any sense for him to have pointed a gun at someone who refused to take a picture with him or kidnap

⁴⁰ The Defendant said the gas station was the "Tiger Mart" when it is actually called Rivers Mart.

someone then take them to his neighborhood. If he was high, as he said, his decision making could have been distorted.

The fourth comment regards the Defendant saying he "got his drugs" from the hood and Johnson didn't know anything about it. Taken in context, the Defendant seemed to refer to the stop at the Stay Over Lodge. The surveillance video showed Johnson stop in front of room 141. Detectives spoke to the occupant of that room, Bryan Robinson. ⁴¹ The surveillance video showed the Defendant knock on the door and Robinson answer. Seconds later, the Defendant ordered Johnson out of the vehicle, which seemed to be him showing her off as a "trophy piece." Two individuals then walked and went into Robinson's apartment with Robinson while the Defendant and the second individual waited outside. Minutes later, the individual walked out and both individuals then walked away. The Defendant then entered Robinson's room with Robinson. He then walked out then walked off in the same direction as the other two individuals. Before leaving, the Defendant told Johnson to stay put in her vehicle and she did. After about 15 minutes, the Defendant returned.

During a pretrial meeting with Robinson, he said the Defendant came to his room that night and asked him for \$20, which he refused. Robinson said the two individuals who came to his room were known local drug users. He couldn't recall why one went into his room that night.

Once again, the Defendant's comments show his motive and intent which is corroborated by the evidence in this case. The Defendant said he went to the "hood", showed off his "trophy piece", and got high. The surveillance video showed the Defendant order Johnson out of her vehicle, then back in. Furthermore, after meeting with a convicted narcotic dealer, the Defendant left and followed two drug users and didn't return until about 15 minutes later. The purpose to introducing this comment is to help establish the elements of kidnapping. Johnson did not drive to the Stay Over because she wanted to. She drove to the Stay Over because the Defendant ordered her to. As the Defendant, himself, said his motive to go to the Stay Over Lodge was to get crack cocaine so he could get high. This is further corroborated by the evidence in the case.

The Defendant's fifth comment regards his ability to purchase narcotics on credit without having money. This comment helps explain how he attempted to obtain narcotics at the Rivers Mart and then did obtain narcotics at the Stay Over Lodge when he nor Johnson had any money in their possession. The Defendant made it clear he has the ability to obtain narcotics on credit. The State would seek to introduce this comment to help explain the

⁴¹ Robinson has been convicted of distribution of crack cocaine in 2001 and 2011.

Defendant's intent and ability to obtain narcotics on the night of the incident when at that point, he didn't have money.⁴²

The sixth comment regards the Defendant's admission he is a drug addict. The State will not seek to introduce this comment into evidence.

The introduction of the Defendant's first, third, fourth, and fifth narcotic use comments will help prove the Defendant's state of mind on the night of the incident by showing his intent and motive. He unlawfully deprived Johnson of her freedom and directed her to various locations for the purpose of getting intoxicated. First, he told her to buy him a beer and then he searched for crack cocaine. Without the introduction of his drug usage comments, a jury could be left to think they were a couple on their long awaited first date. The comments aren't unfairly prejudicial and the probative value to the case is clear.

ii. Defendant's Comments to Johnson Regarding Prison Time

Johnson stated that at some point while she was kidnapped, the Defendant said he served 21 years in prison. A check of the Defendant's criminal history showed he was convicted of armed carjacking and received a 210 month sentence. This comment should be admitted to prove the Defendant's intent and further prove the crime of kidnapping. The Defendant's intent when he made this comment was to tell Johnson he had been convicted of a serious crime in the past and was sentenced to a lengthy prison term. The comment served no other purpose but to intimidate Johnson into following his demands by portraying himself as a dangerous individual.

Furthermore, the comment proves the Defendant violated the kidnapping statute. Kidnapping can be established by proving a defendant unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away any other person by any means whatsoever without authority of law.⁴³ This comment helps prove the Defendant kidnapped Johnson by intimidation as well as force. The State should not be precluded from admitting evidence to prove the Defendant committed the crime of kidnapping simply because other evidence also proves the Defendant committed the crime.⁴⁴

⁴² The Defendant would obtain money later when he directed Johnson to withdraw money from an ATM.

⁴³ *State v. Kornahrens*, 290 S.C. 281 (1986).

⁴⁴ *See, Bell*, 302 S.C. 18. (Admission of prior bad act evidence need not be "necessary" to prove the State's case in order to be admissible.)

In addition, this statement should be admitted because if the jury found there was insufficient evidence to establish the Defendant was armed during the incident, they could still convict the Defendant of kidnapping based in part on this statement.

If admitted, the State will not seek to additionally prove the veracity of the Defendant's comment with extrinsic evidence. The State seeks to admit this evidence not for its truth, but to show the Defendant's intent and motivation and to help prove the crime of kidnapping.

C. Neil v. Biggers Hearing

A defendant may be deprived of due process by an identification procedure that is unduly suggestive and conducive to irreparable misidentification.⁴⁵ Both the pre-trial and in-court identification of a defendant must be suppressed if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification.⁴⁶ Even if there is some degree of suggestiveness in the pre-trial identification, suppression is not automatically required.⁴⁷ Suggestiveness alone does not mandate the exclusion of evidence.⁴⁸

To determine the admissibility of an identification, the court must determine (1) whether the identification process was unduly suggestive and (2) if so, whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed.⁴⁹ The appropriate question is whether "under the totality of the circumstances the identification was reliable" even though the pre-trial identification procedure may have been suggestive.⁵⁰

If the pre-trial identification procedure is found to be unduly suggestive, the following factors are to be considered in evaluating the totality of the circumstances to determine the likelihood of a misidentification: (1) the witness's opportunity to view the perpetrator at the time of the crime (2) the witness's degree of attention (3) the accuracy of the witness's prior description of the criminal (4) the level of certainty demonstrated by the witness at the confrontation and (5) the length of time between the crime and the confrontation.⁵¹

In this case, a lineup was composed of individuals with similar features to the Defendant. The lineup was presented to Johnson the day after the incident. Prior to presenting the lineup, Detective Krasowski read the CPD

⁴⁵ *State v. Calhwell*, 378 S.C. 268 (Ct. App. 2008); *State v. Patterson*, 337 S.C. 215 (Ct. App. 1999).

⁴⁶ *State v. Cheeseboro*, 346 S.C. 526 (2001).

⁴⁷ *Manson v. Brathwaite*, 432 U.S. 98 (1977).

⁴⁸ *Neil v. Biggers*, 409 U.S. 188 (1972).

⁴⁹ *Biggers*, 409 U.S. 188.

⁵⁰ *State v. Stewart*, 275 S.C. 447 (1980).

⁵¹ *State v. Moore*, 343 S.C. 282 (2000).

Lineup Admonition form to Johnson, which she indicated he understood. Upon viewing the lineup, Johnson immediately identified the Defendant as the individual who robbed and kidnapped her. Her identification was reliable because Johnson was with the Defendant for almost two hours during the crime. She had ample opportunity to view him. Johnson's lineup identification should not be suppressed because the process was not suggestive and her identification was reliable.

D. Excited Utterances

An excited utterance is statement relating to a startling event or condition made while the declarant, an actual witness, was under the stress of excitement caused by the event or condition.⁵² There are three elements that must be met for a statement to be an excited utterance:

1. The statement must relate to a startling event or condition;
2. The statement must have been made while the declarant was under the stress of excitement;
3. The stress of excitement must be caused by the startling event or condition.⁵³

A court must consider the totality of circumstances when determining whether a statement is admissible under the excited utterance exception, and the determination is generally left to the sound discretion of the trial court.⁵⁴

i. Osborne's Excited Utterance to Lambert and Hemphill

After the Defendant pressed the gun to Osborne's head, she took off running toward Lambert and Hemphill yelling, "Run. He's got a gun." This comment was made right after the startling event of having a gun pressed to her head. Lambert and Hemphill both state Osborne was in a good mood prior to the event. The event caused Osborne's excitement and her comment related to that event. Therefore, Osborne's statement should be admitted under the excited utterance exception to the hearsay rule.

ii. Johnson's Excited Utterance to Lawrence

After Johnson escaped from the Defendant, she sped home. When she arrived home, she stopped her vehicle, ran up, hugged Lawrence, and said, "That motherfucker just kidnapped me." As with Osborne's comment, Johnson's comment was caused by the Defendant's actions of kidnapping her and her comment directly related to her being kidnapped. Therefore, Johnson's statement should be admitted under the excited utterance exception to the hearsay rule.

⁵² *State v. Washington*, 379 S.C. 120, 124 (2008).

⁵³ *Id.*

⁵⁴ *Id.*

V. SEARCH WARRANT SUPPRESSION

A suppression hearing is required whenever evidence is introduced that was allegedly obtained by conduct violating a defendant's constitutional rights.⁵⁵ The defendant must articulate specific factual and legal grounds to support his contention that the evidence was obtained by such conduct. The court must grant a suppression hearing if the defendant's grounds are sufficiently definite, specific, detailed and nonconjectural to enable the court to conclude that contested issues of fact going to the validity of the search are in question. A bare allegation that the evidence was obtained in violation of the defendant's Fourth Amendment rights will not suffice to justify the duplicative consumption of the trial court's time required by the suppression hearing.⁵⁶ A defendant is entitled to an evidentiary hearing if the following criteria are met:

1. The defendant's attack is more than conclusory and is supported by more than a mere desire to cross examine;
2. The defendant makes allegations of deliberate falsehood or of reckless disregard for the truth which are accompanied by an offer of proof (and the defendant has the burden of proving these allegations by a preponderance of the evidence); and
3. The affiant has made allegedly false or reckless statements.

If the allegations above are established, the court must consider the affidavit's remaining content to determine if it is sufficient to establish probable cause. If probable cause does not exist after the false material is omitted from the analysis, the search warrant must be voided and the fruits of the search excluded.⁵⁷

A. First Search Warrant for 1917 Marson St.

The first search warrant for 1917 Marson St. was prepared by Detective Jarrell on June 3, 2015 one day after the Defendant was identified by Johnson as the perpetrator via photographic lineup. The detective believed evidence could be found in 1917 Marson St. because Ms. Tisdale told him the Defendant stayed there up to four days a week. In addition, Johnson reported she last saw the Defendant on the street in which Ms. Tisdale resided. The warrant adequately described 1917 Marson St. and listed the following items sought: Firearm, firearm accessories, ammunition, white t-shirt with "Newport Pleasures" written in red, DNA, photographs

⁵⁵ *State v. Patton*, 322 S.C. 408 (1996).

⁵⁶ *Id.*

⁵⁷ *Franks v. Delaware*, 438 U.S. 154 (1978); *State v. Jones*, 342 S.C. 121 (2000).

of the interior of residence, Ford Taurus vehicle keys, US currency, an iPhone 5S, and an iPhone Otter box (White and gray in color.)

Each of the items listed were germane to the investigation. The warrant was presented to the Honorable Judge Ellen Steinberg on June 3, 2015 who reviewed the contents and swore Detective Jarrell before signing. The warrant was executed the same day. The only evidence seized during the search was a white t-shirt with "Newport Pleasures" written on the front. A copy of the warrant was left with Ms. Tisdale at the residence. A return of the search warrant was completed on June 8, 2015 and presented to Judge Steinberg.

The search warrant was valid and established probable cause for the search. Therefore, the mentioned t-shirt should be admitted into evidence.

B. Second Search Warrant for 1917 Marson St.

During the Defendant's statement to detectives, he said he had Johnson's phone number written down on a business card next to his nightstand. He also mentioned he had spoken to Johnson on the phone for 2-3 months prior to the night of the incident. Based on these comments, Detective Tuttle prepared another search warrant to go back to 1917 Marson St. searching for the mentioned business cards and the Defendant's cell phone.

On June 8, 2015, Detective Tuttle prepared another search warrant and met with Judge Steinberg. Judge Steinberg reviewed the search warrant and swore Detective Tuttle prior to signing. The warrant was executed the same day. Detective Tuttle presented Ms. Tisdale the warrant and she directed Detective Tuttle to the Defendant's nightstand next to their bed. Detective Tuttle located numerous business cards and a blue Nokia cell phone on the nightstand. A return of the search warrant was presented to Judge Steinberg on June 12, 2015.

The search warrant was valid and established probable cause for the search. Therefore, the mentioned business cards and cell phone should be admitted into evidence.

VI. LIFE WITHOUT PAROLE

For the purposes of imposing a life without parole (LWOP) sentence, a prior conviction under Sections 17-25-45(F) and 17-25-50 means the defendant has been convicted of a most serious or serious offense on a separate occasion prior to the instant adjudications. The defendant bears the burden of proof when collaterally attacking a prior conviction the State seeks to use for sentence enhancement.⁵⁸ This is based, at least in part, on the

⁵⁸ *State v. Spratt*, 383 S.C. at 243, citing *State v. Payne*, 332 S.C. 266, 272 (Ct. App. 1998).

"presumption of regularity given to final judgments." ⁵⁹ Once the State has proven the prior conviction, defendant "must prove it is constitutionally defective or otherwise invalid by a preponderance of the evidence." ⁶⁰

A prior conviction not listed as a serious or most serious offense may be considered as such for the purposes of Section 17-25-45 if it is shown to contain all the elements of a serious or most serious offense. ⁶¹ When a prior conviction is for an offense not contemplated by Section 17-25-45, the trial court must examine the elements of the offenses and determine whether they are equivalent to any current offenses classified as "serious" or "most serious." ⁶² An out-of-state conviction can be used to trigger LWOP, if the facts of the prior conviction match the elements of the serious or most serious crime under South Carolina statutes. ⁶³ However, if there's ambiguity in comparison to the out-of-state conviction and as applied to section 16-1-60, a same-elements test should not be construed. ⁶⁴

If convicted, the State seeks to enhance his sentence using the Defendant's prior federal armed carjacking convictions and request the Court to impose an LWOP sentence. The conviction stems from an incident that occurred on July 29, 1995 and began in Orangeburg. On that day, the reporting victims were driving in a vehicle when they observed four individuals who asked for a ride. One of the victims said they had seen the individuals before so they agreed to give them a ride. After driving a short distance, one of the males removed a handgun and told the driver to stop, which he did. The gunman ordered the victims out of the vehicle and they complied. Prior to driving off in the stolen vehicle, the gunman said that if he knew they would call the police, he would just as well kill them now. The victims knew the gunman went by the nickname of "Ice." ⁶⁵ About an hour and a half later, Bamberg County reported an armed robbery to a convenience store. The description of the get-away vehicle as well as the perpetrators matched that of the carjacking incident. In addition, the vehicle was reported to be headed back to Orangeburg. Deputies located the vehicle and all four subjects were arrested. The Defendant was one of the four subjects arrested. A handgun was located in the vehicle. The Defendant was charged with the state charges of:

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *State v. Lindsey*, 355 S.C. 15 (2003).

⁶² *State v. Phillips*, 393 S.C. 407 (Ct. App. 2011).

⁶³ *State v. Zulfer*, 345 S.C. 258 (Ct. App. 2001). (A burglary conviction was enhanced based on prior out-of-state burglary convictions.)

⁶⁴ *Hinton v. South Carolina Dept. of Probation, Parole and Pardon Services*, 357 S.C. 327 (Ct. App. 2004).

⁶⁵ A certified copy of the Defendant's federal conviction listed his alias as being "Ice."

armed robbery and carjacking. Those charges were dismissed and federal authorities indicted the Defendant on February 21, 1996.

On October 31, 1996, the Defendant pled guilty to:

Aiding and abetting in carjacking (150 months)
 Aiding and abetting in the interference of commerce by threats or violence (150 months concurrent)
 Felon in possession of a firearm in interstate commerce (150 months concurrent)
 Aid and abet in using and carrying a firearm during and in relation to a crime of violence (60 months consecutive)
 66

The Defendant was convicted of carjacking while armed with a firearm. The facts of the Defendant's prior conviction make it a most serious offense. There is no ambiguity in the facts that could lead one to conclude the Defendant's prior conviction is anything other than the equivalent to the South Carolina crime of armed robbery, which is a most serious offense. Therefore, if convicted of either armed robbery or kidnapping, the Defendant should receive a LWOP sentence.

VII. IMPEACHMENT THROUGH PRIOR CONVICTIONS

South Carolina Rules of Evidence 609 allows for the attacking of a witness' credibility. A witness' credibility, other than the accused, may be attacked based on a conviction of a crime where the punishment was in excess of one year or death if its probative value is substantially outweighed by the danger of unfair prejudice.⁶⁷ Evidence of a conviction is not admissible if a period of 10 years has elapsed since the date of release.⁶⁸ The analysis for the admissibility of impeachment evidence differs depending on whether the purpose is to impeach a witness or a criminal defendant.⁶⁹ In *State v. Brayboy*, the South Carolina Court of Appeals quoted Warren Moise who said, "Thus, criminal convictions of a party or witness, other than the accused in a criminal trial rarely should be excluded under Rule 403."

An accused may be impeached through evidence of a conviction punishable by death or imprisonment in excess of one year if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused.⁷⁰ The court must consider, along with any other relevant factors:

1. the impeachment value of the prior crime;
2. the point in time of the conviction and the witness' subsequent history;
3. the similarity between the past and the charged crime;

⁶⁶ The record is unclear whether the plea was to both incidents or whether charges from one of the incidents were dismissed as part of the plea.

⁶⁷ SCRE 609(a) & SCRE 403

⁶⁸ SCRE 609(b)

⁶⁹ *State v. Brayboy*, 401 S.C. 207 (Ct. App. 2009)

⁷⁰ SCRE Rule 609(a).

4. the importance of the defendant's testimony; and
5. the centrality of the credibility issue.⁷¹

The likelihood of prejudice is greater with a conviction similar to the crime charged.⁷²

A. COBB'S ARREST HISTORY

In this case Cobb was convicted on March 12, 1997 for bank fraud and use of a weapon during and in relation to an armed carjacking. Cobb was sentenced and released from incarceration on February 15, 2008. Therefore, Cobb's convictions are within the 10-year time period mentioned in Rule 609(b). Whether the State can impeach Cobb regarding this conviction comes to a Rule 403 analysis.

When interviewed Cobb told detectives he worked at a barbershop and on the night of the incident, he cut the Defendant's hair and charged \$20. The Defendant did not have the money but said if Cobb accompanied him he would meet with his cousin who would give him the \$20 to give to Cobb. The Defendant and Cobb then drove to the Church's at Rivers and Reynolds where Cobb bought the Defendant dinner. Cobb then bought the Defendant a beer, cigarettes, and put gas in his vehicle at the Rivers Mart across the street from the Church's. The Defendant then drove downtown and turned right off King St. While on the side road, the Defendant said something to a few individuals. The Defendant then got out of the vehicle and returned a moment later. Cobb had no idea what was said and claimed to have seen nothing. The Defendant then drove a block or two up, turned right, then turned right again. The Defendant then said, "There he go", which Cobb assumed was the Defendant's cousin. The Defendant exited the vehicle and a short time later came riding up in a dark colored vehicle. The Defendant told Cobb to follow him. Cobb followed the vehicle to the corner store at King and Cannon. He waited a while in the Defendant's vehicle until it ran out of gas. He received assistance from a stranger and put gas in the Defendant's vehicle. Cobb drove the Defendant's vehicle back to the barbershop where he left it until the Defendant picked up the vehicle the next day.

Cobb claimed he never saw the Defendant with a gun and never saw him do anything unusual that night.

The State will call Cobb as a witness because he was in the Defendant's vehicle at the time of the incidents and he does explain what happened to the vehicle when the Defendant exited. However, Cobb's statement provides somewhat of an alibi for the Defendant. Even though Cobb's conviction of armed carjacking is similar to the

⁷¹ *Green v. State*, 338 S.C. 428 (2000); *State v. Colf*, 337 S.C. 622 (2000); *State v. Scriven*, 339 S.C. 333 (Ct. App. 2000).

⁷² *Id.*

charges against the Defendant, the State should nevertheless be permitted to impeach him regarding this conviction because the probative value of this impeachment is substantially outweighed by the danger of unfair prejudice to the Defendant. The State does not intend to ask Cobb whether the Defendant knew of his conviction nor does the State intend on asking Cobb to relay a specific account of the incident. The State merely intends to bring Cobb's credibility into question by impeaching him regarding his convictions.

B. Robinson's Prior Convictions

Robinson has been convicted of the following:

2001: Conspiracy to Possession of Distribution of Crack Cocaine and Distribution of Crack Cocaine and Marijuana

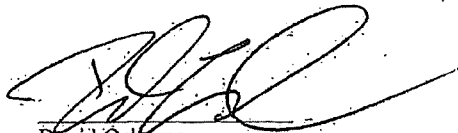
2011: Distribution of Cocaine Base 1st

During his statement to detectives and during a pretrial meeting, Robinson said the Defendant came to his house on the night of the incident and asked to borrow \$20. By his own admission, the Defendant was attempting to purchase narcotics on the night in question. The surveillance video from the Stay Over Lodge seems to clearly show drug activity involving Robinson's apartment. The probative value of impeaching Robinson concerning his credibility is substantially outweighed by unfair prejudice to the Defendant.

Since the 2001 conviction is outside of the 10 year time period envisioned by 609(b), the State has provided the defense notice of its intent to impeach Robinson concerning this conviction.

C. Defendant's Prior Convictions

Here, if the Defendant chooses to testify, the State should be allowed to impeach him regarding his federal armed carjacking conviction. The State acknowledges both the prior conviction and current charges are similar and therefore, there is a risk a jury could reach a decision based on the Defendant's propensity to commit the crime with which he is charged. However, credibility is the central issue in this case. The Defendant claims Johnson voluntarily accompanied him and claims the surveillance videos from the various businesses support his assertion. The value of impeaching the Defendant regarding his prior conviction of armed carjacking outweighs any prejudicial effect.


David Osborne
9th Circuit Assistant Solicitor

2017 MAR 10 AM 11:43
FILED
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2015-GS-10-5967
	)	2015-GS-10-5968
	)	2015-GS-10-5969
	)	2015-GS-10-5964
	)	2015-GS-10-5966
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
	)	
ANTHONY MCCLAIN	)	
	)	
Defendant	)	
	)	
	)	
	)	
_____	)	TRANSCRIPT OF RECORD

March 10, 2017
Charleston, South Carolina

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE

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

DAVID OSBORNE, ESQ.
Attorney for the State

AARON MAYER, ESQ.
Attorney for the Defendant

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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[All exhibits pre-marked prior to start of trial unless
otherwise indicated in transcript]

COURT

<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>
1	Stipulations x 7	26

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1 PROCEEDINGS

2 THE COURT: You're Anthony McClain?

3 MR. MCCLAIN: Yes, sir.

4 THE COURT: Good morning, Mr. McClain.

5 MR. MCCLAIN: Good morning.

6 THE COURT: We're here for a number of motions. I

7 have reviewed the submissions, the written submissions.

8 I have not reviewed the video at this point; only because

9 we can review what you want. The video I assume is the

10 video of his statement?

11 MR. OSBORNE: Yes, Your Honor.

12 THE COURT: And it is about three hours long?

13 MR. OSBORNE: It is, Your Honor. There are some

14 breaks but about three hours of actual speaking time.

15 THE COURT: What I would like to do when we get to

16 that point is just -- is it the entire statement that you

17 consider from start to finish that supports your position

18 to not allow -- for me to suppress it Mr. Meyer or is it

19 a certain something that occurs within the statement

20 itself within the video?

21 MR. MAYER: Judge, we would take the position that

22 the statements made by the Defendant were more

23 prejudicial than probative and we would ask that they all

24 be suppressed.

25 THE COURT: On that basis alone?

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1 MR. MAYER: On that basis, alone.

2 THE COURT: All right. I'm not sure that I would
3 have to even view it for that reason. It is what -- it
4 speaks for itself from the standpoint of that. And
5 obviously, my response to that would be that would be
6 true of every single statement that is ever given in
7 General Sessions Court.

8 So if that is the basis of it then I would -- of
9 course my burden is the preponderance of the evidence
10 here and not beyond a reasonable doubt; then you can
11 challenge it again of course at trial. But at that point
12 I would find that the statement as submitted is freely,
13 voluntarily, knowingly and intelligently given because
14 there is no question that he had Miranda warnings.

15 There is no question that he responds and there is
16 no question there were some admissions in there of all
17 the review of the summaries that I have read. And there
18 is no question that I would concede that they are
19 prejudicial. They don't outweigh the probative value of
20 the statement because the statement is freely,
21 voluntarily, knowingly and intelligently made so that's
22 the reason.

23 So your motion then if you will prepare an order the
24 Jackson v Denno motion is denied on the argument that the
25 prejudice outweighs the probative value under a 403

1 analysis I think would be my requirement. Mr. Mayer, is
2 that the way you presented it?

3 MR. MAYER: That's correct, Judge.

4 THE COURT: Thank you, sir. Why don't we do this?
5 Let's talk about the severance first. The LWOP; that one
6 we may have to -- I may want to hear from you all. I've
7 read your positions on those and thank you very much.

8 I guess Mr. Mayer specifically because the one case
9 that seems to me to set forth for me at least set forth a
10 number of things because the first thing that hit me, I
11 didn't see this in there but it is in the Simmons case is
12 a res gestae. And that's the whole from the beginning
13 and the onset.

14 And it seems to me that the first instance occurs
15 shortly before the second one, which is the second one is
16 what we're trying and that's the armed robbery and
17 kidnapping. But there seems to be enough connection
18 there to make this really a part of the whole mindset of
19 the Defendant at this time.

20 And Simmons addresses that separate and apart from
21 just the motion to sever as to whether or not -- well, we
22 know the number; were they generally the same nature?
23 Were they connected transactions closely related in time
24 and place and character. Well, clearly that's there. I
25 don't see anything in the resuscitation and this is what

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1 I'd like for you to address if there is anything. Is
2 there a break because there are certainly some cases I
3 read that were cited in the Simmons where there was a
4 break; there was a separation. And the Court said no,
5 you can't try those together because there was a
6 sufficient break in the action and activities so that
7 they are really truly separate.

8 In this case for me the first instance where he
9 stops and talks to them. And I understand you've raised
10 that these people are intoxicated and that's fine.
11 What's significant about that is because if you read the
12 Simmons case they tried the two -- the two cases were
13 tried together and it was the Brooks matter where the
14 Court directed a verdict even in that. So the evidence
15 was obviously not very strong in the case that was
16 presented.

17 So the fact that there is some question about that
18 and evidentiary some challenges this case even addresses
19 that because the Court said it was okay to try both of
20 the burglaries notwithstanding that the Court directed a
21 verdict in the second one of not guilty.

22 So I don't -- if there is no prejudice in that
23 situation because there was weak evidence there can't be
24 prejudice in this situation is basically my analysis of
25 that and how I take that. But I may be overlooking

1 something in the record that I've missed. But clearly
2 the first one there is allegations that he pulled a gun
3 which is significant because he doesn't -- they basically
4 are the same; again the res gestae. He takes the same
5 action when he approaches the Johnson vehicle.

6 And so I know he denies in his statement that there
7 was ever a gun present and that's fine; I understand
8 that. But clearly those two situations they are general
9 in nature. They are general in character, they are
10 general in res gestae, and it's almost identical really
11 of the two of how he is approaching this.

12 Now, granted he takes another, allegedly takes
13 another step in the second one that he didn't in the
14 first one because they ran apparently and maybe there
15 wouldn't have been any there; I don't know. But just
16 because there is further activity I don't see how that
17 separates it enough and distinguishes it enough to make
18 it separate.

19 Also, it goes to the issue of whether or not there
20 was a gun present, and that's the significant part of the
21 State's burden. And I think it's therefore connected
22 because it's a gun here, gun here, and a short period of
23 time inbetween. So that's my basis at this point. If you
24 can point out something, fine. If you rely on -- and I'm
25 not asking you to argue against yourself; you've raised

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1 your issues in your submission and I've read those too.
2 I just don't think that that carries the day for me but
3 you're entitled to rely on your position there. But if
4 you want to supplement it I'll be happy to hear from you.

5 MR. MAYER: So just very briefly.

6 THE COURT: Sure, absolutely.

7 MR. MAYER: You know my big concern on this is that
8 according to the police reports Your Honor it's not clear
9 that these things happened one after the other. It's
10 entirely possible from the police reports that the
11 allegations against my client regarding this kidnapping
12 were occurring concurrently with what was going on with
13 these college kids on a different block.

14 I mean it was apparently a busy night downtown in
15 the evening there. And so that's one concern, Judge.
16 And then the other concern that I'd like to add is with
17 regard to trying the two cases together I think a concern
18 arises with after the information is presented on the
19 first kind of incident my concern is that all this
20 testimony or this second incident involves this
21 kidnapping allegation is going to prejudice the jury's
22 consideration of the first incident.

23 And I think it's a whole kit and caboodle that
24 doesn't need to be added to that first incident. So I
25 wonder in light of the Court's comments a moment ago I

1 wonder if the Court would consider if not a complete
2 severance at least a bifurcation.

3 THE COURT: Well, I appreciate that. Again, I
4 think to me Mr. Mayer because the case is cited obviously
5 it's a discretionary ruling; the Court has been clear
6 about that. And the argument that you're making really
7 are arguments that are certainly pertinent to your
8 client's position.

9 And I don't argue with you insofar as what you're
10 stating. But what I do note from the cases that are --
11 that would exist in every single case where there is a
12 joinder. And so obviously inherently there is always
13 going to be some prejudice and some confusion.

14 But that's why I mentioned this case, the Simmons
15 case because we had exactly that in this case precisely
16 what you're saying; had to be because the Court as a
17 matter of law directed a verdict of not guilty. So
18 clearly the evidence was confusing. There wasn't even
19 enough to persuade the trial Judge that it should go to
20 the jury in the first place.

21 So the fact that that evidence is confusing, the
22 fact that it wasn't -- the fact that he was convicted on
23 one but not on the other shows that that's not a concern.
24 And they are comfortable with the jury sorting it out.
25 And I think that's pertinent and I think it's important

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1 because the problem is we have the general nature is the
2 same, there are lots of factors that connect the two
3 crimes. They are just so intertwined there really there
4 is no -- and the same evidence is going to be used to
5 present it all. I mean he's going to testify that he
6 talked to some girls.

7 And so the bottom line is because those people even
8 if we tried the second one I want to be sure I assume
9 this from it but we really didn't talk -- are these
10 persons going to be witnesses, the first group of girls?

11 MR. OSBORNE: Yes, Your Honor.

12 THE COURT: Who are going to identify this
13 Defendant?

14 MR. OSBORNE: They will not and I think that's an
15 important part because identify is not an issue. By his
16 own admission ---

17 THE COURT: --- well, there's no question but what
18 are they going to say?

19 MR. OSBORNE: They're going to say that there were
20 four of them ---

21 THE COURT: --- are they going to identify a car?

22 MR. OSBORNE: They are going to say that we were
23 walking down the road. We were split up into two groups;
24 there were two girls in front and a girl and a man in the
25 back. The individual come up, the subject came up and

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1 made a comment about taking a photograph. By his own
2 admission he said he approached attractive young women
3 and made a comment about taking a photograph. They said
4 that he appeared high. By his own admission he had been
5 smoking crack that night.

6 THE COURT: Well, I think I'd go to the direct --
7 he admits to talking with the girls in his statement.

8 MR. OSBORNE: About a photograph.

9 THE COURT: I understand.

10 MR. OSBORNE: And yes, and so they make a rude
11 comment, a crass comment to him ---

12 THE COURT: --- I'm sure ---

13 MR. OSBORNE: --- he becomes upset. He admits to
14 detectives that he did become upset by that comment. He
15 then made a bolder comment to them telling them to
16 basically F off and then he says he got back in the car.

17 THE COURT: Well, there may be -- we may have
18 exactly a Simmons situation here because it sounds like
19 there may be a directed verdict down the road, it could
20 be. I haven't heard all -- Judge Newman will make that
21 call.

22 But clearly in this case that didn't stop the Court
23 from doing what it did and that's my -- I'm relying
24 pretty heavily obviously on the Simmons case because it
25 talks about in the Simmons case the Court even addresses

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1 some of the concerns about trying it; just what you've
2 alluded to about wait a minute, you're using these things
3 to bolster the others so to speak. And I understand
4 that.

5 But when they are as closely connected as these are
6 I just -- there is no question it happened. The point of
7 contact, that's going to be established in the record of
8 being in the same general locale.

9 MR. OSBORNE: Your Honor, if you'd like I can show
10 you ---

11 THE COURT: --- no, no, as I read it I mean I'm
12 familiar with where we were.

13 MR. OSBORNE: Okay.

14 THE COURT: It's just -- it's really in the same
15 neighborhood.

16 MR. OSBORNE: It's within two blocks of each other
17 and ---

18 THE COURT: --- exactly ---

19 MR. OSBORNE: --- through surveillance video we can
20 establish it was within seconds.

21 THE COURT: And so that to me again points out the
22 connection, the connectivity of the conduct. And then of
23 course I can't ignore his statement. I understand you
24 wanted it excluded and I understand that. But by his own
25 admission he admits to being in the area and admits to

1 talking with the girls. So therein that puts him there.
2 That establishes at least the presence. The question is
3 going to be whether the trial judge is going to believe
4 enough of a fact has been submitted to the jury or the
5 evidence raised and submission to the jury, but clearly
6 the fact that it can be a directed verdict does not mean
7 it can't be joined because of Simmons. So, I'm going to
8 deny your motion for severance, okay.

9 MR. MAYER: Yes, Your Honor.

10 THE COURT: And certainly both of your writings are
11 incorporated for purposes of review should that become
12 necessary. You are to rely on the cases that you've
13 cited in there for your future argument if that ever
14 becomes a needed factor.

15 Okay, that brings us to the motion for -- let's talk
16 about now -- I want to hear -- you moved to basically set
17 aside the LWOP or remove it because you don't think it
18 meets the muster so to speak requirements for life
19 without parole?

20 I've looked at his record and what's in your brief
21 but I want to hear from you. Why don't you tell us why
22 you believe the State is entitled to a notice of life
23 without parole?

24 MR. OSBORNE: Okay Your Honor. He, the Defendant,
25 was convicted of an incident and I think let me just tell

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1 you briefly the facts of that scenario. He along with
2 three other co-defendants were hitchhiking. They were
3 picked up by some individuals; this was in Orangeburg
4 County.

5 They get into the car and the individuals that
6 picked them up said they knew them from seeing them
7 around, that's why they agreed to give them a ride. Once
8 in the car the Defendant then pulled a handgun out on the
9 victims, ordered them out of the car and then took the
10 car.

11 He and the other co-defendants then went to Bamberg
12 County and they robbed a business in Bamberg County.
13 They then fled back to Orangeburg County where the police
14 then conducted a traffic stop. He was arrested and a gun
15 was located inside the car.

16 Orangeburg County PD along with Bamberg County PD or
17 Solicitor's Office took the case. They then nol-prossed
18 the case -- the State charges against the defendant. The
19 federal prosecutors then picked it up and he ended up
20 pleading to four charges.

21 THE COURT: With the feds?

22 MR. OSBORNE: With the feds, yes Your Honor. He
23 pled to Federal statute 18:2119 within section 2 which is
24 aiding and abetting and carjacking. Now this is where it
25 gets -- and I'm going to openly admit it gets a little

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1 bit weird with the Federal statute when you compare it to
2 the State statute.

3 This Federal statute of carjacking says whoever with
4 the intent to cause death or serious bodily harm takes a
5 motor vehicle that has been transported, shipped and
6 commerce from the person or the presence of another by
7 force, violence or intimidation; sounds a lot like our
8 strong armed robbery statute.

9 However, he pled to three other charges and the
10 three other charges involve him being in possession of a
11 firearm in ---

12 THE COURT: --- but my question is this. How does
13 it meet the statute? Am I entitled to interpret the law?
14 I thought it had to be -- what's the section, the LWOP
15 section, the 17 one?

16 MR. OSBORNE: The LWOP is 17-25-45 (f) and 25-50.

17 THE COURT: All right. I've got a code section. I
18 brought it here since this year I think I'm going to be
19 doing primarily criminal work. So I have both the Title
20 16 and 17. And I'm of the old school rather than the
21 computers. I know y'all like the computers but I want
22 the book in my hand.

23 MR. OSBORNE: So the State's position would be this.
24 You know I looked at State v Zulfer, that's 345 S.C. 258.
25 And in that case his burglary conviction I think it was

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1 in Florida, which he pled to, was enhanced. And they
2 looked at the fact that it was a burglary that he had
3 pled to. Now they didn't exactly look at the Florida
4 statute and compare elements to but he pled to burglary.

5 I understand and I think it's a little bit ambiguous
6 the way they interpret it but I think the idea that he
7 can be convicted for an out of our jurisdiction
8 conviction and that can be used for enhancement purposes.

9 THE COURT: So basically you're going under the
10 provision that a federal out of state conviction offense
11 would be classified as a serious offense under our
12 statute?

13 MR. OSBORNE: A most serious offense. If we go
14 serious then it wouldn't be enhanceable and it would just
15 be carjacking. And so I'm combining the armed element
16 that he pled to in relation to that incident and making
17 it and our equivalent would be an armed robbery or an
18 armed carjacking which would be an armed robbery.

19 THE COURT: What was the charge that he pled to?
20 What did he actually get sentenced for?

21 MR. OSBORNE: Okay. Give me one second, Your
22 Honor.

23 [Whereupon, Mr. Osborne reviews documents]

24 THE COURT: I have it in your brief I think.

25 MR. OSBORNE: The aiding and abetting a carjacking

1 he received 150 months sentence. The aiding and abetting
2 and interference with commerce by threats or violence he
3 received 150 months sentence; that was run concurrent, a
4 felon in possession of a firearm that was 150 months
5 sentence; that was also run concurrent.

6 The aiding and abetting and using and carrying a
7 firearm during and in relation to a crime of violence was
8 a 60 months sentence and that was run consecutive. So,
9 a total of 210 months.

10 THE COURT: Okay. And that's one so this would be
11 the most -- if he is convicted here that would be the
12 most serious and therefore entitle him to an LWOP?

13 MR. OSBORNE: Yes, Your Honor. He had, and just
14 for the record, he had a conviction ---

15 THE COURT: --- don't -- that just hit me. I don't
16 want to pass the buck but I'm not going to be the
17 sentencing Judge therein lies the...

18 MR. OSBORNE: And the problem comes to this that I
19 can it from a prosecutor and this is why I did it twice.
20 He has two plea rejections on the record. The offer that
21 I -- and this is why I think it maybe could be important
22 because if he is thinking about pleading then maybe it's
23 a ruling that I don't know -- and so when we did two
24 different pleas, I put it on the record on both occasions
25 that this would be an issue that would be addressed by

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1 the sentencing Judge if he were convicted. I'm not 100
2 percent sure he's enhanceable.

3 THE COURT: I'm not either. But in fact I'm going
4 to think out loud but I don't know that because Judge
5 Newman is going to have his own view of this. And it
6 really is; it's left to the discretion of the Judge
7 whether or not it's met.

8 And I won't expedite it but that hearing really
9 comes only after he's convicted because there is no
10 question at this point it has to be an interpretation of
11 that for the life without parole to apply. If he says
12 no, he can sentence him in accordance with penalties that
13 he is facing for these crimes, okay.

14 And one of the things, and I'm thinking out loud
15 just talking but he's entitled to -- he's innocent as far
16 as I'm concerned. Mr. McClain, how old are you today,
17 sir?

18 [Whereupon, the Defendant stands]

19 MR. MCCLAIN: 52, sir.

20 THE COURT: He doesn't have to stand Mr. Mayer. If
21 he wants to stand he can but I don't require it. But I
22 appreciate you doing that.

23 MR. MAYER: Thank you, Your Honor.

24 THE COURT: How old are you sir?

25 MR. MCCLAIN: 52, sir.

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1 THE COURT: As a practical matter sir if you are
2 convicted of these crimes it's going to be life without
3 parole because of your record. I'll just tell you
4 because I can structure -- if I'm the sentencing Judge I
5 can easily structure this one. All you've got to do is
6 make the conviction possession of a knife without --
7 firearm in commission of a crime run it consecutive. You
8 can't -- I don't believe they are going to -- that will
9 be up to them.

10 But they give you good time credit for that that's a
11 day for day proposition or run the armed robbery
12 consecutive. You really are looking at 35 years. And
13 you may beat the statistics but that would put you at
14 about 87 or 88. And I guess the life without parole for
15 me is -- for some people it may be as long as I breathe
16 I'm in prison until I'm 88 yes, I've had life without
17 parole because there is no life after that.

18 I have -- my mother-in-law is 95 and she's still
19 moving. I guess if I'm there I'd probably think that's a
20 pretty good life. But right now that would be something
21 -- but anyway those are factors that you don't need to
22 worry about because you're innocent of these things right
23 now as far as I'm concerned. I really don't think I can
24 rule on that one. I think that's something that Judge
25 Newman will have to address if he's convicted. The other

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1 ones -- what crimes come in? If you wanted -- you
2 mentioned those types of motions. Those are really in
3 limine motions Mr. Mayer you can address because that's
4 going to be -- the trial Judge is going to have to make
5 that call. The I.D. we can if we want to put up
6 testimony concerning the Biggers hearing. Whose
7 testimony is that? Is that Ms. Johnson's?

8 MR. OSBORNE: No, Your Honor. I was going to call
9 Detective Krasowski [phonetic] but I spoke to Mr. Mayer
10 yesterday and its audio recorded and he says it's really
11 no reason to refute it because there is nothing bias that
12 is suggestive about the procedure at all. And by the
13 Defendant's own admission he was with Johnson that night
14 and there is surveillance video shows it so there is no
15 reason to challenge it.

16 THE COURT: Is that correct, Mr. Mayer?

17 MR. MAYER: Judge, that's correct.

18 THE COURT: Okay. And you agree with that sir?
19 From the standpoint of an I.D. because by your statement
20 you agree to being with Ms. Johnson so if she says you
21 were with her, yes you were. But as I understand the
22 difference is you didn't do anything.

23 MR. MCCLAIN: Right.

24 THE COURT: I understand. So there really is no
25 purpose of having the Neil v Biggers so therefore you are

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1 withdrawing your request to have a hearing on
2 identification?

3 MR. MAYER: Yes, Your Honor.

4 THE COURT: Okay. Now let me just say this.
5 Obviously, you as a trial lawyer can change your mind but
6 I'll just tell Judge Newman that at this point the Neil v
7 Biggers hearing has been withdrawn so he doesn't have to
8 hear that before you start, okay.

9 MR. MAYER: Yes, Your Honor.

10 THE COURT: Anything else that we need to address
11 then that we can handle?

12 MR. OSBORNE: I would like, Your Honor, if we could
13 go ahead and get these stipulations that we've agreed to
14 on the record now.

15 THE COURT: Sure. But you'll have to restate them
16 though.

17 MR. OSBORNE: Okay.

18 THE COURT: Because he can really -- well, are you
19 in agreement with these stipulations?

20 MR. MAYER: If they're the ones we've talked about
21 I've agreed to some.

22 THE COURT: Let's go ahead and do that and you can
23 reduce those to writing. I'll sign that and let Mr.
24 Mayer consent to it. That's the way we can do that.

25 MR. OSBORNE: Okay.

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1 THE COURT: We can read them on the record Mr.
2 Osborne but I'm going to ask you to confirm it so that
3 Judge Newman will have that where he can look at them
4 too.

5 MR. OSBORNE: We have already signed them, both of
6 us but I don't have a section for your signature.

7 THE COURT: I'm a person that's -- substance over
8 form. Why don't you read -- these are all -- I thought
9 there was going to be one -- why don't we do this. Let's
10 go ahead and read them in the record. I'll get them to
11 confirm that and then I can sign it. How about that?

12 MR. OSBORNE: Okay. Thank you.

13 THE COURT: We'll do that. So Mr. McClain he's
14 going to read each of the stipulations in. After he has
15 read them I'm going to ask your lawyer and ask you if
16 those are agreed stipulations.

17 MR. OSBORNE: Thank you, Your Honor. The first
18 stipulation says attorneys for the State and the
19 Defendant agree that appropriate measures took place in
20 the collecting and transporting of the following exhibit.
21 While in the custody of the Charleston Police Department
22 the exhibit was not tampered with at any time. The
23 exhibit is Patricia Johnson's, who is the victim's
24 mother, Regents Bank Statement from May the 20th to June
25 the 19th of 2015.

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1 Attorneys for the State and the Defendant agree that
2 the above listed exhibit may be moved into evidence
3 without the necessity of calling a custodian of records
4 employed by Regents Bank.

5 THE COURT: Is that correct?

6 MR. MAYER: Yes, Your Honor. I examined ---

7 THE COURT: --- that's a chain issue.

8 MR. MAYER: Exactly. And I examined this and we
9 have a high degree of confidence that it is what it
10 purports to be.

11 THE COURT: Thank you so much. Do you agree with
12 that, sir?

13 MR. MCCLAIN: What is it?

14 THE COURT: The statement?

15 MR. MAYER: Your Honor, my ---

16 THE COURT: --- that's all right. You're making
17 that call as his lawyer.

18 MR. MAYER: Exactly.

19 THE COURT: Okay. Thank you.

20 MR. OSBORNE: The verbiage in the next stipulation
21 ---

22 THE COURT: --- let me retract that. Mr. McClain,
23 you don't have to say a word in this proceeding unless
24 you want to, sir.

25 MR. MCCLAIN: Okay.

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1 THE COURT: Because you have the absolute right to
2 remain silent throughout this entire process, sir.

3 THE COURT REPORTER: Mr. Osborne, read a little
4 slower, please.

5 MR. OSBORNE: Okay.

6 THE COURT: Yes. Thank you.

7 MR. OSBORNE: The verbiage in the next stipulation
8 is identical. This exhibit that we are seeking to admit
9 is surveillance video from the Kangaroo located at 5302
10 Rivers Avenue from the night of June 2nd, 2015.

11 THE COURT: That's fine. Is that correct?

12 MR. MAYER: That's correct, Judge.

13 THE COURT: Very well.

14 MR. OSBORNE: The verbiage on the next stipulation
15 again is identical. This exhibit is surveillance video
16 from the Rivers Mart at 3255 Rivers Avenue from the night
17 of June the 2nd, 2015.

18 THE COURT: Okay.

19 MR. MAYER: And that's accurate, Judge.

20 THE COURT: Very well.

21 MR. OSBORNE: The next stipulation regards
22 surveillance video from the Stayover Lodge located at
23 2070 McMillan Avenue from the night of June the 2nd,
24 2015.

25 THE COURT: Okay.

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1 MR. MAYER: Again, accurate Judge.

2 THE COURT: Thank you.

3 MR. OSBORNE: The next stipulation regards
4 surveillance video from the Exxon gas station at 420
5 Meeting Street from the night of June the 2nd, 2015.
6 Again, the verbiage is identical.

7 MR. MAYER: That's correct, Judge.

8 THE COURT: Very well.

9 MR. OSBORNE: Now the next two stipulations I'm
10 going to add a little bit more to it.

11 THE COURT: That's fine.

12 MR. OSBORNE: These are in regard to phone records.
13 And I will just mention that I met with Mr. Mayer. We
14 reviewed the phone records together. Mr. Mayer asked for
15 an additional layer of authenticity, which the State has
16 provided and I thought that was fine and a respectful
17 request on his part. What he wanted was the phone
18 records to be emailed directly to him from the phone
19 company accompanied with a certificate of authenticity to
20 verify that the State nor law enforcement had altered the
21 records in any way.

22 THE COURT: Absolutely.

23 MR. OSBORNE: He received those records so this
24 stipulation regards the phone records from [REDACTED]-3575
25 from March the 1st of 2015 to June the 3rd of 2015.

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1 THE COURT: Is that correct, Mr. Mayer?

2 MR. MAYER: That is accurate, Judge.

3 THE COURT: Very well. It not necessary to have
4 those people -- Mr. Mayer was provided with the
5 documentation and that's the basis of -- you rely on that
6 for purposes of agreeing?

7 MR. MAYER: That's correct, Judge.

8 THE COURT: Okay.

9 MR. OSBORNE: And the verbiage for the next set of
10 phone records is identical. These phone records were
11 from [REDACTED]-2910. And that's from March the 1st, 2015
12 to June the 3rd of 2015. Those phone records came from
13 Verizon. The prior phone records came from AT&T.

14 THE COURT: Mr. Mayer, is that correct?

15 MR. MAYER: That's accurate, Judge.

16 THE COURT: Very well. What we will do, it just
17 occurred to me, if this case goes on appeal we'll have
18 two transcripts. So for purposes of this trial that is
19 Court's exhibit -- all of those stipulations collectively
20 are Court's exhibit 1. Any objection to Court's exhibit
21 1, Mr. Mayer?

22 MR. MAYER: Nothing, Judge.

23 THE COURT: Very well.

24 [Whereupon, Court's exhibit number 1 is marked by
25 the court reporter]

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1 THE COURT: And then they will be delivered I guess
2 to the court reporter -- the Clerk's office will have
3 them and deliver them, to be retained by the Clerk's
4 Office and be passed up as Court's exhibit 1 in this
5 proceeding, okay?

6 MR. OSBORNE: And I think that's it, Your Honor.
7 Everything else regards impeachment issues of witnesses.

8 THE COURT: Correct.

9 MR. OSBORNE: And statements, Lyle evidence
10 regarding statements that the Defendant is alleged to
11 have made to the victim along with the law enforcement.

12 THE COURT: No question. And those are matters
13 that I'd love to help you all but that will be a matter
14 for the trial judge. Let me just say this to y'all too.

15 I know this is an inconvenience to come and
16 everybody assemble again and be here and mess up another
17 day but thank you for doing this because it really does
18 -- I told -- I was in a meeting with Judge Newman and I
19 told him that I was hearing some motions to try to
20 expedite it.

21 And he appreciated that very much. And I hope it
22 will help things move more easily. Thank you all and
23 have a good weekend.

24 MR. MAYER: Thank you, Your Honor.

25 MR. OSBORNE: Thank you, Your Honor.

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1	MR. MCCLAIN: You too. Thank you.
2	THE COURT: Thank you sir, you too.
3	*****END OF TRANSCRIPT OF RECORD*****
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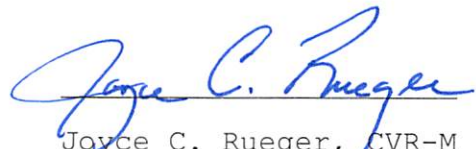
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Certificate of the Court Reporter
March 10, 2017

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 10th day of March, 2017.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

April 11, 2019


Joyce C. Rueger, CVR-M
Court Reporter



COPY

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2015-GS-10-5967
	)	2015-GS-10-5968
	)	2015-GS-10-5969
	)	2015-GS-10-5964
	)	2015-GS-10-5966
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
	)	
ANTHONY MCCLAIN	)	
	)	
Defendant	)	
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_____	)	TRANSCRIPT OF RECORD

March 13, 2017
Charleston, South Carolina

VOLUME 1 (OF 3)

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, JR., JUDGE

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

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1 PROCEEDINGS

2 THE COURT: Good Morning. All right, who is who?

3 MR. OSBORNE: My name is David Osborne with the

4 State, Your Honor. This is Alex Ginsberg.

5 THE COURT: Alex Ginsberg?

6 MS. GINSBERG: Ginsberg, Judge.

7 THE COURT: Ginsberg. All right.

8 MR. MAYER: Judge, Aaron Mayer, an attorney here in

9 Charleston on behalf of Anthony McClain.

10 THE COURT: All Right. Mr. Osborne, Ms. Ginsberg,

11 Mr. Mayer, are you ready for the jury?

12 MR. OSBORNE: Yes, Your Honor.

13 THE COURT: Mr. Mayer?

14 THE COURT: For the jury?

15 MR. OSBORNE: We are.

16 THE COURT: Okay. Mr. Mayer, anything before they

17 come?

18 MR. MAYER: We have some pretrial matters, Judge

19 but I don't think we need to do them before the jury gets

20 here.

21 THE COURT: Okay. Let's bring them on. Strikes

22 are...

23 MR. OSBORNE: Five and ten, Your Honor.

24 THE COURT: Five and ten. I received a voir dire,

25 a proposed -- suggested voir dire from the State and from

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1 the defense.

2 MR. MAYER: Yes, Your Honor.

3 THE COURT: Did you submit any? Who did you give
4 it to -- proposed voir dire?

5 MR. MAYER: I believe I emailed them but I have a
6 hard copy here.

7 MR. OSBORNE: And Your Honor, I'm sorry. I do have
8 one name to add to the witness list.

9 THE COURT: Okay. Who is that?

10 MR. OSBORNE: His name is -- he's a Charleston
11 County Sheriff's Office deputy, Sergeant Mark Lipsey.

12 THE COURT: Mark Lipsey. Any objection to the
13 other's side request?

14 MR. MAYER: No.

15 THE COURT: Okay.

16 MR. MAYER: May I approach?

17 THE COURT: Yes, sir. I'll probably merge them
18 together some way.

19 [Whereupon, Mr. Mayer provides documents to the
20 court]

21 [Whereupon, the jury panel enters at 12:25 p.m.]

22 THE COURT: Good morning. Ladies and gentlemen I
23 am Clifton Newman and I am presiding this week in this
24 courtroom. Next to me is my law clerk Jasmond Kearse
25 [phonetic]. She is a lawyer. And judges have law clerks

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1 to assist them and Jasmond is my law clerk. I look
2 forward to working here in Charleston this week in
3 General Sessions court. You all have been sent up here
4 for jury selection in our first case. And we'll have the
5 State call their first case.

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VOIR DIRE

MR. OSBORNE: Thank you, Your Honor. The State calls Anthony McClain.

THE COURT: Ladies and gentlemen, the State has called the trial of the case of the State versus Anthony McClain. Mr. McClain if you will, stand and face the jury panel along with counsel. And counsel if you will introduce yourself.

[Whereupon, Mr. McClain and Mr. Mayer stand]

MR. MAYER: Ladies and gentlemen of the jury, potential jury, my name is Aaron Mayer a Charleston attorney here working in West Ashley. This [indicates] is my client Mr. Anthony McClain.

THE COURT: Okay. And the State is represented through the Ninth Circuit Solicitor's office and the Assistant Solicitors in court representing the State you may introduce yourselves as well.

MR. OSBORNE: Thank you, Your Honor. My name is David Osborne. I work for Scarlett Wilson in the Ninth Circuit. This [indicates] is Alex Ginsberg. She is also a prosecutor and she is going to be helping me with this case. Investigator Ray Haupt is my investigator and he will be here throughout the case as well. Thank you.

THE COURT: Ladies and gentlemen this case comes into court as a result of an indictment returned by the

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1 Grand Jury of Charleston County charging the defendant,
2 Anthony McClain, with several criminal offenses. He is
3 indicted for armed robbery; pointing or presenting a
4 firearm, two counts; possession of a weapon during a
5 violent crime and kidnapping. He has pled not guilty to
6 each of those charges.

7 He is presumed to be not guilty of those charges.
8 He cannot be found guilty unless the State presents
9 evidence that convinces a jury that is each and every
10 juror of his guilt beyond a reasonable doubt. And that
11 is the purpose of a trial; to determine whether the State
12 can meet that burden of proving the defendant guilty
13 beyond a reasonable doubt.

14 And out of all of you who just came and took those
15 seats out there we're going to pick 14 of you to serve as
16 the jury in this case. The first 12 jurors and two
17 additional jurors referred to as alternates. So we look
18 forward to going through this process with you.

19 Please remember that when you reported to the jury
20 qualification this morning you took an oath. And that
21 oath was for you to give complete and truthful
22 information concerning all questions asked during the
23 jury qualification process. That oath continues through
24 this process and that is through these questions we're
25 about to ask you you must give complete and truthful

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1 responses. The lawyers are entitled to and the court is
2 entitled to receive this information regardless of
3 whether or not it is personal or uncomfortable for you to
4 disclose you must give complete and truthful responses.
5 If after any particular question you do not wish to
6 respond in front of everyone in here we'll give you an
7 opportunity to come forward and give those answers to the
8 court in the presence of the lawyers.

9 But simply the preference is for expediency for you
10 to stand and respond as you must give complete and
11 truthful responses to the questions that are asked. Now
12 with regard to the indictments returned in this case what
13 area of the city or county did the alleged offenses occur
14 in Solicitor?

15 MR. OSBORNE: The armed robbery, the kidnapping and
16 the pointing in presenting all occurred in the area of
17 downtown Charleston just off King Street. One was around
18 King and Cannon ■ Cannon specifically the other ones was
19 around Morris and Coming.

20 THE COURT: All right.

21 MR. OSBORNE: But they did carry -- excuse me, Your
22 Honor but they did carry on the kidnapping in particular
23 into many areas of North Charleston.

24 THE COURT: And the dates and times were?

25 MR. OSBORNE: June 2, 2015 starting at about 12:30

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1 a.m. and ending around 2:30 a.m.

2 THE COURT: With the alleged victims being?

3 MR. OSBORNE: Jennifer Johnson, Morgan Osborne, and
4 Sebastian Bedon.

5 THE COURT: Ladies and gentlemen with that bit of
6 information if any juror knows anything about this case,
7 has heard anything about this case or if you are a
8 friend, relative, associate or acquaintance of any of the
9 alleged victims or the defendant Anthony McClain please
10 stand?

11 It seemed like I saw a motion but I said please
12 stand if any of these questions apply to any of you. Do
13 you know the defendant, any of the victims, or have heard
14 anything about this case. Yes sir, stand, S-T-A-N-D.

15 [Whereupon, a juror stands]

16 THE COURT: Yes sir, and who are you?

17 MR. MAZYCK: Michael Mazyck.

18 THE COURT: And why are you standing?

19 MR. MAZYCK: He looks familiar.

20 THE COURT: He looks familiar to you?

21 MR. MAZYCK: Uh Huh.

22 THE COURT: And you believe that you know the
23 defendant Anthony McClain?

24 MR. MAZYCK: He looks real familiar like I've seen
25 him before.

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1 THE COURT: You have seen him before? All right,
2 that's fine.

3 MR. MAZYCK: Not to incriminate him, but ---

4 THE COURT: --- sir, just come forward a moment
5 please along with counsel.

6 [Whereupon, the juror comes forward]

7 THE COURT: And ladies and gentlemen any time you
8 stand the first thing I need to know is your juror number
9 so find out what your juror number is so when you stand
10 you can say I'm juror number so and so and then you'll
11 tell me why you're standing.

12 MR. MAZYCK: 250.

13 THE COURT: 250?

14 MR. MAZYCK: I be in some of them kind of areas
15 like King Street and stuff.

16 THE COURT: Well everybody is on King Street ---

17 MR. MAZYCK: --- dropping off my friends and stuff.

18 THE COURT: We're on King Street now, aren't we?

19 MR. MAZYCK: I mean I've seen him before.

20 THE COURT: You've seen him before?

21 MR. MAZYCK: Uh Huh.

22 THE COURT: Where have you seen him?

23 MR. MAZYCK: Around that area.

24 THE COURT: Around that area?

25 MR. MAZYCK: Yes, sir.

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1 THE COURT: Okay. Do you believe that would
2 affect your ability to be fair and impartial?

3 MR. MAZYCK: I mean I'm kind of biased towards it
4 but I mean...

5 THE COURT: You're kind of what?

6 MR. MAZYCK: I would say he's guilty.

7 THE COURT REPORTER: Repeat what you just said.

8 MR. MAZYCK: I mean I don't want to sound biased
9 towards him but guilty.

10 THE COURT: You think he's guilty?

11 MR. MAZYCK: Yes.

12 THE COURT: You haven't heard any evidence.

13 MR. MAZYCK: No, sir.

14 THE COURT: You've heard stuff?

15 MR. MAZYCK: Yes, sir. And I've seen him before in
16 those areas you're talking about.

17 THE COURT: You kind of know him, right?

18 MR. MAZYCK: Uh Huh.

19 THE COURT: Okay. Any objection to him not being
20 considered? So we're going to excuse you and then we
21 just let him go to wherever the excused jurors go. Thank
22 you very much.

23 MR. MAZYCK: Thanks.

24 [Whereupon, the juror returns to the audience]

25 THE COURT: Juror number 250 we're going to have

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1 him excused and he can go back to wherever excused jurors
2 go.

3 CLERK OF COURT: The jury assembly room.

4 THE COURT: Back to the jury assembly room, okay.

5 Thank you. The following people may testify in this case
6 including those alleged victims that I mentioned, the
7 following people may testify as well:

8 From the Charleston Police Department Detective Paul
9 Krasowski, Detective Jason Jarrell, Detective Eric
10 Tuttle, police officer Ariel Polite, Mark Lipsey, Dane
11 York. From the Charleston Sheriff's Department Deputy
12 Kevin Sherbine, Dispatch supervisor Angela Casey.
13 Additional possible witnesses are Allison Jenkins, Will
14 Cobbs, Barry Johnson, Bryan Robinson, Patricia Johnson,
15 Justin Lawrence, Sebastian Bedon B-E-D-O-N, Morgan
16 Osborne, Katheryn Hemphill, and Hannah Lambert.

17 If you know any of them or you think you know any of
18 them if they are friends, relatives, associates,
19 acquaintances, enemies please stand? If you know any of
20 them or think you might know some of them.

21 [Whereupon, a juror stands]

22 THE COURT: And tell me your juror number and why
23 you are standing. Yes, ma'am?

24 MS. KILLEENHAUPT: Kelly Killeenhaupt, 212. In the
25 beginning Investigator Ray Haupt he's my brother-in-law.

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1 THE COURT: You said Investigator Ray Haupt; how do
2 you spell his name?

3 MS. KILLEENHAUPT: H-A-U-P-T.

4 THE COURT: H-A-U-P-T. And you said he works with
5 the Solicitor's Office and he's your brother in law?

6 MS. KILLEENHAUPT: Yes.

7 THE COURT: And you believe that fact would affect
8 your ability to be a fair and impartial juror?

9 MS. KILLEENHAUPT: No.

10 THE COURT: All right. Thank you.

11 [Whereupon, a juror stands]

12 THE COURT: Yes ma'am, in the blue?

13 MS. WEBSTER: My juror number is 379 and my name is
14 Brandy Webster and I work for the Charleston County
15 Sheriff's Office in the warrants division.

16 THE COURT: All right. That's good enough. You
17 work for Charleston County Sheriff's Office in the
18 warrants division. Any objection to her not being
19 considered?

20 MR. OSBORNE: No, Your Honor.

21 MR. MAYER: No, Your Honor.

22 THE COURT: We will not consider you for selection.
23 Thank you.

24 [Whereupon, a juror stands]

25 THE COURT: Yes, sir?

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1 MR. TIPPETT: Juror 359 John Tippet. I know in
2 passing two of the officers that were named and Angela
3 Casey at Consolidated Dispatch through my work with the
4 Charleston Fire Department.

5 THE COURT: And would the fact that you're working
6 at the Charleston Fire Department and knowing some of
7 those folks would that affect your ability to be a fair
8 and impartial juror?

9 MR. TIPPETT: No, sir.

10 THE COURT: All right. Thank you. Now let's see.
11 Have any of you or any members of your immediate family
12 ever had any criminal charges handled by the Solicitor's
13 office here in Charleston? If so, please stand.

14 [Whereupon, a juror stands]

15 MR. RICHTER: Ronnie Richter, number 307. A couple
16 of years ago my brother-in-law was murdered and the
17 Solicitor's office handled that charge.

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

20 MR. RICHTER: No, it would not.

21 THE COURT: All right. Thank you.

22 [Whereupon, a juror stands]

23 THE COURT: Yes, ma'am?

24 MS. DAISE: Evon Daise, juror 105. My nephew was
25 involved in a murder case in I think March of last year

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1 at Olive Garden.

2 THE COURT: He was involved in the sense that he
3 was a victim or a defendant or what?

4 MS. DAISE: He was charged with murder.

5 THE COURT: He was charged with murder?

6 MS. DAISE: Yes, sir.

7 THE COURT: Is that case still going on or is it
8 over?

9 MS. DAISE: I think it's still open.

10 THE COURT: Pardon?

11 MS. DAISE: I think it's still open but I'm not real
12 sure.

13 THE COURT: You think it's still open. Do you
14 believe that fact would affect your ability to be a fair
15 and impartial juror?

16 MS. DAISE: No, sir.

17 THE COURT: Okay. Thank you. Does any member of
18 the jury panel have any personal, political or religious
19 beliefs that would prevent you from sitting in judgment
20 of another person and determining whether the person is
21 guilty or not guilty of a crime? If so, please stand.

22 [Whereupon, no one stands]

23 THE COURT: No one is standing. Have any of you
24 had a particularly bad experience with law enforcement or
25 a law enforcement officer that would taint your view of a

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1 law enforcement officer's testimony or his capacity or
2 her capacity to tell the truth? If so, please stand.

3 [Whereupon, no one stands]

4 THE COURT: Ladies and gentlemen in a criminal,
5 civil any kind of case in which you sit as a jury the
6 jury determines the facts and the judge instructs the
7 jury as to the law. The jury must apply the law as given
8 by the court whether you agree with the law or disagree
9 with the law you must follow the law as given to you by
10 the judge. If any of you would have a problem in
11 following that directive, please stand.

12 [Whereupon, no one stands]

13 THE COURT: No one is standing. If any of you own
14 real property; if you own a house or any other real
15 property anywhere in the world please stand.

16 [Whereupon, jurors stand]

17 THE COURT: Just give us your juror numbers and
18 then you can be seated. Yes, sir?

19 JUROR NUMBER 24: I own a house ---

20 THE COURT: --- just give me your juror number.

21 JUROR NUMBER 24: 24.

22 THE COURT: 24. Yes?

23 JUROR NUMBER 275: 275.

24 THE COURT: Give me your number and be seated and
25 we'll go pretty quickly. Yes, sir?

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1	JUROR NUMBER 359: 359.
2	THE COURT: All right.
3	JUROR NUMBER 156: 156.
4	JUROR NUMBER 396: 396.
5	JUROR NUMBER 373: 373.
6	JUROR NUMBER 289: 289.
7	JUROR NUMBER 307: 3 07.
8	JUROR NUMBER 324: 324.
9	JUROR NUMBER 322: 322.
10	THE COURT: Red shirt or maroon?
11	JUROR NUMBER 158: 158.
12	JUROR NUMBER 100: 100.
13	JUROR NUMBER 109: 109.
14	THE COURT: In the front row; yes sir?
15	JUROR NUMBER 102: 102.
16	JUROR NUMBER 1: 1.
17	JUROR NUMBER 30: 30.
18	JUROR NUMBER 227: 227.
19	JUROR NUMBER 157: 157.
20	JUROR NUMBER 66: 66.
21	JUROR NUMBER 212: 212.
22	JUROR NUMBER 107: 107.
23	JUROR NUMBER 65: 65.
24	JUROR NUMBER 181: 181.
25	JUROR NUMBER 340: 340.

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1 THE COURT: Okay. Thank you. If you are related
2 by blood or marriage or if you have any close personal
3 friends or acquaintances who works in any law enforcement
4 agency, prosecution agency, civilian or military law
5 enforcement agency please stand? Prosecutor's office or
6 anything of the like if so, please stand. We have the
7 prosecutor's office that's an example. We'll start with
8 you.

9 JUROR NUMBER 212: 212.

10 THE COURT: And tell me who it is you are standing
11 in regard to?

12 JUROR NUMBER 212: Kelly Killeenhaupt, 212. My
13 brother-in-law, Ray Haupt is an investigator.

14 THE COURT: Okay. Thank you. Yes, sir?

15 JUROR NUMBER 359: 359. An uncle that was a police
16 officer in D.C. and a cousin police officer in -- County,
17 Maryland.

18 THE COURT: All right.

19 JUROR NUMBER 311: 311. I have a son who is with
20 the Department of Corrections.

21 JUROR NUMBER 307: 307. My cousin works with the
22 Solicitor's office, Claire Richard.

23 JUROR NUMBER 49: Number 49. A good friend of mine
24 Daniel Cooper works for the Solicitor's office.

25 THE COURT: What's his name?

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1 JUROR NUMBER 49: Daniel Cooper.

2 THE COURT: Thank you.

3 JUROR NUMBER 181: 191. My father is a Magistrate
4 in juvenile court.

5 THE COURT: In?

6 JUROR NUMBER 181: Not locally.

7 THE COURT: Where?

8 JUROR NUMBER 181: In Ohio.

9 THE COURT: What part?

10 JUROR NUMBER 181: Cincinnati.

11 THE COURT: Cincinnati; Hamilton County. You've
12 heard the names of those prospective witnesses. If you
13 think you're related by blood, marriage, know any of them
14 please stand.

15 [Whereupon, no one stands]

16 THE COURT: If you or any member of your immediate
17 family or close personal friends have ever been the
18 victim of a violent crime; violent crime being rape,
19 robbery, kidnapping, murder, burglary. If you or any
20 member of your immediate family or close personal friends
21 have ever been the victim of a violent crime or accused
22 of committing a violent crime if so, please stand.

23 [Whereupon, jurors stand]

24 THE COURT: Yes, sir?

25 JUROR NUMBER 307: 307. My brother-in-law was

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1 murdered.

2 THE COURT: Yes, sir. Thank you.

3 JUROR NUMBER 322: 322. I was robbed at gun point.

4 JUROR NUMBER 342: 342. My brother was robbed at
5 gunpoint.

6 JUROR NUMBER 338: I just realized that I was robbed
7 but it wasn't by gunpoint.

8 THE COURT: Well, tell us your juror number.

9 JUROR NUMBER 338: It's 338.

10 THE COURT: 338. Thank you.

11 JUROR NUMBER 30: 30. My boyfriend was murdered in
12 New Orleans; not here.

13 THE COURT: If any of your experiences in your life
14 in general or those things specifically and this is
15 addressing all jurors would affect your ability or
16 prevent you from being a fair and impartial juror please
17 stand?

18 [Whereupon, no one stands]

19 THE COURT: If any of you or any member of your
20 immediate family or close friends is a member of any
21 groups such MADD, SADD, CAV or any other organization
22 which has as its goal the promotion of law enforcement or
23 the ACLU or any other similar organization that has as
24 its mission the defense or rights of the accused, please
25 stand?

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1 [Whereupon, no one stands]

2 THE COURT: If you have ever sat on a jury before,
3 if you've ever done some jury serving before please
4 stand? If you have previous experience as a juror and
5 just give me a short, short when and where and what?

6 [Whereupon, jurors stand]

7 THE COURT: Yes, ma'am?

8 JUROR NUMBER 324: 324, Federal Court here in
9 Charleston.

10 THE COURT: Criminal or civil?

11 JUROR NUMBER 324: Civil.

12 THE COURT: Okay. Thank you. Yes, sir?

13 JUROR NUMBER 100: 100 and it was civil here in
14 Charleston.

15 THE COURT: Okay. Thank you.

16 JUROR NUMBER 340: 340. Two civil and one federal
17 in Alabama.

18 JUROR NUMBER 1: Number 1, criminal court in
19 Birmingham, Alabama.

20 THE COURT: All right.

21 JUROR NUMBER 66: Criminal in Marietta, Georgia.

22 THE COURT REPORTER: And your number?

23 JUROR NUMBER 66: 66.

24 THE COURT: If any member of the jury panel is a
25 member of the military or any member of your immediate

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1 family is a military member, please stand.

2 [Whereupon, jurors stand]

3 THE COURT: We'll start with -- yes, juror number?

4 JUROR NUMBER 231: My mom is retired from the Army
5 Reserves and she's also active duty and my dad was in the
6 Navy.

7 THE COURT: And your juror number is -- what is
8 your name?

9 JUROR NUMBER 231: Marvin Lloyd.

10 THE COURT: Marvin?

11 JUROR NUMBER 231: Lloyd, L-L-O-Y-D.

12 CLERK OF COURT: 231.

13 THE COURT: 231 is your number. Yes?

14 JUROR NUMBER 49: Number 49, my dad is retired from
15 the Marine Corps.

16 THE COURT: Thank you. Yes?

17 JUROR NUMBER 275: 275. My brother-in-law is a
18 Lieutenant in the Navy.

19 THE COURT: Thank you.

20 JUROR NUMBER 359: 359. My son is a Major in the
21 Army National Guard.

22 JUROR NUMBER 373: My brother is a Chief in the Air
23 Force.

24 THE COURT: Thank you. Any other questions
25 proposed by the State or the defense?

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1 MR. OSBORNE: No, Your Honor.

2 MR. MAYER: Nothing further, Judge.

3 THE COURT: Ladies and gentlemen I indicated to you
4 the charges against the defendant, his presumption of
5 innocence, the State's burden of proof. This case is
6 expected to last how many days you think?

7 MR. OSBORNE: I think we can finish on Thursday.

8 THE COURT: Okay. So we think we'll be here until
9 Thursday to do this case. Court typically runs from 9 or
10 9:30 to 5:30 or so depending on what is going on at the
11 time. So first of all do we have any jurors who have to
12 pick up children from daycare centers at 4:30 or 5:00?
13 If so, please stand.

14 [Whereupon, no one stands]

15 THE COURT: We don't. If you know of any reason
16 why you should not be selected to be a juror in this
17 case, any reason whatsoever now is your time to tell me.
18 We have all these people here and as I indicated we're
19 going to pick 14 of you. And we don't want to pick you
20 if you have some reason why you should not be selected.
21 So if you know of any reason whatsoever why you should
22 not be selected, please stand.

23 [Whereupon, a juror stands]

24 THE COURT: Yes sir, tell me your juror number.

25 JUROR NUMBER 227: 227.

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1 THE COURT: Yes, sir.

2 JUROR NUMBER 227: I write for a news and quality
3 website and I guess it's right leaning.

4 THE COURT: You write for a right leaning news ---

5 JUROR NUMBER 227: --- yes. It's like it has a
6 conservative office I guess.

7 THE COURT: Okay. And you believe that would
8 prevent you from being a fair and impartial juror?

9 JUROR NUMBER 227: No.

10 THE COURT: And your juror number again is?

11 JUROR NUMBER 227: 227.

12 THE COURT: Okay. Anyone else? Anything else
13 before we pick this jury?

14 [Whereupon, no one responds]

15 THE COURT: Okay. Give the Clerk your attention
16 and we will press on with jury selection. Madame Clerk?

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STRIKING OF THE JURY

CLERK OF COURT: So ladies and gentlemen what is going to happen is if I call your juror name and number please grab your personal belongings. You're going to walk through these [indicates] double doors. Walk straight up to the podium, stand and face your fellow jurors. Juror number 37, Leroy Bennett.

[Whereupon, the juror comes forward]

CLERK OF COURT: What say you for the State?

MR. OSBORNE: Please present the juror.

CLERK OF COURT: What say you for the defendant?

MR. MAYER: Please present the juror.

CLERK OF COURT: Sir, if you will please walk up that ramp right there [indicates] and have a seat in the jury box. You've been selected as a juror in the trial of this case.

[Whereupon, the juror is seated in the jury box as a juror]

CLERK OF COURT: Juror number 309, Penny Robins.

[Whereupon, the juror comes forward]

CLERK OF COURT: What say you for the State?

MR. OSBORNE: Please excuse the juror.

CLERK OF COURT: Ma'am, you may have a seat back in the audience. You've been excused from the trial of this case.

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1 [Whereupon, the juror returns to the audience]
2 CLERK OF COURT: Juror number 15, Timothy Avers.
3 [Whereupon, the juror comes forward]
4 CLERK OF COURT: What say you for the State?
5 MR. OSBORNE: Please present the juror.
6 CLERK OF COURT: What say you for the defendant?
7 MR. MAYER: Please present the juror.
8 CLERK OF COURT: Please have a seat in the jury
9 box. You've been selected as a juror in the trial of
10 this case.
11 [Whereupon, the juror is seated in the jury box as a
12 juror]
13 CLERK OF COURT: Juror number 322, Lynette
14 Schroeder.
15 [Whereupon, the juror comes forward]
16 CLERK OF COURT: What say you for the State?
17 MR. OSBORNE: Please present the juror.
18 CLERK OF COURT: What say you for the defendant?
19 MR. MAYER: Please excuse the juror.
20 CLERK OF COURT: Please have a seat back in the
21 audience. You've been excused from the trial of this
22 case.
23 [Whereupon, the juror returns to the audience]
24 CLERK OF COURT: Juror number 24, Sundarav
25 Balasubramanian.

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1 THE COURT: What say you for the State?

2 MR. OSBORNE: Please excuse the juror.

3 CLERK OF COURT: Please have a seat back in the
4 audience. You've been excused from the trial of this
5 case.

6 [Whereupon, the juror returns to the audience]

7 CLERK OF COURT: Juror number 373, Winnifred
8 Waring.

9 [Whereupon, the juror comes forward]

10 CLERK OF COURT: What say you for the State?

11 MR. OSBORNE: Please seat the juror.

12 CLERK OF COURT: What say you for the defendant?

13 MR. MAYER: Please excuse the juror.

14 CLERK OF COURT: Please have a seat back in the
15 audience. You've been excused from the trial of this
16 case.

17 [Whereupon, the juror returns to the audience]

18 CLERK OF COURT: Each side has now used two of
19 their strikes. Juror number 340, Joan Smith.

20 [Whereupon, the juror comes forward]

21 CLERK OF COURT: What say you for the State?

22 MR. OSBORNE: Please excuse the juror.

23 CLERK OF COURT: Please have a seat back in the
24 audience. You've been excused from the trial of this
25 case.

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1 [Whereupon, the juror returns to the audience]
2 CLERK OF COURT: Juror number 175, Carolina Harper.
3 [Whereupon, the juror comes forward]
4 CLERK OF COURT: What say you for the State?
5 MR. OSBORNE: Please seat the juror.
6 CLERK OF COURT: What say you for the defendant?
7 MR. MAYER: Court's indulgence.
8 [Whereupon, Mr. Mayer consults with his client]
9 MR. MAYER: Please excuse the juror.
10 CLERK OF COURT: Please have a seat back in the
11 audience. You've been excused from the trial of this
12 case.
13 [Whereupon, the juror returns to the audience]
14 CLERK OF COURT: Juror number 105, Evon Daise.
15 [Whereupon, the juror comes forward]
16 CLERK OF COURT: What say you for the State?
17 MR. OSBORNE: Please excuse the juror.
18 CLERK OF COURT: Please have a seat back in the
19 audience. You've been excused from the trial of this
20 case.
21 [Whereupon, the juror returns to the audience]
22 CLERK OF COURT: The State now has one remaining
23 strike. Juror number 100, Richard Crosby.
24 [Whereupon, the juror comes forward]
25 CLERK OF COURT: What say you for the State?

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1 MR. OSBORNE: Please seat the juror.
2 CLERK OF COURT: What say you for the defendant?
3 MR. MAYER: Please seat the juror.
4 CLERK OF COURT: Please have a seat in the jury
5 box. You've been selected as a juror in the trial of
6 this case.
7 [Whereupon, the juror is seated in the jury box as a
8 juror]
9 CLERK OF COURT: Juror number 289, James Perrine.
10 [Whereupon, the juror comes forward]
11 CLERK OF COURT: What say you for the State?
12 MR. OSBORNE: Please present the juror.
13 CLERK OF COURT: What say you for the defendant?
14 MR. MAYER: Please present the juror.
15 CLERK OF COURT: Please have a seat in the jury
16 box. You've been selected as a juror in the trial of
17 this case.
18 [Whereupon, the juror is seated in the jury box as a
19 juror]
20 CLERK OF COURT: Juror number 65, Barbara Morgana.
21 [Whereupon, the juror comes forward]
22 CLERK OF COURT: What say you for the State?
23 MR. OSBORNE: Please present --
24 CLERK OF COURT: Morgana?
25 MR. OSBORNE: I'm sorry; what?

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1 JUROR NUMBER 65: There has been some confusion.
2 It's Tesmin [phonetic] and Morgana is the right name.
3 You have two of my names mixed --

4 MR. OSBORNE: Please present Ms. Tesmin [phonetic].

5 CLERK OF COURT: What say you for the defendant?

6 MR. MAYER: Please excuse the juror.

7 CLERK OF COURT: Please have a seat back in the
8 jury box [sic]. You've been excused from the trial of
9 this case.

10 [Whereupon, the juror returns to the audience]

11 CLERK OF COURT: Juror number 396, Kimberly
12 Yarborough.

13 [Whereupon, the juror comes forward]

14 CLERK OF COURT: What say you for the State?

15 MR. OSBORNE: Please present the juror.

16 CLERK OF COURT: What say you for the defendant?

17 MR. MAYER: Please present the juror.

18 CLERK OF COURT: Please have a seat in the jury
19 box. You've been selected as a juror in the trial of
20 this case.

21 [Whereupon, the juror is seated in the jury box as
22 a juror]

23 CLERK OF COURT: Juror number 109, Norma Davis.

24 [Whereupon, the juror comes forward]

25 CLERK OF COURT: What say you for the State?

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1 MR. OSBORNE: Please present the juror.
2 CLERK OF COURT: What say you for the defendant?
3 MR. MAYER: Please present the juror.
4 CLERK OF COURT: Please have a seat in the jury
5 box. You've been selected as a juror in the trial of
6 this case.
7 [Whereupon, the juror is seated in the jury box as
8 a juror]
9 CLERK OF COURT: Juror number 1, Allyson
10 Abernathy.
11 [Whereupon, the juror comes forward]
12 CLERK OF COURT: What say you for the State?
13 MR. OSBORNE: Please present the juror.
14 CLERK OF COURT: What say you for the defendant?
15 MR. MAYER: Please excuse the juror.
16 CLERK OF COURT: Please have a seat back in the
17 jury [sic]. You've been excused from the trial of this
18 case.
19 [Whereupon, the juror returns to the audience]
20 CLERK OF COURT: Juror number 359, John Tippet.
21 [Whereupon, the juror comes forward]
22 CLERK OF COURT: What say you for the State?
23 MR. OSBORNE: Please present the juror.
24 CLERK OF COURT: What say you for the defendant?
25 MR. MAYER: Please excuse the juror.

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1 CLERK OF COURT: Please have a seat back in the
2 audience. You've been excused from the trial of this
3 case.

4 [Whereupon, the juror returns to the audience]

5 CLERK OF COURT: The defendant has now used six of
6 the ten strikes. Juror number 66, Patrick Butler.

7 [Whereupon, the juror comes forward]

8 CLERK OF COURT: What say you for the State?

9 MR. OSBORNE: Please present the juror.

10 CLERK OF COURT: What say you for the defendant?

11 MR. MAYER: Please excuse the juror.

12 CLERK OF COURT: Please have a seat back in the
13 audience. You've been excused from the trial of this
14 case.

15 [Whereupon, the juror returns to the audience]

16 CLERK OF COURT: Juror number 231, Marvin Lloyd.

17 [Whereupon, the juror comes forward]

18 CLERK OF COURT: What say you for the State?

19 MR. OSBORNE: Please excuse the juror.

20 CLERK OF COURT: Please have a seat back in the
21 audience. You've been excused from the trial of this
22 case.

23 [Whereupon, the juror returns to the audience]

24 CLERK OF COURT: The State has now used their five
25 strikes. Juror number 376, Herman Watson.

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1 [Whereupon, the juror comes forward]
2 CLERK OF COURT: Any challenges from the State?
3 MR. OSBORNE: None.
4 CLERK OF COURT: What say you for the defendant?
5 MR. MAYER: Please seat the juror.
6 CLERK OF COURT: Please have a seat in the jury
7 box. You've been selected as a juror in the trial of
8 this case.
9 [Whereupon, the juror is seated in the jury box as
10 a juror]
11 CLERK OF COURT: Juror number 158, Michael Gordon.
12 [Whereupon, the juror comes forward]
13 CLERK OF COURT: Any challenges from the State?
14 MR. OSBORNE: None.
15 CLERK OF COURT: What say you for the defendant?
16 MR. MAYER: Please seat the juror.
17 CLERK OF COURT: Please have a seat in the jury
18 box. You've been selected as a juror in the trial of
19 this case.
20 [Whereupon, the juror is seated in the jury box as
21 a juror]
22 CLERK OF COURT: Juror number 311, Phillip
23 Rockefeller.
24 [Whereupon, the juror comes forward]
25 CLERK OF COURT: Any challenges from the State?

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1 MR. OSBORNE: Court's indulgence.
2 [Whereupon, Mr. Osborne and Ms. Ginsberg confer]
3 MR. OSBORNE: None.
4 CLERK OF COURT: What say you for the defendant?
5 MR. MAYER: Please excuse the juror.
6 CLERK OF COURT: Please have a seat back in the
7 audience. You've been excused from the trial of this
8 case.
9 [Whereupon, the juror returns to the audience]
10 CLERK OF COURT: Juror number 381, Lynn Weirs.
11 [Whereupon, the juror comes forward]
12 CLERK OF COURT: Any challenges from the State?
13 MR. OSBORNE: None.
14 CLERK OF COURT: What say you for the defendant?
15 MR. MAYER: Please seat the juror.
16 CLERK OF COURT: Please have a seat in the jury
17 box. You've been selected as a juror in the trial of
18 this case.
19 [Whereupon, the juror is seated in the jury box as
20 a juror]
21 CLERK OF COURT: Juror number 342, Kyle Snyder.
22 [Whereupon, the juror comes forward]
23 CLERK OF COURT: Any challenges from the State?
24 MR. OSBORNE: None.
25 CLERK OF COURT: What say you for the defendant?

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1 MR. MAYER: Please excuse the juror.

2 CLERK OF COURT: Please have a seat back in the
3 audience. You've been excused from the trial of this
4 case.

5 [Whereupon, the juror returns to the audience]

6 CLERK OF COURT: Defendant has now used nine of
7 their ten strikes. Juror number 181, Matthew Henderson.

8 [Whereupon, the juror comes forward]

9 CLERK OF COURT: Any challenges from the State?

10 MR. OSBORNE: None.

11 CLERK OF COURT: What say you for the defendant?

12 MR. MAYER: Please seat the juror.

13 CLERK OF COURT: Please have a seat in the jury
14 box. You've been selected as a juror in the trial of
15 this case.

16 [Whereupon, the juror is seated in the jury box as
17 a juror]

18 CLERK OF COURT: Juror number 325, Pamela Scott.

19 [Whereupon, the juror comes forward]

20 CLERK OF COURT: Any challenges from the State?

21 MR. OSBORNE: None.

22 CLERK OF COURT: What say you for the defendant?

23 MR. MAYER: Please seat the juror.

24 CLERK OF COURT: Please have a seat in the jury
25 box. You've been selected as a juror in the trial of

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1 this case.

2 [Whereupon, the juror is seated in the jury box as
3 a juror]

4 CLERK OF COURT: Juror number 77, Betty Chancy.

5 [Whereupon, the juror comes forward]

6 CLERK OF COURT: Any challenges from the State?

7 MR. OSBORNE: None.

8 CLERK OF COURT: What say you for the defendant?

9 MR. MAYER: Please seat the juror.

10 CLERK OF COURT: Please have a seat in the jury
11 box. You've been selected as a juror in the trial of
12 this case.

13 [Whereupon, the juror is seated in the jury box as
14 a juror]

15 CLERK OF COURT: For the first alternate juror
16 number 156, Richard Goheen.

17 [Whereupon, the juror comes forward]

18 CLERK OF COURT: What say you for the State?

19 MR. OSBORNE: Please seat the juror.

20 CLERK OF COURT: What say you for the defendant?

21 MR. MAYER: Please seat the juror.

22 CLERK OF COURT: Please have a seat in the jury
23 box. You've been selected as an alternate juror in the
24 trial of this case.

25 [Whereupon, the juror is seated in the jury box as

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1 an alternate juror]

2 CLERK OF COURT: Juror number 212, Kelly

3 Killeenhaupt.

4 [Whereupon, the juror comes forward]

5 CLERK OF COURT: What say you for the State?

6 MR. OSBORNE: Please excuse the juror.

7 CLERK OF COURT: Please have a seat back in the

8 audience. You've been excused from the trial of this

9 case.

10 [Whereupon, the juror returns to the audience]

11 CLERK OF COURT: Juror number 275, Trent Nowell.

12 [Whereupon, the juror comes forward]

13 CLERK OF COURT: Any challenges from the State?

14 MR. OSBORNE: None.

15 CLERK OF COURT: What say you for the defendant?

16 MR. MAYER: Please seat the juror.

17 CLERK OF COURT: Please have a seat in the jury

18 box. You've been selected as an alternate juror in the

19 trial of this case.

20 [Whereupon, the juror is seated in the jury box as

21 an alternate juror]

22 CLERK OF COURT: Your Honor, the jury has been

23 seated.

24 THE COURT: Any matters of law regarding the jury

25 selection?

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1 MR. OSBORNE: None from the State.

2 MR. MAYER: We'd like to raise it outside the
3 presence of the jury.

4 THE COURT: Pardon?

5 MR. MAYER: We'd like to raise it outside the
6 presence of the jury.

7 THE COURT: All right. Ladies and gentlemen if you
8 all will, follow the bailiff that way [indicates].
9 Please do not discuss the case while you're there.

10 [Whereupon, the jury exits at 1:10 p.m.]

11 THE COURT: Ladies and gentlemen those of you who
12 were not selected we need to have you go outside into the
13 jury room. Don't stray too far away. You can use the
14 restroom if you want to. Just try to remain outside
15 until they tell you to come back in.

16 [Whereupon, the jury panel exits at 1:11 p.m.]

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Proceedings
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1 THE COURT: Yes, sir?

2 MR. MAYER: Judge, may it please the court? And I
3 understand this challenge is mainly academic but this is
4 a challenge to the array of jurors as ultimately brought
5 into the courtroom here in Charleston County.

6 THE COURT: All right.

7 MR. MAYER: And the challenge is based on the
8 disproportionate impact of both the jury pool's selection
9 but more importantly Your Honor it is based on the way
10 that prospective jurors are excused during jury
11 qualifications, Judge. The burden of both child care and
12 prior arrests or convictions falls disproportionately on
13 the African American community, Judge. We feel like as a
14 result of that the jurors brought in the courtroom today
15 were substantially more white than otherwise would be the
16 case, Your Honor.

17 So that's the basis of our challenge. I did have
18 just a written motion on this with some of the Charleston
19 County statistics which has been shared with opposing
20 counsel in anticipation of this. I can pass it up to the
21 court at this time is that's...

22 THE COURT: Yes, sir.

23 [Whereupon, Mr. Mayer provides documents to the
24 court]

25 MR. MAYER: And Judge I have to confess I haven't

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1 done the statistical analysis because I haven't had time
2 on the actual pool as it was selected here this morning.
3 But in observing the jury qualifications I did have that
4 familiar intuitive disheartening feeling of a lot of
5 minorities being excused for good reason from the jury
6 pool, Judge.

7 THE COURT: All right. What says the State?

8 MR. OSBORNE: Your Honor, I spoke to because I
9 wasn't quite sure exactly how we came about this jury
10 pool so I spoke to Mr. Don Michel, he's the Clerk of
11 Court, before we came in here to address this motion. He
12 said we get the jury pool by three ways in Charleston
13 County. You're either a registered voter, you have a
14 South Carolina I.D. or South Carolina driver's license.
15 From there it is completely random.

16 So the jury pool wasn't -- there was no
17 purposefulness on the State's part to try to get a
18 disproportionate race representation on the jury pool.
19 And our jury for this case is if I'm doing my math
20 correctly is five African Americans out of 14.

21 THE COURT: Mr. Mayer, you said this is an academic
22 motion?

23 MR. MAYER: Well, you know Judge I'm making the
24 motion in good faith. But really it is to preserve any
25 appellate review, Judge. I'm not sure; I'm not a

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1 statistician. I haven't employed one for this purpose
2 but it's just a concern to me. I see it time and again
3 in our juries here. I think we've addressed it as well
4 as can be for today's purposes but I always feel like
5 it's important to raise an issue, Judge.

6 THE COURT: Well, for me presiding in Charleston
7 County over the past 17 years now this is a shockingly
8 high percentage of African Americans on the jury pool.
9 I've presided here in Charleston time and time again
10 before all white juries, juries with one African American
11 or two. Never that I can recall have I presided over a
12 jury with more than three. And it has always been
13 puzzling to me as to the reasons why.

14 Of course, I think when you eliminate people with
15 criminal records and eliminate people who attempt to get
16 out of serving on jury duty because they can't afford to
17 miss work because they owe child support, because they
18 have to pay rent, because of economic problems associated
19 with serving on jury duty particularly considering the
20 low compensation for jurors. How much do y'all pay them
21 over here?

22 CLERK OF COURT: Ten dollars a day and 53 cents now
23 for mileage.

24 THE COURT: Considering the low pay people who
25 serve on jury duty then its many people. So there are a

1 multitude of reasons. And I cannot associate it with any
2 statistical problems I can tell you that the last case I
3 tried here the number of African Americans who showed up
4 for jury duty was right around 25 percent. We had the
5 sheriff personally serve the jurors so ensure as maximum
6 appearances as possible considering the fact that many
7 people don't live in their homes or move around quite a
8 bit.

9 Due to the shifting population demographics of this
10 county we've had a desistance of people who are
11 homeowners to stand. Those are probably the people with
12 the most stability. And out of that number how many
13 people -- 24 people stood as being homeowners out of this
14 list of 43 people we have and probably two or three of
15 them were African American if any; I don't know. But
16 they are very few. So you have a number of things that
17 go into people being available to serve.

18 You've hit a soft spot with me because I get to be
19 kind of irate out of people who attempt to get out of
20 serving on jury duty. And they think that they have
21 really ganged the system; they've really done something
22 by being able to get out of serving for often non-
23 legitimate reasons. That is something that is a soft
24 spot for me. But I think given the jury pool that we
25 have, given the lack of any evidence that shows that the

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1 people were not properly summoned according to law but
2 they did not appear and they were not excused. The judge
3 has some discretion when people say I can't afford to be
4 here because otherwise I'll get locked up for child
5 support or I can't pay my rent or I've got to pick up my
6 baby from daycare and meet them at the bus and all the
7 various reasons we get.

8 There is no indication there is any problem with
9 this jury pool or this jury selection and so I deny your
10 motion. But you gave me an opportunity to vent on that
11 issue. So we've got our jury. Anything else about this
12 jury panel?

13 MR. OSBORNE: No, Your Honor.

14 THE COURT: So we'll bring those folks back in so
15 we can let them go. This case is not going to end in a
16 plea is it?

17 MR. OSBORNE: It doesn't look that way.

18 THE COURT: Is that a pretty accurate indication
19 Mr. Mayer?

20 MR. MAYER: It has been for a while, Judge, yes
21 sir.

22 THE COURT: Is that right Mr. -- what's your name?

23 MR. MCCLAIN: McClain, sir. Your Honor, this is my
24 first time so you know I'm not used to this. But for the
25 plea that they offered me it's too much. I'm too old.

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1 But anything is possible; maybe.

2 THE COURT: All right.

3 [Whereupon, the jury panel enters at 1:20 p.m.]

4 THE COURT: Ladies and gentlemen you have made it
5 through this jury selection process. I don't know how
6 many more jury selection processes you might have to go
7 through this week. We don't know what will happen with
8 this case. But if we do this case and it goes until
9 Thursday then it might be it for me with picking juries
10 this week. We have about how many other trial judges
11 this week?

12 CLERK OF COURT: Two, Your Honor.

13 THE COURT: Two other trial judges. So I guess a
14 group of them are already in another room.

15 CLERK OF COURT: Yes, Your Honor. Judge Couch just
16 pulled his jury.

17 THE COURT: So are we through with these folks for
18 the day or?

19 CLERK OF COURT: Yes.

20 THE COURT: Do they leave or do they go downstairs?

21 CLERK OF COURT: Y'all can leave for the day and
22 call that juror information line tonight after 6 p.m. and
23 it will give you instructions for tomorrow.

24 THE COURT: For your convenience we don't make you
25 sit around to see if we need you. If we're not using you

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1 we'll let you go and then try to predict when or if you
2 need to come back. My suggestion is that since generally
3 you'll be calling at the end of the day that you should
4 be able to simply return to work with the understanding
5 that if you get the call that you have to come in then
6 you have to come in. But otherwise you are free to go
7 about your business. But you are responsible for calling
8 in and returning if we need you to. Thank you very much.
9 Have a good evening; a good afternoon and evening.

10 [Whereupon, the jury panel exits at 1:22 p.m.]

11 THE COURT: We're at 1:30 already. We're deep into
12 lunch. What time do y'all want to come back and get
13 going?

14 MR. OSBORNE: 3 o'clock would work for us.

15 THE COURT: I understand there are some pretrial
16 motions about something.

17 MR. MAYER: I think we do have some pretrial issues
18 to address, Judge.

19 [Whereupon, Mr. Mayer and Mr. Osborne confer]

20 MR. OSBORNE: The Jackson v Denno hearing when we
21 had that in front of Judge Dennis Friday I believe we
22 reached a resolution on that. There was an order filed
23 on that so there doesn't appear to be a need for that
24 hearing. We had several stipulations that were read on
25 the record then. Mr. Mayer waived the Biggers hearing at

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1 that time. So I think we're good on that. There is a
2 search warrant suppression that I'm not sure if Mr. Mayer
3 is still filing or not. We can handle that when I call
4 the witness if you'd like. I think everything seems to
5 be proper with the search warrant.

6 MR. MAYER: We're not really disputing the validity
7 of the search warrant Judge. I just had a couple of
8 motions in limine that may be relevant for when the court
9 starts addressing jurors and that sort of things. These
10 motions here wouldn't take too long. There were a couple
11 of things in the State's pretrial brief that maybe would
12 cause us to have to send the jury out later that if you
13 want to address them now we can or we can do it later.

14 THE COURT: I'd rather just get rolling as soon as
15 possible and take up problems when we need to. Of course
16 if something is disputed then you probably don't want to
17 mention it in opening statements.

18 MR. MAYER: Sure.

19 THE COURT: So let's say 2:45. That's an hour and
20 20 minutes; is that enough? So let's bring the jury back
21 so that we can let them go to 2:45.

22 MR. MAYER: May I approach with some pretrial
23 motions?

24 THE COURT: Yes, sir.

25 [Whereupon, Mr. Mayer provides documents to the

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1 court]

2 THE COURT: So this to conduct arraignment out of
3 jury's presence do we need to do that or has that been
4 done?

5 MR. MAYER: I just would prefer not to do it in the
6 presence of the jury. I think what was done already was
7 necessary but a formal arraignment if we are to do that
8 I'd prefer to do it outside the presence of the jury.

9 THE COURT: I just wanted to know the necessity of
10 doing it. I never do it.

11 MR. MAYER: Then we're fine with that.

12 THE COURT: I give copies of jury instructions,
13 written copies to the jury; I do that. I'm fine with
14 juries taking notes if they want to. I usually have an
15 instruction on that. Motion to prevent prosecution from
16 referring to the accusers as the victim.

17 MR. OSBORNE: Well, they are alleged victims.
18 We've handled this kind of stuff before. I'm not going
19 to get on a soap box and start calling victim, victim,
20 victim. But occasionally there might be a question where
21 it comes out where they are referred to as victim. But I
22 don't plan on arguing it. That's not a part of my case.

23 THE COURT: I usually say alleged when I refer to a
24 victim so we'll deal with that. So we've got
25 inadmissible evidence; we'll discuss it where it is

1 applicable.

2 [Whereupon, the jury enters at 1:27 p.m.]

3 THE COURT: Ladies and gentlemen how are y'all
4 doing? You made it to a jury and we've made it to
5 lunchtime. So we're going to break for lunch. We need
6 you back at 2:45.

7 Now once you're selected on a jury you're not
8 allowed to discuss the case. You're not allowed to
9 become investigators to investigate a case because you
10 must decide the case solely based on the evidence
11 presented in the courtroom applying your common sense to
12 the -- and evaluating the evidence that is presented and
13 applying the law as I give it to you.

14 So you're to have no contact with any of the
15 participants in the case; friends or family of any of the
16 parties involved in the case. So we're going to take a
17 break and I'll give you a more thorough preliminary
18 instruction when you get back. So we need you back in
19 the jury room at 2:45.

20 [Whereupon, the jury exits at 1:30 p.m.]

21 THE COURT: Just a couple more minutes to go
22 through the rest of these motions here. The last one was
23 motion to redact inadmissible evidence from admissible
24 evidence.

25 MR. MAYER: And Judge I know that's very vague and

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1 broad. And I think for the most part Mr. Osborne and I
2 have resolved those issues ahead of time with regard to
3 -- but the biggest issues there were some of the recorded
4 statements, the post-Miranda statements, Your Honor. But
5 I believe we have resolved those.

6 MR. OSBORNE: We have. There was only one comment.
7 During the interview he mentioned that he was a drug
8 addict. The clips that we plan on playing that won't be
9 included in there. But there is another issue. During
10 the abduction or during the alleged abduction the victim
11 states that the defendant told him -- told her that he
12 had been in prison for 21 years in the past. As it
13 turned out he has been in prison for quite a while; it
14 was 17 and half years for an armed carjacking. And this
15 is what this incident is.

16 Our thought was this; that that comment was told to
17 the victim to intimidate her so that she knew that he was
18 a violent individual that had been in prison before and
19 so she would do what he told her to do. That was the
20 only motivation for him making that comment.

21 We do not plan on proving that through any extrinsic
22 evidence. The only thing I would do is ask Ms. Johnson
23 what did he say to you while you were in the car and at
24 some point she would say that. There was another comment
25 that was made while they were driving around. He said

1 that he had given crack to a female and when she didn't
2 pay him back he then punched her. I believe that that
3 comment was made to Ms. Johnson once again to intimidate
4 her, to scare her to let her know that he was an
5 individual that was capable of hurting a woman.

6 We don't plan on proving that comment through any
7 extrinsic evidence either. We're not introducing either
8 or attempting to introduce either one of those comments
9 to prove that he is a bad individual or trying to prove
10 it. What we're trying to do is prove the kidnapping
11 statute.

12 THE COURT: Mr. Mayer?

13 MR. MAYER: Well Judge, this is a he said she said
14 case that the prosecution is trying to bootstrap some
15 stuff together on. I think to allow an alleged victim
16 to create statements that were said to her where she is
17 the only alleged witness to it I think is really
18 problematic, Judge. I think the prejudicial impact
19 substantially outweighs any probative value.

20 In the Solicitor's pretrial brief the argument is
21 that this was to intimidate her into getting in the car
22 or whatever. But here he is saying it was said in the
23 car when they had been together for some period of time
24 already. They are alleging that a pistol was used so I'm
25 not sure -- I mean if they are going to show that a

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1 pistol was used why they need some super prejudicial
2 statement like this. I just think it is gratuitous and
3 unreliable, Judge. And we would ask that both of those
4 statements be excluded.

5 MR. OSBORNE: And Your Honor, I know that some of
6 this is just coming at you here and we've been looking at
7 this case for a long time. They go to several different
8 gas stations at his direction. At these gas stations
9 it's true you can see the defendant and he is favoring
10 something on his left side; he's left handed. He's
11 pulling down on his shirt the whole time.

12 But having said that I believe that the argument
13 from Mr. Mayer would be what you don't see is him armed
14 with a hand gun. So a jury could easily say we're not
15 100 percent convinced that he was armed with a hand gun
16 so the kidnapping statute may not be able to be proved by
17 the hand gun portion of it. But those comments right
18 there clearly go to force or intimidation to intimidate
19 Ms. Johnson into doing what he tells her to do.

20 THE COURT: Those kinds of statements or this type
21 of issue is obviously difficult for a Judge to rule in
22 limine without having much appreciation for the case.
23 The pretrial hearing was done by Judge Dennis. I read
24 over the pretrial brief and am becoming acquainted with
25 this case. What would be troubling for me at the outset

1 would be if the State were to in opening statement say
2 these things. And if the State sought to lead a witness
3 into saying those things whereas a witness can obviously
4 say that he throughout the process he was seeking to
5 intimidate me by telling me different things. If
6 something is more spontaneous that comes from a witness
7 that's one thing. But if it is extracted by the State
8 and introduce the defendant's character it may be a
9 little more problematic.

10 But for me I would have to get into this case more
11 to see because quite often issues raised in limine in
12 advance become non-issues during a trial. So I would
13 rather deal with it in the context of it becoming an
14 issue in the trial and not injected in it by the State.
15 You can say well we're not concerned about the truth of
16 it but to show another element that may be true. But we
17 need to see how the proof develops in that.

18 MR. OSBORNE: Yes, Your Honor. I won't mention it
19 in opening and we won't call her until the last or the
20 very next.

21 THE COURT: And by that time who knows what we will
22 have heard. The next one is motion to suppress the
23 legally obtained statements. Have y'all dealt with that
24 yet?

25 MR. MAYER: Judge, I think that was dealt with for

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1 the most part in the pretrial matter with Judge Dennis.
2 I think that may piggyback on the next motion about the
3 jail calls a little bit, which we firmly believe should
4 not be included in this case.

5 THE COURT: Did Judge Dennis rule on that one?

6 MR. MAYER: He did not rule on jail calls.

7 MR. OSBORNE: Not on jail calls.

8 THE COURT: All right. The last one is motion to
9 prohibit restraints. I don't see any restraints.

10 MR. MAYER: It's done, Judge. Thank you very much.

11 THE COURT: And this one motion to suppress the
12 legally intercepted communications and for hearing. What
13 is it you want me to do with regard to this?

14 MR. MAYER: Well Judge, I think it's the State's
15 intention to include a couple of jail calls between my
16 client and the woman who he refers to as his wife, his
17 common law wife. There is a special spousal privilege of
18 course as the court understands. And I feel like them
19 wiretapping these privileged communications -- a lot of
20 times jail calls come in.

21 But I think that's when a guy is talking to his
22 friend or his mother or something like this. But due to
23 the special relationship afforded to spouses and I think
24 that's one thing that the State and I can agree on is
25 that Mr. McClain has been very clear from the beginning

1 that Ms. Tisdale is his wife. They call each other
2 husband and wife.

3 THE COURT: Do they file taxes as husband and wife?

4 MR. MAYER: Well, they just recently kind of got
5 together, Your Honor.

6 THE COURT: I usually go for this on guilty pleas
7 with this casual use of my fiancé who has been a fiancé
8 for 20 years and things of that nature. Some people use
9 that word as a substitute for friend or girlfriend.

10 MR. MAYER: Yes. And so here he always thinks of
11 Ms. Tisdale as his wife. I believe the feeling is mutual
12 between the two of them. Our argument would be that the
13 special privileges of the spouses would attach and that
14 the State eavesdropping on their communications would be
15 something that would have to be waived by one another.

16 THE COURT: All right. Yes?

17 MS. GINSBERG: Thank you, Your Honor. There are no
18 South Carolina cases directly dealing with this issue.
19 However other circuits have and they found the following.
20 They found that a defendant gives consent when he makes
21 that phone call because he hears a recording that
22 specifically states that all phone calls are monitored
23 and recorded as well as the individual at the other end
24 of the phone call also hears that it is monitored and
25 recorded. Other circuits have held that once an

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1 individual hears that instruction and then continues to
2 make the call that they have in fact consented to the
3 taping of that call. Additionally our Supreme Court, the
4 United States Supreme Court has held that inmates do not
5 have a reasonable expectation of privacy in Hudson v
6 Palmer because of the nature of prison, or jail in this
7 case.

8 Additionally other circuits have dealt with the
9 issue of whether or not this violates the wiretapping
10 statute. And six circuits have held that taped jail
11 calls are an exception to the wiretapping statute under
12 the law enforcement exception.

13 It's because of these points, Judge that we believe
14 that these jail phone calls should be admitted as the
15 defendant himself consented albeit not directly but
16 continuing the phone call. Additionally, the individual
17 at the other end also knows that the tape is occurring.
18 Thank you, Judge.

19 THE COURT: Well, the other part of that says you
20 want a hearing. You mean including the taking of
21 testimony by this defendant and the lady on that issue?

22 MR. MAYER: Judge, if that would help the court I'd
23 be happy to do it.

24 THE COURT: Well, you requested the hearing so
25 typically when people request hearings they're entitled

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1 to hearings if they requested hearings. So we can take
2 that issue up first thing in the morning or late in the
3 afternoon. Is she here?

4 MR. MAYER: Ms. Tisdale is here, yes sir.

5 THE COURT: Ms. Tisdale?

6 MS. TISDALE: Yes, sir.

7 THE COURT: Not Ms. McClain, Ms. Tisdale?

8 MS. TISDALE: Yes sir, that's correct.

9 THE COURT: We'll be happy to deal with that. We
10 have between now and Thursday. Do you plan to be here
11 Ms. Tisdale?

12 MS. TISDALE: Well, being truthful I have dialysis
13 tomorrow but I'll try to make it if God permits me to.

14 THE COURT: What time do you get through with that
15 dialysis?

16 MS. TISDALE: Probably about 10:30.

17 THE COURT: Tomorrow morning? All right. Is that
18 downtown?

19 MS. TISDALE: Yes, sir.

20 THE COURT: You come here when you leave there and
21 we'll be seeing you.

22 MS. TISDALE: Okay. .

23 MR. MAYER: Thank you, Judge.

24 THE COURT: Very good. So we'll break for one hour
25 until 2:45. We're in recess.

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1 [Whereupon, court is in recess from 1:43 p.m. until
2 3:00 p.m.]

3 THE COURT: All right. We got two alternates and
4 my understanding is there might be some issues with one
5 of them already. The number is what?

6 CLERK OF COURT: 376.

7 THE COURT: 376? His relative is speaking to a
8 juror or something like that -- no, he's a juror.

9 [Whereupon, juror 376 enters the courtroom]

10 THE COURT: Number 376, how you doing? Are you
11 having some problems or issues with serving?

12 JUROR NUMBER 376: Yes.

13 THE COURT: And what is that?

14 JUROR NUMBER 376: Well honestly I just feel I don't
15 have the interest of serving. I just feel you should ask
16 somebody...

17 THE COURT: Step up a little bit closer so I can
18 hear you a little better.

19 JUROR NUMBER 376: I said I just feel you should
20 pick somebody who has interest in the case. I really
21 don't.

22 THE COURT: You don't have any interest in it?

23 JUROR NUMBER 376: No.

24 THE COURT: Well, a juror is not supposed to have
25 any interest in the case. That's why we pick them

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1 because they don't have any interest in the case. But go
2 ahead; what else?

3 JUROR NUMBER 376: I'm just saying that's how I
4 feel.

5 THE COURT: You don't want to be on the jury?

6 JUROR NUMBER 376: No, I don't.

7 THE COURT: Who is that lady right there
8 [indicates]?

9 JUROR NUMBER 376: That's my mother.

10 MS. WATSON: What's your name?

11 MS. WATSON: Marguerite Watson.

12 THE COURT: Marguerite Watson. And why are you
13 standing? What's on your mind, Ms. Watson?

14 MS. WATSON: What it is while I was waiting for him
15 to come out to the back door and I was sitting in the
16 hall and the lady was sitting there and she called me and
17 she was talking to me about the case and she was telling
18 me what the case was about since I told her -- she said
19 what are you waiting for.

20 And I said I was waiting for my son to come out if
21 he was picked to serve. And she said oh, that must be my
22 husband's case because she told me the charges and
23 everything. And then when he came out I was talking to
24 him about it and then he was like I guess so. So I don't
25 feel you know because I already told him what I guess the

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1 wife said.

2 THE COURT: So his wife was discussing the case
3 with you telling you all about the case and then you told
4 your son about everything she told you about the case.

5 MS. WATSON: Yes, I did because I didn't know that
6 you know...

7 THE COURT: Tell me about your son? Is he able to
8 be a juror or does he have some problems?

9 MS. WATSON: He has a little problem.

10 THE COURT: Like what?

11 MS. WATSON: As far as expressions and getting
12 things down to details in explaining himself and stuff.

13 THE COURT: I mean is he slow or on medicine or?

14 MS. WATSON: No, he's not on medicine. But just has
15 -- he's not too what would you call it to take it like he
16 should and to explain like he should.

17 THE COURT: Why did you come to court with him? We
18 don't usually have Momma's coming with them ---

19 MS. WATSON: --- well I'm waiting on him ---

20 THE COURT: --- how old are you now?

21 JUROR NUMBER 376: She didn't come with me ---

22 MS. WATSON: --- I had to bring him because he
23 doesn't have transportation because I'm coming from
24 Edisto and I had to bring him.

25 THE COURT: How old are you now?

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1 JUROR NUMBER 376: 31.

2 THE COURT: 31. And you still live with your
3 mother?

4 JUROR NUMBER 376: Yes.

5 THE COURT: That's why I'm saying -- you're still
6 in charge of him?

7 MS. WATSON: Yes, mostly.

8 THE COURT: I'm just trying to understand what's
9 what.

10 MS. WATSON: Mostly.

11 THE COURT: So that's the status. I'll hear from
12 the State and defense on anything.

13 MR. OSBORNE: I would ask you to go ahead and
14 strike this juror, Your Honor, and just use an alternate.
15 We -- in essence he has heard testimony from the
16 defendant's girlfriend that we don't plan on calling her
17 as a witness. Nevertheless, that bell has already been
18 rung and he's already heard things. And quite honestly
19 when I presented this juror and Mr. Mayer said please
20 seat the juror he did have a pretty volatile reaction to
21 being seated.

22 And then when he sat back down he was scowling. His
23 demeanor was pretty aggressive in not wanting to serve.
24 When you were giving instructions just before lunch I
25 couldn't help but notice that he put his hand on his head

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1 and openly seemed to disregard what you were saying. So
2 I think in the best interest here I would ask that we
3 seat an alternate in this case.

4 THE COURT: Mr. Mayer?

5 MR. MAYER: I kind of observed the same things that
6 Mr. Osborne just mentioned. I think it's really
7 unfortunate because I think the jury could really have
8 benefitted from this young man's prospective. I've told
9 -- I didn't know that this happened, Your Honor. I
10 advised my client's girlfriend to not discuss things
11 around here. She may have done that before I talked to
12 her. But we would tend to agree with the prosecution,
13 Judge.

14 THE COURT: Even before the jury went out to lunch
15 someone mentioned to me that the facial expressions and
16 reactions of this juror toward what was going on that it
17 -- and I was going to let that one pass. But before I
18 could get back in chambers it came up again and now it
19 seems that he can't be a fair juror based on being
20 tainted. So we're not going to put you through that Mr.
21 Watson of Edisto. Y'all are all the way from Edisto? I
22 thought that was in a different county.

23 MS. WATSON: No, it's Charleston County.

24 THE COURT: Edisto?

25 MS. WATSON: Edisto Beach is in Colleton County but

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1 Edisto Island is in Charleston County.

2 THE COURT: Y'all have a long way to come, don't
3 you?

4 MS. WATSON: Yes.

5 THE COURT: How long did it take you to get here?

6 MS. WATSON: Probably almost an hour; not quite but
7 almost.

8 THE COURT: If the traffic isn't bad.

9 MS. WATSON: Right.

10 THE COURT: Okay. We'll let you go back to Edisto.
11 It's not a problem. You want to sit on some more cases
12 or you want to be through with jury duty?

13 JUROR NUMBER 376: Through.

14 THE COURT: Maybe you can be on a wreck case. You
15 don't want to be on that either. Well, we'll let you go.
16 I think he served his time. How about that Madame Clerk?

17 CLERK OF COURT: I will get him removed.

18 THE COURT: You're good to go. What did you leave
19 in the jury room?

20 JUROR NUMBER 376: Nothing at all.

21 THE COURT: Nothing at all. He doesn't even need
22 to go back. He said he didn't leave anything in there.
23 Mr. Robinson will take care of it from him. Thank you,
24 sir.

25 MR. WATSON: Thank you, Your Honor.

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1 THE COURT: Thank you, sir. Take care. Be
2 careful now.

3 [Whereupon, juror number 376 is excused and exits
4 the courtroom]

5 THE COURT: We're down to 13. That's why I try my
6 best to get them to tell me any reason whatsoever you
7 shouldn't be selected because Monday mornings they
8 hesitate. But it is what it is. Are y'all ready for
9 them?

10 MR. OSBORNE: Just one other matter regarding
11 sequestration of witnesses. We have three victims in
12 this case and they would like to be present at least for
13 some of the trial.

14 THE COURT: Yes, sir?

15 MR. MAYER: We would ask that all witnesses be
16 sequestered. As to at least two of these victims,
17 alleged victims, I would say that their testimony, their
18 prior statements to the police officers are not the same.

19 THE COURT: Let me stop you. To this extent anyone
20 who is a victim under the Victim's Bill of Rights they
21 have a right to be present. If they are on an indictment
22 as a victim they have a constitutional right based on the
23 passage of the Victim's Bill of Rights they have a
24 constitutional right to be present. As I understand from
25 the facts there may be some others who may not be listed

1 a victims on the indictment or is everyone a victim?

2 MR. OSBORNE: They are all listed as victims;
3 Morgan Osborne, Sebastian Bedon, and Jennifer Johnson.

4 THE COURT: If they are on the indictment as a
5 victim they have a right to be present.

6 MR. OSBORNE: And they are, Your Honor.

7 MR. MAYER: Okay. Just to be clear then the other
8 witnesses will still be sequestered?

9 THE COURT: Well, I'm anti -- I don't favor
10 sequestration of witnesses absence some basis because of
11 the -- I mean legitimate basis because of the
12 inconvenience of trying to find these people and going
13 out inbetween. It's an open courtroom and quite often
14 there is no opposition by the State or the defense. And
15 of course sequestration goes both ways and also the State
16 has a right to have a law enforcement person assist them.
17 So I'm not sure who all we're talking about.

18 MR. OSBORNE: Well quite honestly Your Honor I'm
19 pretty certain that one of our victim's in this case,
20 Jennifer Johnson, would like her mother to be with her
21 during the process but I do need to also call her as a
22 witness.

23 MR. MAYER: I've got no objection to that, Judge.
24 I would just ask specifically about these other college
25 kids from this first alleged incident who aren't listed

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1 as victims. I would just ask that they come in only for
2 their portion of their testimony.

3 MR. OSBORNE: I wouldn't object to that.

4 THE COURT: And they can stay after their testimony
5 obviously. Okay, fair enough. Now as far as moving up
6 to number 13 it is chosen by lot. Each one will have a
7 50 percent change of being picked.

8 MR. MAYER: Judge, our concern arose and probably
9 the court has a good way of dealing with this but I just
10 want to put it out there. It was mentioned to me during
11 the break that juror 109 had a very pained expression on
12 her face when she heard the charges involved. And I know
13 that might not mean much but I think for the defense we'd
14 like to clarify that doesn't mean she's become biased by
15 hearing those charges.

16 THE COURT: And she is one of the first 12?

17 MR. MAYER: Yes, Your Honor.

18 THE COURT: Okay. Do we need to bring her in and
19 ask her whether her pained expression means anything or
20 something similar to that?

21 MR. MAYER: Thank you, Judge.

22 THE COURT: Any objection to that?

23 MR. OSBORNE: No, Your Honor.

24 THE COURT: All right. Let's bring 109 in.

25 CLERK OF COURT: The two alternates?

1 THE COURT: Put them in a cup. Any objection to
2 the Clerk picking one of these two out of the cup?

3 MR. OSBORNE: None, Your Honor.

4 MR. MAYER: No.

5 [Whereupon, the Clerk chooses a name]

6 CLERK OF COURT: 275.

7 THE COURT: Okay. 275 is now the 12th juror.

8 CLERK OF COURT: Trent Nowell.

9 [Whereupon, juror number 109 enters]

10 THE COURT: How are you doing?

11 JUROR NUMBER 109: Fine, thank you.

12 THE COURT: Ma'am, when you were selected it seemed
13 like you had a pretty -- or maybe when the charges were
14 mentioned you had a rather pained, curious some kind of
15 look on your face. How would you describe it?

16 JUROR NUMBER 109: I don't remember. I don't know.

17 THE COURT: Is there anything about the nature of
18 the charges in this case that would prevent you from
19 sitting as a fair and impartial juror?

20 JUROR NUMBER 109: No, sir.

21 THE COURT: Very good. Thank you very much. Now
22 when we call jurors in you don't discuss with other
23 jurors why you came in. I just needed to ask that
24 question before we got started. Thank you.

25 [Whereupon, juror number 109 exits the courtroom]

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1 THE COURT: All right. Anything else before we
2 start?

3 MR. OSBORNE: No, Your Honor.

4 MR. MAYER: Nothing from the defense, Judge.

5 THE COURT: We're going to bring them in in two
6 minutes and we'll be ready to go. We'll take a two
7 minute recess.

8 [Whereupon, court takes a brief recess]

9 [Whereupon, Court's exhibit number 1-A is marked by
10 the court reporter]

11 THE COURT: Okay. Let's bring the jury.

12 [Whereupon, the jury enters at 3:19 p.m.]

13 THE COURT: Welcome back ladies and gentlemen. If
14 you all will, stand to be sworn.

15 CLERK OF COURT: Raise your right hands please. Do
16 you swear or affirm that you shall well and truly try and
17 a true deliverance make between the state of South
18 Carolina and the defendant at the bar whom you shall have
19 in charge and a true verdict render according to the
20 evidence and the law so help you God? Please indicate by
21 saying I do.

22 [Whereupon, the jurors all comply]

23 CLERK OF COURT: Thank you. If you have accepted
24 this oath please have a seat; if not please remain
25 standing. Thank you.

State v Anthony McClain
Court's Opening Remarks to the Jury
March 13, 2017

1 THE COURT: Well ladies and gentlemen I would
2 imagine probably three or four weeks ago or maybe longer
3 you received a summons to say you have to come to jury
4 duty here at Charleston County Judicial Center. You
5 responded to that summons by showing up this morning and
6 you went through jury qualifications conducted by Judge
7 Jefferson. And that jury qualification was to determine
8 whether or not you would be qualified to serve on jury
9 duty.

10 After passing through and being determined to be
11 qualified then you are sent to this room and jury
12 selection or jury voir dire. And information was
13 obtained from you this morning and qualification and even
14 before that by completing and returning the paperwork to
15 the Clerk's office. And then additional questions were
16 asked of you in this courtroom so that the lawyers could
17 determine who they wanted to -- who they want to sit and
18 decide this case.

19 You have been selected and now you just took an oath
20 to well and truly try this case render a true verdict
21 according to the law and according to the evidence so
22 help you God. And if you do that you will have complied
23 with your oath and responsibility as a juror and no one
24 would have any right to complain about any verdict you
25 might render at the end of the case. As I indicated to

State v Anthony McClain
Court's Opening Remarks to the Jury
March 13, 2017

1 you earlier this case is a case that comes into court as
2 a result of an indictment returned by the Charleston
3 County Grand Jury charging the defendant with various
4 crimes including two counts of pointing and presenting a
5 firearm, armed robbery, kidnapping, possession of a
6 weapon during the commission of the violent crime; and
7 those of the charges.

8 He has pled not guilty to each and every charge and
9 the fact that he was indicted by the Grand Jury is not
10 evidence. This is simply the charging paper that brings
11 the case into court. He has pled not guilty to these
12 charges and he is presumed to be not guilty of these
13 charges. He cannot be found guilty unless the State
14 presents evidence which convinces a jury of his guilt
15 beyond a reasonable doubt.

16 So out of all the people who live in Charleston
17 County, out of all the people live in the state of South
18 Carolina, out of all the people who live in the United
19 States of America, out of all the people who live in the
20 world only to 12 of you who will deliberate can determine
21 whether the defendant is guilty or not guilty of these
22 charges. So you play an important and critical role in
23 the judicial process. Jurors have a constitutional right
24 to serve on jury duty. So once you are qualified to
25 serve then your constitutional right to serve and make

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Court's Opening Remarks to the Jury
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1 this important determination kicks in and I certainly am
2 thankful that you all have come forward in response to a
3 summons, you've appeared and you have taken an oath to
4 perform jury service in this case in Charleston County
5 this week; this case and any other case you might be
6 called upon.

7 You will be asked to determine the facts of this
8 case based on the evidence presented from this witness
9 stand. You are the sole judges of the facts of this case
10 that you are to determine from the evidence that is
11 presented. And the evidence can be through testimony; it
12 can be through documents or photographs or other videos
13 or similar things or even through the stipulations or
14 agreement by the lawyers.

15 But you are to consider solely the evidence
16 presented in this case and not base your determination on
17 something extraneous of this case; meaning something you
18 may hear, see, read or watch on T.V. outside the presence
19 of this case in court. That's why in the same connection
20 you are not to engage in any type of Internet search,
21 social media search, any other kind of research because
22 all jurors must hear the same evidence, deliberate based
23 on the same evidence and decide the case based on the
24 same evidence. Now just as only you can determine the
25 facts of this case based on the evidence as the presiding

State v Anthony McClain
Court's Opening Remarks to the Jury
March 13, 2017

1 Judge I am the sole judge of the law of this case. And
2 you must accept as correct the law as I state it to you
3 at this time during the trial and in greater detail at
4 the end of the trial.

5 Some of you may want to take notes and that's why
6 all those notepads are there for any of you who might
7 want to take notes. There are two rules of thumb on
8 jurors and taking notes. One is that the jury might
9 start taking some notes -- well, some of you are better
10 note takers than others. And the fact that you may take
11 a note cannot be substituted for the recollection of
12 another juror. But some of you might want to take notes
13 because that's the way you spend your day; writing things
14 or taking notes about things.

15 There is some thought that jurors when you look in
16 those notebooks afterwards you see a bunch of doodling so
17 they're not really writing much down. They're just kind
18 of keeping their mind occupied when things get boring in
19 court. But you can take notes if you want to take notes.

20 You will have to leave them in the courtroom
21 whenever you go out and then the bailiff will pass them
22 to you and then you can use them during deliberations.
23 And later in the process I will appoint one of you to
24 serve as the Foreperson of the jury. That person will
25 serve as the spokesperson for the jury regarding any

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Court's Opening Remarks to the Jury
March 13, 2017

1 communications with the court during the case and at the
2 end of the case during the process of deliberations if it
3 is necessary. But the Foreperson is the spokesperson for
4 the jury and will have the responsibility of presiding
5 over the jury deliberations and completing the verdict
6 form at the end of the case.

7 I look forward to making this experience as
8 convenient for you as possible. If at any time you get
9 tired sitting or to the extent that you need a break or
10 you just need a break for whatever reason you let me know
11 and I promise we will take a break. I don't want anyone
12 to be unduly uncomfortable.

13 The State has the burden of proof and the State will
14 present its case following opening statements. The
15 defense will have an opportunity to make an opening
16 statement and or present evidence. But the defense is
17 not required to because the burden of proof is on the
18 State; it is not on the defense to prove anything.

19 We will press on now with opening statements. Mr.
20 Osborne?

21 MR. OSBORNE: Thank you, Your Honor. May it please
22 the court?

23

24

25

State v Anthony McClain
Opening Statements-Remarks by Mr. Osborne
March 13, 2017

1 OPENING STATEMENTS

2 BY MR. OSBORNE:

3 It was the night of June the 1st, 2015 going into
4 June the 2nd, 2015. It was a Monday night. It was the
5 first night of Anthony McClain's birthday week and he was
6 going to celebrate. He started his celebration by
7 getting his hair cut. He was going to look sharp. He
8 went to his barber Will Cobbs.

9 After getting his hair cut he and Will went riding
10 around in Anthony's girlfriend's car. They went riding
11 around North Charleston going to various locations. They
12 went to Church's Chicken and got something to eat; the
13 Church's at Rivers and Reynolds. They then went across
14 the street to Rivers Mart. While there Will bought
15 Anthony some beer, cigarettes and put a little gas in the
16 car.

17 They kept driving around and at some point the
18 defendant decided to go downtown. So he went down King
19 Street coming from North Charleston. Then he came up to
20 a road calling Morris Street; a small little street
21 running perpendicular to King Street. He turned down
22 Morris. He went a block or two and something caught his
23 eye. It was a group of college age kids mostly girls.
24 He would later describe one of the girls as being F-ing
25 gorgeous. So he pulled over and he said hey, can I get

State v Anthony McClain
Opening Statements-Remarks by Mr. Osborne
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1 my picture taken with you. One of the girl's friends
2 made a smart rude comment to him upsetting him; made him
3 mad, made him real mad. She was trying to ruin his
4 night. He got out of the car, he approached this group
5 of individuals and he put a gun to the back of her head;
6 so hard in fact that it caused a bruise the next day.

7 There was a guy that was with her, Sebastian Bedon.
8 He then put the gun to his head, pressed it against his
9 forehead. They took off running screaming gun; he's got
10 a gun, run, run. The rest of their friends then ran. He
11 went back to his car where Will was sitting but his night
12 wasn't through. He then went a block, two blocks and
13 took a right on Smith Street and went one block. Then he
14 took a right on Cannon Street.

15 As he took a right on Cannon Street he saw something
16 else that caught his eye. He saw Jennifer Johnson. Now
17 Jennifer, she's a 24 year old girl, a single mother. She
18 lives at ■ Cannon with her Mom, her granddad, and her
19 brother. He would later describe her as being so pretty.
20 The video doesn't even do her justice; you've got to see
21 her in person.

22 Jennifer was on her way to meet up with her
23 boyfriend. Her boyfriend worked at Boeing. He got off
24 late that night. He had called her and they had agreed
25 and arranged to meet at the Silver Dollar right down the

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1 road and have a couple of drinks together. Now as she
2 was walking to her car the defendant drove down Cannon
3 Street and passed her and saw her. He had tried the
4 photograph, the picture thing before and that didn't work
5 out so he changed tactics.

6 He said hey, how do I get to North Charleston? She
7 said you go a couple of blocks up and hang a left and at
8 the Crosstown right, North Charleston and you're on the
9 Interstate. He says okay. He goes up a little bit and
10 stops. He gets out of the car. As Jennifer is sitting
11 in the driver's seat of the car he approaches. She has
12 not yet closed the door. He gets in the door jamb; give
13 me everything you've got. He uses that same gun.

14 She hands him three dollars. He says what, this is
15 all you got? She did have something else. She had her
16 debit card. Now this debit card was given to her by her
17 Mom. It accesses money from her Mom's bank account. She
18 uses that card in cases of emergency. If she is ever
19 going to use it she would always call her Mom first. She
20 only uses it about once or twice a month.

21 She didn't want him to have access to that account
22 so she took the card and she hid it while she gave him
23 the three dollars. She hid it underneath the seat. He
24 took the three dollars. He then walked back to his car.
25 Now normally that would be it. I would ask you at the

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1 end of this trial I want you to convict this defendant of
2 armed robbery. But he's not through. His birthday night
3 was just getting started because when he went to the car
4 and said something to Will and then he came back. And
5 when he came back he went to the passenger side of the
6 car this time with that gun in his hand; let me in your
7 car. Jennifer says no. He said you got to let me in the
8 car I've got a gun.

9 She says okay and she opens up the door. He gets in
10 the car. She makes a smart comment; she doesn't want him
11 in the car. She makes some kind of rude smart comment.
12 He then takes that gun and presses it against her face
13 and says you're going to take me to the store and you're
14 going to buy me a beer. She says okay.

15 She then takes the car and she drives up Cannon
16 Street passing the defendant's car. Will then follows.
17 She goes up to King and Cannon and she pulls right there
18 at the corner store and stops in front of the store. She
19 had been there before. It's not too far from her house.

20 The defendant doesn't like that. He doesn't like
21 the people there and maybe he didn't like the fact that
22 she had been there so he says keep going. So he directs
23 her to go up King to Woolfe, left on Woolfe, left on
24 Meeting stopping at the Exxon right at 420 Meeting. Will
25 driving his car has had enough; he's gone. When they get

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1 to Exxon he gives her back the same three dollars that he
2 took. Go and buy me a Miller Highlife, the 40 ounce.
3 You'll see from the surveillance video she gets out of
4 the car. He's hanging out the window keeping a close eye
5 on her. She goes up to the window, it's closed so she
6 has to hand the money through the little slot there, buys
7 the beer and gets back in the car.

8 Now when he first got in the car he said take me to
9 the store and buy me a beer. Well, she already did that
10 but he wasn't through. Now we're going to North
11 Charleston. Get on Meeting and hang a right. So she
12 comes up to Meeting and she hangs a right. She's nervous
13 and she's scared. She knows the last time she made a
14 smart comment to him he put a gun to her head so she
15 tries to calm him down.

16 She's not driving the newest model car so she says
17 my car is making some noise. She is trying to make small
18 talk with him. He says well, I got you. Pull over; pull
19 over to the Family Dollar parking lot. The Family Dollar
20 was closed; this is late at night. She pulls over and
21 it's dark. He's going to help her. Pop your hood; I'll
22 take a look at your car for you. She can't get the hood
23 up. The latch is broken. That's all right. He gets
24 back in the car. Just keep going to North Charleston.
25 He directs her to go to the Rivers Mart. The same Rivers

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1 Mart where Will bought him beer, cigarettes and gas
2 earlier. It's Jennifer's turn now. But Jennifer doesn't
3 have any money; she already spent the three bucks. But
4 he wants cigarettes. But that's okay because this gas
5 station sells loose cigarettes for change and she's got
6 some change in her purse. They go inside; she buys the
7 cigarettes for him. He's still not through.

8 He directs her to go to the Stayover Lodge at
9 McMillan right across from the VA Hospital, or the old
10 one. He tells her to park in the back of the Stayover
11 Lodge. He gets out of the car. But before he gets out
12 of the car he wants to make sure she doesn't go anywhere
13 so he takes the keys and he takes her cell phone. He
14 goes up and knocks on the room to room 141 -- the door to
15 room 141. Bryan Robinson answers.

16 Now Bryan knows the defendant. He looks out and
17 he's never seen the defendant in this car before and he's
18 certainly never seen this girl before. So he says how do
19 you like what I got? I got a bad little Shorty right
20 there. He makes more comments.

21 He tells Jennifer get out the car. Jennifer gets
22 out. Now get back in the car. She gets back in the car.
23 Surveillance video you'll see it. At some point he then
24 ends up going back into or going into Bryan's apartment.
25 Now while in Bryan's apartment Bryan will tell you

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1 normally he's a calm, cool guy. That night he was antsy,
2 he was fidgety. He was making weird comments. Then he
3 let the defendant know what his plans were for Jennifer.
4 He said I'm going to punish her later on. He then comes
5 back outside and tells Jennifer don't move. He then
6 leaves. Now Jennifer has no idea how long he's going to
7 be gone. It ends up he's gone for seven minutes. She
8 doesn't move. She stays there scared.

9 He then comes back to the car. He's still not
10 through. He then directs her to drive to an area called
11 Ferndale Subdivision in North Charleston. He tells her
12 to pull over by Railroad Road. It's a dark road with
13 train tracks. Pull over to the side of the road. And
14 now it's just her and him. She has no idea what he has
15 planned for her. But he gives her two options. He needs
16 more money but he'll take payment by another source.

17 He tells her you can either have sex with me or you
18 can give me money; it's your choice. She chooses money.
19 They then switch seats. This is his side of town; he'll
20 drive. So he knows where the A-T-M is. So they go up to
21 Morrison Street. It's a trailer park in the neighborhood
22 and that's where he lives. He takes a swing by his
23 neighborhood and then he comes back out and he goes to
24 the Kangaroo at 526 and Rivers Avenue. Now Jennifer's
25 got a problem. That debit card that she uses in case of

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1 emergency, and make no mistake this is an emergency, is
2 underneath the driver's seat where he's sitting. She
3 can't just tell him that I hid it; that's going to make
4 him mad. So she pretends that she's looking for it. She
5 looks in her purse looking for a card she knows is not
6 there. But while she's looking in the purse she finds
7 something. She finds a spare key to the car that she
8 forgot she left in there. But she still needs the card.

9 So after looking for a while she gets out the car
10 and she goes and she sits behind the defendant and
11 reaches underneath the seat and finds the card. They
12 then go into the Kangaroo. She goes up to the A-T-M.
13 He's right behind her; he's close. He wants to keep his
14 eye on her. She withdraws 100 dollars. Backs up and
15 lets him take it. And you'll see the video what he does
16 after that but he's basically the life of the party after
17 that.

18 They then go back out to the car. Now he must be a
19 little afraid that this old car isn't going to get him
20 where he needs to go because he tells her you need to put
21 some gas in the car and gives her ten dollars from the
22 same 100 dollars that she just withdrew and tells her to
23 go inside and pay for it. She goes inside and it must
24 dawn on him then it's not a good idea to leave her alone
25 because he then follows her. Now while she was inside

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1 with the clerk alone for a moment the clerk asked her are
2 you all right? And before she can answer he comes right
3 through the door. Tells her get back out to the car,
4 takes a quick look around and everything is okay, then he
5 goes back out to the car. After gassing up he takes her
6 over to his neighborhood, Ferndale, Morrison Street.

7 Now once they get there he gets out of the car and
8 starts talking to some of his friends and Jennifer waits
9 for her opportunity and when she sees it she slides over
10 to that driver's seat, puts the key in the ignition,
11 cranks up and speeds out of there and goes back home.

12 It doesn't take law enforcement long to identify him
13 and locate him. They interview him two days later,
14 Detective Jason Jarrell interviews him. He had him in
15 the interview room, and he was in there for a while, and
16 he told numerous stories. He started off by saying I was
17 with Will that night. We were driving around and Will
18 dropped me off around midnight. Will had the car.

19 When he realized that wasn't going work because
20 Detective Jarrell had surveillance video of him with
21 Jennifer later on that night at different locations he
22 then changed his story. He said, yeah you know I do
23 know her. In fact I met her about two or three months
24 ago. We've been talking to each other on the phone like
25 Middle School kids. We talk once or twice a week. Now,

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1 Detective Jarrell obviously was very interested in
2 finding that connection. He went back and you'll hear
3 it, he looked at the phone records, he looked at his
4 phone. He looked at everything he could find to try to
5 prove any evidence that they knew each other that they
6 had spoken to each other that they had even seen each
7 other prior to that night and it doesn't exist.

8 This was no date and at the end of this trial I'm
9 going to ask you to hold him accountable, hold him
10 accountable for what he thought was a celebration that
11 night and for what he did to the individuals in this
12 case. I'm going to ask you to convict him on two counts
13 of pointing and presenting, armed robbery, kidnapping,
14 and possession of a weapon during the commission of a
15 violent crime. Thank you.

16 THE COURT: Mr. Mayer?

17 MR. MAYER: Thank you, Your Honor. May it please
18 the court?

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State v Anthony McClain
Opening Statements-Remarks by Mr. Mayer
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OPENING STATEMENTS

BY MR. MAYER:

Aaron Mayer on behalf of Anthony McClain. This is a case of he said she said. Anthony, I believe you will see is a very gregarious guy. It's been my experience if you have an appointment with him to spend an hour you end up spending three. He's a talker. The State here is trying to bootstrap allegations from a totally separate incident, totally separate group of people onto grasp onto this victim's allegations; the alleged victim's allegations. You'll see when they testify that they are describing someone completely different.

They are describing someone who is five foot seven to five foot nine. My client is six feet. Someone with corn rows, which is braids in the hair. My client looks the same today as he did the night that he went out with Jennifer. I think you're going to be relieved at the end of this case to see that there is I think about nine minutes of, probably more than that in total but there is at least nine minutes of surveillance video that shows absolutely nothing. It shows two people riding around.

What really happened that night was that my client had encountered Jennifer Johnson prior. And he did have her phone number, and he had called. And then he bumped into her that night as she was going out and as he was

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1 out at his friend and said hey, you want to get high?
2 Yes, let's get high. I'm going out anyway; I'm going to
3 a bar right now to meet my boyfriend. Let's get high.
4 That's how it started okay but she got in this
5 appointment so to speak with Anthony that ended up taking
6 a lot longer to get the job done. It took a lot longer
7 to get high all right.

8 And she got frustrated and she started feeling like
9 she was getting in trouble with her boyfriend for not
10 showing up at the bar as she said she was going to. She
11 comes up with this over the top elaborate excuse not to
12 mess up her relationship that she really wanted. And all
13 she wanted to do was to get high. She didn't want to be
14 gone for an hour plus with this guy she hardly knew but
15 that's what it turned out to be. So she comes back and
16 she says I was kidnapped. It's outrageous.

17 But guys I want to emphasize to you my client has
18 been indicted and I want to talk about that just a
19 minute. You may have heard the old phrase you can indict
20 a ham sandwich. That's what is happening here. A ham
21 sandwich never did anything to hurt anybody, right;
22 that's why that's the phrase. You can indict a ham
23 sandwich. You can indict somebody who is innocent, okay.
24 That's what happened here. I think you'll find that
25 that's what happened here. Pay attention to the

State v Anthony McClain
Opening Statements-Remarks by Mr. Mayer
March 13, 2017

1 evidence. It doesn't fit together. It's a shoddy case
2 and like I said before I think you will be relieved at
3 the end to be able to find my client not guilty and I
4 hope that's what you do. Thank you very much.

5 THE COURT: Call your first witness.

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State v Anthony McClain
Hannah Lambert-Direct Examination by Mr. Osborne
March 13, 2017

1 MR. OSBORNE: The State calls Hannah Lambert.
2 [Whereupon, Ms. Lambert comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]
5 CLERK OF COURT: Once seated state your first and
6 last name and spell out your last name please.
7 THE WITNESS: Hannah Lambert, L-A-M-B-E-R-T.
8 MR. OSBORNE: Thank you, Your Honor.
9 - - - - -
10 HANNAH LAMBERT,
11 Having been first duly sworn,
12 Was examined and testified as follows:
13 DIRECT EXAMINATION
14 BY MR. OSBORNE:
15 Q. Ms. Lambert, let's just take a minute to introduce
16 yourself to the jury. How old are you?
17 A. I'm 23.
18 Q. Where did you grow up?
19 A. Beaufort, South Carolina.
20 Q. And did you -- where did you go to high school?
21 A. Beaufort High.
22 Q. And did you go to college?
23 A. Uh Huh, College of Charleston.
24 Q. Did you graduate?
25 A. Yes, in May.

State v Anthony McClain
Hannah Lambert-Direct Examination by Mr. Osborne
March 13, 2017

1 Q. And what was your major?
2 A. Economics.
3 Q. Where do you work now?
4 A. David Aylor Law offices.
5 Q. David Aylor, right down the road?
6 A. Yes.
7 Q. Married?
8 A. No.
9 Q. Any children?
10 A. No.
11 Q. Let's go to 2015, a couple of years ago. Were you
12 in school then?
13 A. Yes.
14 Q. And you were studying what did you say?
15 A. Economics.
16 Q. Without getting into the specific address where did
17 you live then?
18 A. I was on Calhoun Street.
19 Q. Okay. Let me just ask you generally speaking how
20 long did you -- that's downtown Charleston, right?
21 A. Uh Huh.
22 Q. How long did you live downtown Charleston?
23 A. The whole time I went to college so four years, five
24 years.
25 Q. Okay. And so during that time you would often I

1 assume walk around downtown to various restaurants and
2 whatnot?

3 A. Uh Huh.

4 THE COURT REPORTER: Is that a yes?

5 A. Yes.

6 Q. [Mr. Osborne] Would you say that it was uncommon for
7 individuals to talk to and maybe just strike up a
8 conversation as you're walking around?

9 A. No.

10 Q. It happened a lot?

11 A. Yes.

12 Q. And when you didn't know the individuals is it fair
13 to say that maybe you'd try to ignore them and keep
14 walking?

15 A. Yes, that's fair.

16 Q. So let's talk specifically about the night of June
17 the 1st going into the early morning hours of June the
18 2nd. Did you go out that night?

19 A. Yes.

20 Q. And just tell the jury generally what were your
21 plans, what were you going to do?

22 A. We went to Silver Dollar usually for the drink
23 specials. So that was pretty much our only plan.

24 Q. So you were in college ---

25 A. --- typical college night, yes.

State v Anthony McClain
Hannah Lambert-Direct Examination by Mr. Osborne
March 13, 2017

1 Q. Typical college night just going out drinking and
2 hanging out?
3 A. Uh Huh.
4 Q. So this night who did you go out with?
5 A. I went out with Morgan, Katheryn, and Sebastian.
6 Q. Okay. Morgan Osborne?
7 A. Yes.
8 Q. And do you know Katheryn's last name?
9 A. Hemphill.
10 Q. And Sebastian?
11 A. I don't know his last name.
12 Q. Okay. Where did you leave from?
13 A. I think we started at Morgan's house.
14 Q. Okay. Do you know, and I know this has been a while
15 ago, but do you know about what time you got to the
16 Silver Dollar?
17 A. I would probably guess around 10; that's usually
18 when we went to the bars.
19 Q. Okay. How long about did you stay?
20 A. A few hours.
21 Q. Okay. I know you were in college so I guess y'all
22 were probably drinking. Do you recall what you drank
23 that night?
24 A. No. I do know I wasn't all that drunk that night
25 though because I remember the walk home and everything.

State v Anthony McClain
Hannah Lambert-Direct Examination by Mr. Osborne
March 13, 2017

1 Q. All right. You said you weren't that drunk. I know
2 this is putting you back but let's say one is not very
3 drunk at all, you just had one drink or one beer or
4 whatever and ten is like fall down drunk. Where would
5 you say you were that night?

6 A. Two, three.

7 Q. All right. So when you left the Silver Dollar where
8 were you headed?

9 A. We were headed back to Morgan's house.

10 Q. Okay.

11 MR. OSBORNE: Your Honor, I'd like to publish
12 State's exhibit 1. I think it's been admitted without
13 evidence -- without objection.

14 MR. MAYER: No objection, Your Honor.

15 THE COURT: It's admitted.

16 [Whereupon, State's exhibit number 1 is entered into
17 evidence by the court]

18 [Whereupon, the photograph is shown]

19 Q. [Mr. Osborne] Can you get your bearing looking at
20 that map?

21 A. I probably would need the street names on there. If
22 you can direct me to King and Calhoun, yes.

23 Q. They are actually on there but the resolution is
24 really bad. Let's try this.

25 MR. OSBORNE: Your Honor, may she stand?

State v Anthony McClain
Hannah Lambert-Direct Examination by Mr. Osborne
March 13, 2017

1 THE COURT: Yes.

2 Q. [Mr. Osborne] If you want to stand you can get
3 closer to the map because I'm going to ask you to point
4 out a couple of things.

5 [Whereupon, the witness complies]

6 Q. Can you tell where the Silver Dollar is on that map?

7 A. It looks like it is probably about in the middle
8 there [indicates].

9 Q. It's going to be a little cumbersome but you can
10 walk over and point to it.

11 [Whereupon, the witness leaves the stand]

12 A. Morris Street is over here [indicates] so Dollar I
13 think is about here [indicates]. I'm trying to remember
14 exactly where on King.

15 Q. Okay. And where is King again?

16 A. Right here [indicates].

17 Q. Okay. So when you left King where did you say you
18 were heading again?

19 A. To Morgan's house on Morris.

20 Q. Okay. So where is Morris Street?

21 A. Morris is right here [indicates].

22 Q. Okay. So did you, Morgan, Sebastian, and Katheryn
23 all leave together?

24 A. Yes.

25 Q. And y'all were headed to Morgan's house?

State v Anthony McClain
Hannah Lambert-Direct Examination by Mr. Osborne
March 13, 2017

1 A. Yes.

2 Q. And she lives on Morris Street?

3 A. Yes.

4 Q. Now when you were walking down Morris Street were
5 y'all all walking in a group or were y'all staggered?

6 A. We were in a group but Katheryn and I were ahead of
7 Morgan and Sebastian so they were a few feet behind us.

8 Q. Okay. So you and Katheryn were in front and a few
9 feet behind you were Sebastian and Morgan.

10 A. Correct.

11 Q. Okay. All right. Go ahead and tell the jury while
12 y'all were walking down Morris Street what happened.

13 [Whereupon, the witness returns to the stand]

14 A. So while we were walking a man approached us from
15 the side of the road. We were on the right side of
16 Morris. He asked if he could take a picture with us. He
17 was making a few comments. I don't remember the exact
18 comments. And we refused to take a picture.

19 Katheryn and I kind of disregarded. He mentioned we
20 were being disrespectful; we just kept walking. Behind
21 us I guess Morgan was trying to defend us. Things got a
22 little heated and the next thing ---

23 Q. --- let me stop you right there. So he makes a
24 comment about taking a picture. Did he say who he wanted
25 to take a picture with?

State v Anthony McClain
Hannah Lambert-Direct Examination by Mr. Osborne
March 13, 2017

1 A. I don't remember him saying who he wanted to take a
2 picture with.

3 Q. Okay. Do you know if that comment was directed
4 toward you or kind of more toward the group?

5 A. At the time I took it as it was directed towards all
6 of us.

7 Q. What was your hair color back then?

8 A. It was brown.

9 Q. So and you said that y'all made some sort of comment
10 and he said you're being disrespectful or rude?

11 A. We just refused to take a picture so.

12 Q. And then you said that Morgan was defending you. Do
13 you remember what she said?

14 A. No, I don't.

15 Q. Okay. But was the tone that Morgan was taking with
16 the individual was it friendly?

17 A. I would say she was sassy.

18 Q. Sassy, okay. So you and Katheryn just keep walking.

19 A. Correct.

20 Q. You lived downtown and this is not uncommon; you
21 just ignore it and keep walking.

22 A. Yes.

23 Q. Okay. So what happens next?

24 A. A few minutes later I hear Morgan and Sebastian
25 yelling gun, run. We all just take off running and run

1 to Morgan's house.

2 Q. Okay. Let's talk about the tone in which Morgan
3 said that. Was it calm?

4 A. No.

5 Q. How would you describe the tone?

6 A. I mean they were yelling, they were screaming to
7 run.

8 Q. Both of them or just Morgan or you're not sure?

9 A. I couldn't tell you if it was both. I just know
10 that I heard it so.

11 Q. Did you feel it appropriate or ask her to elaborate
12 on what she meant by that?

13 A. Not at the time, no. I just knew to run.

14 Q. Okay. And so all four of you then took off running?

15 A. Correct.

16 Q. Okay. Where did you go from there?

17 A. We just ran down Morris to Morgan's house.

18 Q. Okay. Let me just clarify a couple of things now.

19 Did you -- well, let me ask you did you get a good look
20 at the individual?

21 A. No, I did not.

22 Q. Why not?

23 A. At the time I wasn't really paying attention. I
24 didn't think anything of it.

25 Q. A stranger is talking to you and you've just trying

State v Anthony McClain
Hannah Lambert-Direct Examination by Mr. Osborne
March 13, 2017

1 to ignore him?

2 A. Correct, yes.

3 Q. Did you ever see him with a gun?

4 A. No, I did not.

5 [Whereupon, Mr. Osborne and Ms. Ginsberg confer]

6 MR. OSBORNE: No further questions, Your Honor.

7 THE COURT: Okay.

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1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. Ms. Lambert, this happened almost two years ago,

4 right?

5 A. Correct.

6 Q. And were you interviewed by the police shortly after

7 this happened?

8 A. Yes.

9 Q. Is it fair to say that your recollection at the time

10 would have been much more clear than it is today,

11 correct?

12 A. Correct.

13 Q. All right. So isn't it true that at the time you

14 said that this person who came up to y'all was in his mid

15 to late 20's, isn't that right?

16 A. Yes, I guess so.

17 Q. Approximately 5 foot, seven inches in height? Is

18 that yes; I'm sorry.

19 A. Yes.

20 Q. Okay. And as far as you recall at that time that

21 person just appeared kind of in the area, is that

22 correct?

23 A. Yes.

24 Q. And you testified with Mr. Osborne that you were

25 just a few feet ahead of your friends; something like

State v Anthony McClain
Hannah Lambert-Cross-Examination by Mr. Mayer
March 13, 2017

1 eight feet or ten feet something like that?

2 A. Correct.

3 Q. Okay.

4 MR. MAYER: No further questions, Your Honor.

5 THE COURT: Anything further?

6 MR. OSBORNE: Just one question, Your Honor.

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State v Anthony McClain
Hannah Lambert-Redirect Examination by Mr. Osborne
March 13, 2017

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REDIRECT EXAMINATION

BY MR. OSBORNE:

Q. Now correct me if I'm wrong but when you were walking together and you were staggered you were just a couple of feet away, is that correct?

A. [No response]

Q. And then when the subject -- you have to answer; I'm sorry.

A. Yes.

Q. And then when the subject said something to you you kept walking and not paying -- you don't know what happened behind you is that accurate?

A. Correct. Yes.

Q. Okay.

MR. OSBORNE: No further questions, Your Honor.

THE COURT: Anything further? You may step down.

[Whereupon, the witness is excused and exits the witness stand]

THE COURT: Next witness.

State v Anthony McClain
Katheryn Hemphill-Direct Examination by Mr. Osborne
March 13, 2017

1 MR. OSBORNE: The State calls Katheryn Hemphill.
2 [Whereupon, Ms. Hemphill comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]
5 CLERK OF COURT: Once seated state your first and
6 last name and spell out your last name please.
7 THE WITNESS: My name is Katheryn Hemphill. My
8 last name H-E-M-P-H-I-L-L.
9 - - - - -
10 KATHERYN HEMPHILL,
11 Having been first duly sworn,
12 Was examined and testified as follows:
13 DIRECT EXAMINATION
14 BY MR. OSBORNE:
15 Q. All right Katheryn, how old are you?
16 A. Twenty-two.
17 Q. And where did you grow up?
18 A. Rock Hill, South Carolina.
19 Q. Did you go to Rock Hill High?
20 A. No, sir. It was Northwestern.
21 Q. Okay. You went to college?
22 A. College of Charleston.
23 Q. Okay. Did you graduate?
24 A. I graduate in May.
25 Q. Okay. Married? Children?

State v Anthony McClain
Katheryn Hemphill-Direct Examination by Mr. Osborne
March 13, 2017

- 1 A. No, neither.
- 2 Q. All right. Let's just get right into it. In 2015
- 3 were you in school then?
- 4 A. Yes.
- 5 Q. All right. You don't have to give the specific
- 6 address but where did you live back then?
- 7 A. King Street.
- 8 Q. Downtown?
- 9 A. Yes.
- 10 Q. On the night of June the 1st going into June 2nd did
- 11 you hang out with your friends?
- 12 A. Yes.
- 13 Q. And who were you hanging out with that night?
- 14 A. Morgan and Hannah and I believe we were with a
- 15 couple other people; Emily and a couple of other friends.
- 16 Q. And where did y'all go?
- 17 A. We went to Dollar.
- 18 Q. Silver Dollar ---
- 19 A. --- Silver Dollar ---
- 20 Q. --- that's on King Street ---
- 21 A. --- on King Street.
- 22 Q. Just drinking, hanging out with your friends;
- 23 nothing unusual?
- 24 A. No.
- 25 Q. At least not to that point?

State v Anthony McClain
Katheryn Hemphill-Direct Examination by Mr. Osborne
March 13, 2017

- 1 A. Yes.
- 2 Q. When y'all left where were y'all headed to?
- 3 A. Probably to Emily's house. We were walking down
- 4 Morris Street so.
- 5 Q. Okay. Did Emily live with Morgan? If you don't
- 6 know that's okay.
- 7 A. They do now. I can't remember at the time if Morgan
- 8 was at that Morris Street house or not. We've all moved
- 9 around so many times.
- 10 Q. Okay. When y'all left the Silver Dollar who was all
- 11 in the group walking down Morris?
- 12 A. Me, Morgan, Hannah, and Sebastian.
- 13 Q. Okay. Were y'all all walking together in one group
- 14 or were y'all staggered or split up in some way?
- 15 A. Hannah and I were walking I believe in front of
- 16 Sebastian and Morgan. But I know for sure that Hannah
- 17 and I were a little separated from Morgan and Sebastian.
- 18 Q. Okay. A little bit in front of them?
- 19 A. Uh Huh.
- 20 Q. A few feet or so do you know? It may have changed.
- 21 At the beginning was it just ---
- 22 A. --- yeah, I don't know; maybe five or six feet.
- 23 Q. Okay. Were you drinking that night?
- 24 A. Yes.
- 25 Q. So your intoxication level let's just put it on

1 scale; it's easiest that way I think. One to ten; one is
2 barely drinking and ten is like can't even remember what
3 I was doing that night. Where do you think you were?

4 A. Maybe a six or seven.

5 Q. Okay. So you're walking with Hannah. Sebastian and
6 Morgan are behind you. Go ahead and tell the jury what
7 happened.

8 A. Well, we were walking in front of them and then
9 Morgan comes up to Hannah and I and runs up frantically
10 and is screaming basically to run. Then we all just ran
11 to Morgan's house and kind of I guess when we got there
12 sat down and kind of talked about everything. We were
13 all in shock but.

14 Q. Don't mention what anyone else talked about inside
15 the house okay. That would be -- we'll get them for
16 that.

17 A. Okay.

18 Q. When you were walking down the road and you said
19 that Morgan came running up screaming and all that do you
20 have any idea what she was screaming about?

21 A. No, I can't remember exactly what she said but she
22 did tell us to run basically.

23 Q. Okay.

24 A. It all happened so fast.

25 Q. Was there a conversation of any sort with anyone

State v Anthony McClain
Katheryn Hemphill-Direct Examination by Mr. Osborne
March 13, 2017

1 prior to that?

2 A. What do you mean?

3 Q. Do you remember talking to the police on the night
4 of the incident?

5 A. Yes.

6 Q. Do you remember telling the police that there was
7 an individual that approached your group?

8 A. Yes.

9 Q. Do you remember telling the police that the
10 individual made a comment saying that your group was
11 somehow disrespectful to him?

12 A. I do not remember saying that.

13 Q. Okay. Now let me ask you this. Morgan prior to her
14 coming up running what was her demeanor like? Was she
15 having fun that night?

16 A. Yes, we were all together with a group of friends
17 drinking so.

18 Q. When she came running up to you screaming did it
19 seem like she was having fun then?

20 A. No.

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

22 MR. MAYER: No questions, Judge.

23 THE COURT: Thank you. You may step down.

24 [Whereupon, the witness is excused and exits the
25 witness stand]

State v Anthony McClain
Morgan Osborne-Direct Examination by Ms. Ginsberg
March 13, 2017

1 MS. GINSBERG: The State calls Morgan Osborne.

2 [Whereupon, Ms. Osborne comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Once seated if you can state your
6 first and last name and spell out your last name please?

7 THE WITNESS: Morgan Osborne, O-S-B-O-R-N-E.

8 - - - - -

9 MORGAN OSBORNE,

10 Having been first duly sworn,

11 Was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. GINSBERG:

14 Q. Morgan, are you -- you're not related to David
15 Osborne are you?

16 A. No.

17 Q. Okay. How old are you Morgan?

18 A. Twenty-two.

19 Q. And are you from here in Charleston?

20 A. I'm actually from Costa Rica.

21 Q. Costa Rica? Where did you go for undergrad?

22 A. College of Charleston.

23 Q. And have you graduated yet?

24 A. I graduate in May.

25 Q. And did you go to the College of Charleston back in

State v Anthony McClain
Morgan Osborne-Direct Examination by Ms. Ginsberg
March 13, 2017

- 1 2015?
- 2 A. Yes, ma'am.
- 3 Q. And what was your major?
- 4 A. International Studies.
- 5 Q. And without giving us the specific address where you
- 6 lived what street did you live on?
- 7 A. Morris Street.
- 8 Q. And have you lived downtown for most of your college
- 9 career?
- 10 A. My whole college career.
- 11 Q. Okay. So let's chat about the night of June 1st,
- 12 2015 to June 2nd, 2015. On that night did you have any
- 13 plans to go out?
- 14 A. Yes, a group of us; Hannah, Katheryn, Sebastian all
- 15 met up and decided we wanted to go out; it was break.
- 16 Q. Okay. So it was break and you, Hannah, Sebastian,
- 17 Katheryn you decide to go out. Where do y'all go?
- 18 A. Monday night is like the college thing to go to the
- 19 Silver Dollar on King Street.
- 20 Q. Silver Dollar on King Street. And what time do you
- 21 think you left to go to the Silver Dollar?
- 22 A. Probably 10 or 10:30.
- 23 Q. And how long do you think you stayed at Silver
- 24 Dollar?
- 25 A. A couple of hours; nothing too crazy.

1 Q. Okay. Nothing too crazy. So after the Silver
2 Dollar where were you guys heading?

3 A. Back to my house on Morris.

4 Q. Okay. And what time do you think you left Dollar to
5 go back to your house on Morris Street?

6 A. 12 or 12:30.

7 Q. And how far away is King Street from Morris Street?

8 A. It's so close. It's like a ten minute walk in all.
9 A few blocks away from my house.

10 Q. Okay. So you said that Hannah, Katheryn, and
11 Sebastian were with you. Were they with you on the way
12 back to the house as well?

13 A. Yes.

14 Q. Okay. And so you're walking back to Morris Street.
15 What was everyone's position? Were you guys walking side
16 by side or ---

17 A. --- so Hannah and Katheryn were in front of us and
18 then Sebastian and I were lingering in the back chatting
19 and hanging out.

20 Q. So as you're walking can you tell the jury while
21 you're walking down Morris Street what happened?

22 A. So Sebastian and I were walking and we're all as a
23 group and we see this man and he's being very like I
24 guess not like creepy but very uncomfortable for us. And
25 my other friends it didn't bother but for me it bothered

State v Anthony McClain
Morgan Osborne-Direct Examination by Ms. Ginsberg
March 13, 2017

1 me. I've very protective and I guess sassy demeanor. So
2 he asked to take a picture. I got in his face and I was
3 like no, it's not happening. It got really
4 uncomfortable. I mean we drank but I knew enough that I
5 was uncomfortable, very uncomfortable.

6 Q. I'll stop you really quick. What made you
7 uncomfortable about the person who approached you?

8 A. I think that once you say no, they would leave but
9 they kept coming on and getting in our faces.

10 Q. Okay. And so how did that individual appear to you,
11 cocky, calm?

12 A. No, like drugs and bulging eyes; very intense.

13 Q. Okay. So he comes up to you guys and asks to take a
14 picture. You said you got protective. How did you get
15 protective?

16 A. I got in his face a little bit like no, leave us
17 alone; get out of here kind of. I probably shouldn't
18 have but...

19 Q. Did he say anything to you?

20 A. There were like derogatory words like bitch, come at
21 me or something like that.

22 Q. Okay. So after you guys have this conversation what
23 happened next?

24 A. So I got in his face a little bit and things got a
25 little heated. The next thing I knew I felt like a huge

1 like heavy -- I mean I saw a pistol. It went so fast
2 that it was on the back of my head and it was really
3 heavy. I remember feeling the weight of it.

4 Q. Okay. So you said it was a pistol. How did you
5 know it was a pistol?

6 A. My dad. I've seen guns before. It was a little
7 black pistol.

8 Q. Okay. Can you describe it a little bit further?

9 A. At that time I can't remember exactly but I know
10 that it was a pistol. I knew it didn't have like a
11 revolve. It was like a click. It was like small just
12 like a normal gun.

13 Q. Okay. So at that moment you have what you think is
14 a pistol slammed to your head.

15 A. Yes.

16 Q. What do you do then?

17 A. I was calm and then Sebastian and obviously everyone
18 was kind of freaking out. We did not expect that at all.
19 It's never happened to anyone I know at least. The
20 minute that I felt it release I ran and ---

21 Q. --- what -- I'm sorry, go on.

22 A. I know it was a pistol because it's so heavy. I've
23 never felt anything so heavy against my head.

24 Q. Okay. So you felt the release and then you ran.
25 Where did you run to?

State v Anthony McClain
Morgan Osborne-Direct Examination by Ms. Ginsberg
March 13, 2017

1 A. I ran to my friends who was up front and told them.
2 I was in shock, just to run. We ran to my house on
3 Morris. We locked the door and talked about it and
4 decided to call 911.

5 Q. So as you're running to the house do you know what
6 happened to the guy that put that pistol to your head?

7 A. I saw a car come up but at that point I was focused
8 on myself or the situation; not him.

9 Q. I know it as like two years ago but do you recall
10 sort of what car that was?

11 A. I would say like a small darker color car. I'm not
12 really sure.

13 Q. Like a SUV, like a truck?

14 A. An SUV.

15 Q. Okay.

16 MS. GINSBERG: Court's indulgence.

17 [Whereupon, Mr. Osborne and Ms. Ginsberg confer]

18 Q. [Ms. Ginsberg] Ms. Osborne, do you remember talking
19 to Detective Jarrell, this guy right here [indicates]?

20 A. That night?

21 Q. Shortly after?

22 A. Yes.

23 Q. Do you remember telling Detective Jarrell actually
24 that the vehicle was a dark in color possibly a small car
25 but you were unsure?

State v Anthony McClain
Morgan Osborne-Direct Examination by Ms. Ginsberg
March 13, 2017

1 A. Yes.

2 Q. Okay. When you took this -- or when you made this
3 statement this was shortly after the incident wasn't it?

4 A. Uh huh, like an hour.

5 Q. Okay. So this was pretty fresh in your memory when
6 you did it?

7 A. Yes.

8 Q. And now it's two years ago.

9 A. Yes.

10 Q. So do you recall now after your statement if it was
11 a small car or was it an SUV?

12 A. I would go with whatever I said before.

13 Q. Okay. So the dark in color possibly a small car.

14 A. Yes.

15 Q. When you made this statement an hour after the
16 incident?

17 A. Yes.

18 Q. Thank you.

19 MS. GINSBERG: No further questions, Your Honor.

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State v Anthony McClain
Morgan Osborne-Cross-Examination by Mr. Mayer
March 13, 2017

1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. Ms. Morgan, Aaron Mayer. I'm curious. What made
4 you say a minute ago it was an SUV?

5 A. I was just assuming. I don't know much about cars.
6 It's either a truck or a SUV to me.

7 Q. Okay. What's an SUV to you?

8 A. Like a small midsize car.

9 Q. Okay. So you were just talking about the statement
10 you gave back right at the time of the incident that this
11 happened. Is it fair to say that was a long time ago?

12 A. Yes.

13 Q. Is it fair to say your memory probably was pretty
14 clear back then compared to what it might be today?

15 A. Yes.

16 Q. Isn't it true that back then you described the
17 person who approached you guys as being about five feet
18 nine inches tall?

19 A. Probably.

20 Q. Black male, somewhere between 22 and 35 years old?

21 A. Yes.

22 Q. You told the cops that night that it was Hannah and
23 Katheryn who were way back. But today you're saying that
24 they were ahead of you guys. What changed?

25 A. All I know is that my friends were away from me and

1 that I was heading to my house. And I definitely wanted
2 to warn them.

3 Q. Okay.

4 A. And I saw them like a minute after that happened so.

5 Q. Back when this situation occurred you told the
6 police that it was a silver color car or you thought it
7 was is that right?

8 A. I'm not sure.

9 Q. But if you had said silver at the time that would
10 have been your recollection; you're not changing the
11 color of it today, right?

12 A. Correct.

13 Q. Okay.

14 A. I don't think I was paying much attention to the
15 color of the car at that point.

16 Q. But if a detective asked you what was the color of
17 the car and you said silver then that would be fair?

18 A. Yes.

19 Q. Okay. Do you remember telling Detective Krasowski
20 that it was a silver in color car?

21 A. I do not. I remember somewhat of the conversation
22 an hour after since it was like two years ago.

23 Q. Sure. Now did the police ask you to try and
24 identify somebody?

25 A. Yes.

State v Anthony McClain
Morgan Osborne-Cross-Examination by Mr. Mayer
March 13, 2017

1 Q. And what did they do; give you a photographic lineup
2 with six faces or something?

3 A. Correct.

4 Q. Okay. And you didn't identify him did you?

5 A. I could not. I felt like they all looked very
6 similar.

7 Q. Okay. And you said that the person who did this put
8 a gun to your head but at the same time they were in your
9 face. Can you describe kind of where they were standing
10 in relation to you?

11 A. In front of me. I just it was wrapped around next
12 to me. All I know is how heavy that thing was and I saw
13 a pistol.

14 Q. You say it was heavy. Was it on top of your head?

15 A. It had me like right here [indicates] in the back of
16 my head.

17 Q. And you were standing?

18 A. Yes.

19 Q. Okay. Were you like leaning into it? I don't
20 understand the heavy part.

21 A. It was someone slammed a pistol at me so it's very
22 heavy.

23 Q. Okay. It was like you were hit with something?

24 A. Yes.

25 Q. Okay. And even the night this happened when you

1 were interviewed about it you were unable to say what the
2 person was wearing, is that right?

3 A. Correct.

4 Q. And you're not trying to say they were wearing
5 something particular today are you?

6 A. No.

7 Q. Okay. I'm very sorry that happened to you.

8 MS. GINSBERG: Briefly, Judge.

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State v Anthony McClain
Sebastian Bedon-Direct Examination by Ms. Ginsberg
March 13, 2017

1 MS. GINSBERG: The State calls Sebastian Bedon.

2 [Whereupon, Mr. Bedon comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Once seated please state your first
6 and last name and spell your last name for the record
7 please.

8 THE WITNESS: Sebastian Bedon, last name is B-E-D-
9 O-N.

10 - - - - -

11 SEBASTIAN BEDON,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. GINSBERG:

16 Q. Sebastian, how old are you?

17 A. I am 21.

18 Q. Are you married?

19 A. No.

20 Q. Do you have any kids?

21 A. No.

22 Q. Are you currently in school right now?

23 A. Right now I am not. I am working to pay off some
24 student loans.

25 Q. Okay. When you were in school where did you go to

State v Anthony McClain
Sebastian Bedon-Direct Examination by Ms. Ginsberg
March 13, 2017

1 school?
2 A. College of Charleston.
3 Q. And what were you studying?
4 A. Finance.
5 Q. Finance. Where do you live currently? You don't
6 have to give the specific address.
7 A. In Beaufort County, South Carolina.
8 Q. So you live in Beaufort now?
9 A. Yes.
10 Q. Do you currently work?
11 A. Yes, I do.
12 Q. What do you do?
13 A. Remodeling, painting, and drywall.
14 Q. Okay. Back in June of 2015 were you at the College
15 of Charleston?
16 A. Yes, I was.
17 Q. It was break then?
18 A. It was break but yes.
19 Q. But you were enrolled in the college.
20 A. Yes.
21 Q. We'll just cut to the chase. The night of June 1st,
22 2015 did you have plans to go out that night?
23 A. Yes, because I was going to the Dollar. You can't
24 beat that special of dollar drinks.
25 Q. Okay. So you were going to the Dollar. Who was

1 going with you?

2 A. Katheryn, Morgan, Hannah, I know we were meeting up
3 with other girls there too.

4 Q. Okay. And where is the Dollar?

5 A. On King Street.

6 Q. And you were with Morgan, Katheryn, Hannah is that
7 what you said?

8 A. Yes.

9 Q. And so how long did you stay at the Dollar?

10 A. I would say like two hours; two hours max.

11 Q. And after the Dollar where did you guys go?

12 A. We were going back to Morgan's house. We were on
13 Morris Street?

14 Q. Is that where Morgan's house is on Morris Street?

15 A. Yes, I believe it was further down Morris Street.

16 Q. So as you're heading back to Morgan's house what
17 happened?

18 A. We were walking down Morris Street. I remember
19 Morgan being by my side. We were with a larger group
20 specifically with Hannah and Katheryn as well. They were
21 a couple of feet ahead of us but there were other girls
22 also like behind us.

23 I don't know if they were really coming with us but
24 we were all kind of walking in a cluster. And that's
25 when I kind of noticed that a car approached coming from

State v Anthony McClain
Sebastian Bedon-Direct Examination by Ms. Ginsberg
March 13, 2017

1 King Street onto Morris Street. And he leaned his head
2 out the window and said y'all are beautiful. Can I get a
3 picture?

4 Q. Okay. I'll just stop you right there. I know it's
5 been two years but from what you remember what was the
6 car like? Can you describe it?

7 A. It was a sedan. I remember it being kind of like
8 from where I was on the sidewalk I was like eye level
9 with him.

10 Q. Okay. Do you remember speaking to detectives
11 shortly after this incident?

12 A. Yes, I do.

13 Q. Do you remember saying that it was a red sedan?

14 A. Yes.

15 Q. Okay. So you're walking towards Morris Street.
16 You have all your friends' girls in front and behind you
17 and this guy comes up in a red sedan and yells out the
18 window you girls are beautiful can I take a picture? Is
19 that right?

20 A. Yes, ma'am.

21 Q. And so how did everybody react to it?

22 A. Brushed it off really. It's like some of the girls
23 brushed it off a little, a little worst that others I
24 guess.

25 Q. What do you mean by that ---

1 A. --- they got sassy with him.

2 Q. Okay, got sassy with him. And after that what
3 happened?

4 A. The car stopped in the middle of Morris Street. And
5 there were no cars coming, which is surprising. But the
6 car stopped and we kept walking. And the male exited the
7 vehicle and approached us and got really close to us and
8 admitted that he felt disrespected. And there was kind
9 of like bickering back and forth.

10 Q. Okay. And what happened after that?

11 A. A gun was presented. Once the gun was presented a
12 couple of the girls ran. Like I said there were people
13 behind us as well. And they just took off running.

14 Q. How did you know it was a gun?

15 A. Besides I've seen a gun before.

16 Q. Can you describe it a little bit to the jury?

17 A. It was a black handgun. If you're familiar with
18 handguns it kind of looked like a Glock.

19 Q. Okay. So you said the guy got kind of close to
20 you. How was he -- what did he look like? How as he --
21 what was his demeanor?

22 A. His demeanor was definitely very aggressive, very
23 aggressive yes.

24 Q. And when he pulled that gun on you did he say
25 anything to you?

State v Anthony McClain
Sebastian Bedon-Direct Examination by Ms. Ginsberg
March 13, 2017

1 A. I remember that he kind of like showed the gun,
2 showed that he had a gun to the girl that I guess you
3 would say rudest to him. And at that point I tried to
4 kind of calm the situation down saying we didn't have any
5 intentions of any problems.

6 Then he showed the gun to me, presented it to my
7 face and Morgan kind of got loud with him and that's when
8 he put the gun on her head. And the moment he did that
9 you could see that there were cars coming like from King
10 Street onto Morris Street. And I think the subject took
11 notice of that and when he did that he kind of like
12 stepped away.

13 Before he stepped away he asked us if we had any
14 money and I didn't have a dollar on me so I said no and
15 he just took off. And as that was happening the rest of
16 the girls were running and we were kind of running.

17 Q. So the girls were running. What did you do?

18 A. Started following them.

19 Q. Okay.

20 MS. GINSBERG: Court's indulgence.

21 [Whereupon, Mr. Osborne and Ms. Ginsberg confer]

22 Q. [Ms. Ginsberg] You said earlier Sebastian that you
23 went to the bar on King Street and then were going to
24 Morgan's house on Morris Street.

25 A. Yes.

1 Q. How far away is that?
2 A. Like ten minutes, a ten minute walk.
3 Q. Is it blocks and blocks away or?
4 A. No, just a few blocks away.
5 Q. Okay. You mentioned that he presented the gun at
6 you. How did he do that? Like where was the gun?
7 A. Well, when he first presented the gun he didn't
8 point it to the girl; he just made it known that he had a
9 gun. And then whenever I -- like a word came out of my
10 mouth I had a gun to my face.
11 Q. Where to your face?
12 A. My face right here [indicates].
13 [Whereupon, Mr. Osborne and Ms. Ginsberg confer]
14 Q. So you're walking up Morris Street -- I'm sorry, I'm
15 just getting specifics -- how far up Morris Street like a
16 block or two or three blocks before the suspect came out
17 and presented that firearm in your face?
18 A. I believe we were right before Coming Street.
19 Q. Right before Coming Street?
20 A. Yes.
21 Q. Okay. No further questions. Please answer any
22 questions Mr. Mayer may have.
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State v Anthony McClain
Sebastian Bedon-Cross-Examination by Mr. Mayer
March 13, 2017

1	CROSS-EXAMINATION
2	BY MR. MAYER:
3	Q. Mr. Bedon, how are you?
4	A. How are you?
5	Q. So you started drinking that night at the Silver
6	Dollar or had you been drinking before?
7	A. No. I started drinking at the Silver Dollar.
8	Q. Okay. And do you recall describing the person who
9	did that to you as being about 30 years of age?
10	A. Yes, I recall that.
11	Q. About five feet eight inches or five feet nine
12	inches I think was the range you gave police.
13	A. Yes.
14	Q. Does that sound correct?
15	A. Yes.
16	Q. And you described someone with I think the quote was
17	poorly done corn roll. Is that accurate?
18	A. Yes. His hair was ---
19	Q. --- it says rolls but its cornrows I guess.
20	A. Yes.
21	Q. And you described someone with baggy shorts on or
22	something like this, is that right?
23	A. I knew that they were baggy pants of some sort. I
24	didn't -- I can't really remember if they were jeans or
25	shorts or longer shorts but they were baggy. And I do

1 remember like a white t-shirt.

2 Q. And you remember which hand this person was holding
3 the weapon in, correct?

4 A. Right now I really can't.

5 Q. Right. But back at the time the police interviewed
6 you you remembered what hand the person was holding the
7 gun in.

8 A. I'm sure I did.

9 Q. And do you remember telling them it was the right
10 hand, does that sound accurate?

11 A. Yes, it sounds...

12 Q. You wouldn't dispute that today would you?

13 A. No.

14 Q. Okay. No further questions.

15 MS. GINSBERG: Just briefly, Judge.

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State v Anthony McClain
Sebastian Bedon-Redirect Examination by Ms. Ginsberg
March 13, 2017

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REDIRECT EXAMINATION

BY MS. GINSBERG:

Q. Sebastian, are you 100 percent sure that it was in his right hand?

A. No, whenever I saw just the gun in my face that's what I was looking at; looking down the barrel of the gun.

Q. But you recall him getting into a red sedan, isn't that right?

A. Yes.

MS. GINSBERG: No further questions, Your Honor.

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

[Whereupon, the witness is excused and exits the witness stand]

State v Anthony McClain
Proceedings
March 13, 2017

1 THE COURT: We'll take a few minutes now. Please
2 go to the jury room. Please do not discuss the case.

3 [Whereupon, the jury exits at 4:30 p.m.]

4 THE COURT: We'll take a break for ten minutes.

5 [Whereupon, court is in recess from 4:30 p.m. until
6 4:42 p.m.]

7 THE COURT: All right. Are you ready for them?

8 MR. MAYER: Yes, Your Honor.

9 THE COURT: All right. Bring them on. Is your
10 next witness nearby?

11 MR. OSBORNE: Yes, Your Honor. She is right
12 outside.

13 [Whereupon, the jury enters at 4:45 p.m.]

14 THE COURT: Your next witness?
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State v Anthony McClain
Ariel Police-Direct Examination by Mr. Osborne
March 13, 2017

1 MR. OSBORNE: The State calls Officer Ariel Polite.
2 [Whereupon, Officer Polite comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]
5 CLERK OF COURT: Please have a seat. Please state
6 your first and last name and spell out your last name
7 please.
8 THE WITNESS: Ariel Polite, P-O-L-I-T-E.
9 - - - - -
10 ARIEL POLITE,
11 Having been first duly sworn,
12 Was examined and testified as follows:
13 DIRECT EXAMINATION
14 BY MR. OSBORNE:
15 Q. All right Officer Polite, where do you work?
16 A. For the City of Charleston Police Department.
17 Q. And how long have you worked there?
18 A. Seven years.
19 Q. What are some of the assignments that you've had
20 since you've been there?
21 A. Patrol. I've been a patrol officer the entire time.
22 Q. Okay. And I believe CPD breaks it down into teams?
23 A. Yes.
24 Q. And so what teams have you worked at?
25 A. Team One the entire time.

State v Anthony McClain
Ariel Police-Direct Examination by Mr. Osborne
March 13, 2017

1 Q. Team One the whole time. Tell the jury the
2 boundaries of Team One.

3 A. Team One is Calhoun Street north in between the
4 Cooper River Bridge and the Ashley -- the Cooper River
5 and the Ashley River.

6 Q. Okay. Before we start getting into what you did in
7 this specific case I want to ask you about the Exxon at
8 420 Meeting Street, is that in Team One?

9 A. Yes.

10 Q. Is that an area that you frequently patrol?

11 A. Yes.

12 Q. Do you happen to know is the business open around
13 12:30 at night?

14 A. It is, but the store is closed and you have to use
15 the window.

16 Q. Okay.

17 A. After 12:30.

18 Q. Okay. So it's open but you have to go to the
19 window.

20 A. Yes.

21 Q. So just tell the jurors who aren't familiar with
22 that when you patrol that area at night describe the
23 scene. What is a common scene that you might see when
24 you go there?

25 A. The area in which the gas station is located is

State v Anthony McClain
Ariel Police-Direct Examination by Mr. Osborne
March 13, 2017

1 frequented by drug users, drunks, homeless people and
2 they are always there.

3 Q. All right, let's get into June the 2nd of 2015. Were
4 you working that night?

5 A. Yes.

6 Q. And actually the night of June the 1st into the early
7 morning hours of June the 2nd.

8 A. Yes.

9 Q. And what were you doing that night? What was your
10 assignment?

11 A. Patrol.

12 Q. Okay. And what time were you scheduled to get off
13 that night?

14 A. At 3 a.m.

15 Q. Okay. While on -- before we get into what you did
16 let me ask you something. Morris Street; is that in the
17 City and County of Charleston?

18 A. It is.

19 Q. What about Morris and Coming?

20 A. It is.

21 Q. Morris and Saint Phillips?

22 A. Yes.

23 Q. All of Morris is in the City and County of
24 Charleston?

25 A. Yes.

State v Anthony McClain
Ariel Police-Direct Examination by Mr. Osborne
March 13, 2017

1 Q. Okay. So while on patrol did you have the occasion
2 to respond to a call of service at ■ Cannon?

3 A. I did.

4 Q. Is that also in the City and County of Charleston?

5 A. It is.

6 Q. What was the nature of that call?

7 A. It was in reference to a missing person.

8 Q. Okay. So taking a missing person call and
9 subsequent report is that part of your duties as a patrol
10 officer?

11 A. Yes, it is.

12 Q. Do you know what time that call came in?

13 A. Approximately around 2:18.

14 Q. And about what time were you dispatched to the call?

15 A. Approximately 2:21.

16 Q. And about what time did you end up arriving on
17 scene?

18 A. Approximately 2:26.

19 Q. Okay. I'm showing you what has already been marked
20 and admitted into evidence. And you're probably going to
21 have to stand up and that's okay; that door swings
22 [indicates].

23 Can you mark or point to ■ Cannon on the map? And
24 if you need to get closer to it the resolution is pretty
25 bad; that's the best we could do.

State v Anthony McClain
Ariel Police-Direct Examination by Mr. Osborne
March 13, 2017

1 [Whereupon, the witness reviews map]
2 A. I'm unable to see the street signs.
3 [Whereupon, Mr. Osborne adjusts the photograph]
4 Q. Does that help a little bit?
5 A. Yes, it does.
6 Q. Do you see Cannon Street?
7 A. I do. This [indicates] is Cannon Street, and ■
8 Cannon is around this area [indicates].
9 Q. Okay. That's the only thing I'm going to need you
10 to point at.
11 [Whereupon, the witness returns to the stand]
12 Q. All right. So when you arrived to ■ Cannon Street
13 tell the jury who did you meet with?
14 A. Patricia Johnson.
15 Q. Okay. And who -- was she the complainant?
16 A. She was the complainant.
17 Q. And you said this was a missing person call for
18 service. Who was being reported missing?
19 A. Jennifer Johnson, Patricia's daughter.
20 Q. Okay. Was there anyone else there?
21 A. Yes. Jennifer's brother as well as her boyfriend
22 was there.
23 Q. Okay. So -- now you can't testify to what Ms.
24 Johnson told you, Patricia that is, but I am going to ask
25 you what was her demeanor like?

State v Anthony McClain
Ariel Police-Direct Examination by Mr. Osborne
March 13, 2017

1 A. She was very worried about the whereabouts of her
2 daughter.

3 Q. Okay. How about Jennifer's brother or her
4 boyfriend?

5 A. They were all worried. They were making phone calls
6 and pacing back and forth.

7 Q. All right. Now after talking to Patricia, Ms.
8 Johnson the mother and getting some of the basic
9 information what did you elect to do?

10 A. To write a missing person report.

11 Q. When you make that decision to file a missing person
12 report what does that entail?

13 A. I get information about the missing person such as
14 the last seen date and time, a description of the
15 clothing, any vehicles, where they frequent and a
16 description of their person including scars, marks and
17 tattoos.

18 Q. Okay. What is the importance of getting that type
19 of description as far as marks and tattoos?

20 A. Well, it's easy to change clothes. Scars and marks
21 and tattoos are usually permanent just in case we need to
22 identify a person.

23 Q. Okay. So you're getting all this information down
24 from Patricia, the boyfriend and her brother. Do you
25 make any attempts to try to locate Jennifer yourself?

State v Anthony McClain
Ariel Police-Direct Examination by Mr. Osborne
March 13, 2017

- 1 A. I did.
- 2 Q. And what did you do?
- 3 A. I obtained her cell phone number and I called her
- 4 cell phone from mine.
- 5 Q. What is your cell phone number?
- 6 A. Its [REDACTED].
- 7 Q. [REDACTED]?
- 8 A. Yes.
- 9 Q. Okay. And so you called her in the midst of
- 10 getting information to take the missing person report?
- 11 A. I did.
- 12 Q. Did anyone answer?
- 13 A. No.
- 14 Q. Did it ring?
- 15 A. It did.
- 16 Q. Did you leave a message, do you remember?
- 17 A. I don't remember.
- 18 Q. Okay. So while gathering that information you
- 19 tried to make a phone call and that didn't work. What
- 20 happens next?
- 21 A. While I was out there gathering information Jennifer
- 22 Johnson she speeds up the street and she parks right in
- 23 front of the house where we were.
- 24 Q. All right. What happened then?
- 25 A. She hurriedly got out of the car and she ran to

State v Anthony McClain
Ariel Police-Direct Examination by Mr. Osborne
March 13, 2017

1 either her boyfriend or her mother; I can't remember
2 which one and she embraced them like really tight.

3 Q. Okay. When she stopped her car and she exited the
4 car you said she hurried. How would you describe it?
5 Did she kind of walk up at a hurried pace or?

6 A. It was a jog.

7 Q. And when she got to either her mother or her
8 boyfriend did she say anything?

9 A. Yes.

10 Q. What did she say?

11 A. She said that motherfucker kidnapped me.

12 Q. How would you describe the tone in which she made
13 that comment?

14 A. It was very loud and excited; above normal voice
15 level.

16 Q. Did you have the occasion to speak to Jennifer?

17 A. I did.

18 Q. So you say that you've worked downtown Charleston
19 and I assume that you've had the occasion to arrest
20 people for public intoxication.

21 A. I have.

22 Q. Is it fair to say that you've also arrested people
23 for narcotic use?

24 A. I have.

25 Q. Is it fair to say that -- and seven years you've

State v Anthony McClain
Ariel Police-Direct Examination by Mr. Osborne
March 13, 2017

- 1 | been doing this; all downtown right?
- 2 | A. Yes.
- 3 | Q. And downtown is the King Street area, right?
- 4 | A. Yes.
- 5 | Q. And the business area where the bars are and all
- 6 | that.
- 7 | A. Yes.
- 8 | Q. So I would imagine you run across intoxicated people
- 9 | on a regular basis?
- 10 | A. I do.
- 11 | Q. Especially at night?
- 12 | A. Yes.
- 13 | Q. And you spoke to Jennifer, correct?
- 14 | A. Yes.
- 15 | Q. During your conversations with her did she appear as
- 16 | though she was intoxicated?
- 17 | A. No.
- 18 | Q. In any way?
- 19 | A. No.
- 20 | Q. Did she appear as though she had been smoking crack?
- 21 | A. No.
- 22 | Q. Alcohol?
- 23 | A. No.
- 24 | Q. Did she seem completely sober to you?
- 25 | A. She did.

State v Anthony McClain
Ariel Police-Direct Examination by Mr. Osborne
March 13, 2017

- 1 Q. After speaking to Jennifer what did you do?
- 2 A. After speaking with Jennifer...
- 3 Q. Let me try it another way. After speaking to
- 4 Jennifer did you have a suspect vehicle description you
- 5 were looking for ---
- 6 A. --- I did.
- 7 Q. What did you do with that information?
- 8 A. I broadcast that information over the air.
- 9 Q. Okay. Did officers locate any vehicles that seemed
- 10 like ---
- 11 A. --- no ---
- 12 Q. --- could be viable suspects?
- 13 A. No.
- 14 Q. Not that night?
- 15 A. Not that night, no.
- 16 Q. Okay. I hate to do this to you and I'm sorry but
- 17 directions of the streets are important here so I've got
- 18 to get you back up there and let's talk about some of
- 19 these streets and some of the directions, okay?
- 20 A. All right.
- 21 [Whereupon, the witness steps down from the stand]
- 22 Q. Can you point out Morris and Coming? Let me just
- 23 try this; I'm sorry. So Morris and King; let's do it
- 24 that way. Do you see Cannon?
- 25 A. I do.

State v Anthony McClain
Ariel Police-Direct Examination by Mr. Osborne
March 13, 2017

1 Q. Point out Cannon.
2 A. This is Morris [indicates] and King [indicates].
3 Q. Okay. So that's Morris and King. Now follow
4 Morris towards Rutledge. That first intersection is
5 Morris and what?
6 A. This is Morris and King [indicates].
7 Q. Right. Now follow Morris towards Rutledge.
8 [Whereupon, the witness indicates]
9 Q. When you got to that first intersection what was the
10 first intersection right there?
11 A. This is Morris and Saint Phillips [indicates].
12 Q. Okay, the next intersection?
13 A. This would be -- I'm sorry, this is Morris and Saint
14 Phillips [indicates] and Morris and Coming [indicates].
15 Q. Okay. That's right. Now let me ask you about
16 Morris and Coming. Is that a one-way road or two way
17 road?
18 A. Both are one way.
19 Q. Okay. And do you know the directions that they
20 travel?
21 A. Coming runs south to north. And Morris runs east to
22 west.
23 Q. Okay. So just point that out on the map as best
24 you can.
25 [Whereupon, the witness complies]

State v Anthony McClain
Ariel Police-Direct Examination by Mr. Osborne
March 13, 2017

1 Q. So there is Coming?
2 A. So this is Coming [indicates]. Coming runs north;
3 I'm sorry only north, and Morris runs only west.
4 Q. Okay. So the next street right after Coming is
5 what? Is that Felix?
6 A. Yes. This is Felix [indicates].
7 Q. Is that a two way street or one way street?
8 A. It's a two way street.
9 Q. Okay. Keep going and we'll skip the small road off
10 to the left. Do you know that?
11 A. That would be Jasper.
12 Q. Okay. And the next intersection what is that?
13 A. This is Smith [indicates].
14 Q. Okay, Smith, one way or two way?
15 A. Two way.
16 Q. And the next intersection is what?
17 A. Rutledge.
18 Q. Okay. Rutledge is a one way?
19 A. Yes.
20 Q. Coming back towards the Battery?
21 A. Yes, it runs south.
22 Q. Okay. Thanks.
23 [Whereupon, the witness returns to the stand]
24 Q. So I think I asked you this no suspect vehicle had
25 been located that night ---

State v Anthony McClain
Ariel Police-Direct Examination by Mr. Osborne
March 13, 2017

1 A. --- located not while I was on duty.

2 Q. Okay. And when you secured for the night did
3 Central detectives and other detectives start doing
4 follow up after that?

5 A. Yes, Central arrived on scene.

6 MR. OSBORNE: No further questions, Your Honor.

7 THE COURT: Mr. Mayer?

8 MR. MAYER: Briefly, Judge.

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State v Anthony McClain
Ariel Police-Cross-Examination by Mr. Mayer
March 13, 2017

1	CROSS-EXAMINATION
2	BY MR. MAYER:
3	Q. Officer Polite, you testified about Jennifer Johnson
4	and whether or not she was on drugs and that sort of
5	thing. You did say though she was pretty agitated,
6	right?
7	A. Yes.
8	Q. And isn't being agitated one of the things that
9	crack can do to somebody?
10	A. It can.
11	Q. Okay. And you didn't drug test her did you?
12	A. No, I did not.
13	Q. Okay. No further questions.
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State v Anthony McClain
Ariel Police-Redirect Examination by Mr. Osborne
March 13, 2017

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REDIRECT EXAMINATION

BY MR. OSBORNE:

Q. And when I asked if you thought that she was
intoxicated on crack cocaine and you said no why did you
say that?

A. Because she was very coherent.

Q. When you deal with individuals who are high on crack
cocaine how do they behave?

A. Jumpy a lot of the times can't focus.

Q. Are they able to give you rational thoughts or relay
a story of what happened to them?

A. Not usually, no.

Q. With specific details?

A. Not usually, no.

Q. Okay. No further questions.

THE COURT: Anything further? Thank you.

[Whereupon, the witness is excused and exits the
witness stand]

THE COURT: Yes?

State v Anthony McClain
Justin Lawrence-Direct Examination by Ms. Ginsberg
March 13, 2017

1 MS. GINSBERG: The State calls Justin Lawrence.
2 [Whereupon, Mr. Lawrence comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]
5 THE COURT: Once seated if you could state your
6 first and last name and spell your last name for the
7 record, please.
8 THE WITNESS: Justin Lawrence, L-A-W-R-E-N-C-E.
9 - - - - -
10 JUSTIN LAWRENCE,
11 Having been first duly sworn,
12 Was examined and testified as follows:
13 DIRECT EXAMINATION
14 BY MS. GINSBERG:
15 Q. Mr. Lawrence, how old are you?
16 A. I'm 27 on the [REDACTED]^h.
17 Q. Twenty-seven on the [REDACTED]^h. Are you from here in
18 Charleston?
19 A. Yes.
20 Q. Have you lived here all your life?
21 A. Yes.
22 Q. Where did you go to school here?
23 A. I went to West Ashley High School.
24 Q. Do you currently work Mr. Lawrence?
25 A. Yes.

State v Anthony McClain
Justin Lawrence-Direct Examination by Ms. Ginsberg
March 13, 2017

- 1 Q. And where do you work?
- 2 A. At Boeing.
- 3 Q. And what do you do at Boeing?
- 4 A. I'm a mechanical technician.
- 5 Q. Okay. Are you married?
- 6 A. No.
- 7 Q. Do you have any kids?
- 8 A. No.
- 9 Q. Mr. Lawrence, how do you know Jennifer Johnson?
- 10 A. She's my girlfriend of three years.
- 11 Q. Three years? Have you known Ms. Johnson before
- 12 y'all started dating?
- 13 A. Yes.
- 14 Q. How long did you know her?
- 15 A. Probably since I was 11 or 12.
- 16 Q. How did you meet her?
- 17 A. At church.
- 18 Q. How do you describe your relationship; like serious,
- 19 exclusive?
- 20 A. Seriously exclusive I guess.
- 21 Q. Okay. So you've known Ms. Johnson you said since
- 22 you were like 11. You've dated her for three years.
- 23 Does Jennifer have a drug problem?
- 24 A. No.
- 25 Q. Have you seen her do crack?

State v Anthony McClain
Justin Lawrence-Direct Examination by Ms. Ginsberg
March 13, 2017

1 A. No.

2 Q. Have you seen her do cocaine?

3 A. No.

4 Q. I know this is a really personal question but has
5 she ever cheated on you?

6 A. No.

7 Q. Does she have the propensity to date old men?

8 A. No.

9 Q. Okay. I'm going to talk to you about that morning
10 of June 2nd, 2015. Did you have plans with Jennifer that
11 night?

12 A. Yes. We talked earlier that day. I was at work and
13 we were going to meet each other later on when I got off
14 for drinks.

15 Q. And what time did you get off?

16 A. I got off at 11:30.

17 Q. And where were you guys going to get some drinks?

18 A. We were going to go to Silver Dollar on King Street.

19 Q. Okay. Around what time were y'all supposed to meet
20 at the bar?

21 A. Well, I got off at 11:30 and I was going to make it
22 there by about 12. So I figured I was in the car on the
23 way to the bar in between 11:30 and 12 and let her know
24 to meet me out there sometime whenever she got ready, and
25 whenever she got dressed. She told me it was going to be

State v Anthony McClain
Justin Lawrence-Direct Examination by Ms. Ginsberg
March 13, 2017

1 about 20 minutes.

2 Q. Okay, 20 minutes. And how far does Jennifer live
3 from Silver Dollar?

4 A. She lives approximately five minutes away.

5 Q. So you said be there in 20 and she lives five
6 minutes away?

7 A. Yes.

8 Q. Okay. So you make it to Silver Dollar that night.
9 What do you do?

10 A. So I get there it's about 12 o'clock and I get a
11 drink and I'm waiting on Jennifer. It gets to be about
12 12:25 or a little bit later maybe give or take five
13 minutes. And I go ahead and try calling her and I don't
14 get any response. I text her and she never texted me
15 back. So I finished my drink and decided to go to her
16 house.

17 Q. Okay. So is this typical for Jennifer to do this?

18 A. No, especially after we had just gotten off the
19 phone and we made plans to meet each other.

20 Q. Okay. So it's about 12:25 almost 30 minutes after
21 you guys decided to hang out. What do you do after that?

22 A. I finished my drink and I go to her house, which is
23 right around the corner five minutes away. I knocked on
24 her door and her brother answered and I asked him has he
25 seen her.

State v Anthony McClain
Justin Lawrence-Direct Examination by Ms. Ginsberg
March 13, 2017

1 Q. Before you answer I have to interrupt you. You
2 can't say what he said but what did you learn from her
3 brother at that point?

4 A. That she left the house.

5 Q. When did -- she left the house when?

6 A. He told me about -- he said five to ten minutes ago.

7 Q. Okay. Five to ten minutes ago. So would that mean
8 -- how long was it after 12 that ---

9 A. --- at that point it had to have been 12:40ish.

10 Q. So almost an hour after you were supposed to meet?

11 A. Yes.

12 Q. So what did you do after you learned that she left
13 shortly after?

14 A. After I learned that she left shortly after I
15 started to get a little worried but I wasn't all the way
16 worried yet. So I was like let me go back to the bar.
17 Maybe when I was leaving the bar she was going to the
18 bar, maybe like we crossed and we just didn't know it
19 happened.

20 So I went back to the bar to see if she was there.
21 And I went back to where I knew she would park because
22 there are certain parking lots we use when we go certain
23 places. So I went to go look for her and she wasn't
24 there in the parking spot or back at the bar. I went
25 back there for about ten or 15 minutes, looked around and

State v Anthony McClain
Justin Lawrence-Direct Examination by Ms. Ginsberg
March 13, 2017

1 didn't see her.

2 Q. Okay. So at this point were you worried?

3 A. At this point I started to get a little bit more
4 worried, yes. I went back to her house to see where she
5 was. Still she didn't come back or I didn't see her
6 there so at that point I started to get really worried.

7 And I told her brother to go ahead and let her
8 mother know that I was supposed to meet up with her an
9 hour and some change ago and still haven't seen her.

10 Q. Do you know if 911 was called?

11 A. At that point yes, her mother called 911.

12 Q. Okay. You mentioned you tried calling her earlier.
13 Did you try to call her later throughout the evening?

14 A. Oh yes, I continued to call her after I didn't get
15 her and I was looking for her throughout the whole time I
16 was calling her.

17 Q. How many times if you could guess how many times do
18 you think you called her?

19 A. I would say 40, 50 times.

20 Q. 40 or 50 times?

21 A. Yes.

22 Q. And she never answered?

23 A. No.

24 Q. And that's not typical?

25 A. No, it's not typical.

State v Anthony McClain
Justin Lawrence-Direct Examination by Ms. Ginsberg
March 13, 2017

1 Q. So 911 was called and police showed up. When was
2 the next time you saw Jennifer?

3 A. I saw Jennifer when her car pulled around the corner
4 and she drove really fast up to her curb and got out the
5 car and said what the officer said.

6 Q. And what was that?

7 A. That motherfucker kidnapped me.

8 Q. And how did she appear to you?

9 A. She looked pretty distraught. She looked like she
10 was just worn out and she got back home after a long
11 night.

12 Q. Okay.

13 MS. GINSBERG: Court's indulgence.

14 [Whereupon, Mr. Osborne and Ms. Ginsberg confer]

15 Q. [Ms. Ginsberg] Mr. Lawrence, what is your cell phone
16 number?

17 A. [REDACTED].

18 Q. [REDACTED]. And do you know a Porsche?

19 A. Yes.

20 Q. And who is that?

21 A. That's like a sister to Jennifer. It's her best
22 friend.

23 Q. Okay, her best friend. And do you know -- I'm
24 probably going to butcher this name -- Sekeena
25 [phonetic]?

State v Anthony McClain
Justin Lawrence-Direct Examination by Ms. Ginsberg
March 13, 2017

1 A. No, I can't -- Sekeena [phonetic]?

2 Q. Sekeena [phonetic] there you go.

3 A. Oh yes, Sekeena [phonetic]. That's one of her
4 friends too.

5 Q. Sekeena [phonetic], okay she's a friend. And what
6 was Jennifer's number do you remember?

7 A. Jennifer's number is [REDACTED].

8 Q. [REDACTED]?

9 A. [REDACTED].

10 Q. [REDACTED]. Three years and serious, okay. How long
11 has she had that number?

12 A. As long as I've known her.

13 Q. Okay. And do you know if she has any other cell
14 phone numbers?

15 A. No.

16 Q. And how long after -- so the police arrive, how long
17 after that did Jennifer make it to Cannon Street?

18 A. I think the police officer came and it was about 15
19 or 20 minutes before she pulled up it seemed.

20 Q. Okay. No further questions.

21 THE COURT: Yes, sir?

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State v Anthony McClain
Justin Lawrence-Cross-Examination by Mr. Mayer
March 13, 2017

1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. Hi Justin, I'm Aaron Mayer. You're talking about
4 being at Silver Dollar from 12 to 12:25 and Jennifer
5 wasn't texting you back during that time. How many times
6 did you text her in that timeframe?

7 A. I'm a little cloudy on how many times I texted her
8 specifically. I remember we talked when I was on the way
9 to the Silver Dollar and she said that she would be on
10 her way. There might have been a text or two okay, see
11 you there but specifics I don't remember.

12 Q. Okay. And was your testimony -- I'm sorry; I
13 thought I heard you say that she didn't text you back
14 during that time from midnight until about 12:25?

15 A. From about midnight to 12:25 I talked to her -- I
16 don't remember if it was that I talked to her and she
17 said that she was going to meet up with me or I texted
18 her and she said she was going to meet up with me so I'm
19 not sure.

20 Q. Okay. But are you saying that during that 25 minute
21 window you did talk to her, communicate with her or you
22 did not communicate with her?

23 A. No. On the way to the Silver Dollar I did not but
24 before that we had said we were going to go out.

25 Q. I see. And your testimony is that you arrived at

State v Anthony McClain
Justin Lawrence-Cross-Examination by Mr. Mayer
March 13, 2017

1 the Silver Dollar around midnight?

2 A. Yes.

3 Q. Okay. And that's when you expected her there?

4 A. Yes.

5 Q. Now you testified that you've known her for a long
6 time. Have you ever known Jennifer to do illegal drugs?

7 A. No.

8 Q. Even marijuana?

9 A. No.

10 Q. Okay. No further questions.

11 THE COURT: Anything further?

12 MS. GINSBERG: Nothing further, Your Honor.

13 THE COURT: All right. Thank you. You may step
14 down.

15 [Whereupon, the witness is excused and exits the
16 witness stand]

17 THE COURT: Next witness?

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State v Anthony McClain
Patricia Johnson-Direct Examination by Ms. Ginsberg
March 13, 2017

1 MS. GINSBERG: The State calls Patricia Johnson.

2 [Whereupon, Ms. Johnson comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Once seated please state your first
6 and last name and spell out your last name for the
7 record, please?

8 THE WITNESS: Patricia Johnson, J-O-H-N-S-O-N.

9 - - - - -

10 PATRICIA JOHNSON,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. GINSBERG:

15 Q. Hi Ms. Johnson. How are you?

16 A. I'm fine.

17 Q. How old are you Ms. Johnson?

18 A. I'm 61.

19 Q. And are you from here in Charleston?

20 A. I was born here but I was raised in Union.

21 Q. Okay. Born here and raised in Union. Where's
22 Union?

23 A. South Carolina near Spartanburg.

24 Q. Okay, near Spartanburg. Do you work Ms. Johnson?

25 A. I'm retired.

State v Anthony McClain
Patricia Johnson-Direct Examination by Ms. Ginsberg
March 13, 2017

- 1 Q. And where was your last job?
- 2 A. Charleston County Sheriff's Office.
- 3 Q. Are you married Ms. Johnson?
- 4 A. No.
- 5 Q. Do you have any children?
- 6 A. Yes.
- 7 Q. Who are your children?
- 8 A. Jennifer Johnson and Kevin Johnson.
- 9 Q. I know you said that you're from Union but where did
10 you raise Jennifer and Kevin?
- 11 A. In Charleston.
- 12 Q. Where exactly, what street?
- 13 A. ■ Cannon Street.
- 14 Q. So where did Jennifer go to Middle School?
- 15 A. She went to Middle School at Charles Towne Academy.
- 16 Q. Where did she go to High School?
- 17 A. Burke.
- 18 Q. And can you describe to the jury just a little bit
19 about Jennifer. How she was in school.
- 20 A. She was an outgoing student, kept her grades up; not
21 a problem child.
- 22 Q. Were you living in Charleston back in June of 2015?
- 23 A. Yes.
- 24 Q. And who was living with you again?
- 25 A. Jennifer Johnson, Kevin Johnson, my granddaughter

State v Anthony McClain
Patricia Johnson-Direct Examination by Ms. Ginsberg
March 13, 2017

1 and my father.

2 Q. Your granddaughter, who is that?

3 A. **Minor** [phonetic].

4 Q. And that is Jennifer's daughter?

5 A. Yes.

6 Q. And that was on **█** Cannon Street?

7 A. Yes.

8 Q. I know it's been a long time and I know it was not
9 the best night but we're going to move forward to June
10 2nd, okay. Can you briefly tell the jury about what
11 happened that day, just the beginning of the day?

12 A. I got up and went to work and came home. I think
13 Jennifer worked that day. But I got home and had dinner
14 and Jennifer was taking care of **Minor** [phonetic]. Then
15 later on that evening she was getting her ready for bed
16 because she told me she was going to meet Justin for
17 drinks.

18 And so she always gets **Minor** in bed herself before
19 she leaves. So I went ahead and went to bed probably
20 around 11:30 or 12.

21 Q. Okay. So you went to bed around 11:30 and Jennifer
22 told you that she was going out with Justin?

23 A. Yes.

24 Q. And Justin is her boyfriend?

25 A. Yes.

State v Anthony McClain
Patricia Johnson-Direct Examination by Ms. Ginsberg
March 13, 2017

- 1 Q. Was that common for her to hang out with Justin?
- 2 A. Yes.
- 3 Q. You're a Mom so obviously you know this but did she
- 4 ever talk to you about Anthony?
- 5 A. No.
- 6 Q. About a guy named Anthony McClain?
- 7 A. No.
- 8 Q. Was it typical for Jennifer to just hand out her
- 9 number to older men?
- 10 A. No.
- 11 Q. Okay. So let's get back to that night. You go to
- 12 bed around 11:30. Do you recall where Jennifer was going
- 13 that night?
- 14 A. She told me she was going to the Silver Dollar.
- 15 Q. Okay. When Jennifer goes out does she typically
- 16 stay out all night or does she come back home?
- 17 A. Sometimes she comes home.
- 18 Q. Why does she come home?
- 19 A. Sometimes because she just wants to come home or she
- 20 would have to get up and go to work the next morning.
- 21 Q. Okay. So she goes to work the next morning. How
- 22 would Jennifer get to the bar typically?
- 23 A. She would drive.
- 24 Q. And what kind of car did she drive?
- 25 A. She had a 1999 Taurus.

State v Anthony McClain
Patricia Johnson-Direct Examination by Ms. Ginsberg
March 13, 2017

- 1 Q. A 1999 Ford Taurus?
- 2 A. Taurus.
- 3 Q. And do you recall how many keys Jennifer had for
- 4 that car?
- 5 A. She had two sets.
- 6 Q. Two sets? So Jennifer drove. You were asleep when
- 7 she left?
- 8 A. She told me was leaving.
- 9 Q. Okay. So she told you she was leaving. What
- 10 happened after she left?
- 11 A. I noticed that my son, I don't know what time it
- 12 was, but I noticed my son came in my room and then he
- 13 left out and then he came back in again and then he woke
- 14 me up. Well, he thought he was waking me up and he told
- 15 me he had something to tell me. And he said he didn't
- 16 know how to ---
- 17 Q. --- I'm sorry; I have to stop you just a second.
- 18 You can't say exactly what Kevin told you but what did
- 19 you learn when Kevin ---
- 20 A. --- that she was missing. And so I immediately got
- 21 my cell phone and called 911.
- 22 Q. Was it common for Jennifer to be missing?
- 23 A. No.
- 24 Q. Has she ever been missing before?
- 25 A. No.

State v Anthony McClain
Patricia Johnson-Direct Examination by Ms. Ginsberg
March 13, 2017

1 Q. So you said after you learned that she was missing
2 you called 911?

3 A. Yes.

4 MS. GINSBERG: Your Honor, may I approach?

5 THE COURT: Yes.

6 Q. [Ms. Ginsberg] Ms. Johnson, I'm showing you what has
7 been marked as State's exhibit 2.

8 [Whereupon, the witness is shown exhibit]

9 Q. Do you recognize this?

10 A. Yes.

11 Q. And what do you recognize that to be?

12 A. A C.D. with the call that I made to 911.

13 Q. And how do you recognize it?

14 A. I initialed it.

15 MS. GINSBERG: Your Honor, at this time I'd like to
16 admit this into evidence as State's exhibit 2 under Rule
17 104(b) and to later be authenticated by an evidence
18 custodian.

19 THE COURT: Any objection?

20 MR. MAYER: Judge, I'd ask that it wait to be
21 authenticated.

22 THE COURT: The basis for the objection is what?

23 MR. MAYER: Improper foundation, Judge and this is
24 not the correct authentication --

25 THE COURT: Response to that statement.

State v Anthony McClain
Patricia Johnson-Direct Examination by Ms. Ginsberg
March 13, 2017

1 MS. GINSBERG: Judge, according to Rule 104(b)
2 Perry v Jeffrey [phonetic] says judge commits no error in
3 admitting evidence for its relevancy if established later
4 in trial. Judge, we ---

5 THE COURT: --- his objection is to authentication;
6 not as to relevance.

7 MS. GINSBERG: I understand, Judge. We can admit
8 it at a later time if you'd like. I'll wait and admit it
9 with the evidence custodian.

10 THE COURT: Did you listen to that, ma'am?

11 THE WITNESS: Yes.

12 THE COURT: Did you listen to that C.D.?

13 THE WITNESS: Yes.

14 THE COURT: Is that the call that you made?

15 THE WITNESS: Yes.

16 THE COURT: It's admitted over objection.

17 MS. GINSBERG: Thank you, Judge.

18 [Whereupon, State's exhibit number 2 is entered into
19 evidence by the court]

20 Q. [Ms. Ginsberg] Ms. Johnson, while we're cueing that
21 up you mentioned that Jennifer had two sets of keys.

22 A. Yes.

23 Q. What were those keys?

24 A. Two sets of keys to her car.

25 Q. Okay. So a key she normally used and then what was

State v Anthony McClain
Patricia Johnson-Direct Examination by Ms. Ginsberg
March 13, 2017

1 the other key?

2 A. A spare key.

3 Q. Where did she keep that key?

4 A. It was supposed to be kept on the coat rack that we
5 have when you first come in the house but she always had
6 a habit of keeping both sets in her pocketbook.

7 Q. Okay.

8 MS. GINSBERG: Judge, may I publish this 911 call to
9 the jury?

10 THE COURT: It's admitted into evidence.

11 MS. GINSBERG: Thank you.

12 [Whereupon, the 911 call plays]

13 [Whereupon, the 911 call ends]

14 [Not taken down]

15 Q. [Ms. Ginsberg] Ms. Johnson, after you made this 911
16 call what happened next?

17 A. I got up and got dressed and went outside and waited
18 on the police officer.

19 Q. And the police officer eventually came?

20 A. Yes.

21 Q. When was the next time you saw your daughter?

22 A. When she drove up in the front of the funeral home
23 right next to our house.

24 Q. How did she drive up?

25 A. Fast. She just pulled up and got out.

State v Anthony McClain
Patricia Johnson-Direct Examination by Ms. Ginsberg
March 13, 2017

1 Q. How did she get out?

2 A. She ran out. She ran out and then she hugged Justin
3 first and told him that she had been kidnapped. And then
4 I reached for her and hugged her.

5 Q. How did she appear to you?

6 A. Very upset.

7 Q. We've heard a lot about a debit card. Can you tell
8 us about this debit card?

9 A. Yes. Before she -- she had just recently gotten a
10 job but before she had a job I gave her a debit card to
11 use with my checking account so if she was in an
12 emergency situation she would have access to some money.

13 Q. So it's just an emergency is that what you said?

14 A. Yes.

15 Q. What were her typical purchases?

16 A. Gas for the car, and if she wanted to buy something
17 she would call and ask me or if she was going out to
18 dinner with her friends or whatever she would call me and
19 see if it was okay if used the card.

20 Q. After the incident did you ever look at your bank
21 statement?

22 A. Yes.

23 MS. GINSBERG: Your Honor, may I approach?

24 THE COURT: Yes.

25 Q. [Ms. Ginsberg] I'm showing you what has been

State v Anthony McClain
Patricia Johnson-Direct Examination by Ms. Ginsberg
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1 admitted into evidence as State's exhibit 3.

2 [Whereupon, the witness is shown exhibit]

3 Q. Do you recognize this?

4 A. Yes.

5 Q. Is this your bank statement?

6 A. Yes, it is.

7 Q. Can you look through that?

8 [Whereupon, the witness reviews document]

9 Q. Do you recognize any unfamiliar purchases or
10 withdrawals from your bank account?

11 A. Yes, there is 103 dollar withdrawal.

12 MS. GINSBERG: May I approach, Judge?

13 THE COURT: Yes.

14 Q. [Ms. Ginsberg] Is that the withdrawal you're talking
15 about Ms. Johnson?

16 A. Yes.

17 Q. What day was that on?

18 A. June the 2nd.

19 Q. And how much was it for?

20 A. One hundred and three dollars.

21 MS. GINSBERG: Court's indulgence.

22 Q. [Ms. Ginsberg] Ms. Johnson, when did you give
23 Jennifer access to this debit card?

24 A. She said -- she had it for a few years before then.

25 Q. Okay. And how many times a month do you think

State v Anthony McClain
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March 13, 2017

1 Jennifer used it?

2 A. Maybe three or four to get gas.

3 Q. Okay. And has she ever used this debit card without
4 checking with you first?

5 A. No.

6 Q. No further questions. Please answer any Mr. Mayer
7 has for you.

8 THE COURT: The defense?

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Patricia Johnson-Cross-Examination by Mr. Mayer
March 13, 2017

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CROSS-EXAMINATION

BY MR. MAYER:

Q. Ms. Johnson, Aaron Mayer. You mentioned that you have a granddaughter and how old is your granddaughter?

A. She's five now.

Q. And almost two years ago she would have been like three, is that right?

A. Probably like two.

Q. Okay. And I think you testified that your daughter was putting your granddaughter to bed but I didn't quite follow the timeframe. Had you gone to bed before your granddaughter was going to bed?

A. No, she usually gets her in bed -- she tries to get her in bed like around 10 or 10:30.

Q. Okay. And so as far as you remember your granddaughter was in bed?

A. Yes.

Q. Okay. And your -- that was around 10:30 you think?

A. 10:30 -- I'm not exactly sure what time. She is usually in bed before 11.

Q. I'm not asking you to nail it down. I just didn't know if you had talked this through before or.

A. No.

Q. I'm not asking you to remember back to when the bed time was almost two years ago; that's not what I'm asking

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1 for. But as far as you recall and it sounded like on the
2 911 tape you didn't see your daughter go out.

3 A. No. She just came to the room and told me she was
4 getting ready to leave. I'm not sure what time it was
5 because I was already in bed.

6 Q. Okay. Because from the 911 call from what I heard
7 you weren't able to say what she was wearing, is that
8 right?

9 A. No.

10 Q. Okay. As far as your daughter's consumption of
11 drugs and alcohol how would you characterize that?

12 A. I don't know her -- I mean I know she drinks but I
13 don't know her doing any drugs.

14 Q. So to your knowledge she doesn't do any illegal
15 drugs?

16 A. No.

17 Q. Including marijuana?

18 A. Not that I know of, no.

19 Q. Okay. No further questions.

20 MS. GINSBERG: Nothing further.

21 THE COURT: Thank you. You may step down.

22 [Whereupon, the witness is excused and exits the
23 witness stand]

24

25

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1 MR. OSBORNE: May we approach.

2 THE COURT: Let me excuse the jury and then you can
3 approach unless it's something involving the jury.

4 MR. OSBORNE: No, Your Honor.

5 THE COURT: Ladies and gentlemen we've come to a
6 quitting time for today, 5:28. We need you back at 9:30
7 tomorrow morning. 9:30 tomorrow morning. Have a good
8 evening. Please do not discuss the case, don't get on
9 the computer investigating it or anything of that nature.

10 [Whereupon, the jury exits at 5:30 p.m.]

11 THE COURT: What else before we leave?

12 MR. OSBORNE: Nothing, Your Honor. I think you
13 were reading my mind. We were out of witnesses.

14 THE COURT: We made it to 5:30. We did well. So
15 we will reconvene at 9:30.

16 MR. MAYER: Thank you, Judge.

17 MR. OSBORNE: Thank you, Your Honor.

18 [Whereupon, court adjourns at 5:45 p.m.]

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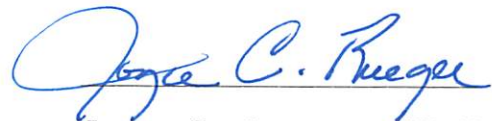
State v Anthony McClain
Certificate of the Court Reporter
March 13, 2017

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 13th day of March, 2017.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

April 20, 2018



Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2015-GS-10-5967
	)	2015-GS-10-5968
	)	2015-GS-10-5969
	)	2015-GS-10-5964
	)	2015-GS-10-5966
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
	)	
ANTHONY MCCLAIN	)	
	)	
Defendant	)	
	)	
	)	
	)	
_____	)	TRANSCRIPT OF RECORD

March 14, 2017
Charleston, South Carolina

VOLUME 2 (OF 3)

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, JR., JUDGE

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PROCEEDINGS

[Off the record discussion regarding upcoming witnesses for the State]

MR. OSBORNE: Bryan says he didn't have 20 dollars to give him. Our position, if Bryan denies this is that the two individuals that came there as well as the defendant were there attempting to purchase crack cocaine. Bryan has a prior conviction for conspiracy for distribution of crack cocaine. He also has another conviction for distribution of crack cocaine.

THE COURT: Well, you don't know -- many times you don't know what a person is going to say when the moment of truth arrives. You said what Bryan will say we don't know what Bryan will say really. I would rather deal with it in real time. Quite often when people are interviewed they change their story, they lie or whatever. But they put their hand on that Bible and miraculously they tell the truth; sometimes. And sometimes they lie again so we don't know. Let's just play that in real time and see what happens.

MR. OSBORNE: Yes, sir.

THE COURT: Yes, sir?

MR. MAYER: Thank you, Your Honor. And my two cents about that is that with regard to William Cobb his prior that Mr. Osborne would like to impeach him with is

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1 so similar to the alleged facts here that it is going to
2 be substantially more prejudicial than probative. It's
3 going to make it seem like these guys were in cahoots and
4 were doing that again. And I just ---

5 THE COURT: --- well similarities of the prior
6 offenses usually in that evaluation that particularly
7 pertains to a defendant; it doesn't apply to witnesses
8 does it?

9 MR. MAYER: Your Honor ---

10 THE COURT: --- in State v -- State v Green,
11 Dunlap. What are the prior convictions?

12 MR. MAYER: I think it's for armed carjacking or
13 something like this for Will Cobbs, which happened I
14 believe it was more than ten years ago.

15 THE COURT: He's not the barber is he?

16 MR. MAYER: Yes, sir.

17 THE COURT: Oh, he's the barber?

18 MR. MAYER: Yes, sir. And I just think -- I just
19 wanted to put that on the record, Your Honor. And then
20 the other housekeeping matter I had ---

21 THE COURT: --- I'm not ruling. I said let's deal
22 with it in real time.

23 MR. MAYER: Thank you, Your Honor.

24 THE COURT: I have to get a sense of what's what as
25 the testimony comes in.

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1 MR. MAYER: Thank you, Your Honor. And then the
2 two other housekeeping matters the defense have were
3 after talking with Ms. Tisdale yesterday, which is who my
4 client calls his wife, she said there really is no point
5 in testifying about the issue of them being married. She
6 always has considered herself a fiancé. So I'm certain
7 that the law would be that if one person thinks they're
8 married and the other doesn't then they're not. So I
9 don't think we need to ---

10 THE COURT: --- you'd have to impeach her.

11 MR. MAYER: And then the only last matter I wanted
12 to raise and I'm not sure where -- anyway the matter Your
13 Honor is with regard to a hearing we had in front of
14 Judge Dennis on Friday about the admissibility of my
15 client's post Miranda statements. I had my head on that
16 and I was focusing on the statements pertaining to Ms.
17 Johnson and the kidnapping and the reason they had
18 brought him in that day.

19 And by their own admission they already had arrest
20 warrants for him when they brought him in that day for
21 that charge. And I think it's real clear that the
22 Miranda was proper. The questioning along those lines
23 was proper. What my concern has arisen about, Your Honor
24 is that they kind of shifted, their mission kind of
25 shifted or the conversation shifted to this other issue

1 being about these college kids, which I think would
2 probably -- I probably need to request for a particular
3 ruling on whether his Miranda that they gave him for the
4 armed robbery and kidnapping stuff also covered his
5 statements as they pertained to this college kids stuff.
6 I'm not sure of the law on it, Your Honor. I feel like
7 it's not clear and I think we could benefit from the
8 court's guidance a little bit.

9 THE COURT: Okay. What says the State?

10 MR. OSBORNE: Your Honor, just to give you an
11 overview ---

12 THE COURT: --- I spent I guess about two hours
13 last night viewing these clips. I would watch one and
14 then the next clip up fall asleep and come back. But I
15 went through about eight or ten I believe.

16 MR. OSBORNE: Then you got to at ---

17 THE COURT: --- I was trying to figure whether this
18 was the same day, no this is 2 o'clock, now its 2:30 now
19 we're at 3 o'clock. Mr. McClain had to use the restroom
20 and a break here and break there and had some water.
21 These things are fresh; they put me to sleep last night
22 and woke me up but I got through all of them.

23 MR. OSBORNE: Well, then you've heard it. The
24 detectives advised him of his Miranda rights. He
25 knowingly and intelligently waived it. There was no

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1 coercion, no threats, no force, no promise. They were
2 trying to ascertain if he had ever been downtown
3 Charleston at all that night. And in that moment he had
4 a moment of enlightenment and then he is the one who
5 volunteered oh I did go downtown that night ---

6 THE COURT: --- but it's on a narrow issue though
7 if you arrest someone and you've given them Miranda if
8 they think that Miranda questioning pertains to one crime
9 and you ask them questions about more than one crime ---

10 MR. OSBORNE: --- you can, Your Honor. And I
11 haven't done that research and I don't have it directly
12 in front of me but I know I have researched that point
13 before. You are not required to advise the defendant of
14 every single crime that you believe him to be a suspect
15 of.

16 Once he voluntarily, knowingly, and intelligently
17 waives his Miranda rights you can question him about any
18 specific crimes as long as you don't question about a
19 crime of which he is already under representation. And
20 in this case he wasn't under any representation.

21 THE COURT: Okay. Well, we'll do a little research
22 on the whole thing as we progress on. And I will rule
23 pertinent to Mr. Mayer's request at the appropriate time.

24 MR. MAYER: Thank you, Your Honor.

25 THE COURT: Okay. Let's bring them in.

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1 [Whereupon, the jury enters at 9:59 a.m.]

2 THE COURT: Good morning. Welcome back. The State
3 requested that we shifted courtrooms. This one has
4 better technology so we shifted over here. Next witness?

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State v Anthony McClain
Bryan Robinson-Direct Examination by Mr. Osborne
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1 MR. OSBORNE: The State calls Bryan Robinson.
2 [Whereupon, Mr. Robinson comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]
5 CLERK OF COURT: Once seated, please state your
6 first and last name and spell out your last for the
7 record.
8 THE WITNESS: Bryan Robinson, R-O-B-I-N-S-O-N.
9 - - - - -
10 BRYAN ROBINSON,
11 Having been first duly sworn,
12 Was examined and testified as follows:
13 DIRECT EXAMINATION
14 BY MR. OSBORNE:
15 Q. Good morning, Bryan.
16 A. Good morning.
17 Q. How old are you?
18 A. Thirty-eight.
19 Q. And are you married?
20 A. Yes.
21 Q. Do you have any children?
22 A. Four.
23 Q. Do you work?
24 A. Yes.
25 Q. Where do you work?

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1 A. Tecna Corporation. We do pre-stress; basically do
2 bridge work.

3 THE COURT REPORTER: What's the name of the
4 company?

5 A. Tecna.

6 Q. [Mr. Osborne] A bridge worker. Does your company
7 deal with the pylons?

8 A. Everything. We basically put it -- we build it on
9 the ground and they put it together like Lego blocks.

10 Q. Okay. What is your job title there?

11 A. Q-C Manager.

12 Q. Okay. Now you don't have to give your exact address
13 but where do you live now? Whereabouts?

14 A. [REDACTED] at the Stayover Lodge.

15 Q. Okay, [REDACTED]?

16 A. Yes, room [REDACTED].

17 Q. Okay. Back on June the 2nd of 2015 did you live at
18 the Stayover Lodge then?

19 A. Yes.

20 Q. Is that the one on McMillan?

21 A. Yes.

22 Q. Did you live in room [REDACTED] then?

23 A. No, [REDACTED].

24 Q. Okay. Who did you live with back then?

25 A. Me, my wife, my 12 year old daughter and my now 2

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1 year old son.

2 Q. Okay.

3 MR. OSBORNE: Your Honor, may I approach the
4 witness?

5 THE COURT: Yes, sir.

6 Q. [Mr. Osborne] I'm showing you now what has been
7 marked as State's exhibit 12 and 13. Can you take a look
8 at that and tell me if you recognize it?

9 [Whereupon, the witness is shown photographs]

10 A. That's the Stayover.

11 Q. Okay. State's exhibit 13 in particular. Is that
12 the front or the back?

13 A. That's the back, right around in the area where I
14 stayed.

15 Q. Where you stayed back then?

16 A. Yes.

17 MR. OSBORNE: Your Honor, at this time the State
18 seeks to admit 12 and 13 into evidence.

19 THE COURT: Any objection?

20 MR. MAYER: No objection, Your Honor.

21 THE COURT: They are admitted.

22 [Whereupon, State's exhibit numbers 12 and 13 are
23 entered into evidence by the court]

24 [Whereupon, the photos are shown on screen]

25 Q. [Mr. Osborne] This is the front of the Stayover,

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1 State's exhibit 12?
2 A. Yes.
3 Q. And State's exhibit 13. Is this the photograph of
4 the rear of the Stayover?
5 A. [No response]
6 Q. Is it?
7 A. Yes, sir.
8 Q. And that's where you lived back in 2015?
9 A. Yes.
10 Q. All right. Let's talk about -- can you see your
11 apartment, room [REDACTED] there? Where would it be?
12 A. Probably right around ---
13 Q. --- you can touch that tablet in front of you.
14 A. Right about up probably right up in this area right
15 here [indicates].
16 Q. Okay. Do me a favor. Go ahead and stand up and
17 point to it.
18 [Whereupon, the witness complies]
19 A. Like right up in this area [indicates].
20 Q. Okay. Right over here [indicates]?
21 A. Yes.
22 Q. Okay. Let's talk about the defendant in this case
23 Anthony McClain. Do you know him?
24 A. Yes.
25 Q. How do you know him?

State v Anthony McClain
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1 A. We probably got out of federal prison around the
2 same time. I met him in a halfway house.

3 Q. How long has that been?

4 A. Since 2013.

5 Q. And I believe you said you worked at Tecna?

6 A. Yes, we were co-workers too.

7 Q. Okay. So you met him or at least you knew him when
8 you worked at Tecna?

9 A. Yes, we was co-workers.

10 Q. Did you know him to be dating someone?

11 A. Ms. Liz.

12 Q. Okay. And how do you know Ms. Liz?

13 A. Me and him we stayed acquaintances after we got
14 released or whatever. And my wife used to tell him to do
15 his wife better and when he come around he would be with
16 his wife.

17 Q. Would you often talk to him on the phone?

18 A. Every so often he would call to check on me or I
19 would check on him. But we basically kept in
20 communication with each other being that we worked
21 together and things like that.

22 Q. Did you talk to -- did you ever talk to Ms. Liz on
23 the phone?

24 A. Once or twice but it's not common for a man to talk
25 to another man's wife and hold a conversation on the

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1 phone.

2 Q. But you would speak to her on the phone?

3 A. Yes.

4 Q. Did the defendant and did Ms. Liz have the same

5 phone number?

6 A. Sometimes they would share the same phone or

7 sometimes he would have his own line.

8 Q. Okay. And what was his phone number?

9 A. I don't even remember it offhand right now.

10 Q. Okay. Do you remember speaking to this man

11 [indicates] Detective Jarrell?

12 A. Yes.

13 Q. It was like a day or two after the incident?

14 A. Well, I was at work and my wife called me and said

15 the detective is here looking for you. And I said for

16 what? And she was like I don't know. He said when you

17 get home give him a call. I got home and gave him a

18 call.

19 Q. And do you remember him asking what Anthony's phone

20 number was?

21 A. Yes. He asked me the number but at the time I had

22 the phone I had the number in the phone ---

23 Q. --- oh, okay ---

24 A. -- so when I told him I was like this is his number.

25 Q. So you looked at it in your phone.

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1 A. So I was like this is the number.

2 Q. Do you remember telling him that his number was [REDACTED]
3 [REDACTED]?

4 A. Whatever the number was that was in the phone I gave
5 him the number because I wanted to know and see what was
6 going on.

7 Q. Okay. So if you told him that that would have been
8 accurate?

9 A. Yes, sir.

10 Q. Okay. Do you remember telling him that Ms. Liz's
11 phone number was [REDACTED]?

12 A. Whatever number I had that corresponded.

13 Q. Let's get into the night of June the 1st going into
14 early morning hours of June the 2nd. Did the defendant
15 come by your hotel that night?

16 A. Yes.

17 Q. And what time was that?

18 A. Probably like 12:30 or 1 o'clock; kind of late.

19 Q. What were you doing at that time?

20 A. In the house with my family.

21 Q. Were you up or were you sleeping or do you remember?

22 A. I was kind of like in between dozing because I had
23 to get up to go to work the next morning. I heard the
24 door knock and I got up and it was...

25 Q. Okay. Did you have any inclination that he was

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1 coming by to visit you that night?

2 A. No.

3 Q. He didn't call or anything like that?

4 A. No.

5 Q. Is it normal for him to visit you at that hour?

6 A. I mean not normal but he will come around and check
7 on me or knock on the door and ask me am I okay. And
8 every now and then I'll see him walking around. We crazy
9 but not that time of night.

10 Q. Okay. And how did you go about seeing him? Like
11 the knock on the door what did you do then?

12 A. Basically I just got up and put my pajamas on and
13 came to the door. I opened the door, I seen him and I
14 was like what's up. And we just started conversing from
15 there.

16 Q. Okay. What was that -- so when you're talking to
17 him are you talking to him at the doorway?

18 A. No, I'm standing outside the door.

19 Q. You came outside to talk to him.

20 A. I had my wife and my kids in there and there's no
21 need to bring nobody near my family.

22 Q. Right. And what were y'all talking about?

23 A. He basically came -- first he came and he was like
24 man, can I borrow 20 dollars. And we was just talking
25 and he was I got this girl with me man and I'm about to

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1 go be with I guess sleep with her or whatever. And we
2 just had a conversation and I was like man, come on let's
3 go in the house and we went in the house and we started
4 conversing from there.

5 Q. Okay. Let's slow it down a little bit. He said
6 that he had a girl with him. Did you see the girl?

7 A. Not at first because me and him was outside standing
8 and talking. You could see somebody in the car but I
9 didn't see her at first.

10 Q. All right. The car; have you ever seen Anthony, the
11 defendant in that car before?

12 A. That's the first time I've ever seen the car.

13 Q. The first time you've ever seen the car?

14 A. Yes.

15 Q. Okay. You said you could tell there was somebody in
16 the car. At a certain point were you able to get a
17 better look at that person?

18 A. Well, me and him we was conversing and he was
19 telling me he had the girl. He was like get out. She
20 got out the car and stood up. He was like you can get
21 back in and she got back in the car and that was it; me
22 and him finished conversing.

23 Q. Okay. So he told her to get out the car. Let's
24 talk a little bit more about that. When he asked her to
25 get out the car was it a friendly, kind tone?

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1 A. I mean the way we talk in the street he was like get
2 out and she just got out like that was all it was to it.
3 He said get out and she got out.

4 Q. Did it seem more like a request or more like a
5 demand?

6 A. I would say like in-between. But that's just how
7 certain people talk. He was like get out and she got
8 out.

9 Q. Did you find that his tone was aggressive?

10 A. The way he talked it was kind of like in-between but
11 you know.

12 Q. Okay. Did he refer to her in any other way at that
13 point?

14 A. He never said her name or nothing. He was just like
15 he got this shorty with him and basically they was going
16 to sleep together or something in that tone.

17 Q. He said he got this shorty with him.

18 A. Yes.

19 Q. Do you remember telling us he had a bad shorty with
20 him?

21 A. Yes.

22 Q. Is that what he said?

23 A. Yes. I got this bad little shorty with me and I'm
24 about to punish her, you know what I'm saying.

25 Q. About to do what to her?

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1 A. Basically punish her. That's what men say when they
2 about to be with woman.

3 Q. Okay. And so that was a term that he used that he
4 was going to punish her?

5 A. Yep.

6 Q. All right. Now while y'all were talking outside
7 before y'all go inside or anything like that does he ask
8 you for anything?

9 A. He asked me to borrow 20 dollars. Then we went
10 inside and started talking because my wife know him and
11 my kids know him. He's a friend of the family.

12 Q. Okay. So it would have been uncommon for him to
13 come by and ask for money like that?

14 A. No, that wouldn't have been uncommon.

15 Q. That would not have been uncommon.

16 A. No.

17 Q. Did you give him the money?

18 A. No. I told him I ain't had no money.

19 Q. Okay. Now you say that you ended up going inside
20 your apartment with him. But before you went inside your
21 apartment with him did someone else come to your
22 apartment?

23 A. Yes, two people. Normally I do lend the people
24 around the money because I goes to work every day so I
25 lend them money. I might charge them a couple of cents

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1 extra or whatever because if they see me outside, okay
2 he's outside; let me see if I can get some money out of
3 him too.
4 Q. Okay. So these two people came by and they were
5 asking you for money too?
6 A. Yes.
7 Q. Okay. And who are they? Or what do you know them
8 as?
9 A. I know them as Moped and Spindarella [phonetic].
10 They just be around the motel.
11 Q. Moped and Spindarella [phonetic]?
12 A. Yes.
13 Q. Was it Twan or was it Moped or does he go by both?
14 A. Everybody got an alias.
15 Q. Okay. Twan and Spindarella [phonetic]. So it's
16 not uncommon for them to come by and ask you for money
17 too?
18 A. Nope.
19 Q. Okay. Did Twan or Spindarella [phonetic] go into
20 your apartment?
21 A. Twan.
22 Q. Twan went into your apartment?
23 A. Yes.
24 Q. What happened when you and Twan were in the
25 apartment?

State v Anthony McClain
Bryan Robinson-Direct Examination by Mr. Osborne
March 14, 2017

1 A. I went inside and told him I could give him five
2 dollars. I gave him five dollars and he came in and went
3 back out.

4 Q. Okay. Twan came in for a little bit. He wasn't in
5 there for long?

6 A. Nope.

7 Q. He's out. Is that when the defendant then goes into
8 your apartment?

9 A. Yep.

10 Q. Okay. Tell the jury what happened when you and the
11 defendant were in the apartment?

12 A. Basically when he came inside we just was talking.
13 And I could basically tell he had something on his mind
14 and he was like man these people out there just keep
15 playing with me but they are going to quit playing with
16 me.

17 So I was like I ain't got no 20 dollars to give you
18 but I can give you a meal and you need to go home. And
19 he was like man, I ain't -- man listen. And I was like
20 man, just home because normally when I see him out in the
21 street and I see him I'll be like go home to your wife
22 man. Just go home to your wife.

23 So after me and him was conversing and he was
24 telling me about he had the girl he had shorty with him
25 and this that and the third. He asked me for the 20

State v Anthony McClain
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1 dollars again and I told him I ain't had it. I offered
2 him a meal and he gets mad and he walks out the door. He
3 came out and I stayed in.

4 Q. Okay. So I want to elaborate a little bit more on
5 that. So while he was inside he said -- tell me
6 something about he's not playing with them anymore.

7 A. He was just like people just keep playing with me
8 and I'm not playing with no more. I ain't got time to
9 play with them no more and they keep playing with me.

10 So you know to further elaborate on it but we
11 couldn't really elaborate on the conversation because I
12 had my family in there. But whatever you know that's
13 just what his thing was; I'm just tired of these people.

14 Q. Okay. Is it fair to say you didn't know what he
15 was talking about?

16 A. Not really. I mean for being in the street you can
17 basically read in-between the lines. But still you
18 really don't know the whole story until somebody fill you
19 in.

20 Q. All right. During your previous encounters with the
21 defendant Anthony would you say that his normal demeanor
22 is a calm individual?

23 A. Yes, on a regular day he's calm, collected.
24 Everybody gets along. Everybody can kind of talk to and
25 relate to him.

State v Anthony McClain
Bryan Robinson-Direct Examination by Mr. Osborne
March 14, 2017

1 Q. And was his demeanor the same that night?

2 A. No, he looked like he kind of was edgy. But you
3 know it just -- when he was having the conversation about
4 these dudes just need to quit playing with me then it
5 just was that was edgy but he wasn't his normal.

6 Q. So he wasn't normal.

7 A. He wasn't his normal the way he normally is easy
8 going.

9 [Whereupon, Mr. Osborne and Ms. Ginsberg confer]

10 MR. OSBORNE: No further questions, Your Honor.

11 THE COURT: Cross-Examination?

12 MR. MAYER: Thank you, Judge.

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State v Anthony McClain
Bryan Robinson-Cross-Examination by Mr. Mayer
March 14, 2017

1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. Hey. Aaron Mayer here on behalf of Anthony. So
4 Anthony's normally a pretty talkative guy, isn't he?

5 A. Yes.

6 Q. All right. And could we put up that...

7 [Whereupon, the photograph is shown]

8 Q. And just real briefly looking at the picture the
9 State introduced of where you used to live over at 141 it
10 looks like there is a golden arches, there is a McDonalds
11 back over there, is that right?

12 A. Yes.

13 Q. Is that a pretty busy commercial area; they have
14 lots of stores and gas stations and things over there?

15 A. There is a McDonald's right there, an Exxon, and a
16 Quick Mex Market like right behind it.

17 Q. All within easy walking distance, correct?

18 A. Yes.

19 Q. And visible from the parking lot as well.

20 A. Yes.

21 Q. Is that right?

22 A. Well, there is a fence back there but you can see
23 the McDonalds right there [indicates]. You can't help
24 but see the big M. And the lights from the gas station
25 right beside it.

State v Anthony McClain
Bryan Robinson-Cross-Examination by Mr. Mayer
March 14, 2017

1 Q. Okay. It looks like that fence is kind of an old
2 ratty fence. Are a couple of different ways through
3 there?

4 A. No, you got to come in the front -- there is a
5 couple of ways around the hotel; a bunch of halls. But
6 basically you got to come in the front.

7 Q. Okay. But it's in with a number of different
8 establishments?

9 A. Yes.

10 Q. Okay. Thanks very much.

11 THE COURT: Anything further?

12 MR. OSBORNE: Just briefly.

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State v Anthony McClain
Bryan Robinson-Redirect Examination by Mr. Osborne
March 14, 2017

1 REDIRECT EXAMINATION

2 BY MR. OSBORNE:

3 Q. So piggybacking off that we'll go back to State's
4 exhibit 13.

5 [Whereupon, the photograph is shown]

6 Q. So is this accurate if you follow my pen here. If
7 you were to come into the rear of the Stayover you would
8 come this way [indicates] is that correct?

9 A. Yes.

10 Q. And if you were to keep going and to hang a right
11 right here [indicates] can you get out that way?

12 A. No, it's a closed gate back there.

13 MR. OSBORNE: No further questions, Your Honor.

14 THE COURT: Anything else?

15 MR. MAYER: Court's indulgence.

16 [Whereupon, Mr. Mayer confers with his client]

17 MR. MAYER: Nothing further.

18 THE COURT: Okay. Thank you, sir.

19 [Whereupon, the witness is excused and exits the
20 witness stand]

21 MR. MAYER: Judge, we have a motion.

22 THE COURT: Okay. Ladies and gentlemen we'll have
23 you go to the jury room.

24 [Whereupon, the jury exits at 10:16 a.m.]

25 THE COURT: Yes, sir?

State v Anthony McClain
Motion for Mistrial-Remarks by Mr. Mayer
March 14, 2017

1 MOTION FOR MISTRIAL

2 MR. MAYER: Judge, it was out before I could catch
3 it. He said they were in the federal prison together.
4 And I think that's not information that necessarily could
5 come in. I think it's extremely prejudicial and colors
6 my client in a particular light in front of the jury that
7 in a way the prosecution had no right to elicit. And I
8 think we need to have a different jury panel. I don't
9 think that we can fix that. I wasn't going to object in
10 real time because it just draws more attention to it.
11 But I think this panel is tainted.

12 THE COURT: What says the State?
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State v Anthony McClain
Motion for Mistrial-Remarks by Mr. Osborne
March 14, 2017

1 MR. OSBORNE: We had told that witness over and
2 over again to not mention anything about this defendant's
3 prior conviction. In fact, my investigator told him
4 before he took the stand. He is a friend of this
5 individual. He is experienced with the criminal justice
6 system as is he. I don't know whether he did that
7 purposefully knowing what the intention would be and
8 knowing what the result would be.

9 But if he did we cannot try this case because I
10 think he would do it again. I think there is a remedy.
11 There is a curative instruction that can be given. And I
12 would even go so far to argue in my closing that if there
13 were any evidence of that we would have presented it and
14 they should disregard it.

15 We are going to put other people on the stand who
16 are also associates of them and we've told them the same
17 thing as well as they have been told before they
18 testified. What the answer should have been and what we
19 talked about was that he used to work with him.

20 THE COURT: That guy is gone? See if he is still
21 outside.

22 UNIDENTIFIED SPEAKER: He's still outside.

23 THE COURT: Have him stay out there. Hold onto him
24 for a minute.

25

State v Anthony McClain
Motion for Mistrial-Reply by Mr. Mayer
March 14, 2017

1 MR. MAYER: And Judge, may I?

2 THE COURT: Yes, sir.

3 MR. MAYER: I just want to say that no one from my
4 office or on my behalf has talked to this guy or tried to
5 set any mess like that up; just so the court knows.

6 THE COURT: All right. Yes, we need him.

7 [Whereupon, Mr. Robinson enters the courtroom]

8 THE COURT: I need you to come and take the witness
9 stand again.

10 MR. ROBINSON: Yes, sir.

11 [Whereupon, Mr. Robinson retakes the witness stand]

12 THE COURT: All right. Go ahead Solicitor.

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State v Anthony McClain
Bryan Robinson-In Camera-Direct Examination by Mr. Osborne
March 14, 2017

1 DIRECT EXAMINATION (In Camera)

2 BY MR. OSBORNE:

3 Q. Mr. Robinson, when we met in a pretrial meeting did
4 I not tell you to be very careful and not mention
5 anything concerning Mr. McClain's prior conviction?

6 A. Yes, you did but at the same time you asked me to
7 put my hand on the Bible and tell the truth about how I
8 know this man. So all I could do is tell the truth in
9 the court of law about how I know him. You asked me a
10 question and I answered the question.

11 Q. Okay, fair enough. But didn't I say that if we
12 talked about the background to mention that you used to
13 work with him because that's true; you did used to work
14 with him?

15 A. Yes.

16 Q. And didn't I tell you not to mention anything about
17 a halfway house as well?

18 A. Yes, but you still asked me to tell the truth in the
19 court of law about how I know Mr. McClain. So from point
20 A to point B that's how I know him.

21 If I made a mistake or I did something wrong then
22 I'll take the penalty as me being the man that comes with
23 it. But you asked me a question, I put my hand on the
24 Bible and I swore to told the truth and that's how I know
25 him.

State v Anthony McClain
Bryan Robinson-In Camera-Direct Examination by Mr. Osborne
March 14, 2017

1 Q. Okay. Did Investigator Haupt tell you outside
2 before you took the stand to not say anything about it as
3 well?

4 A. He just said basically don't go into details.

5 THE COURT: He said not to go into details about
6 what?

7 THE WITNESS: He just basically said don't go into
8 details. If he asks you certain questions don't go into
9 details.

10 BY MR. OSBORNE:

11 Q. Isn't it true though he said don't go into the
12 defendant's criminal history?

13 A. He just said if they ask me about my criminal
14 history don't go into details about mine; just keep it
15 short.

16 I'm trying to figure out what's going on here
17 because at the end of the day y'all asked me to do
18 something, asked me to put my hand on the Bible and tell
19 the truth at the court of law. I do it and now I'm in
20 the middle of a situation that I asked not to be in from
21 the beginning. You see what I'm saying?

22 Now I feel like I'm sitting up here being penalized
23 for something that don't even pertain to me one way or
24 the other. I was home in my bed. It's in black and
25 white. Whatever Mr. McClain's got going on that's Mr.

State v Anthony McClain
Bryan Robinson-In Camera-Direct Examination by Mr. Osborne
March 14, 2017

1 McClain's business. I feel like I'm in the middle of
2 something that don't pertain to me.

3 MR. MAYER: Judge, may I ask him some questions?

4 THE COURT: Yes, sir.

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State v Anthony McClain
Bryan Robinson-In Camera-Cross-Examination by Mr. Mayer
March 14, 2017

1 CROSS-EXAMINATION (In Camera)

2 BY MR. MAYER:

3 Q. If instead of the prosecutor telling you ahead of
4 time to admit something from your background that you
5 felt like was part of the truth that you needed to say if
6 the Judge had said you cannot say about the halfway house
7 or the prior federal stuff how you knew him would you
8 have left that out then if the Judge had instructed you
9 to?

10 A. Yes, but at the same time not in the rebuttal if you
11 asked me not to go into details about my criminal history
12 about disclosing it but then you ask me a question I'm
13 supposed to answer your question. So if the Judge asked
14 me a question I'm going to have to answer Your Honor's
15 question.

16 THE COURT: Anything else of this witness?

17 MR. OSBORNE: No, Your Honor.

18 MR. MAYER: No, Judge.

19 THE COURT: You can step down, sir. But stay with
20 us. It looks like you're heading -- is that your work
21 outfit?

22 THE WITNESS: I was at work. I left work to come
23 here because they asked me to be here.

24 THE COURT: Do you plan to go back today or are you
25 taking off today?

State v Anthony McClain
Bryan Robinson-In Camera-Cross-Examination by Mr. Mayer
March 14, 2017

1 THE WITNESS: No, sir. I was going back so I can
2 make money to feed my family.

3 [Whereupon, the witness is excused and exits the
4 witness stand]

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State v Anthony McClain
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March 14, 2017

1 THE COURT: Anything else?

2 MR. OSBORNE: There may be another way of doing it.
3 Obviously, it would be up to you, Your Honor. But I
4 could recall him and then I could say Mr. Robinson you
5 made a comment that the defendant had been convicted of a
6 federal crime but you have no proof of that isn't
7 correct? And then I think if the jury were to hear that
8 then they would understand that or at least they would
9 think that. If that were true I wouldn't be bringing him
10 back up trying to say that.

11 THE COURT: That's on one hand and on the other
12 hand he wouldn't be in a federal prison if he wasn't
13 convicted of a federal crime.

14 MR. OSBORNE: It could be word on the street, too.
15 He wouldn't have any personal knowledge of that. And of
16 course again in closing I could make it a point to say if
17 there were any evidence of that fact that you were to
18 consider you can bet that I would have presented that to
19 you during the case.

20 THE COURT: Mr. Mayer?

21 MR. MAYER: Judge, I've said my peace. I think you
22 can't recover from that. The more you highlight it the
23 worst it gets. I mean these jurors pick up on the
24 smallest things you know. I feel like there is no way he
25 can get a fair trial now. I hate it. I hate it for

1 everybody. But it's not right to go forward.

2 THE COURT: Well, we've had a number of
3 conversations here. It was a motion earlier that the
4 barber who was with him shouldn't be able to get into the
5 testimony that he was convicted of a carjacking or
6 something. I misspoke on that when I said that that only
7 pertains to a defendant. It also pertains to a witness.
8 So Mr. Mayer the same analysis must be done as to
9 witnesses as argued by Mr. Mayer.

10 But in connection with the alleged victims testimony
11 and the State's theory of the case the defendant
12 supposedly tells her that he had been to prison and per
13 the State's theory the fact that he had been to prison is
14 part of the intimidation to keep her under control. Now
15 we, I don't know if we're going to get to have a separate
16 discussion about the admissibility of that or if that is
17 something Judge Dennis has already ruled on I don't know.
18 But I know that's a part of what might otherwise be the
19 testimony of the case.

20 So it's sort of a cardinal rule that you don't put
21 the defendant's character into evidence as the defense is
22 arguing now. But if it is inevitable based on what
23 transpired that night in relation to the defendant and
24 the alleged victim or perhaps even in some of those
25 clips. I'm not sure what all he said about having been

State v Anthony McClain
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1 in trouble before. I don't know if that came in or I'm
2 fuzzy on whether I missed part of that I don't know. So,
3 I'm going to take that issue under advisement and we're
4 going to press on.

5 MR. MAYER: Thank you, Judge.

6 MR. OSBORNE: Thank you, Judge.

7 THE COURT: Let's take a two minute stretch and
8 bring them back -- a two minute break.

9 [Whereupon, court is in recess from 10:30 a.m. until
10 10:35 a.m.]

11 THE COURT: Let's bring our panel.

12 [Whereupon, the jury enters at 10:38 a.m.]

13 THE COURT: You may call your next witness.
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State v Anthony McClain
Barry Johnson-Direct Examination by Ms. Ginsberg
March 14, 2017

1 MS. GINSBERG: The State calls Barry Johnson.
2 [Whereupon, Mr. Johnson comes forward]
3 THE COURT: If you will go there and place your
4 left hand on the Bible and raise your right hand and face
5 me left hand on the Bible and raise your right hand.
6 [Whereupon, the witness is duly sworn by the Court]
7 THE COURT: Be seated and tell us your name.
8 THE WITNESS: Barry Johnson.
9 THE COURT: Barry Johnson. All right.
10 - - - - -
11 BARRY JOHNSON,
12 Having been first duly sworn,
13 Was examined and testified as follows:
14 DIRECT EXAMINATION
15 BY MS. GINSBERG:
16 Q. Good morning Mr. Johnson.
17 A. Good morning.
18 Q. How old are you?
19 A. Fifty-four.
20 Q. And where are you from?
21 A. Charleston.
22 Q. You were born and raised here?
23 A. Yes.
24 Q. Are you married?
25 A. Yes, but divorced now.

State v Anthony McClain
Barry Johnson-Direct Examination by Ms. Ginsberg
March 14, 2017

1 Q. Oh divorced? Do you have kids?
2 A. Yes.
3 Q. How many kids do you have?
4 A. Four boys.
5 Q. Four boys? Do you work?
6 A. Yes.
7 Q. Where do you currently work?
8 A. Rays Automotive.
9 Q. Rays Automotive. Where do you currently live? You
10 don't need to say the exact address but what street?
11 A. In North Charleston on Morrison Street.
12 Q. Morrison Street?
13 A. Yes.
14 Q. And is that in the Ferndale neighborhood?
15 A. Yes.
16 MS. GINSBERG: Your Honor, may I approach?
17 THE COURT: Yes.
18 Q. [Ms. Ginsberg] I'm showing you what has been marked
19 and previously admitted as State's exhibits 44 and 45.
20 [Whereupon, the witness is shown photographs]
21 Q. Do you recognize these pictures?
22 A. Yes.
23 Q. And what are they?
24 A. This is my trailer right here [indicates].
25 Q. Okay. And what is this [indicates]?

State v Anthony McClain
Barry Johnson-Direct Examination by Ms. Ginsberg
March 14, 2017

1 A. This is the neighborhood.
2 Q. State's exhibit 44 I'm going to show this to you.
3 What is this?
4 [Whereupon, the witness is shown photograph]
5 A. That's my trailer.
6 Q. So this tan one [indicates] that's your trailer?
7 A. Yes.
8 Q. So you're in the tan trailer?
9 A. Yes.
10 Q. And this white trailer is your neighbor?
11 A. Yes.
12 Q. Okay. State's exhibit 45, this white trailer who is
13 that?
14 [Whereupon, the witness is shown photograph]
15 A. That's my neighbor's.
16 Q. Okay. So this is your neighbor's?
17 A. Yes.
18 Q. Okay. So how do you -- before we get into this
19 picture do you know the defendant in this case?
20 A. Yes.
21 Q. And how did you know the defendant?
22 A. He was my neighbor.
23 Q. Okay. And in this picture in State's exhibit 45 can
24 you see where he used to live?
25 [Whereupon, the witness is shown photograph]

State v Anthony McClain
Barry Johnson-Direct Examination by Ms. Ginsberg
March 14, 2017

1 A. His trailer is right there [indicates] where that
2 little tree is.
3 Q. Where the little tree is at?
4 A. Yes.
5 Q. So right here [indicates] where this little tree is?
6 A. Yes.
7 Q. Okay. So he's like three houses down from you?
8 A. Well, four I think.
9 Q. Okay. Four; you're right it's your neighbor.
10 A. Yes.
11 Q. Did Mr. McClain live with anyone?
12 A. His wife.
13 Q. Okay, his wife. And how often ---
14 A. --- either his girlfriend or his wife. I'm not
15 sure.
16 Q. Okay. So his girlfriend or his wife. Since y'all
17 were neighbors how often did you see Mr. McClain?
18 A. Well, we see just about every day.
19 Q. And what did y'all do when you saw each other?
20 A. When I got off sometime we would just sit around and
21 talk and have a beer.
22 Q. Okay, talk and have a beer. So on the night of June
23 1st, 2015 that early morning did you see Mr. McClain that
24 night?
25 A. Yes.

State v Anthony McClain
Barry Johnson-Direct Examination by Ms. Ginsberg
March 14, 2017

1 Q. Can you tell the jury about that? How did you see
2 him that night?

3 A. Well, I came out my house and when I walked out I
4 saw him pick up some chairs on the table and he was
5 sitting up there. So I came out and asked him what's
6 going on. I asked him if he wanted a beer and so we sat
7 out there and talked.

8 Q. Okay. So you guys sat out there and talked. How
9 long do you think you chatted for?

10 A. Probably about an hour.

11 Q. About an hour. And how did Mr. McClain appear to
12 you?

13 A. He just was sitting there. When I walked out he was
14 just sitting there. He wasn't doing nothing.

15 Q. Okay. Drunk, sober, angry, mad?

16 A. No, he wasn't drunk.

17 Q. Okay. So you guys are sitting out there chatting.
18 Then what happened?

19 A. After that I noticed -- sometimes the police they
20 just cruise through so when he saw the police he got up
21 and he said he was going home and he walked through the
22 field and he went home. And then I thought it seemed
23 like something was strange that he just jumped up like
24 that.

25 Q. Why did you think something was strange?

State v Anthony McClain
Barry Johnson-Direct Examination by Ms. Ginsberg
March 14, 2017

1 A. Well, because we normally if we see a police he
2 don't get up. We just sit right there and just continue
3 on doing what we're doing.

4 Q. So that time he sees a police car come by and he
5 jumps up. Did he say anything to you when he was
6 leaving?

7 A. No, he just said he was going home.

8 Q. Okay. And where did he go once he jumped up?

9 A. Well, he walked through the middle field and walked
10 to the back way of his trailer.

11 Q. I'm showing you again State's exhibit 44. Can you
12 point out to me the middle field?

13 [Whereupon, the witness is shown photograph]

14 A. Like if you walk through there [indicates].

15 Q. Okay. Right in here [indicates]?

16 A. Yes.

17 Q. I'm going to keep my finger there so I can show the
18 jury. Right in here [indicates]?

19 A. Yes.

20 Q. So he walked right in this little middle field?

21 [Whereupon, the photograph is shown]

22 A. Right.

23 Q. Did you see Mr. McClain after that?

24 A. No, not after that night.

25 Q. Okay. Thank you.

State v Anthony McClain
Barry Johnson-Direct Examination by Ms. Ginsberg
March 14, 2017

1	Q.	Okay.
2		MS. GINSBERG: No further questions, Your Honor.
3		THE COURT: Defense questions?
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State v Anthony McClain
Barry Johnson-Cross-Examination by Mr. Mayer
March 14, 2017

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CROSS-EXAMINATION

BY MR. MAYER:

Q. Hey, Aaron Mayer here for Anthony. About what time were y'all sitting around having a beer?

A. Probably about 11 or 12; something like that.

Q. At night?

A. Yes, at night.

Q. Okay. It wasn't a lot later than that? I mean I know we're asking you stuff that happened a long, long time ago but I'm just trying to think if it's 11 or 12 or if it was 2 in the morning.

A. No, I don't think it was that late. It had probably been right around 12 or something like that.

Q. Okay. And so when you're saying that Anthony got up it was after having a beer?

A. Yes, after we was sitting there talking.

Q. Y'all had been talking for a good while right?

A. Yes, we were sitting there for a good little while talking.

Q. Okay. I mean isn't it possible he just was done talking and was tired and ready to go to bed?

A. Well, not really. I mean when we sit up late --

Q. I'm sorry?

A. Sometimes we will sit up late you know.

Q. And how do you end it when you guys sit out late?

State v Anthony McClain
Barry Johnson-Cross-Examination by Mr. Mayer
March 14, 2017

1 Do y'all fall asleep in the chairs out there?

2 A. No, I don't fall asleep outside.

3 Q. At some point y'all part ways?

4 A. Yes, we just go our separate -- he goes to his house
5 and I go inside.

6 Q. What would be like the latest that y'all sit out
7 late when y'all are sitting out?

8 A. Well, round about 2.

9 Q. Okay. Well, if you're sitting out at 2 or after
10 that it's pretty late for y'all?

11 A. Yes.

12 Q. That's time to get up and go to bed.

13 A. Yes, that's right.

14 Q. Okay. Thank you.

15 MS. GINSBERG: Just briefly, Judge.

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State v Anthony McClain
Barry Johnson-Redirect Examination by Ms. Ginsberg
March 14, 2017

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REDIRECT EXAMINATION

BY MS. GINSBERG:

Q. Mr. Johnson, Mr. Mayer said is it possible that Mr. McClain left because it was late. That could have been a reason right?

A. Yes.

Q. But it's also possible that he could have left because he just saw that police car drive by.

A. Right, yes.

Q. And you yourself said that was strange that he did that.

A. Yes, he just got up like that.

Q. Okay. Thank you.

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

[Whereupon, the witness is excused and exits the witness stand]

THE COURT: Next witness.

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1 MR. OSBORNE: The State calls Will Cobbs.

2 [Whereupon, Mr. Cobbs comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Once seated please give your first
6 and last name and spell out your last name please.

7 THE WITNESS: My first name is William Cobbs,
8 C-O-B-B-S.

9 - - - - -

10 WILL COBBS,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. OSBORNE:

15 Q. Mr. Cobbs, how old are you?

16 A. Excuse me?

17 Q. How old are you?

18 A. Fifty one.

19 Q. Fifty one. Are you married?

20 A. No.

21 Q. Do you have any children?

22 A. No.

23 Q. Where do you live? You don't have to give the exact
24 address; whereabouts do you live?

25 A. --

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1 THE COURT REPORTER: I'm sorry?
2 Q. [Mr. Osborne] Say it again?
3 A. Summerville.
4 Q. Summerville?
5 A. Yes.
6 Q. Who do you live with?
7 A. Me and my mother.
8 Q. You're going to have to really speak up. I'm sorry.
9 A. I currently reside with my mother.
10 Q. With your mother in Summerville?
11 A. Yes.
12 Q. And what type of work do you do?
13 A. I'm a barber.
14 Q. You've been a barber for awhile, right?
15 A. For quite some time, yes.
16 Q. Let's talk about the defendant in this case, Anthony
17 McClain. Did you cut his hair?
18 A. I have.
19 Q. You have before?
20 A. Yes.
21 Q. Going back in 2015 and before that how often did you
22 cut his hair?
23 A. I cut his hair at a couple of different shops. So I
24 own my own shop but he frequents another shop that I used
25 to work at.

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1 Q. Okay. So he was a customer of yours at another shop
2 and then in a previous shop and then the shop in 2015?

3 A. Yes.

4 Q. When did you first start cutting his hair? What
5 year was that?

6 A. Probably somewhere in '15 -- '14 or '15. I don't
7 remember.

8 Q. Okay, fair enough. Let's go back to the night of
9 June the 1st going -- let's start with the night of June
10 the 1st, 2015. Were you working that night or that day I
11 guess?

12 A. I'm sure I was.

13 Q. Okay. And what barber shop were you working at
14 then?

15 A. If it was '15 it was on Dorchester Road.

16 Q. On Dorchester Road, okay. And did you see the
17 defendant that day?

18 A. I'm sure if its -- I mean I can't remember the exact
19 dates and exact times. If it was in '15 I know it was
20 there.

21 Q. So just to help you a little do you remember
22 speaking to Detective Jarrell?

23 A. Yes.

24 Q. And do you remember speaking to Investigator Haupt,
25 myself ---

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- 1 A. --- yes ---
- 2 Q. --- and Ms. Ginsberg?
- 3 A. Yes.
- 4 Q. The rest of the questions that I'm going to be
- 5 asking you concerning that night are going to be the
- 6 incidents that we asked you about, okay.
- 7 A. All right.
- 8 Q. So on that night did you cut the defendant's hair?
- 9 A. On what night?
- 10 Q. The night of June the 1st; the same night that
- 11 Detective Jarrell asked you about?
- 12 A. Okay, well I guess yes.
- 13 Q. And how much did you charge him for a haircut?
- 14 A. It was 20 dollars for a haircut; that's standard.
- 15 Q. Does he normally give you a tip or does he just pays
- 16 you 20 bucks?
- 17 A. He normally just pays the 20 bucks.
- 18 Q. Okay.
- 19 A. Sometimes he gets a little better deal than others.
- 20 Q. So it would vary.
- 21 A. Yes.
- 22 Q. But the baseline is 20?
- 23 A. Baseline is 20.
- 24 Q. That night when you cut his hair did he pay you?
- 25 A. He was supposed to come back because he was -- I

1 think him and his wife was leaving to go out of town so
2 he was supposed to come back and take care of it, yes.

3 Q. Okay. So you cut his hair, he didn't pay you but he
4 said he would pay you later, is that fair?

5 A. Uh Huh. Well, his wife stood for it.

6 Q. I'm sorry; say it again.

7 A. His wife stood for it. She said she would make sure
8 I get my money.

9 Q. Okay. So did his wife pay you?

10 A. Well, they were supposed to come back and bring the
11 money.

12 Q. Okay. So you cut his hair ---

13 A. --- they had some business to go take care of and
14 they said they would on their way coming that she would
15 make sure I would get the money.

16 Q. Okay. Did they come back?

17 A. Yes.

18 Q. Okay. So they left and they come back. Did you get
19 paid then?

20 A. Not right then. I was supposed to go and he was
21 supposed to go pick up some money through somewhere from
22 his cousin or something.

23 Q. Okay. You said not right then. Isn't it accurate
24 that you never got paid?

25 A. Yes, I mean eventually.

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1 Q. All right. So he said he was going to get some
2 money from his cousin, is that right?

3 A. Well, he was going to stop somewhere and pick up
4 some money. And at that point in time I was about to
5 close. So I was like okay, I'll catch a ride with him
6 and eventually I would --

7 Q. You're going to have to speak up because she is
8 writing down everything you're saying. So say it again;
9 I'm sorry.

10 A. I didn't get paid right then but through the course
11 I was supposed to get paid and get a ride home.

12 Q. Okay. So he said he was going to go meet with a
13 cousin or someone.

14 A. Yes, someone ---

15 Q. --- to get the money. And you agreed to go with
16 him?

17 A. I was just okay, that's fine.

18 Q. Well, I mean is that unusual? Do you normally cut
19 people's hair and then go with them to get paid?

20 A. Well, I mean I know him from I dated one of the
21 family members that he dated so I know him from there.

22 Q. Who did you date?

23 A. I dated with his cousin's -- with his wife's niece.

24 Q. Wife being Ms. Liz, Ms. Tisdale?

25 A. Yes.

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1 Q. So you dated her niece?

2 A. Yes, at one point in time. I mean that's how we
3 knew each other.

4 Q. Okay. So is it fair to say then you weren't just
5 going to get paid you were going to maybe hang out with
6 him; I mean you're friends with him?

7 A. I mean not friends I mean we're not bed buddies or
8 anything but I know of him. And he's never done anything
9 to me and we've always had a mutual friendship.

10 Q. Okay. What time does your shop close?

11 A. It varies.

12 Q. What time do you think it closed that night?

13 A. Well, I mean usually most of the time I'm probably
14 closed by 9 o'clock unless I got a host of people.

15 Q. Okay. So you think that you and the defendant would
16 have left about 9 o'clock?

17 A. It was probably somewhere around there; I'm not
18 sure.

19 MR. OSBORNE: Your Honor, may I approach?

20 THE COURT: Yes.

21 Q. [Mr. Osborne] Mr. Cobbs, I'm showing you what has
22 been marked as State's exhibit 6. Can you take a look at
23 that and tell me if you recognize it?

24 [Whereupon, the witness is shown photograph]

25 A. Yes.

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1 Q. And what is that?

2 A. It's a car.

3 Q. And whose car is that?

4 A. I mean I don't know whose car it is. That was the
5 car that was being driven that day. I'm sure it's
6 probably his wife's car because I've seen her in it.

7 Q. Okay. So is that the car that you drove around with
8 the defendant that night?

9 A. Yes, that's the car we were in.

10 Q. Okay.

11 MR. OSBORNE: Your Honor, at this time I would seek
12 to admit State's exhibit 6 into evidence.

13 MR. MAYER: No objection, Your Honor.

14 THE COURT: It's admitted.

15 [Whereupon, State's exhibit number 6 is entered into
16 evidence by the court]

17 Q. [Mr. Osborne] All right. So you get in the car with
18 the defendant. Is he driving or are you driving?

19 A. He's driving.

20 Q. Okay, he's driving. Where do y'all go?

21 A. First to Church's Chicken and across the street to
22 the convenience store on Reynolds Avenue.

23 Q. Okay.

24 MR. OSBORNE: May I approach, Your Honor?

25 THE COURT: Yes.

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1 Q. [Mr. Osborne] I'm showing you State's exhibit 14 and
2 15. Can you take a look at those and tell me if you
3 recognize them?

4 [Whereupon, the witness is shown photographs]

5 A. Yes. There goes Church's and there goes the store I
6 was talking about.

7 Q. Okay. And this is where you -- maybe one of the
8 first locations that you went with the defendant that
9 night?

10 A. Yes, it is.

11 MR. OSBORNE: Your Honor, I would seek to admit
12 State's exhibit 14 and 15 into evidence.

13 MR. MAYER: No objection, Your Honor.

14 THE COURT: It's admitted.

15 [Whereupon, State's exhibit numbers 14 and 15 are
16 entered into evidence by the court]

17 Q. [Mr. Osborne] I'm showing you State's exhibit 14
18 first.

19 [Whereupon, the photograph is shown on screen]

20 Q. Off in the background is that the Church's that
21 y'all went to?

22 A. Yes.

23 Q. Okay. What -- do you know that intersection?

24 A. Yes, the barber shop I used to work, I used to work
25 at a barber shop right in that same location right behind

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1 Church's.

2 Q. What intersection is that? What are the two roads?

3 A. Probably Reynolds and Spruill or Reynolds and
4 Rivers.

5 Q. Okay. So y'all first went to that Church's. Did
6 you get something to eat?

7 A. Yes.

8 Q. Who paid?

9 A. I paid. I mean I just got -- actually I was hungry
10 so I got a snack. I got some chicken and then because he
11 was there I offered him a piece.

12 Q. Okay. After y'all ate you then went to the gas
13 station you said?

14 A. Yes, across the street.

15 Q. Is that it right there in that image in State's
16 exhibit 14?

17 A. Yes, it is.

18 Q. Is that also at the same intersection? Yes?

19 A. Yes, it is.

20 Q. I'm showing you State's exhibit 15.

21 [Whereupon, the photograph is shown on screen]

22 Q. Is that just another picture of the same gas
23 station?

24 A. [No response]

25 Q. Is that just another -- you have to answer; I'm

1 sorry.

2 A. Yes, I mean it seems to be.

3 Q. And then Church's is still in the background?

4 A. Yes.

5 Q. All right. When y'all went to the gas station did

6 you get something, did you y'all buy something?

7 A. Yes.

8 Q. What did you buy?

9 A. I probably bought a beer and some orange juice.

10 Q. Beer, orange juice and cigarettes?

11 A. I don't remember. I just remember I know I bought

12 something to drink.

13 Q. Okay. Bought him a beer, the defendant?

14 A. Either a beer or some orange juice. I know I bought

15 beer and orange juice there.

16 Q. You know you bought him something?

17 A. Yes.

18 Q. Is it fair to say that you bought him something to

19 eat; you bought him a beer and probably some cigarettes

20 or something so his tab is going up a little bit. Now

21 it's ---

22 A. --- well, it's not on the tab. It's just something

23 -- I was going to get something to eat and because I was

24 with him I said hey, you want a piece of chicken ---

25 Q. ---okay ---

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1 A. --- it wasn't like I just went there because he was
2 hungry or I was hungry.

3 Q. He still owes you that 20 right?

4 A. Excuse me?

5 Q. He still owes you that 20 right?

6 A. Obviously.

7 Q. All right. Once you left the gas station where did
8 you and the defendant go then?

9 A. I don't know. I mean just like he said we were
10 going to take a ride or riding or waiting on a call from
11 his cousin to tell me where to pick up the money or where
12 to pick up the money.

13 So we rode and basically ended up downtown. We rode
14 down Meeting Street. I don't know exactly what general
15 area he was supposed to talk to these people or whatever
16 but we ended up on Meeting Street riding towards
17 downtown.

18 Q. Meeting Street or King Street?

19 A. Excuse me.

20 Q. Meeting Street or King Street?

21 A. Probably I mean downtown. I don't remember exactly
22 which one.

23 Q. All right. So let's cover something before we go
24 on. So you said that he was waiting on a phone call from
25 a cousin or somebody like that. So I take it he had a

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- 1 cell phone with him.
- 2 A. Yes, I imagine.
- 3 Q. I mean he told you he was waiting on a phone call,
- 4 right?
- 5 A. Yes.
- 6 Q. And the cousin wasn't going to call you was he?
- 7 A. No, I mean...
- 8 Q. And when this cousin called that was the arrangement
- 9 for him to go pick up the 20 dollars presumably that he
- 10 either owed him or he was going to borrow from the cousin
- 11 to pay you?
- 12 A. Yes.
- 13 Q. But you didn't ask him a whole lot of details about
- 14 it.
- 15 A. I mean, I didn't ask a lot of details about it, no I
- 16 didn't.
- 17 Q. You just wanted the 20 dollars.
- 18 A. Eventually, I just wanted to get paid.
- 19 Q. And he told you he was going to pay you as soon as
- 20 he got the phone call.
- 21 A. Well, somewhere along that line. I mean the whole
- 22 purpose of me being with him is so I can get my money and
- 23 eventually end up home.
- 24 Q. Okay. Do you know the defendant's phone number?
- 25 A. Phone number?

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1 Q. Do you know it?
2 A. No, I mean the detective was telling me I gave him
3 some number but I don't remember.
4 Q. Okay. Do you remember talking to Detective Jarrell
5 and Investigator Haupt and myself and Ms. Ginsberg and
6 you said that y'all were riding down King Street?
7 A. Yes.
8 Q. In North Charleston?
9 A. Uh Huh. Well, I know we ended up on King Street.
10 Q. Okay. I'm showing you State's exhibit 1.
11 [Whereupon, the photograph is shown]
12 Q. Where are you from Mr. Cobbs?
13 A. Charleston.
14 Q. So I take it you've been down on King Street before?
15 A. Several times.
16 Q. Okay. King Street is a kind of long street. Some
17 of it is residential and some of it is business. When
18 y'all were coming down King Street were you in the
19 residential area or more in the upper King business area?
20 A. Upper King.
21 Q. Okay.
22 A. Well, not residential like coming into Charleston on
23 Spring Street or Cannon.
24 Q. Okay. So the bar area, the restaurant area; riding
25 down there?

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- 1 A. The store area.
- 2 Q. Okay. So y'all were coming from North Charleston,
3 correct?
- 4 A. Yes.
- 5 Q. So this is King Street right here [indicates] that
6 I'm showing you. Right up here [indicates]; that's King
7 Street. And when you were heading down King Street did
8 y'all end up making a turn?
- 9 A. At some point.
- 10 Q. Did you turn right or left?
- 11 A. I remember a right turn.
- 12 Q. You made a right turn. You came up King Street and
13 then made a right turn. When you made that right turn do
14 you know what street it was on?
- 15 A. I can't remember.
- 16 Q. Was it around the bar area as well? Do you know
17 where Calhoun Street is?
- 18 A. Yes.
- 19 Q. Was it before Calhoun?
- 20 A. It might have been before Calhoun. I know it was a
21 busy area just the same but you know...
- 22 Q. So y'all make a right hand turn. Does he ever pull
23 over or does he ever talk to someone?
- 24 A. Yes, we stopped maybe once or twice.
- 25 Q. Let's talk about that first stop. When y'all made

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1 the right turn how far did y'all go up before he stopped?

2 Was it a block or two or was it more than that?

3 A. A block or two.

4 Q. Okay. So he made a right hand turn from King Street
5 and went a block or two. What happened then when he
6 stopped?

7 A. It was just -- I don't know just some kids on the
8 side or something like that. I don't know who initiated
9 the conversation or were they getting ready to cross the
10 street or something and almost ran into them. But I know
11 we ended up talking to the kids.

12 Q. Okay. To some kids?

13 A. They looked like college kids or whatever.

14 Q. College kids ---

15 A. --- vacation kids ---

16 Q. --- any girls?

17 A. I think it was girls and -- male and females.

18 Q. Okay. About how many were there?

19 A. A little group of them; probably five or six or
20 something like that.

21 Q. Okay. You said y'all stuck up a conversation with
22 them. What was said?

23 A. Well, I didn't say we struck up a conversation. I
24 said a conversation was struck. We pulled over or they
25 pulled over or he waved them over and just casual

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1 conversation.

2 Q. You said they pulled over. These college kids were
3 they walking or were they in a car?

4 A. They were walking.

5 Q. Okay, they were walking. And a conversation was
6 struck up. What was said during this conversation?

7 A. I don't know. It was in reference to where do you
8 go at to party around here; that kind of thing.

9 Q. Okay. And so I take it it was the -- since you
10 weren't talking it was the defendant who was talking?

11 A. Pretty much, yes.

12 Q. Did you hear him say anything about taking a
13 picture?

14 A. Taking a who?

15 Q. Taking a photograph, a picture?

16 A. If he did I don't remember.

17 Q. You don't remember that?

18 A. No.

19 Q. Okay. How did these college age kids look? Were
20 they white, black?

21 A. They were white.

22 Q. They were white? They looked young I take it?

23 A. College kids.

24 Q. Okay. So he strikes up a conversation. He stops
25 the car? The defendant stops the car, yes or no?

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- 1 A. The car was stopped.
- 2 Q. He's in control of the car isn't he?
- 3 A. Yes, but I'm saying...
- 4 Q. You're not controlling the car.
- 5 A. I mean I don't know what you're asking. You can't
- 6 speak to somebody in a moving position I wouldn't think.
- 7 Q. Did the defendant stop the car?
- 8 A. The car was stopped.
- 9 Q. Did the defendant get out of the car?
- 10 A. No, not at that point in time.
- 11 Q. Did the defendant ever get out of the car?
- 12 A. The defendant got out the car probably the second
- 13 stop we made.
- 14 Q. So he never got out of the car during the first
- 15 stop?
- 16 A. I don't remember, no.
- 17 Q. So he could have got out the car but you don't
- 18 remember?
- 19 A. Okay. Well, he could have got out the car I don't
- 20 remember.
- 21 Q. He could have?
- 22 A. Yes.
- 23 Q. Okay. And you said there was a second stop?
- 24 A. Yes.
- 25 Q. So when he either did or did not get out of the car

1 he then drove I take it?

2 A. Yes.

3 Q. Did he continue straight on that road?

4 A. Probably made a turn. Seems like I remember a turn,
5 yes.

6 Q. Did he make that turn after a block or two or was it
7 longer than that?

8 A. Probably a block or two.

9 Q. Did he turn right or left?

10 A. Right I believe, yes, right.

11 Q. And took a right. Did he turn again?

12 A. At some point, yes.

13 Q. When he made that next turn was it right or left?

14 A. Right.

15 Q. Do you know what street you're on now?

16 A. No idea.

17 Q. After he makes that next right turn you said he made
18 a second stop. Tell us how that happened.

19 A. I mean he stopped. There was some kids, either some
20 kids were making some noise across the street and I think
21 like I said he just stopped and they struck up a
22 conversation, he went across the street and they struck
23 up a conversation.

24 Q. Okay. Was this one kid or multiple kids?

25 A. It's another group of kids.

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1 Q. Another group of kids? Okay. Did he stop his
2 vehicle after talking to one kid?

3 A. I don't know what you're asking.

4 Q. Did he ever stop his vehicle after talking to one
5 kid?

6 A. Did he ever stop the vehicle after talking to one
7 kid? There was a group of kids.

8 Q. Did he stop his vehicle again after that?

9 A. There was one more stop.

10 Q. Okay a third stop. Let's talk about that third stop
11 then. What happened then?

12 A. I think he said he saw whoever he was looking for
13 and saw or he knew somebody or something. We just pulled
14 over and stopped. He pulled over on the side.

15 There was another car either going into a parking
16 lot or about to park or something like that. And I think
17 he said something in reference okay, there go my people
18 or something like that.

19 Q. Okay. So on this stop he said he saw someone. Is
20 it one person or is it a group of people?

21 A. It is a car. He saw a car and it was pulling in so
22 I guess he recognized the car.

23 Q. Okay. And he exited the vehicle?

24 A. Yes.

25 Q. But before exiting he said there goes my people

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1 there?

2 A. Yes. Something along the line because he had to
3 have a reason for stopping I'm guessing because he just
4 pulled over on the side.

5 Q. Did he pull over in front of the vehicle or behind
6 the vehicle?

7 A. This was in front. Now that I remember it was
8 pulled over in the front and pulled over I don't know if
9 it was a parking space or a double parked or something
10 like that but I know it was on the left side; the same
11 side of the car in the front.

12 Q. So he would have had to pass the vehicle and then
13 pull over.

14 A. Right.

15 Q. When he passed the vehicle did he slow down and say
16 anything to the person?

17 A. Not as I remember, no.

18 Q. Okay. So he could have but you don't remember?

19 A. I don't remember him saying anything. I saw the car
20 and he pulled up like there go my people hold on a second
21 and pulled over on the side and exited the car.

22 Q. Did he park the car when he stopped it or did he
23 kind of stop in the road?

24 A. I think it was more or less in the road because I
25 guess it was residential parking is like on the left and

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- 1 I think he just pulled over on the side.
- 2 Q. Okay. After he pulled over what happened?
- 3 A. After he pulled over he exited the car and like one
4 or two minutes he came back and he said hey, follow me to
5 the store. I'm with my people or whatever follow me to
6 the store.
- 7 Q. Okay. Let's go through that a little slower. So he
8 gets out of the car. Does he walk back toward ---
- 9 A. --- yes ---
- 10 Q. --- the direction of the other car? Okay. And you
11 say he's gone for about a minute or two.
- 12 A. Right.
- 13 Q. Then he walks back to the car?
- 14 A. Yes, he either gets in the car but I know speaking
15 to him and he said follow me to the store.
- 16 Q. Follow me to the store?
- 17 A. Right.
- 18 Q. Okay. Now then he walked back to the car again?
- 19 A. Right.
- 20 Q. Once he told you to follow him to the store what did
21 you do?
- 22 A. I came around and jumped in the driver's seat and
23 when the car passed I pulled out behind him.
- 24 Q. Okay. The car, what did it look like?
- 25 A. If I'm mistaken it was like a mid-size sedan if I'm

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1 not mistaken.

2 Q. Do you remember the color?

3 A. I know it was a dark color. I don't remember
4 exactly what color. It had to be either black or blue or
5 something.

6 Q. Okay. Was the defendant driving the car when it
7 passed you?

8 A. I couldn't tell you. I doubt it very seriously but
9 I couldn't tell you.

10 Q. Did you see the driver of the car?

11 A. I couldn't tell you whether it was a male or female.

12 Q. Don't know if it was a male or female. So he told
13 you to follow him to the store and you get on the
14 driver's side. Where do y'all go then?

15 A. We went up about a block and made a right onto I
16 guess it is Cannon Street. And got to Cannon and King
17 they pulled in front of the store. I pulled behind them
18 and there wasn't no parking spots so I backed up back on
19 Cannon Street.

20 Q. Okay. So you said you guess you were on Cannon
21 Street. So when he first got into the car with that
22 individual who he said was his cousin or his friend that
23 occurred on Cannon Street?

24 A. No. We had to make some kind of turn. I know
25 everything was a right turn. So it had to make some kind

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1 of right to get on Cannon Street.

2 Q. Okay. So at some point you are following that black
3 car on Cannon Street?

4 A. Yes, whatever, yes.

5 Q. And then y'all go from Cannon to King?

6 A. On the corner of Cannon and King; that's where the
7 store was.

8 Q. Okay. And there was a store there?

9 A. Yes.

10 Q. Now what -- now walk the jury what the cars are
11 doing; what you're doing and the car in front of you.

12 A. Like I said there is a light at the very end of
13 Cannon and King. And when they made the right turn and
14 parked in front of the store I pulled behind them because
15 there was no parking spots.

16 So I backed the car back up on Cannon Street. So
17 they are like on one corner here [indicates] and I'm on
18 the corner on Cannon Street.

19 Q. Okay. So you're on Cannon facing King?

20 A. Right.

21 Q. There is the corner store ---

22 A. --- and they actually are on King.

23 Q. On King, okay. What happens then?

24 A. I guess -- I don't know. I guess I was waiting for
25 them to come out of the store or go in the store -- they

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1 just like -- waiting on them to come out the store.
2 Q. How long do you think you waited?
3 A. Probably about five minutes because I said man, how
4 long is it going to take. When I got out the car to look
5 and see where the car was they were pulling off. So I
6 jumped back in the car to continue following them and the
7 car shut off.
8 Q. Okay. So you didn't run out of gas?
9 A. Yes. That's why the car shut off.
10 Q. Say that again?
11 A. That's why the car shut off. I said when I got back
12 in the car to follow them the car shut off.
13 Q. I thought you said the car shot off, okay I'm sorry.
14 So you get back in the car, you're going to follow them
15 but then his car shuts off.
16 A. Right.
17 Q. It runs out of gas?
18 A. Right.
19 Q. So now you're stuck at the intersection of King and
20 Cannon in the defendant's car ---
21 A. --- right ---
22 Q. --- which is out of gas?
23 A. Right.
24 Q. Okay. And then he's already left ---
25 A. --- right ---

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1 Q. --- the defendant and -- so what do you do then?

2 A. So I'm wondering because I don't have no way of
3 getting in touch with him. This is what I was saying
4 about the cell phone I knew I didn't have a number
5 because I couldn't -- I didn't have a number to get in
6 touch with him or call him or anything. So right now I'm
7 stuck. I'm like dang.

8 Q. What happens then?

9 A. I'm all alone. I had to find somebody -- I went out
10 and somebody came and I paid them to take me up to the
11 gas station and just thankfully they had a gas can or
12 either I bought a gas can or something of that nature but
13 I know I went up to the store and got some gas.

14 Q. Somebody picked you up from that intersection?

15 A. Yes. Just some little white guy who had been out at
16 the bar and he was like what's wrong. And I was like I'm
17 out of gas.

18 Q. And you didn't know him so you got in the car with
19 him and he took you to a gas station.

20 A. Right.

21 Q. And luckily he had a gas can?

22 A. Right.

23 Q. This guy is a white guy, black guy?

24 A. White.

25 Q. So y'all go to what gas station?

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1 A. It's a gas station on -- I think it's on Meeting
2 Street. It seems like an Exxon or something.

3 Q. And y'all go to the Exxon and you put some gas in
4 the can I take it?

5 A. Right.

6 Q. Does he drive you back to the intersection?

7 A. Yes.

8 Q. You get out and put gas in the car?

9 A. Yes.

10 Q. And then what happens?

11 A. I just asked him how much to I owe you and he said
12 I'm all right man. So that was it. He took off.

13 Q. Owe him for the ride?

14 A. Yes, for taking me up the street ---

15 Q. --- and his trouble. And you took off. Which way
16 did you go? Did you take a right on King or did you take
17 a left on King?

18 A. Well, I knew that since I didn't have no way of
19 getting in touch with him I went back to my shop because
20 I was driving his car.

21 I know his wife and I said well, probably he'll get
22 in touch with somebody and they will come and if I'm at
23 the shop that will be some kind of point where -- you
24 know.

25 Q. Would that be a right on King or a left on King back

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- 1 to your shop?
- 2 A. Well, it would be left because I'm heading back to
3 North Charleston.
- 4 Q. Back to North Charleston, okay. So, after taking a
5 left on King where did you go then?
- 6 A. Back to my shop.
- 7 Q. And that's on where again, what road?
- 8 A. Dorchester Road.
- 9 Q. On Dorchester Road. Did you take a swing by his
10 trailer to see if he was there?
- 11 A. I don't think I knew where he lived at that point.
- 12 Q. Okay, fair enough.
- 13 A. I knew nothing about the trailer at that point.
- 14 Q. So you went back to your shop ---
- 15 A. --- right, that's what I'm saying. I didn't have
16 no way of getting in touch with him so I just figured if
17 I'm at the shop maybe he'll call his wife or let her know
18 I got the car or whatever the case may be or he left the
19 car. It's the only chance I had I figured.
- 20 Q. Did he ever come and get the car?
- 21 A. No.
- 22 Q. Who came? Somebody came and got the car right?
- 23 A. The wife.
- 24 Q. The wife did? When did she come and get it?
- 25 A. She got it the next morning.

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1	Q.	Okay.
2	MR. OSBORNE:	Court's indulgence.
3		[Whereupon, Mr. Osborne and Ms. Ginsberg confer]
4	MR. OSBORNE:	No further questions, Your Honor.
5	THE COURT:	Cross-Examination?
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CROSS-EXAMINATION

BY MR. MAYER:

Q. Aaron Mayer here for Anthony. You and Anthony are about the same age, is that right?

A. I assume.

Q. Okay. You're 51 you said.

A. Yes.

Q. And he's about that same age as far as you know, right?

A. As far as I know.

Q. When you were working on his hair previously had he always paid you well?

A. Well, like I said I kind of took him being around family that's a little bit different than not knowing somebody totally. I know somehow eventually I probably would get paid or really it wasn't that big of a deal.

Q. Okay. And when you were with him that night you were with him for it sounds like several hours, correct?

A. It sounds like it but it wasn't that long.

Q. Okay. I mean you were with him in your shop.

A. Yes.

Q. And then you were with him in his car?

A. Yes.

Q. And you were with him in Church's and the gas station.

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- 1 A. Yes.
- 2 Q. During that time did you observe any weapons?
- 3 A. No, I never saw a weapon.
- 4 Q. How about a gun?
- 5 A. Well, I thought probably -- but no, I never saw any
- 6 weapon.
- 7 Q. I'm sorry?
- 8 A. I never saw any weapon. I thought that's probably
- 9 what you were referring to when you said weapon.
- 10 Q. Oh, okay. He got in and out of the car at Church's
- 11 and then ---
- 12 A. --- well not at Church's because we went through the
- 13 drive thru.
- 14 Q. Okay. He got out the car at the gas station?
- 15 A. Yes, while I was in the store.
- 16 Q. And in all that getting in and out of the car you
- 17 never saw him tuck any gun into his waistband or anything
- 18 like this?
- 19 A. I never did.
- 20 Q. Do you know Anthony as somebody who carries a gun?
- 21 A. No.
- 22 Q. Have you ever seen him with a gun?
- 23 A. No.
- 24 MR. MAYER: No further questions.
- 25 THE COURT: Anything further?

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1 MR. OSBORNE: No, Your Honor.

2 THE COURT: You may step down.

3 [Whereupon, the witness is excused and exits the
4 witness stand]

5 THE COURT: Call your next witness.

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1 MR. OSBORNE: The State calls Detective Eric
2 Tuttle.

3 [Whereupon, Detective Tuttle comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: Once seated please state your first
7 and last name and spell out your last name for the
8 record.

9 THE WITNESS: Eric Tuttle, T-U-T-T-L-E.

10 - - - - -

11 ERIC TUTTLE,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. OSBORNE:

16 Q. Good afternoon, Detective.

17 A. Good afternoon, sir.

18 Q. Where do you work?

19 A. Charleston Police Department.

20 Q. How long have you worked there?

21 A. Since 2008.

22 Q. What are some of the various assignments that you've
23 had during that time?

24 A. I started out in patrol and was there for about four
25 years. I moved to the Detectives Division around 2012

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1 where I worked auto theft and robbery and now I'm in
2 homicide.

3 Q. Okay. How long were you in the robbery unit?

4 A. About four years, sir.

5 Q. And when did you move to the homicide unit?

6 A. September of 2015.

7 Q. So back in June of 2015 you would have still been in
8 the robbery unit?

9 A. Yes, sir.

10 Q. Okay. Did you become involved in this
11 investigation, the kidnapping and robbery investigation?

12 A. Yes sir, I did.

13 Q. What was your role in the investigation?

14 A. I assisted Detective Jarrell with interviews, search
15 warrants, arrest warrants, and follow-up investigation.

16 Q. And Detective Jarrell would have been the case agent
17 in this?

18 A. Yes, sir.

19 Q. When did you become involved in it?

20 A. The next morning.

21 Q. So being an assistant detective in a case what do
22 you normally do?

23 A. We review the incident report, the supplemental
24 reports, any evidence that has come in and try to see
25 where we stand with the case.

1 Q. And did you do that in this case?

2 A. Yes sir, I did.

3 Q. So the very next day had a suspect been developed in
4 the case yet?

5 A. Not quite.

6 Q. All right. So after reviewing the reports what did
7 you decide to do first?

8 A. I read some supplemental reports and there was a
9 vehicle involved in this, a red sedan. There were a
10 couple of tags and reports.

11 I looked at databases just to see if maybe they
12 matched the description. In this case those tags did not
13 match the description of the suspect's vehicle.

14 Q. Okay. So you had a couple of tags from that night
15 but they didn't appear to match?

16 A. No, sir.

17 Q. So what did you do next?

18 A. I believe next my partner Paul Krasowski and I drove
19 to the victim's house, Ms. Johnson. We picked her up and
20 asked her to come back to the station, which is typical
21 for a follow-up interview.

22 Q. To do a more thorough interview I take it?

23 A. Yes.

24 Q. On the night of the incident in this case and the
25 other case I guess and tell me if I'm wrong, is it just

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1 the responding detective who takes a kind of abbreviated
2 interview?

3 A. That's right. We just kind of want to get things
4 started to get the basics of the case. But generally
5 it's pretty quick because it's just night shift, there
6 are very few of them so they've got to get started right
7 away so Paul interviews pretty quickly.

8 Q. So this is standard operating procedure to bring the
9 individual back in to talk to them to get a more detailed
10 report.

11 A. Yes, sir.

12 Q. Okay. And did you do that in this case?

13 A. We took her back. Detective Krasowski sort of began
14 the interview and started out with some follow-up
15 investigation from that interview.

16 Q. All right. So -- and the individual who reported
17 this incident what was her name?

18 A. Ms. Jennifer Johnson.

19 Q. Okay. And while speaking with Ms. Johnson did you
20 elect to do something else to try to gather more
21 information?

22 A. In robbery investigations phones are usually pretty
23 vital sources of information. So she had an I-phone, I
24 was very familiar as an Apple user myself so we attempted
25 to log into I-cloud which has sort of a location base

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1 services if it is equipped.

2 Q. And you tried to do that in this case?

3 A. We tried to do that unfortunately the I-cloud
4 information either wasn't working or did not help us in
5 this case.

6 Q. Okay. While going through that information did you
7 find out in other investigative techniques did you find
8 out if her phone had been used at all that night?

9 A. We also were able to log into her phone provider's
10 account to see the last calls. The last call was
11 sometime around midnight to Justin Lawrence who I believe
12 was her boyfriend at the time.

13 Q. Justin Lawrence?

14 A. Yes, sir.

15 Q. Okay. And what was Ms. Johnson's phone number?

16 A. [REDACTED].

17 Q. And you said that call was around midnight?

18 A. Around midnight, yes sir.

19 Q. Okay. And was that the last completed call?

20 A. That was the last connected call, yes sir.

21 Q. All right. So at this point I guess phone records
22 aren't helping you very much?

23 A. In this case they were not helping us very much.

24 Q. All right. What did you do next?

25 A. Next I believe -- the investigation was pretty

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1 complex so a lot of moving parts were going on at once.
2 I believe the defendant was developed as a person of
3 interest in this case.

4 And through that I think that we assisted in
5 drafting some arrest warrants and stuff. And from there
6 we began drafting a search warrant for his residence.

7 Q. Okay. You say that the defendant had been developed
8 as a suspect. Before you got to the arrest warrant stage
9 did you have the occasion to review any surveillance
10 video?

11 A. That's right. There was some surveillance video in
12 this. I believe it was from the Tiger Mart on Rivers
13 Avenue. From the victim's account we tracked her
14 location, went to several locations throughout the area,
15 pulled surveillance video if it was available.

16 And I believe from the Tiger Mart I observed the
17 defendant and the victim in the video. They had kind of
18 pulled into a location at the Tiger Mart, came in and
19 purchased some items and then went back to the car.

20 I believe the defendant was wearing a pretty unique
21 t-shirt at that time that she had described from her
22 interview that said Newport Pleasures on it.

23 Q. Okay. And I know there are other detectives doing
24 other things so I'm asking your observations. But you
25 say that he was developed as a suspect and you believe

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1 arrest warrants were obtained. And you said you assisted
2 with the execution of the search warrant?

3 A. Yes, sir. So after the arrest we identified where
4 his house was. We drafted a search warrant and executed
5 that search warrant.

6 MR. OSBORNE: Court's indulgence.

7 [Whereupon, Mr. Osborne and Ms. Ginsberg confer]

8 MR. OSBORNE: May I approach, Your Honor?

9 THE COURT: Yes.

10 Q. [Mr. Osborne] Detective, I'm showing you State's
11 exhibits 16, 17, and 18.

12 [Whereupon, the witness is shown photographs]

13 Q. Can you take a look at that and tell me what it is?

14 A. State's 16, sir is the defendant's residence, which
15 was 1917 Morrison Street, North Charleston.

16 Q. Okay.

17 A. State's 17, sir is a laundry basket. This was
18 inside of 1917 Morrison Avenue. And the defendant's
19 bedroom is right back here [indicates] and this is the
20 hallway out here [indicates].

21 State's 18 is a close up over the top of the laundry
22 basket and sitting on top is a white t-shirt with the
23 words Newport Pleasures written on it.

24 MR. OSBORNE: Your Honor, at this time I'd seek to
25 admit State's exhibits 16, 17, and 18 into evidence.

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1 MR. MAYER: Without objection.

2 THE COURT: They're admitted.

3 [Whereupon, State's exhibit numbers 16, 17, and 18
4 are entered into evidence by the court]

5 Q. [Mr. Osborne] So this incident occurred on the night
6 of June 1st going into June 2nd. What day did you go to
7 execute this search warrant?

8 A. I believe the search warrant was executed on June
9 3rd.

10 Q. I'm showing you what has been marked and admitted as
11 State's exhibit 16.

12 [Whereupon, the photograph is shown]

13 Q. I know you've already said it. Was that the
14 location that you went to execute the search warrant?

15 A. Yes sir, it is.

16 Q. All right. What happened when you got there?

17 A. When I got there the defendant's girlfriend Ms.
18 Tisdale was on scene. We sort of went in and explained
19 the situation. A search warrant can be traumatic on the
20 homeowners if they're not involved.

21 So we explained to her the situation and why we were
22 searching that house and sort of gathered a statement
23 from her. At the same time there is also a search going
24 on at the residence with officers and detectives.

25 Q. Okay. And I'm showing you State's exhibit 17.

1 [Whereupon, the photograph is shown]

2 Q. And you said that's a laundry basket?

3 A. Yes, sir.

4 Q. And where was the defendant's room?

5 A. That door right there [indicates] that was slightly
6 ajar would have been the defendant's bedroom.

7 Q. And State's exhibit 18?

8 [Whereupon, the photograph is shown]

9 Q. Is that the t-shirt you mentioned that's in that
10 laundry basket that day?

11 A. Yes.

12 MR. OSBORNE: May I approach, Your Honor?

13 THE COURT: Yes.

14 Q. [Mr. Osborne] I'm showing you State's exhibit 19.

15 [Whereupon, the witness is shown exhibit]

16 Q. Could you take a look at that and tell me if you
17 recognize it?

18 A. Yes sir, I do.

19 Q. And what is that?

20 A. That is a white t-shirt that is photographed here in
21 this bag.

22 Q. Do you mind just taking it out?

23 A. Yes, sir.

24 [Whereupon, the witness complies]

25 Q. So you and the other detectives secured that from

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1 that residence is that correct when the search warrant
2 was done?

3 A. Yes, sir.

4 Q. And what happened then from your perspective?

5 A. I returned to the station. The defendant was being
6 interviewed by Detective Jarrell and Sergeant Kasarko
7 [phonetic]. I assisted with the remainder of the
8 interview with the defendant.

9 Q. Okay. So you assisted with interviewing the
10 defendant I think toward the tail end of the interview?

11 A. Yes, sir.

12 Q. Okay.

13 MR. OSBORNE: May I approach, Your Honor?

14 THE COURT: Yes.

15 Q. [Mr. Osborne] For I.D. purposes only can you tell me
16 what that item is?

17 [Whereupon, the witness is shown exhibit]

18 A. This is a search warrant for [REDACTED] Morrison Street,
19 sir.

20 Q. All right. But that's the location that y'all just
21 came from, right?

22 A. Yes sir, that's correct.

23 Q. Why would you want another search warrant for that
24 location?

25 A. In this case because of a lot of moving parts what

1 we do is come back, review the interview and while
2 watching the interview with the defendant the defendant
3 noted that he had called the victim several times prior
4 over the course of the last few months before this
5 incident and that he had written Ms. Johnson's phone
6 number on a business card that was on a nightstand in his
7 bedroom.

8 Q. So he had spoken to her on the phone?

9 A. Basically establishing that he had some sort of
10 preexisting relationship with Ms. Johnson prior to this.

11 Q. Did -- would corroborating that evidence have been
12 important to you?

13 A. Yes.

14 Q. So that was the nature of your second search warrant
15 to go back there?

16 A. Yes, sir.

17 Q. And so you may have said it and if you did I
18 apologize, what specifically were you looking for when
19 you went back?

20 A. Well because he said it was written on a business
21 card on a nightstand in a pretty specific area we also
22 believed that his cell phone would be important to
23 analyze those call so we were looking for the business
24 card and his cell phone.

25 Q. And did he tell you during this statement where to

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1 find the business cards?

2 A. On the nightstand in his bedroom.

3 Q. Okay. And what date did you go back for the second
4 search warrant?

5 A. It was a couple of days later, sir and the search
6 warrant was executed on June the 8th.

7 Q. June the 8th okay. Before I show you these what
8 happened when you got there on June the 8th?

9 A. Ms. Tisdale was there and I believe her brother Mr.
10 Charles Tisdale was there. Ms. Tisdale was very
11 accommodating considering the circumstances. We
12 explained why we were back at her residence again. She
13 directed us to the nightstand and to where his phone was
14 located.

15 MR. OSBORNE: May I approach, Your Honor?

16 THE COURT: Yes.

17 Q. [Mr. Osborne] I'm showing you State's exhibit 21 and
18 22.

19 [Whereupon, the witness is shown exhibits]

20 Q. Can you take a look at those and tell me if you
21 recognize them.

22 A. Yes sir, I recognize both of these.

23 Q. And what are they?

24 A. State's exhibit 22, sir are the business cards that
25 were on his nightstand. State's exhibit 21 is the

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1 defendant's cell phone.

2 MR. OSBORNE: Your Honor, at this time I'd seek to
3 admit State's exhibit 21 and 22 into evidence.

4 [Whereupon, Mr. Osborne and Mr. Mayer confer]

5 MR. MAYER: Without objection.

6 THE COURT: They're admitted.

7 [Whereupon, State's exhibit numbers 21 and 22 are
8 entered into evidence by the court]

9 Q. [Mr. Osborne] All right. You said that you had Ms.
10 Johnson's cell phone number is that correct?

11 A. Yes, sir.

12 Q. When examining State's exhibit 21 did you find any
13 communication between Ms. Johnson ---

14 A. --- no sir ---

15 Q. --- and the defendant's phone?

16 A. No sir, I did not.

17 Q. How many business cards are in here?

18 A. Twenty eight, sir.

19 Q. Out of all these business cards, I'm showing you
20 State's exhibit 22 all at once, did you go through them
21 all?

22 A. Yes, sir.

23 Q. And there were 28?

24 A. Twenty eight, yes sir.

25 Q. Did you collect every business card that was there?

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1 A. I collected every business card that I observed, yes
2 sir.

3 Q. Which one of these business cards has Ms. Johnson's
4 phone number on them?

5 A. None of those cards have her phone number, sir.

6 [Whereupon, Mr. Osborne and Ms. Ginsberg confer]

7 MR. OSBORNE: No further questions, Your Honor.

8 THE COURT: From the defense.

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1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. Hi Detective, Aaron Mayer for Anthony.

4 A. Nice to meet you, sir.

5 Q. Isn't it true that Anthony's phone screen was

6 broken?

7 A. Yes, sir.

8 Q. And it wasn't possible to actually make an outgoing

9 call with that phone, is that correct?

10 A. I don't know if the screen had the effective ability

11 to call, sir.

12 Q. Okay. But back in talking with Anthony he made it

13 clear to you that when he made calls he would borrow

14 someone else's phone to do it, right?

15 A. He did mention that in the interview, yes sir.

16 Q. Okay. S not really surprising that his number

17 wouldn't show up on a call log where you said he called

18 somebody?

19 A. I believe -- I mean his call could still receive

20 calls, correct. It couldn't just outgoing calls?

21 Q. Yes, outgoing calls.

22 A. So it could receive calls?

23 Q. Correct.

24 A. Yes, sir.

25 Q. So when you went to execute the search warrants you

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1 did two search warrants at Anthony's house right?

2 A. Yes, sir.

3 Q. Did you find the victim's, the alleged victim's cell
4 phone?

5 A. No, sir.

6 Q. Okay. Did you find anything belonging to her?

7 A. No sir, we did not.

8 Q. Did you find a gun?

9 A. No, sir.

10 Q. Now you said that you are an I-phone user. Correct
11 me if I'm wrong but isn't it right that if you download
12 anything or you an app on an I-phone you've got to put in
13 your password to do that?

14 A. I think that's a function that you can turn on and
15 off.

16 Q. Okay. But that would be the same password that
17 you'd need to do the I-cloud find my phone app, right?

18 A. Generally it's the same yes sir, for the I-cloud its
19 one Apple I.D. log in, yes sir.

20 Q. Don't you think it's strange that somebody who has
21 their I-phone all set up and everything suddenly doesn't
22 know the password needed to find it when they say it's
23 lost?

24 A. We logged into her I-phone if I remember correctly,
25 sir.

1 Q. I thought you testified that you couldn't get into
2 it.

3 A. No, sir. It was that the location services were of
4 no use to us. If the phone is not on it doesn't track
5 it.

6 Q. Did you make notes of that somewhere at the time
7 like in one of your reports?

8 A. I believe I testified that at the time we attempted
9 to log in and there was no location data.

10 Q. And Officer Tuttle was it yourself who went through
11 the alleged victim's call log and tried to match up
12 numbers? Was that something that you did?

13 A. With Ms. Johnson?

14 Q. Yes?

15 A. Yes.

16 Q. And did you write a report about -- or did you
17 include that in your report kind of saying this number
18 was for so and so and this number was for another person
19 and that sort of thing?

20 A. Yes, sir.

21 Q. How many calls worth of information did you do that
22 on or how many days worth of information did you do that
23 on?

24 A. Sir, I was going through Ms. Johnson's phone log
25 with her. It was immediately after the incident so we

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1 were concerned with the timeframe of the incident; so a
2 few hours give or take around the time of the robbery and
3 the kidnapping.

4 Q. The report had your colleague's name on it as
5 Detective Jarrell who was the investigator. So that
6 would be a different report than the one you're talking
7 about where you went through the call log?

8 A. Yes, sir. My supplemental I did document a couple
9 of calls for a couple of hours around the timeframe of
10 the incident. But if Detective Jarrell's name is on a
11 supplemental report he wrote it, sir.

12 Q. Did you do any investigation in regards to figuring
13 out what numbers had called the alleged victim's phone?

14 A. Yes, sir. When we interviewed Ms. Johnson the
15 morning after the incident we downloaded her phone
16 carrier's call detail records, CDR, and looked for those
17 calls around the time of the incident and any activity
18 around the time of the incident.

19 Q. Had you ascertained in your investigation who those
20 numbers belonged to, either the calls made or received by
21 this phone you were looking at?

22 A. Through Ms. Johnson's knowledge. It was her phone
23 so it would have been her phone numbers.

24 Q. Okay. So you didn't independently call a number if
25 she told you it was Billy Joe or Bob or to give you a

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1 real name Ray and she said that's Gregg's number you
2 didn't call that number to confirm that that's Gregg, is
3 that correct?

4 A. Well sir, actually when we were going through her
5 call detail records around the time of the incident her
6 last call was to her boyfriend, which he provided us his
7 number and another call was maybe to her mother or a
8 missed call to that number was provided. And then
9 another number was from her sister. It was like a
10 Florida based number, an out of state number. But I
11 don't remember any Gregg, sir.

12 Q. But just kind of answer my question and let me maybe
13 rephrase it a little bit just so we're clear.

14 A. Yes, sir.

15 Q. So -- I'm not faulting you in any way.

16 A. Yes, sir.

17 Q. I'm just asking when you were doing this with the
18 phone numbers you didn't dial the number yourself and see
19 who answered, right? You took the information from the
20 alleged victim and said okay, well that's her sister in
21 Florida and make notes like that, is that correct?

22 A. Yes, sir.

23 MR. MAYER: Court's indulgence.

24 [Whereupon, Mr. Mayer confers with his client]

25 MR. MAYER: Nothing further.

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1 REDIRECT EXAMINATION

2 BY MR. OSBORNE:

3 MR. OSBORNE: May I approach, Your Honor?

4 THE COURT: Yes.

5 Q. [Mr. Osborne] I'm showing you what has been marked

6 as State's exhibit number 47. Can you take a look at

7 that and tell me what that is?

8 [Whereupon, the witness is shown exhibit]

9 A. This is my incident report from this investigation,

10 sir.

11 Q. It's an incident report that you typed?

12 A. Yes, sir.

13 Q. Okay. So those are your words?

14 A. Yes, sir.

15 Q. Are you positive that's your report?

16 A. Yes, sir.

17 MR. OSBORNE: Your Honor, at this time I'd ask

18 Detective Tuttle to read a couple lines off his report in

19 reference to what Mr. Mayer was asking in cross.

20 THE COURT: Just you and the witness. Proceed.

21 Q. [Mr. Osborne] Okay. The bracketed off portions.

22 Read those portions.

23 A. [Reading] This information was obtained from her

24 mother's Verizon online account on her consent. The

25 information was downloaded into a Microsoft Excel

1 spreadsheet and I reviewed the information with her.
2 Finally Jennifer attempted to activate her I-cloud
3 account remotely and was unable to do so for the purpose
4 of tracking the cell phone. Jennifer had never activated
5 I-cloud and we were unable to retroactively activate it.
6 Q. Okay. So it wasn't that she wasn't giving you the
7 password or anything like that it's just that she had
8 never turned on that feature, is that accurate?
9 A. Yes, sir.
10 Q. And now I think you may have been a little bit
11 confused or maybe the question was. Mr. Mayer was asking
12 whether you had reviewed phone calls made that day with
13 Jennifer and specific phone calls. Was that done by you
14 or was that done by Detective Jarrell later on; not that
15 night but later on?
16 A. It was done by Detective Jarrell later on, sir.
17 Q. Okay. So when the phone -- what you were looking at
18 there was just something y'all got online that night, is
19 that accurate?
20 A. Yes, sir.
21 Q. So later on Detective Jarrell got the victim's phone
22 records from Verizon, correct?
23 A. Yes, sir.
24 Q. And then he and her went through the phone; you
25 weren't there.

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1 A. No, sir.

2 Q. Okay. Now Mr. Mayer asked something about the
3 screen being broken. And it's true that the screen was
4 broken, right?

5 A. Yes, sir.

6 Q. And the defendant even told you that the screen was
7 broken, right?

8 A. Yes, sir.

9 Q. Did he say when it was broken or when he broke it or
10 how it got broken?

11 A. I don't recall that.

12 Q. Okay. But he did say, am I wrong or right, that he
13 had spoken to Jennifer on the phone for the past two or
14 three months once or twice per week?

15 A. He did say that, yes sir.

16 MR. OSBORNE: No further questions, Your Honor.

17 THE COURT: Anything further?

18 MR. MAYER: Nothing, Judge.

19 THE COURT: Thank you, sir.

20 [Whereupon, the witness is excused and exits the
21 witness stand]

22 THE COURT: Call your next witness.

23

24

25

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1 MS. GINSBERG: The State calls Sergeant Mark
2 Lipsey.

3 MR. MAYER: Your Honor?

4 THE COURT: Yes, sir.

5 MR. MAYER: I think we might need a ruling on a
6 prior motion before this witness.

7 THE COURT: All right.

8 MR. MAYER: May we approach?

9 THE COURT: Yes, sir.

10 [Whereupon, an off the record bench conference is
11 held]

12 THE COURT: Ladies and gentlemen we need to take up
13 a matter outside of your presence. We also have some
14 additional matters to take up unrelated to this case so
15 we are going to excuse you all until 2:15. So 2:15 is
16 the time to be back.

17 [Whereupon, the jury exits at 11:50 a.m.]

18 THE COURT: Mr. Mayer?

19 MR. MAYER: Judge, it's just the defense's position
20 that the jail calls were -- should not be used against
21 the defendant. It's not based on his relationship
22 anymore with who he was talking to at the time but rather
23 it's based on the concept of recording these phone calls
24 without his permission. He didn't have an option if he
25 wanted to talk to his wife other than to do one of these.

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1 It's not like they can have an in person visit or
2 something like this. And it doesn't matter that he was
3 talking to his wife or his fiancé I think at this point I
4 think the issue is these calls can be taken out of
5 context, they can be misconstrued.

6 It just -- I think the State has a lot of statements
7 already from this defendant that were fair and had been
8 properly Mirandized beforehand. Here, obviously there
9 was no Miranda. It certainly was a custodial statement;
10 albeit voluntary and not to law enforcement. We would
11 just ask that the Court find that these jail recordings
12 are not admissible, Judge.

13 THE COURT: All right. Yes, from the State?

14 MS. GINSBERG: Thank you, Your Honor. Like I
15 mentioned previously South Carolina cases haven't
16 directly dealt with this issue, however it is well
17 settled law in other circuits and they have made the
18 following findings: That an inmate gives consent when
19 they hear the notice of the recording that by continuing
20 with the call they are essentially giving consent for the
21 recording. Additionally, the other person on the line
22 also gives consent by accepting the call. So they are
23 made aware that the phone calls are recorded and then
24 they proceed. It's actually -- the jail callers are told
25 three times, before making the call and after making the

1 call that the phone call is being recorded.
2 Additionally, the Supreme Court in Hutson v Palmer
3 [phonetic] has explained that prison inmates have no
4 reasonable expectation of privacy because of the nature
5 of prison. Like I mentioned before that they are warned
6 with the recording and it's well settled that they do not
7 have that Fourth Amendment right.

8 Additionally, this doesn't violate a wire to
9 wiretapping statute. This is simply a law enforcement
10 exception to a wiretapping statute. And several circuits
11 have explained that this is part of that exception.
12 Judge, we've given the defense portions of the jail phone
13 calls that we would be presenting at trial. He might not
14 like what Mr. McClain has to say but it is in fact
15 relevant. Additionally, he did consent to this call and
16 does not have any expectation of privacy.

17 THE COURT: How does section 17-30-110 apply to
18 this situation if it does?

19 MS. GINSBERG: Judge, I believe -- is that where
20 you're talking about the...

21 THE COURT: I'm talking about the statute 17-30-110
22 pretrial motion to suppress prior to any trial hearing
23 proceeding. In or before any court an aggrieved party
24 may move to suppress the contents of any intercepted
25 wire, oral, or electronic communication or evidence

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1 derived there from on the grounds that it was unlawful to
2 intercept, etcetera.

3 MS. GINSBERG: Judge, beg the court's indulgence.

4 [Whereupon, Ms. Ginsberg and Mr. Osborne confer]

5 THE COURT: I move to the other side on that
6 question. Mr. Mayer, what's the application of that
7 section if it does or doesn't? What's your view on it?

8 MR. MAYER: Your Honor, I have to confess that I
9 haven't researched that extensively. I mean it seems to
10 me that maybe a wiretapping law would require some sort
11 of an exception to allow this sort of activity to go
12 forward.

13 THE COURT: Does the statute apply? Have you
14 reviewed -- you're not familiar with the statute?

15 MR. MAYER: I'm sorry?

16 THE COURT: You're saying you're not familiar with
17 the statute?

18 MR. MAYER: I'm not familiar with the statute Judge
19 but I would be happy to look at it.

20 THE COURT: Well, this is a good break time for all
21 of you to review it and tell me what you think about that
22 if it applies or if it doesn't. So we're going to take a
23 break. And your witness lineup again is? You've got the
24 jail guy --

25 MR. OSBORNE: We have a custodian, we have the case

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1 agent and then we have Jennifer Johnson. So the case
2 agent and Jennifer will be pretty lengthy.

3 THE COURT: All right. If you all will approach?
4 [Whereupon, an off the record bench conference is
5 held]

6 THE COURT: We'll be in recess in this case until
7 2:00 and then take a break and deal with our 12 o'clock
8 matter. We'll take about five minutes.

9 [Whereupon, court is in recess from 12:05 p.m. until
10 2:22 p.m.]

11 THE COURT: Well, over lunch I received an email
12 from counsel, Mr. Mayer. It says: I passed on the
13 court's comments to Mr. McClain. My client would plead
14 today if I could give him a sentencing expectation in the
15 18 to 20 year range. That would be if he takes
16 responsibility for the crime and spares the victim having
17 to testify. It's a good resolution all around if we can
18 get this done this afternoon. Thanks for your
19 consideration. Aaron Mayer.

20 Any other thoughts or comments Mr. Mayer?

21 MR. OSBORNE: Your Honor, yes I've spoken to Ms.
22 Johnson about this as well as my superiors and we would
23 be willing to extend a negotiated, if Your Honor is
24 willing to accept, a negotiated 25 year sentence to
25 resolve all charges and taking the LWOP of the table.

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1 THE COURT: What's the defendant's position, Mr.
2 Mayer?

3 MR. MAYER: Judge, I think we realize that it is
4 five or seven years difference. Those are real terms.
5 And I think those years bite hard when you get up above
6 60 being in prison. I think that's part of our concern.
7 We're just trying to -- we'd love to move this case but
8 just trying to kind of feel our way and see -- it's kind
9 of a hard pill to swallow in terms of...

10 THE COURT: If I could just put on the record my
11 comments to counsel. I had you all come up and of course
12 I have under advisement the question of whether or not
13 the court should grant a mistrial based on interjecting
14 the defendant's character into evidence; the defendant's
15 friend Mr. Robinson interjecting into evidence Mr.
16 McClain's character. The State said they told him not to
17 say it and he on the witness stand proclaims out of his
18 sense of oath that he must tell the truth that he had to
19 indicate and put in the case that he was with the
20 defendant in federal prison.

21 And as the case will continue to evolve the court
22 has to evaluate whether the State's theory of the case is
23 that the defendant disclosed to the alleged victim that
24 he had been to prison and that that was a form of
25 intimidation to the victim by saying he had a gun and he

1 has been to prison or he had just gotten out of prison;
2 whatever he said. So I haven't heard any of that
3 testimony to make that judgment. But I also said to
4 counsel that it is not looking good for the defendant.
5 Of course, I have no clue; I'm not on the jury. I have
6 no clue what the jury may be thinking, believing or what
7 the verdict would be. But we haven't heard from the
8 victim. We haven't heard from the victim or the
9 defendant. Of course the defendant has no obligation to
10 testify or present any evidence.

11 I indicated that I'm pretty tough on people who pull
12 guns on people, terrorize people, rob people, kidnap
13 people and all those things. It is a serious crime
14 because of the traumatic nature of that that is an
15 everlasting impact on a victim. But that's just
16 commenting on where we stand with regard to this case.
17 Also, I indicated that I had the clerk to check to see
18 how many more jurors we have that were not in our
19 original panel that if a mistrial is declared whether we
20 can get back here tomorrow morning because they are
21 calling in later today. How many did you say?

22 CLERK OF COURT: If everyone showed up it would be
23 43.

24 THE COURT: So we have plenty of jurors who know
25 nothing about this case because they weren't part of the

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1 first go around. And they haven't been in court. And of
2 course the State having said that it is a four-day case
3 and I'm not relishing the thought of starting the case on
4 Wednesday and that might take us beyond Friday. So the
5 question is can this case be resolved.

6 The State took a little hit with that gratuitous
7 comment by Mr. Robinson and whether that impacts being
8 able to resolve the case or the appellate issue that is
9 raises and if the court proclaims it to be harmless error
10 or something that might have come out anyway through the
11 alleged victim's testimony or other testimony; I don't
12 know.

13 Now, of course the defendant can plead guilty. No
14 one is under any -- if the State proposes the negotiated
15 sentence. But first the parties have to agree for it to
16 be negotiated and then the court would have to accept it.
17 If there is no negotiated sentence the defendant can
18 plead guilty. The State has no burden of reducing
19 anything.

20 Of course the whole issue of whether he is facing
21 life without the possibility of parole based on a
22 conviction in federal court I have not spent a lot of
23 time looking at that except to say that I believe the
24 most serious charges are pretty much enumerated by
25 statute that makes it a two strikes or three strikes and

1 I don't know the full extent of his criminal history.
2 And my policy I think it's unfair to any victim for me to
3 give an indication of what kind of sentence I would give
4 not knowing, not hearing anything from the victim. I
5 think what the victim has to say is one of the most
6 important things that I consider when deciding something.

7 So I don't need to lock myself in by saying in
8 advance what a sentence would be because I like to listen
9 to what the victim has to say; that's the most important
10 person in the whole case. With that being said either
11 the case can be resolved or we press on no matter what
12 circumstances might exist and so we can press on.

13 MR. OSBORNE: Your Honor, a suggestion, maybe we
14 could call Ms. Johnson and we could proffer the testimony
15 regarding what now I think now I'm looking at a little
16 bit differently I think they may be res gestae comments
17 made by the defendant during the process of committing
18 the crime. I could call her to the stand and we could
19 proffer just that portion of the incident.

20 THE COURT: All right. What do you think about
21 that Mr. Mayer?

22 MR. MAYER: I've got no objection to that, Judge.

23 THE COURT: All right.
24
25

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1 MR. OSBORNE: The State calls Jennifer Johnson.

2 THE COURT: We have lingering on that statute for
3 everyone to read and study and talk about. We'll come
4 back to that.

5 MS. GINSBERG: Okay, Judge.

6 [Whereupon, Ms. Johnson comes forward]

7 [Whereupon, the witness is duly sworn by the Clerk
8 of Court]

9 CLERK OF COURT: Once seated please state your
10 first and last name and spell out your last name for the
11 record.

12 THE WITNESS: Jennifer Johnson, J-O-H-N-S-O-N.

13 - - - - -

14 JENNIFER JOHNSON,

15 Having been first duly sworn,

16 Was examined and testified as follows:

17 DIRECT EXAMINATION-PROFFER

18 BY MR. OSBORNE:

19 Q. Ms. Johnson, just for purposes of this hearing we're
20 going to skip a lot of the introductory okay; things that
21 I would normally ask you or that I might ask you in a
22 minute and go right to the night of June the 2nd when you
23 left your house and started walking to your car and we'll
24 pick it up there. Go ahead and tell the Judge what
25 happened after that.

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1 A. You said after I -- when I first got to my car?

2 Q. Yes, when you left your house and you were walking
3 to your car.

4 A. Well, I was walking down my driveway to my car. I
5 had my keys and my shoes and my purse in my hand. A red
6 car sped down the street and kind of stopped and reversed
7 back to my car.

8 And I was putting my things in my car and he got out
9 and said to me excuse me, can you tell me how to get to
10 North Charleston? And I'm talking to him over my car.
11 He is like in the middle of the street.

12 And I said sure, you just make a left because we
13 were on Cannon Street, and just make a left and that will
14 be Coming. You keep straight until you get to the I on
15 the right. And he repeated what I said.

16 And as I was getting in my car he was walking around
17 to my side of the car and when I looked up then he was in
18 my doorway. And he had pulled the gun out and had like
19 since he was bent down talking to me in the car. So he
20 had the gun on his leg. I could see it.

21 And he said sweetheart I need you to give me
22 everything you've got. And so I had three dollars in my
23 wallet; I had just paid the daycare. And I did have mine
24 and my Mom's debit card in my wallet. So when I gave him
25 the three dollars he was just saying well, that's all you

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1 got? You only got three dollars? How you live downtown
2 and you ain't nothing but a pretty face and you ain't got
3 shit. And I was like well, I really don't know what --
4 I'm only 24, I have a kid and I stay with my Mom. So he
5 took the three dollars and he told me to put my leg in
6 the car and he closed the door and he started to walk
7 off.

8 Q. Okay. Did you happen to see did he make it all the
9 way back to his car or did he walk towards his car?

10 A. He was starting to walk. I didn't really see how
11 far he had gotten because I was starting to like panic,
12 like oh, my God I got robbed. So I grabbed my phone and
13 I was about to call the police and then he turned around
14 and walked back to my car.

15 Q. Okay. As he started to walk back towards his car
16 why didn't you just drive away?

17 A. Well, he was I cranked up the car and turned the
18 lights on and put it in drive as if I was about to but he
19 was like on my passenger side on the right side so if I
20 had had pulled off I would have ran him over.

21 Q. Okay. So did he approach your vehicle and say
22 something else to you?

23 A. Yes. He wanted me to put down the window because he
24 wanted to talk to me.

25 Q. Could you still see that he had the gun with him?

1 A. Yes, it was just out now, just out.

2 Q. When you rolled down the window what happened or did
3 you roll it down?

4 A. I cracked it yes, and I was like what. And he was
5 like I want to talk to you. And I said you don't F-ing
6 know me. What do we have to talk about? And he was just
7 let me get in the car; let me get in the car.

8 So then he gets in the car and I can't remember what
9 was said but I said something smart back to him. And
10 that's when the put the gun to my face right here
11 [indicates] and said well, you really don't have a choice
12 right now do you.

13 Q. All right. After he did that what did he tell you?

14 A. He wanted me to take him to the store.

15 Q. And did you drive then?

16 A. Uh Huh.

17 Q. Did you go up Cannon I take it because it's a one
18 way road?

19 A. Uh Huh.

20 THE COURT REPORTER: Is that a yes?

21 A. Yes.

22 Q. [Mr. Osborne] And we're going to kind of skip ahead
23 a little bit so that I don't go through all the details.
24 But you pulled into the King and Cannon store is that
25 correct?

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1 A. Uh Huh. Yes.

2 Q. And you didn't go in?

3 A. No, I didn't go in.

4 Q. Why didn't you go in there?

5 A. Well, he gave me the three dollars back and told me

6 he wanted me to go inside and get him a beer. And I

7 guess he realized there were just too many people around,

8 you know its King Street. He said no, no tell you what

9 turn on Mary Street. So I went up King and turned on

10 Mary and then we were at the Exxon.

11 Q. Okay. And then while at the Exxon did you make the

12 purchase?

13 A. Yes.

14 Q. And what did you buy?

15 A. A Miller High Life, 40 ounces.

16 Q. Forty ounce. Why did you choose to purchase that

17 item?

18 A. That's what he said he wanted.

19 Q. And after you purchased it did you go back to your

20 car?

21 A. Yes.

22 Q. And what did he say then?

23 A. We were driving. He was telling me where to go and

24 that's when he made the comment about him doing 20 years

25 in prison.

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- 1 Q. Okay. So you came back out to the car and you get
2 in the car. At that point I take it you went out to
3 Meeting Street; that's the main road that Exxon is on?
4 A. Uh Huh.
5 Q. Did you turn right or left then?
6 A. Right.
7 Q. And why did you turn right instead of left?
8 A. He was telling me where to go.
9 Q. Okay. So as you're going down Meeting he makes a
10 comment to you. And what does he say to you again?
11 A. I can't remember exactly what it was but he was
12 telling me that he had done time in prison.
13 Q. Did he say how much time?
14 A. Yes, he said 20 years.
15 Q. Did he tell you what the nature of the charge was?
16 A. No.
17 Q. Okay. Having heard that was he -- did it seem like
18 he was kind of laughing and it was funny like a joke?
19 A. He said it like it was a normal conversation.
20 Q. When he said that comment to you what affect if any
21 did it have on you?
22 A. Honestly it didn't really. I was just I guess
23 trying to keep my own nerves together. I just didn't
24 want to show him at all that I was getting upset.
25 Q. Did you ask him anything about his background to

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1 elicit that comment?

2 A. No.

3 Q. Did you ask him you know are you a good person or

4 anything along those lines?

5 A. No. I had already assumed that he wasn't.

6 Q. The comment so is it fair to say it was sort of

7 spontaneous if you didn't ask him?

8 A. Uh Huh, I did not ask him.

9 Q. Okay. And then after that did you drive where?

10 A. We were at the Family Dollar on Meeting Street.

11 Q. Okay. And that's where he started looking at your

12 car because it wasn't running right or it sounded funny?

13 A. Uh Huh.

14 Q. And then after that where did you go?

15 A. Made a right back on Meeting Street and then I guess

16 we rode that up until we were in North Charleston.

17 Q. Okay. And he directed you the whole time?

18 A. Yes.

19 Q. And did you end up going to a gas station?

20 A. Yes, the Rivers Mart on Rivers Avenue.

21 Q. Had you ever been there before?

22 A. I have.

23 Q. Is that a place that you normally go to?

24 A. No.

25 Q. Okay. Did he tell you where to park or did you

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1 decide where to park?

2 A. Yes.

3 Q. And where did he direct you to park?

4 A. He told me to back into a spot that was like near a
5 fence, that wooden fence.

6 MR. OSBORNE: Your Honor, for purposes of this
7 hearing I'd like to play State's exhibit 8.

8 THE COURT: Yes, sir.

9 [Whereupon, the surveillance video plays]

10 Q. [Mr. Osborne] Do you see your vehicle coming in now?

11 A. Yes.

12 Q. What color is your car?

13 A. It's dark green.

14 Q. Is that you at the top of the screen?

15 A. Yes.

16 Q. So it looks like there were other options of parking
17 spaces that would have been a little closer to the
18 business.

19 A. Right.

20 Q. I just want to skip ahead for this hearing. This
21 individual walking up here at the top [indicates] when
22 they walked by did the defendant make any comment to you,
23 anything about a girl?

24 A. Yes, but I don't think that that was the person.

25 That person was in the parking lot. But that person did

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1 walk by and he made a comment about her owing him
2 something and he hit her in the head because I guess she
3 hadn't paid him yet or she was taking too long to give
4 him the money.

5 Q. The money for what? Did he say?

6 A. I want to say drugs.

7 Q. But you're not sure?

8 A. Yes, I'm not sure.

9 Q. Did you point out the girl that walked by and say do
10 you know her?

11 A. No.

12 Q. Did you try to elicit any comments from him
13 regarding that girl?

14 A. No.

15 Q. So once again it was just a spontaneous comment?

16 A. Yes.

17 MR. OSBORNE: No further questions, Your Honor.

18 THE COURT: As part of the proffer do you get a
19 chance to ask questions?

20 MR. MAYER: Judge, I'm not going to ask any
21 questions.

22 THE COURT: Thank you.

23 [Whereupon, the witness is excused and exits the
24 witness stand]

25

1 THE COURT: All right. I think that this testimony
2 though it impacts on the defendant's character its
3 critical testimony by the State to disprove the defense's
4 that the parties knew each other because the defendant is
5 they had this long ongoing relationship. And if it is as
6 some of the witnesses have said this testimony disproves
7 it by him revealing information that she otherwise would
8 not know. She's 24 and he did 20 years. It didn't give
9 him much opportunity for her to know him.

10 So I believe that this testimony would be relevant.
11 On that basis as well as on the basis of words used that
12 could intimidate the victim although she did not
13 specifically say -- she said she was trying to keep him
14 from realizing the fear that she would otherwise show.
15 And of course that could be developed further as to how
16 she really felt on the inside. But I think it balances
17 admissible testimony.

18 The other testimony would then be superfluous to
19 this since the State didn't dwell on it, it is kind of
20 suspicious in the manner in which that witness who Mr.
21 Robinson proclaims that he's putting his hand on the
22 Bible means so much to him despite other circumstances
23 including his criminal history that might suggest
24 something otherwise. So particularly since the State
25 cautioned him he nevertheless introduced that into

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1 evidence. It is introduced and he is a person associated
2 with the defendant. So I'm allowing that in and we will
3 press on.

4 MR. OSBORNE: Thank you, Your Honor.

5 THE COURT: In that connection I am denying the --
6 but still I'll hold in abeyance the mistrial as the case
7 as I see what all develops. On that statute what's the
8 story?

9 MS. GINSBERG: Judge, I apologize. I initially
10 thought you said 17-31-11 which I could not find on the
11 subject. But I understand the 17-30-10 is the
12 wiretapping statute. And I believe that the interception
13 of oral communications is what the statute contemplates.
14 Jail phone calls are within that authorized manner that
15 the statute contemplates.

16 THE COURT: Explain that again now.

17 MS. GINSBERG: I'm sorry, Judge. The statute says
18 the interception of wire, electronic, or oral
19 communications is hereby authorized only in the manner
20 permitted by the chapter. It states argument that jail
21 phone calls, the interception of those jail phone calls
22 are within the authorized manner that is permitted by
23 this chapter. Specifically section 17-30-30 says -- (b)
24 excuse me; says: It is lawful under this chapter for a
25 person acting under color of law to intercept a wire,

1 oral or electronic communication where the person is a
2 party to the communication or one of the parties the
3 communication has given prior consent to the
4 interception.

5 There are two things there, Judge that the person
6 acting under the color of law is a party to the
7 communication, which over the recordings it explains that
8 the phone call is being recorded, that there is another
9 individual that could listen to this. So they are a
10 party to the communications. Secondly, it says or when
11 one of the parties to the communications has given prior
12 consent to the interception, which as I discussed earlier
13 that consent was given upon hearing the notice that it
14 was being recorded and then proceeding with the phone
15 call on both ends; on the defendant's end as well as the
16 recipient's end.

17 THE COURT: All right.

18 MS. GINSBERG: Thank you, Judge.

19 THE COURT: So the statute does not apply. It
20 applies but there is consent.

21 MS. GINSBERG: Correct. It does apply in the fact
22 that this is authorized. This is an authorized
23 interception of an oral communication as contemplated by
24 the statute.

25 THE COURT: Anything further from the defense on

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1 this issue?

2 MR. MAYER: Thank you Judge, just briefly. Yes,
3 after researching it we found that there is a consent
4 exception to the statute, Your Honor, to the wiretapping,
5 the federal wiretapping as well Judge. But the consent
6 there has to do with having meaningful notice. And there
7 is some federal case law, I didn't find any state case
8 law but I have the benefit of one of the 403's
9 researching over there for us, Ms. Gavian [phonetic].

10 She found a federal case called U.S. v Feeks from
11 the 7th Circuit which found inferred consent in just this
12 type of recorded environment in a jail quote unquote
13 troubling, Your Honor because there is no guarantee that
14 it was actual consensus; they kept going forward with
15 their phone calls. So it's U.S. v Feeks, F-E-E-K-S, a
16 7th Circuit case. The citation on that is 879 Fed 2.d
17 1562 and the specific discussion of this issue is at
18 1565. And of course there is not a South Carolina case,
19 Your Honor. I didn't find a South Carolina case on it,
20 Judge but that would be our argument on it.

21 THE COURT: It's a pretty curious statute. It
22 really is part of I think it came in as part of the
23 Homeland Security. It was actually 2002 so that wouldn't
24 be; that particular one...

25 [Whereupon, the court reviews documents]

1 THE COURT: Yes, 2002 so this is sort of a Homeland
2 Security type of statute that came in following 9/11.
3 And I've had several hearings I've had to deal with it on
4 a few occasions. And the most interesting time I had
5 hearing them is when the application is section (b).

6 It came in and said the State has a right to appeal
7 an order granting a motion to suppress made under section
8 (a) says the Judges of the Court of Appeals and en banc
9 have initial appellate jurisdiction over the appeal. All
10 other appellate procedures remain in force and effect.
11 It mentions the right of the State to appeal any adverse
12 ruling on this issue to the Court of Appeals and they
13 have an en banc hearing.

14 And there are some cases pending now before the
15 Court of Appeals on this exact issue out of Richland
16 County. And so the granting of this motion could bring
17 this trial to a halt if the State says no, we want this
18 in and they go to the Court of Appeals and the case comes
19 up again. But it doesn't say that if the defense loses
20 that the defense has a right to an immediate appeal.

21 You know I think that it may be thrashed out in an
22 appellate court and they give better clarity to
23 circumstances under which judges are supposed to must
24 make reference on this statute and when it is to be
25 applied in these proceedings because it originated out of

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1 Homeland Security and all that. But I think that the
2 number of jail house conversations being monitored could
3 bring criminal justice almost to a halt in the state for
4 any court to determine that the parties don't give
5 consent and the warning is inadequate to put the
6 defendant on notice.

7 Of course there are other constitutional privacy
8 issues raised but I don't believe that any of that would
9 require me to grant a motion to suppress on
10 constitutional grounds so I deny the motion. We're ready
11 to keep going?

12 MR. OSBORNE: Your Honor, we do have the other
13 issue regarding Miranda. If the defendant waives Miranda
14 when he is being interrogated regarding one issue can
15 that interrogation then float into a second issue without
16 the requirement to re-advise Miranda?

17 THE COURT: Well, the notice says anything you say
18 will be used against you. There are no limitations on
19 it.

20 MR. OSBORNE: Agreed, Your Honor. And I found a
21 U.S. Supreme Court case Colorado v Springs [phonetic].
22 Its 479 U.S. 564 exactly the same scenario, talked to him
23 about trafficking guns that led into a homicide and both
24 statements were admissible.

25 THE COURT: I agree with the State on that.

1 Anything he says can be used against him. And the
2 officers do not have to disclose the purpose of any
3 questioning. All right. Let's bring them on in.

4 [Whereupon, the jury enters at 2:51 p.m.]

5 THE COURT: All right ladies and gentlemen. We'll
6 press on now with the next witness.

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Mark Lipsey-Direct Examination by Ms. Ginsberg
March 14, 2017

1 MS. GINSBERG: The State calls Sergeant Mark Lipsey.
2 [Whereupon, Sergeant Lipsey comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Once seated please state your
6 first and last name and spell out your last name for the
7 record.

8 THE WITNESS: My name is Mark Lipsey, M-A-R-K L-I-
9 P-S-E-Y.

10 - - - - -

11 MARK LIPSEY,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. GINSBERG:

16 Q. Hey Sergeant Lipsey. I don't think we've ever met
17 actually but where do you work?

18 A. At the Sheriff Al Cannon Detention Center.

19 Q. And how long have you been employed at Al Cannon
20 Detention Center?

21 A. Seventeen years.

22 Q. What are your duties at Al Cannon?

23 A. I'm the lobby sergeant. I pretty much oversee the
24 money that comes in like when we accept fines, bonds,
25 visitation, print and release and also when we get

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1 subpoenas.

2 Q. Okay. When you get subpoenas can you tell the jury
3 what you do with them?

4 A. Well, when my supervisor actually sends a subpoena
5 we issue it to my visitation officers. And usually they
6 ask for phone records so they are able to go in the phone
7 record system and pull whatever date and what specific
8 individuals phone records when they are in the facility.

9 Q. And how do you know how to get a specific
10 individual's phone calls?

11 A. On the subpoena it usually spells out who that
12 individual is and also the specific dates they are
13 looking for.

14 Q. Can you explain how you maintain those calls? Do
15 they have a specific PIN or?

16 A. Each individual when they come in the facility and
17 they go through the process they are issued their own PIN
18 number that is specific to them.

19 Q. Okay. Are inmates advised their calls are being
20 recorded?

21 A. Yes.

22 MS. GINSBERG: May I approach, Your Honor?

23 THE COURT: Yes.

24 Q. [Ms. Ginsberg] I'm handing you what has been marked
25 as State's exhibit 46 just for identification purposes.

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1 [Whereupon, the witness is shown document]

2 Q. Do you recognize this?

3 A. Yes, this is a subpoena.

4 Q. And what is the subpoena for?

5 A. It's for telephone recordings for inmate Anthony
6 McClain and the dates are from June 3, 2015 until
7 present.

8 Q. And what's the inmate number for that individual?

9 A. Inmate number is [REDACTED].

10 Q. And that's for Anthony McClain?

11 A. Yes.

12 Q. I'd like to show you now Sergeant Lipsey what has
13 been marked as State's exhibit 43 just for identification
14 purposes.

15 [Whereupon, the witness is shown exhibit]

16 Q. Do you recognize this?

17 A. Yes, actually I know the handwriting. That's one of
18 my officers Deputy Sherbine. This is a phone recording
19 that we do.

20 Q. For the subpoena that I showed you?

21 A. Yes.

22 Q. And is this the format in which your office responds
23 to subpoenas in the ordinary course of your business?

24 A. Yes, ma'am.

25 Q. And you mentioned that is Officer Sherbine?

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1 A. Yes, ma'am.

2 Q. Now I'd like to show you what has been marked as
3 State's exhibit 42 just for identification purposes.

4 [Whereupon, the witness is shown exhibit]

5 Q. Can you tell us what that is?

6 A. It's a jail call clips.

7 Q. How do you recognize it as jail call clips?

8 A. It's stated on the outside.

9 Q. And have you had a chance to listen to these clips?

10 A. Yes, ma'am.

11 Q. On that disk do you recall what the dates are of the
12 calls?

13 A. If I recall it was June 8th and June 3rd.

14 Q. Of 2015?

15 A. Yes, ma'am.

16 Q. And do you recall what the number that was called?

17 A. No, not offhand.

18 MS. GINSBERG: Your Honor, at this time I'd like to
19 admit State's exhibit 42 into evidence, please?

20 THE COURT: Any objection?

21 MR. MAYER: Just the previously stated, Judge.

22 THE COURT: It's admitted.

23 [Whereupon, State's exhibit number 42 is entered
24 into evidence by the court]

25 [Whereupon, the C.D. plays]

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1 [Whereupon, the C.D. ends]

2 [Not taken down]

3 Q. [Ms. Ginsberg] Thank you, Sergeant Lipsey. Nothing
4 further.

5 THE COURT: By the defense?

6 MR. MAYER: No questions, Your Honor.

7 THE COURT: Thank you, sir.

8 [Whereupon, the witness is excused and exits the
9 witness stand]

10 THE COURT: Next witness.

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State v Anthony McClain
Jennifer Johnson-Direct Examination by Mr. Osborne
March 14, 2017

1 MR. OSBORNE: The State calls Jennifer Johnson.

2 [Whereupon, Ms. Johnson comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Once seated please state your
6 first and last name and spell out your last name for the
7 record.

8 THE WITNESS: Jennifer Johnson, J-O-H-N-S-O-N.

9 - - - - -

10 JENNIFER JOHNSON,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. OSBORNE:

15 Q. Good afternoon, Ms. Johnson.

16 A. Hi.

17 Q. Okay. Let's start off by introducing yourself a
18 little bit to the jury. How old are you?

19 A. Twenty-six.

20 Q. And where were you born?

21 A. In Augusta, Georgia.

22 Q. Did you grow up there?

23 A. No, I moved to Charleston when I was about seven.

24 Q. Okay. Who did you move here with?

25 A. My Mom and my brother.

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- 1 Q. Where did y'all move when you came to Charleston?
2 A. Downtown, on Cannon Street.
3 Q. And why did y'all come to Charleston?
4 A. My Mom and my Dad they were divorcing so we moved
5 here.
6 Q. Was there someone here that you knew?
7 A. My grandfather.
8 Q. And did he live on Cannon Street?
9 A. Yes.
10 Q. So y'all sort of moved in with him?
11 A. Yes.
12 Q. Is there where you grew up on Cannon?
13 A. Yes.
14 Q. Where did you go to high school?
15 A. I went to Burke High School.
16 Q. Did you go to college?
17 A. Yes.
18 Q. Do you have any children?
19 A. Yes, I have a five year old daughter named **Minor**.
20 Q. So back in 2015 she would have been three?
21 A. She was two. Her birthday was in December so she
22 wasn't three yet.
23 Q. All right. Real quick, **Minor**'s father; is he still
24 in the picture?
25 A. So so; comes and goes.

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1 Q. And who is he?
2 A. Angelo Padilla [phonetic].
3 Q. Okay. You still talk to him a little bit?
4 A. Yes.
5 Q. But you're not married?
6 A. No.
7 Q. And I think your boyfriend has already testified;
8 Justin Lawrence.
9 A. Yes.
10 Q. Okay. How long have you been dating him?
11 A. Three years.
12 Q. I'm going to ask you this because it has come up.
13 Have you ever smoked marijuana before?
14 A. No.
15 Q. Back in 2015 where did you live back then?
16 A. ■ Cannon Street.
17 Q. Okay.
18 Q. I'm going to show you State's exhibit 1 that has
19 already been marked and admitted.
20 [Whereupon, the map is shown]
21 Q. Can you get your bearings at all from this? Do you
22 see Cannon Street?
23 A. Yes.
24 Q. And do you know about where your house would be from
25 here?

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- 1 A. Right to the right a little. It would be -- I see
2 Morris so it needs to go. You need to go down just a
3 little more to the right.
- 4 [Whereupon, Mr. Osborne adjusts the image]
- 5 A. I'm not good at looking at these things.
- 6 Q. That's okay. Do you see where King Street is?
- 7 A. Yes.
- 8 Q. I think you may be able to touch that now; the
9 screen in front of you.
- 10 A. This [indicates] is King, right?
- 11 Q. That's King. And do you see Cannon?
- 12 A. Yes. This [indicates] is Cannon.
- 13 Q. Okay. And about how far -- where would your house
14 be about?
- 15 A. Probably about in here [indicates].
- 16 Q. Okay. So that would be in-between Felix and Smith?
- 17 A. Yes.
- 18 Q. Okay. So you said that you lived with your Mom and
19 your brother. What is your Mom's name?
- 20 A. Patricia Johnson.
- 21 Q. And what is her cell phone number?
- 22 A. [REDACTED].
- 23 Q. And how about your brother? What's his name?
- 24 A. Kevin Johnson.
- 25 Q. And what's his phone number?

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- 1 A. [REDACTED].
- 2 Q. Did you work back in June of 2015?
- 3 A. Yes, I worked at CVS on James Island.
- 4 Q. Okay. Let's go ahead and get into that day. June
- 5 the 1st going into June the 2nd did you work on that
- 6 specific day?
- 7 A. Yes.
- 8 Q. And what time did you get off work?
- 9 A. About 10:00.
- 10 Q. Where did you go from there? Go ahead and walk me
- 11 through it ---
- 12 A. --- I went straight home.
- 13 Q. Okay. When you got -- did you pick up your daughter
- 14 on the way home, do you remember?
- 15 A. Right. Well, I'm trying to think. If I worked the
- 16 day then I picked my daughter up before 5 o'clock.
- 17 Q. Was she at a Daycare Center?
- 18 A. Yes. She went to First African CEC on King Street.
- 19 Q. And when you picked her up you went home?
- 20 A. Uh Huh.
- 21 Q. Do you remember what you did after that?
- 22 A. My Mom worked part-time at CVS on George Street so
- 23 our normal routine would be to get home and she would
- 24 come home, change her clothes, grab something to eat and
- 25 then I would take her to work.

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1 Q. Okay. Do you remember if you and your Mom and **Minor**
2 went out to dinner that night?

3 A. I don't.

4 Q. Okay. Let's move on into the night. Did you have
5 any plans that night?

6 A. Yes, I was going to meet Justin when he got off work
7 at the Silver Dollar.

8 Q. Okay. Did he work the evening shift that day?

9 A. Yes. He worked second shift so it would have been
10 like 2 until 11:30.

11 Q. Was that normal for you to go meet him after he got
12 off work?

13 A. Yes.

14 Q. And the Silver Dollar that's on King Street? I
15 think we've heard testimony about that.

16 A. Yes.

17 Q. Did you speak to him on the phone?

18 A. Yes. He called me when he got work and then he -- I
19 talked to him until he got to the Silver Dollar and then
20 I told him I'll see you shortly.

21 Q. And do you recall about what time that would have
22 been?

23 A. He probably got there about 12.

24 Q. Okay. Did you put **Minor** to bed before you left?

25 A. Yes.

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1 Q. All right. Before we get into what happened when
2 you left let me ask you about an individual named Porsche
3 [phonetic]. What's her full name?
4 A. Porsche [phonetic] Hernandez.
5 Q. And do you know her phone number off the top of your
6 head?
7 A. Yes.
8 Q. What is it?
9 A. [REDACTED].
10 Q. And who is Porsche [phonetic]?
11 A. I call her my sister. We're really close; we grew
12 up together. She's older than I am; she is 30.
13 Q. How about an individual by the name of Sekeena
14 [phonetic] do you know her?
15 A. Uh Huh, that's my best friend. We went to high
16 school together, we were in the band. She was a flag
17 girl and I was a dancer.
18 Q. Okay. And what is Sekeena's [phonetic] last name?
19 A. Well, she's married now so her last name is Buckner.
20 Q. What's her phone number?
21 A. [REDACTED].
22 Q. Do you remember talking to Sekeena [phonetic] and
23 Porsche [phonetic] on the day of the incident?
24 A. I don't but it's not out of the norm that I wouldn't
25 have.

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1 Q. Okay. So you agreed to meet Justin at the Silver
2 Dollar. When you go out to meet Justin you're young, do
3 you normally get dressed up a little bit?

4 A. Uh Huh.

5 Q. I'm sorry; you do have to say yes.

6 A. Yes; I'm sorry.

7 Q. And how were you going to get to the Silver Dollar?

8 A. Drive.

9 MR. OSBORNE: May I approach, Your Honor?

10 THE COURT: Yes.

11 Q. [Mr. Osborne] I'm showing you State's exhibits 4 and
12 5.

13 [Whereupon, the witness is shown photographs]

14 Q. Can you take a look at those and tell me if you
15 recognize them?

16 A. It's my car.

17 Q. And do you recognize 5?

18 A. Yes.

19 Q. And what is that?

20 A. Inside my car.

21 MR. OSBORNE: Your Honor, at this time I would seek
22 to admit State's exhibit 4 and 5 into evidence.

23 THE COURT: Any objection?

24 MR. MAYER: No objection, Your Honor.

25 THE COURT: They're admitted.

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1 [Whereupon, State's exhibit number 4 and 5 are
2 entered into evidence by the court]

3 Q. [Mr. Osborne] I'm showing you State's exhibit 4.

4 [Whereupon, the photograph is shown]

5 Q. Is that a picture of your car?

6 A. Yes.

7 Q. And I'm showing you State's exhibit 5.

8 [Whereupon, the photograph is shown]

9 Q. I want to direct your attention to the floorboard.
10 What is that on the floorboard there [indicates]?

11 A. Papers, my shoe, my wallet.

12 Q. Okay. Were those the shoes that you were planning
13 on wearing that night?

14 A. Yes.

15 Q. Okay. Just out of curiosity why didn't you wear
16 those shoes when you went to your car?

17 A. Because I had already taken too long getting out of
18 the house and I just grabbed them and I was going to put
19 them on when I got there.

20 Q. Okay. So you were going to wear those shoes once
21 you parked your car?

22 A. Yes.

23 Q. So was that the game plan to drive down to somewhere
24 around Silver Dollar so you could get a little bit
25 closer, park your car ---

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1 A. --- yes ---

2 Q. --- and then go in?

3 A. Yes.

4 Q. So you're walking out your house, you're headed to
5 your car. Tell the jury what happened next.

6 A. And I see this red car. It goes down Cannon Street
7 pretty fast and I'm just now approaching my car and
8 opening my door and throwing my things in the passenger
9 side and the car stops at the street and reverses back to
10 my car.

11 He gets out and he says excuse me; can you tell me
12 how to get to North Charleston. I said sure, all you do
13 is make a left on Coming Street and make a right and the
14 'I' will be on your right. And he was like oh, and he
15 repeated what I said.

16 And I guess as he was doing so he was walking around
17 to my car because when I looked up he was in my doorway
18 so I couldn't close it. And he had pulled a gun out and
19 he said sweetheart, I need you to give me everything
20 you've got.

21 Q. Okay. When the car came up Cannon did you see what
22 road it turned off of?

23 A. It came from Smith Street.

24 Q. Now, I know you did this before but can you go ahead
25 and put where your house would be?

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1 A. About in here somewhere [indicates].
2 Q. Okay. And where is Smith Street again?
3 A. Smith Street should be right here [indicates].
4 Q. Do you see Morris Street on there?
5 A. Uh Huh, right here [indicates].
6 Q. How about Morris and Coming; do you see that
7 intersection?
8 A. That would be here [indicates] no, that's --
9 Q. If you don't see it that's fine.
10 A. Morris and Coming right here [indicates].
11 Q. Okay. So the car is coming up Smith and then it
12 turns right onto Cannon?
13 A. Yes.
14 Q. And you said it passed you by?
15 A. Yes.
16 Q. Okay. And then the driver is asking directions?
17 A. Yes.
18 Q. Could you tell how many people were in the car?
19 A. It was somebody in the passenger seat.
20 Q. Did you get a decent look at him?
21 A. No.
22 Q. And you said the car was red, is that correct?
23 A. Yes.
24 Q. I'm showing you what has already been marked and
25 admitted as State's exhibit 6.

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1 [Whereupon, the witness is shown photograph]

2 Q. Do you recognize that vehicle?

3 A. Yes.

4 Q. Was that the car?

5 A. Yes.

6 Q. So he comes up, he's in your door jamb, and he's got
7 a gun.

8 A. Uh Huh.

9 Q. Are you sure it was a gun?

10 A. Yes.

11 Q. Why do you say that?

12 A. It was a gun.

13 Q. Okay. And so then he said what again?

14 A. He said -- he needed me to give him everything I
15 had.

16 Q. Okay. And what do you do?

17 A. I told him that I only had three dollars because I
18 had just paid my daughter's daycare bill. And he
19 proceeded to tell me how I was a shit and I wasn't
20 nothing like a pretty face, I live downtown and I don't
21 got no money.

22 And I told him, well I'm only 24 and I just had a
23 kid and you know I stay with my parents so I don't know
24 what you expect me to have.

25 Q. Did he ask you for any cards, credit cards or

1 anything along those lines?

2 A. Yes, but I told him I didn't have any.

3 Q. Was that true?

4 A. No, it was not.

5 Q. What cards were you in possession of?

6 A. My Mom's debit card and I had a card also.

7 Q. Okay. Let's pause the story for a second and your
8 Mom's debit card. Why did you have your Mom's debit
9 card?

10 A. Well, I had just started working not too long ago.
11 So before then I was just staying at home with my
12 daughter. So she gave me that card just to be able to
13 have access to money if I needed it.

14 Q. Okay. And how long were you in possession of that
15 card?

16 A. A couple of years. I still have one today.

17 Q. And during any given month how often would you use
18 it?

19 A. Like maybe two or three times.

20 Q. What did your Mom tell you to do prior to using the
21 card?

22 A. To call her to let her know that I was about to use
23 it more so to make sure she had enough in the account.

24 Q. So she didn't get hit with overdraft charges or
25 anything like that?

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1 A. Right.

2 Q. Over that two to three -- was it a two year period
3 did you ever use the card at all without first checking
4 with your Mom?

5 A. No.

6 Q. All right. So back to the story. So he asked you
7 for a card and you're in possession of these two cards.
8 Do you give it to him?

9 A. No, I throw them under the driver's seat.

10 Q. Okay. Then what happens?

11 A. So he took the three dollars. After his sermon he
12 told me to put my leg back in the car and he closed the
13 door and he started to walk off. And at that moment I
14 was starting to panic and I grabbed my phone to call 911
15 and then he turns back around and comes back to my car.

16 Q. Okay. When he came back to your car you would have
17 been facing him and he would have been walking back
18 towards you, is that correct?

19 A. Yes.

20 Q. When he walked back towards you -- well, let me ask
21 you that. When he went back to the car did you see if he
22 would have went in his car?

23 A. No, I was too busy like trying to get the phone and
24 like I was freaking out.

25 Q. Did you happen to see when he approached his car did

1 he go to the driver's side or the passenger side?

2 A. I don't know. I didn't see.

3 Q. You don't know. Okay. So when he came back to your
4 car did you see if he still had the gun with him?

5 A. Yes. He had it just out in the open.

6 Q. Okay. So when he came back to your car does he come
7 back to the driver's side ---

8 A. --- to the passenger side.

9 Q. While he's at your passenger side what happens?

10 A. He tells me to put down the window. And so I
11 cracked the window and I said for what? And he was like
12 I want to talk to you. And I said for what, you don't F-
13 ing know me.

14 And he was insisting that he get in the car. He got
15 in the car and I said something smart to him and he then
16 put the gun to my face and told me that I really didn't
17 have much of a choice.

18 Q. So he put it to your face?

19 A. Yes.

20 Q. Did you actually feel the gun against your face?

21 A. Yes, it was like about here [indicates].

22 Q. He pressed it to your jaw?

23 A. Yes.

24 Q. All right. And he says you don't have any choice
25 with the barrel of the gun pressed against your jaw what

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1 do you do then?

2 A. I said well I guess I don't. So then he told me to
3 take him to a store. And I said a corner store, a
4 convenience store. And he said just take me to the store
5 and don't take me to no hood.

6 Q. Okay. What did you do then?

7 A. So we were starting to drive and he's telling me
8 that if I do anything stupid there was somebody in the
9 car following me and they would shoot me.

10 He was telling me to slow down; I was going too fast
11 even though I was only doing about 20 and there was a cop
12 in front of me. And we were at the store on King and
13 Cannon.

14 Q. Let's slow it down just a bit. When you started to
15 drive did you end up passing by the red car or did -- was
16 the red car in front of you or behind you when you went
17 down Cannon?

18 A. I passed it and then he got behind me.

19 Q. So he said -- the individual told you that he had
20 someone in the car.

21 A. Yes.

22 Q. And then that car did end up following you?

23 A. Yes.

24 Q. Now you mentioned something there. You said that
25 there was a police officer in front of you?

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1 A. Yes.

2 Q. Did you think to yourself maybe I could just run
3 into the back of the police car?

4 A. No, I didn't.

5 Q. Did you think to yourself maybe I should start
6 honking the horn and get the police officer's attention?

7 A. I didn't.

8 Q. Okay. Go back to the map. When you went up to
9 Cannon where did you end up stopping?

10 A. At the corner store on King and Cannon.

11 Q. Okay. And what happened then?

12 A. He gave the three dollars back to me and he said how
13 old did you say you was? You're 24; you can go buy me a
14 beer. And he told me he wanted a Miller High Life 40
15 ounce and then he said no, no I tell you what just go.
16 And then he told me to turn on Mary Street and then we
17 were at the Exxon on Meeting Street.

18 Q. Okay. Did you have any inclination why he had a
19 change of heart as to you going into that store?

20 A. I assumed that because it was just so busy outside.
21 It was nightlife and people were out and just walking
22 around.

23 Q. Go ahead and start from King and Cannon on the map
24 and you can go ahead and mark that again.

25 [Whereupon, the witness complies]

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1 Q. And you said that you went up to Mary Street?

2 A. Yes.

3 Q. All right. And then you would have did what; took a
4 left?

5 A. Yes, a left and then down here [indicates].

6 Q. Okay. What happened whenever you got to the Exxon?

7 A. He told me to get out and purchase his beer.

8 Q. And did you?

9 A. Yes.

10 Q. All right. While we're cueing that up the
11 individual had robbed you at gunpoint and then told you
12 to get -- or got in the car and told you to drive to the
13 store. Do you see him in the courtroom today?

14 A. Yes.

15 Q. Can you point him out and describe what he is
16 wearing to the jury?

17 A. [Indicates] He has on a pullover sweater with grey
18 diamond pattern and grey slacks.

19 Q. Okay.

20 MR. OSBORNE: Your Honor, at this time I would seek
21 to publish State's exhibit 7, it is the surveillance
22 video from the Exxon, I believe without objection.

23 MR. MAYER: No objection, Your Honor.

24 THE COURT: It's admitted.

25 [Whereupon, State's exhibit number 7 is entered into

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1 evidence by the court]

2 Q. While that is coming up, while you were headed that
3 way to the Exxon what is he saying to you?

4 A. He told me how he -- I think that's when he was
5 telling me he had done ---

6 MR. MAYER: --- objection, Your Honor ---

7 A. --- the 20 years in prison ---

8 MR. MAYER: --- objection.

9 THE COURT: The objection is overruled.

10 Q. [Mr. Osborne] And what did he say to you?

11 A. That he had done 20 years in prison.

12 [Whereupon, the surveillance video plays]

13 Q. Do you see anything that you recognize on the screen
14 there?

15 A. My car.

16 Q. And why did you park at -- while it's playing and I
17 know the video is going to freeze up a couple of times --
18 why did you choose to park in this specific location?

19 A. He was telling me everything to do, where to park,
20 where to drive so he probably told me to park there.

21 Q. Okay. We just paused it right here at this moment
22 and that's 12:57:31 on the video. Is that him
23 [indicates] leaning out of your passenger window there?

24 A. Yes.

25 Q. And I think you just walked by, is that right?

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- 1 A. Yes.
- 2 Q. Why didn't you go inside the store?
- 3 A. The store was locked. We had to use the window
- 4 thing.
- 5 Q. Is he saying something to you hanging out the
- 6 window?
- 7 A. He was saying I don't know if it was to me but he
- 8 was just being loud and just talking out the window.
- 9 Q. Now, while you are talking to this cashier and I
- 10 think that was her that just walked by?
- 11 A. Uh Huh.
- 12 Q. When you're talking to her and you're at the window
- 13 was it easy to communicate with her?
- 14 A. No, I had to kind of speak loudly and kind of speak
- 15 near the drawer thing.
- 16 Q. And what did you buy?
- 17 A. A Miller High Life 40 ounce.
- 18 Q. And why did you choose that specific drink?
- 19 A. I guess that's his choice of beer.
- 20 Q. Or at least that's what he asked for.
- 21 A. Yes.
- 22 Q. Over there on the left [indicates] is the timer
- 23 still running, though? Can you see that?
- 24 A. Yes.
- 25 Q. Is that you walking back to the car?

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1 A. [No response]

2 Q. You may not have caught it. It happened real quick.

3 A. Oh, I already passed.

4 Q. And when you're backing out is he telling you where
5 to go?

6 A. Yes.

7 Q. And where was he telling you?

8 A. I don't exactly remember.

9 Q. When you got back out to Meeting Street -- well,
10 before we get to that.

11 MR. OSBORNE: May I approach, Your Honor?

12 THE COURT: Yes.

13 Q. [Mr. Osborne] I'm showing you what has been marked
14 as State's exhibit 11. Can you take a look at that and
15 tell me if you recognize it?

16 [Whereupon, the witness is shown photograph]

17 A. Yes, that's the beer I purchased.

18 MR. OSBORNE: Your Honor, at this time I'd seek to
19 admit State's exhibit 11 into evidence.

20 THE COURT: Any objection?

21 MR. MAYER: No objection, Your Honor.

22 THE COURT: It's admitted.

23 [Whereupon, State's exhibit number 11 is entered
24 into evidence by the court]

25 [Whereupon, the photograph is shown]

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1 Q. [Mr. Osborne] I believe that was recovered from your
2 car later on?

3 A. Yes.

4 Q. So now you're leaving the Exxon parking lot and you
5 go back to Meeting. Do you hang a right on Meeting or a
6 left on Meeting?

7 A. A right.

8 Q. And why do you turn right?

9 A. He told me to.

10 Q. So before we get to where you went on Meeting I just
11 want to ask you some questions now, okay? While you were
12 there, yes or no, you could have whispered to the clerk.

13 A. I could have.

14 Q. That you were being kidnapped.

15 A. Yes.

16 Q. But you didn't.

17 A. No.

18 Q. Was the defendant right behind you?

19 A. He was in the car out the window.

20 Q. Was he hanging out the window?

21 A. Yes.

22 Q. So -- and to your knowledge he still had the gun.

23 A. Yes.

24 Q. You could have just took off running couldn't you
25 have?

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- 1 A. I could have.
- 2 Q. Do you know if his gun was loaded?
- 3 A. I didn't.
- 4 Q. Was that a chance you were willing to take?
- 5 A. No.
- 6 Q. All right. When you get back out on Meeting Street
- 7 you said you took a right, he told you to turn right.
- 8 A. Yes.
- 9 Q. When you're going down Meeting Street tell the jury
- 10 what the conversation is in the car.
- 11 A. I had mentioned to him that my car was making a
- 12 funny sound so he told me to pull into the parking lot of
- 13 the Family Dollar.
- 14 Q. Why would you talk to him about -- first is your car
- 15 a newer model car?
- 16 A. No, it's a 1999 Taurus.
- 17 Q. Does it run kind of rough?
- 18 A. Yes.
- 19 Q. Why would you talk to him about how your car was
- 20 running?
- 21 A. I was just kind of making small talk just trying to
- 22 keep my nerves down, everything; just trying to keep it
- 23 you know...
- 24 Q. Keep it calm?
- 25 A. Yes.

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1 Q. The last time you made a smart comment to him what
2 happened?

3 A. The gun was put to my face.

4 Q. When you pull into the Family Dollar parking lot
5 what happens then?

6 A. He comes around to the driver's side. He tells me
7 to get out so that he can look. He tries to pull the
8 latch but it pops off. He was trying to see if he could
9 get the hood open but it couldn't.

10 Q. Okay. Then what happened?

11 A. He tells me to get back in the car and we proceed up
12 Meeting Street.

13 Q. Heading towards North Charleston?

14 A. Yes.

15 Q. Does he direct you where to go ---

16 A. --- yes ---

17 Q. --- and the turns that you make?

18 A. Yes.

19 Q. What is your first destination?

20 A. We ended up on it's like a side street like off of
21 Reynolds and he was -- I was driving and he was in the
22 passenger side. He told me to stop.

23 He was hanging like out -- he had the door open but
24 he was standing on the part of the car that you can rest
25 your foot on outside the door. And he was talking to or

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1 like yelling at some guys over -- that were over here
2 [indicates] and he had the gun out and he was letting
3 them see that he had a gun. And they were looking around
4 like you know and they took off running.

5 Q. Did he end up then at some point directing you to go
6 to a gas station?

7 A. Yes, that's when we went to that little gas station
8 off Rivers.

9 Q. Is that where he told you to go after that
10 encounter?

11 A. Yes.

12 MR. OSBORNE: Your Honor, at this time I would seek
13 to publish State's exhibit 8. It is the surveillance
14 video from the Rivers Mart. I believe it is without
15 objection.

16 MR. MAYER: Without objection.

17 THE COURT: It's admitted.

18 [Whereupon, State's exhibit number 8 is entered into
19 evidence by the court]

20 [Whereupon, the surveillance video plays]

21 Q. [Mr. Osborne] Do you recognize that car pulling in
22 now?

23 A. Yes.

24 Q. Who is that?

25 A. That's my car.

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1 Q. Now, what are you doing here? Why are you parking
2 this way?

3 A. He told me to back in and park against the gate or
4 fence.

5 Q. Now the video is still running. You're sitting in
6 the parking lot here. What's the conversation in the car
7 between you and him?

8 A. He's telling me about some woman that was in the
9 parking lot how she owed him money and he hit her in the
10 head because she owed her money.

11 Q. Can you see the woman here on the screen?

12 A. No, I can't.

13 Q. Would she had been in this image or where was she?

14 A. No, she was kind of like off to the side I guess
15 near the pumps I guess kind of; off to the side.

16 Q. Did you at any point ask if he knew her?

17 A. No.

18 Q. While you're sitting there with him how is he
19 behaving? Is he looking around, is he calm, is he
20 talking?

21 A. Yes, he was looking around. And he also told me
22 again before we got out of the car not to do anything
23 stupid and don't scream or run or anything.

24 Q. Does he still have the gun?

25 A. Yes.

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- 1 Q. And the time on the video at this point does it say
2 zero zero 26?
3 A. Yes.
4 Q. June the 2nd?
5 A. Uh Huh.
6 Q. Watch close here [indicates]. When he got out of
7 the car was he doing something with his waistband?
8 A. Uh Huh.
9 Q. Could you tell?
10 A. Yes.
11 Q. Do you know what he was doing?
12 A. He was pulling his shirt -- putting the gun in his
13 waistband and pulling his shirt down over it.
14 Q. Do you remember what he's telling you there?
15 A. That might have been when he was telling me not to
16 do anything stupid.
17 Q. We're going to move ahead to the second clip. Now
18 you said that he was pulling his shirt down. Is that
19 what you mean on his left side?
20 A. Yes.
21 Q. What is he having you do here?
22 A. Step closer to the counter.
23 Q. Are y'all making a purchase?
24 A. Yes.
25 Q. Are you buying or is he buying?

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- 1 A. I bought a little cigarette.
- 2 Q. For yourself or for him?
- 3 A. For him.
- 4 Q. I believe this is going to be you and him entering
- 5 the store again from another angle?
- 6 A. Yes.
- 7 Q. See that guy that just walked by with the bucket of
- 8 rags it looks like?
- 9 A. Yes.
- 10 Q. Do you know him?
- 11 A. No.
- 12 Q. I'm going to play the last clip, clip 4. It should
- 13 be when your car leaves. Is he still tugging on that
- 14 left side?
- 15 A. Yes.
- 16 Q. While this is playing, yes or no Ms. Johnson, you
- 17 could have told the cashier I'm being kidnapped; this guy
- 18 has got a gun.
- 19 A. I could have.
- 20 Q. But you didn't.
- 21 A. No.
- 22 Q. You could have asked the guy with the bucket of rags
- 23 for help couldn't you have?
- 24 A. I could have.
- 25 Q. But you didn't?

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- 1 A. No.
- 2 Q. You could have took off running here couldn't you
- 3 have?
- 4 A. I could have.
- 5 Q. Were you willing to take a chance that the guy with
- 6 the bucket of rags ---
- 7 A. --- was going to save me? No.
- 8 Q. How about the cashier who is selling loose
- 9 cigarettes?
- 10 A. No.
- 11 Q. How about anybody else that's hanging out at the gas
- 12 station?
- 13 A. Definitely not.
- 14 Q. Did you want to go to this gas station that night
- 15 and buy the defendant loose cigarettes?
- 16 A. No.
- 17 Q. Why did you?
- 18 A. He made me. He had a gun.
- 19 Q. Do you remember what the conversation is in the car
- 20 now?
- 21 A. I don't.
- 22 Q. Now when he first got in the car he told you to take
- 23 him to the store.
- 24 A. Yes.
- 25 Q. And now this is the second store ---

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1 A. --- yes ---

2 Q. --- that you've taken him to. Were you asking him
3 anything about letting you go?

4 A. No.

5 Q. Why not?

6 A. Well, he said a couple of times well just one more
7 stop and then you can go, one more stop and you can go.

8 Q. When you questioned him before did that work out
9 well for you?

10 A. No.

11 Q. So at this moment on the video it's at 12:32. It
12 looks like your car is leaving?

13 A. Yes.

14 Q. And why when you got to Reynolds did you take a
15 right instead of a left?

16 A. He told me to. Everywhere we went he was telling me
17 where to turn.

18 Q. Okay.

19 MR. OSBORNE: Your Honor, we're going to try to
20 start cueing up State's exhibit 9. It's the surveillance
21 video from Stayover Lodge. We'd seek to admit it I think
22 without objection.

23 MR. MAYER: No objection, Your Honor.

24 THE COURT: It's admitted.

25 [Whereupon, State's exhibit number 9 is entered into

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1 evidence by the court]

2 Q. [Mr. Osborne] So while that is cueing up when you
3 got to Rivers Avenue did you take a right or left, do you
4 remember?

5 A. A left because the motel is to the left.

6 Q. When you went down Rivers do you remember what turn
7 you took?

8 A. Made a right on McMillan.

9 Q. And what happened when you got to McMillan?

10 A. We went to that motel.

11 [Whereupon, the surveillance video plays]

12 Q. Do you recognize this vehicle pulling up here?

13 A. Yes.

14 Q. Why did you park there?

15 A. He told me to.

16 Q. What is being said here?

17 A. I don't remember.

18 Q. Is this in the front of the Stayover or in the back
19 of the Stayover?

20 A. In the back.

21 Q. Okay. Did he tell you why he asked you to drive
22 there?

23 A. No.

24 Q. Prior to getting out of the car because we can't
25 pause this does he take anything from you?

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- 1 A. Yes, he's about to get out and he turned back around
2 to get my phone and my keys.
- 3 Q. So he has your phone and keys now?
- 4 A. Yes.
- 5 Q. Do you know this man that he is talking to?
- 6 A. No.
- 7 Q. Can you hear what they are saying?
- 8 A. I probably could have but I don't think I was
9 listening.
- 10 Q. Why do you get out of the car?
- 11 A. He told me to get out.
- 12 Q. Why do you go back to the car?
- 13 A. He told me to get back in.
- 14 Q. Did he tell you in a friendly tone?
- 15 A. No, it was more of a demand.
- 16 Q. Did you feel like you had a choice?
- 17 A. No.
- 18 Q. Where is the gun now?
- 19 A. It's still on him.
- 20 Q. These two individuals that are walking up here on
21 your left do you know them?
- 22 A. No.
- 23 Q. Could you tell if it was a man or a woman, do you
24 know?
- 25 A. Yes, I think it was man and a woman.

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- 1 Q. Does the defendant seem to know them?
- 2 A. Yes. He was chatting with them.
- 3 Q. Does he hug one of them it looks like?
- 4 A. Yes, he hugged the woman.
- 5 Q. How old are you again, or how old were you then?
- 6 A. I was 24.
- 7 Q. It doesn't look like you're doing a whole lot in
- 8 your car there, is that fair to say?
- 9 A. Yes.
- 10 Q. Are you just sitting there?
- 11 A. Yes.
- 12 Q. A lot of times when people are sitting around
- 13 especially nowadays they would pull out there phone and
- 14 start getting on the Internet.
- 15 A. Right.
- 16 Q. Do you do that a lot?
- 17 A. Do I do that a lot?
- 18 Q. Yes. Do you get on the Internet and Facebook and
- 19 things of that nature?
- 20 A. Yes.
- 21 Q. Are you doing that now?
- 22 A. No, he had my phone.
- 23 Q. It looks like someone goes into that apartment.
- 24 Could you tell if that was the man or the woman, do you
- 25 remember?

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- 1 A. I don't.
- 2 Q. What is the time on the surveillance video there?
- 3 A. 1:37 a.m.
- 4 Q. It looks like the individual comes back out of the
5 room, is that correct?
- 6 A. Yes.
- 7 Q. Does the defendant go into the room?
- 8 A. Yes.
- 9 Q. And the man and the woman walk off to your left.
- 10 A. Yes.
- 11 Q. The time now is what?
- 12 A. 1:38.
- 13 Q. Okay. So he would have gone in the room about 1:37;
14 the time on the video?
- 15 A. Yes.
- 16 Q. Did you think about running now?
- 17 A. I did. I thought about it but then I thought I'd
18 already been sitting there for some time now so I wasn't
19 sure about how much time I would have to get away.
- 20 Q. Okay. What time is it now?
- 21 A. 1:39.
- 22 Q. He came back out. Did he point to you?
- 23 A. Yes.
- 24 Q. What did he -- did he say anything?
- 25 A. He probably did. I guess he told me to close the

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1 door.

2 Q. Would you have closed the door without him telling
3 you to?

4 A. No.

5 Q. Would you have done anything that night without him
6 telling you to?

7 A. No.

8 Q. So he walked off to the left, is that right?

9 A. Yes.

10 Q. The same direction that the other two individuals
11 walked off toward?

12 A. Yes.

13 Q. And what's the time on the video now?

14 A. 1:39 a.m.

15 Q. Okay, 1:39. All right, now before -- we're going to
16 skip ahead to 1:46 but before we do that I want you to
17 pay attention to yourself while you're inside the car.
18 This is going to be moving a little fast because you're
19 there for seven minutes.

20 [Whereupon, the video continues to play]

21 Q. Watch yourself inside the car. Are you moving at
22 all?

23 A. Not that I can see.

24 Q. Did you get out the car at all during that time
25 period?

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- 1 A. Besides when he told me to?
- 2 Q. No, I mean for that seven minutes there?
- 3 A. No.
- 4 Q. I'm going to spare us all and not have to watch you
- 5 do nothing for seven minutes.
- 6 A. Right.
- 7 Q. Is that him coming back?
- 8 A. Yes.
- 9 Q. Is he still favoring his left side?
- 10 A. Yes.
- 11 Q. Watch him whenever he gets into the car. When he
- 12 got into the car did you see him take anything out ---
- 13 A. --- he took the gun out of his waist.
- 14 Q. When you backed out why did you elect to go that way
- 15 and not the other way?
- 16 A. He told me to.
- 17 Q. Okay. Now let me ask you Ms. Johnson, you were in
- 18 the car for seven minutes. That's a long time. Yes or
- 19 no, you could have gotten out and run during that time,
- 20 right?
- 21 A. I could have.
- 22 Q. You could have flagged down any one of these people
- 23 that we've seen walking around and ask them for help,
- 24 couldn't you have?
- 25 A. I could have.

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1 Q. But when the defendant got out of the car and he
2 started to follow the other two individuals did he say
3 I'll return in seven minutes?

4 A. No.

5 Q. Did you know how long he was going to be gone?

6 A. No.

7 Q. If he had said to you I'll be back in seven minutes
8 would you have taken your chances then and run?

9 A. Maybe.

10 Q. So now he's back in the car. He's directed you
11 where to go. Where do you go from there?

12 A. We go down -- he was telling me like certain area
13 like do you know where you are now and I'm saying no and
14 he was like you're in so and so; and I don't ever want to
15 see your face over here again. I think after this we
16 went to -- I don't know but we ended up on Railroad Road.

17 Q. Do you know what subdivision Railroad Road is in?
18 If you don't that's okay.

19 A. No, I don't.

20 Q. Okay. Is that an area of North Charleston that you
21 frequent -- or were you in North Charleston?

22 A. Yes.

23 Q. Is that an area of North Charleston that you
24 frequent?

25 A. No.

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1 Q. So up until this point in the night were you getting
2 phone calls?

3 A. Yes. Justin was constantly calling my phone, back
4 to back.

5 Q. Okay. Were you ever able to answer him?

6 A. After a certain point of him not stopping calling he
7 told me to turn my phone off.

8 Q. When your phone rings does the contact name of the
9 person calling you show up?

10 A. Yes.

11 Q. And how do you have your boyfriend's name saved?

12 A. At the time I had his first and last name.

13 Q. Which was?

14 A. Justin Lawrence.

15 Q. Okay. You said that you went to Railroad Road.

16 A. Yes.

17 Q. What happened when you got to that road?

18 A. He told me to pull over on the side of the road. He
19 told me that I had two options left. They were to either
20 fuck him or give him some more money.

21 Q. This area of Railroad Road was it well lit?

22 A. No, it was very dark.

23 Q. Were there a lot of people around?

24 A. Nobody else was around.

25 Q. What do you remember -- was there actually train

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- 1 tracks on one side of the road?
- 2 A. Yes.
- 3 Q. Now he's giving you two pretty enticing options.
- 4 Which one do you choose?
- 5 A. I chose money.
- 6 Q. Okay. But you didn't have any money.
- 7 A. No.
- 8 Q. How were you going to get it?
- 9 A. I told him that I had a bank card.
- 10 Q. Okay. Now you were on the side of the road and you
- 11 said that you had a bank card.
- 12 A. Yes.
- 13 Q. What happened then?
- 14 A. I was about to pull off and then he decided that he
- 15 wanted to drive so we switched seats.
- 16 Q. Did he say why he wanted to drive now?
- 17 A. No.
- 18 Q. So now you're in the passenger seat?
- 19 A. Yes.
- 20 Q. He's in the driver's seat?
- 21 A. Yes.
- 22 Q. And where is that debit card that you need to get?
- 23 A. It is under the driver's seat.
- 24 Q. And I know you're not super familiar with that area
- 25 but whereabouts does he go?

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1 A. We went straight down Railroad Road and then it
2 turned into a trailer park. And so we road through the
3 trailer park and then we came out to Rivers Avenue.

4 Q. When he drove through the trailer park did he stop?

5 A. No.

6 Q. Did he say anything?

7 A. No.

8 Q. Did he make any comment ---

9 A. --- no ---

10 Q. --- about that area at all to you that you can
11 remember?

12 A. No.

13 Q. Okay.

14 MR. OSBORNE: Your Honor, at this time I would seek
15 to publish State's exhibit 10. It's the surveillance
16 video from Kangaroo I believe without objection.

17 MR. MAYER: Without objection.

18 THE COURT: It's admitted.

19 [Whereupon, State's exhibit number 10 is entered
20 into evidence by the court]

21 [Whereupon, the video plays]

22 Q. [Mr. Osborne] Do you recognize the car?

23 A. Yes.

24 Q. Is that your car?

25 A. Yes.

1 Q. Now when you got here what's your first mission?
2 What do you need to do?

3 A. Find the card.

4 Q. What do you do first before looking under the seat?
5 Do you look someplace else?

6 A. I look in the glove compartment, I look in the
7 middle little console, then I look in my purse and that's
8 when I find out that I have my spare key.

9 Q. Okay. So you said you looked in the glove
10 compartment and the console; we can see a lot of movement
11 in there. But you knew where the debit card was, right?

12 A. Yes.

13 Q. Why did you look in those other locations?

14 A. When he first approached my car on Cannon Street he
15 asked if I had any cards on me and I told him no so I
16 couldn't just go straight to the card. I didn't want to
17 let him know that I lied to him.

18 Q. So you said that while looking in your purse you
19 found your spare key?

20 A. Yes.

21 Q. Let's talk about that spare key for a moment. Was
22 that spare key on any kind of keychain?

23 A. It had the fob on it. It was just the fob and the
24 key.

25 Q. And you kept that in your purse?

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- 1 A. I did. Not all the time.
- 2 Q. Okay. But your Mom told you a better place to keep
- 3 it would be inside the house.
- 4 A. Yes. Normally, I keep it on the coat rack. But
- 5 often times especially when I'm running kind of late and
- 6 I'm not sure where my other key is I'll just grab that
- 7 one.
- 8 Q. And then you end up being in possession of two keys.
- 9 A. Right.
- 10 Q. Is this the first time that you realize that you had
- 11 that spare key?
- 12 A. Yes.
- 13 Q. What went through your mind when you found the spare
- 14 key?
- 15 A. I said this ain't nothing but the Lord. Like oh my
- 16 God, I have a key.
- 17 Q. From that point on were you thinking I can get out?
- 18 A. Yes. Maybe not right at that second but I knew that
- 19 I probably had a better opportunity.
- 20 Q. You just had to wait for your time?
- 21 A. Yes.
- 22 Q. What are you telling him in reference to where this
- 23 card might be?
- 24 A. I told him that I was looking for it and he told me
- 25 to take my time.

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1 Q. Does he help?
2 A. No.
3 Q. Why do you get out the car?
4 A. I was still looking for the card. And that's when I
5 got the card from under the driver's seat.
6 Q. Did you actually have to get behind him?
7 A. Yes. I got on the floor and was digging under the
8 seat.
9 Q. Do you remember the first time you saw this video?
10 A. In your office a couple of weeks ago.
11 Q. A couple of weeks ago?
12 A. Yes.
13 Q. How about the other videos? When was the first time
14 you saw them?
15 A. The same time.
16 Q. So the first time you ever saw any of these videos
17 was when I showed them to you a couple of weeks ago?
18 A. Yes.
19 Q. And you had already spoken to the police by then?
20 A. Yes.
21 Q. A couple of times?
22 A. Yes.
23 Q. We're going to stop it there and pick up inside the
24 store playing clip 3.
25 [Whereupon, the video clip plays]

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- 1 Q. I think this image shows y'all are parked right in
2 front of the store?
- 3 A. Yes.
- 4 Q. You put your Mom's debit card in the A-T-M?
- 5 A. Yes.
- 6 Q. How much did you withdraw?
- 7 A. One Hundred dollars.
- 8 Q. Why do you withdraw 100?
- 9 A. That's how much he told me to withdraw.
- 10 Q. He's still tugging on his left shirt?
- 11 A. Yes.
- 12 Q. He took the card?
- 13 A. I did.
- 14 Q. Is this -- do you remember is this an A-T-M that is
15 sponsored by your bank?
- 16 A. It wasn't.
- 17 Q. It was not? So that might explain the extra three
18 dollar charge?
- 19 A. Yes.
- 20 Q. He takes the money?
- 21 A. Yes.
- 22 Q. Do you know what is happening here?
- 23 A. He's buying that other man's beer.
- 24 Q. He's buying another man's beer?
- 25 A. Yes.

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- 1 Q. With your money?
- 2 A. Yes.
- 3 Q. We're going to stop it there and pick up at clip 8.
- 4 [Whereupon, the video clip plays]
- 5 Q. And this is picking up right when y'all come back
- 6 outside?
- 7 A. Yes.
- 8 Q. It looks like you started to drive and decided not
- 9 to?
- 10 A. He told me that he was going to drive. He was like
- 11 no, no, no, no. So I got out and got in the passenger
- 12 side.
- 13 Q. Where is the spare key now?
- 14 A. It's still in my purse on the passenger side on the
- 15 floor.
- 16 Q. Do you remember what's happening here?
- 17 A. I don't. He's about to back up to the gas pump and
- 18 give me ten dollars to go inside to pay for gas.
- 19 Q. Ten dollars from the 100 dollars he just took from
- 20 you?
- 21 A. Yes.
- 22 Q. How did that conversation go down specifically as
- 23 best you can remember? When he suggested putting gas in
- 24 the car what was your reaction?
- 25 A. He asked me did the car need more gas and it had a

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1 quarter tank and I said no, it doesn't need any more gas.
2 And he said yeah it do so he gave me ten dollars and told
3 me to go inside to pay for the gas.

4 Q. Okay. We're going to stop it there. We're going to
5 play now camera 3 and camera 8 to play one minute from
6 that. It's a split screen showing both angles. And
7 we're going to pick this up at 9:55 and then end it at
8 11:06.

9 [Whereupon, the video clip plays]

10 Q. That's you walking back into the store?

11 A. Yes.

12 Q. Is that where we left off?

13 A. Yes.

14 Q. You're in the store and the defendant is in the car?

15 A. Yes.

16 Q. Now the defendant is coming into the store?

17 A. Yes.

18 Q. Did he make a purchase when he came back in?

19 A. No.

20 Q. Do you remember what he said to you?

21 A. No.

22 Q. Do you remember what he said to the clerk?

23 A. No.

24 Q. Now, we're going to play camera 8 starting at 9:55.

25 [Whereupon, the video clip plays]

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1 Q. That's you and the defendant walking back out the
2 store?

3 A. Yes.

4 Q. Does anything significant happen while he is gassing
5 your car?

6 A. No.

7 Q. Does he say anything that you recall?

8 A. No.

9 Q. The car is now leaving?

10 A. Yes.

11 Q. When he gets out to Rivers Avenue does he take a
12 left or right do you remember?

13 A. I don't. But we went back the way we came so I
14 guess that was a left.

15 Q. Now, we're going to go back. This is camera 1 and
16 we're going to play 4:55 to 7:30 and there is actual
17 audio.

18 [Whereupon, the video plays]

19 Q. And you didn't at the time when this happened you
20 didn't hear any of that. I mean you weren't paying
21 attention to what was happening?

22 A. I was listening when he told the other guy to put
23 his money back; he would buy his beer for him. I just
24 stood in the back, just far back.

25 Q. We'll move ahead to the ten minute mark and we'll

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1 play one minute. And this will be you, and tell me if
2 I'm wrong, you coming back into the store to buy the ten
3 dollars of gas.

4 [Whereupon, the video plays]

5 Q. What did the clerk ask you?

6 A. He said are you all right?

7 Q. Why didn't you answer him?

8 A. I was about to and then he walked in the door.

9 Q. Okay. Do you have any inclination as to why the
10 clerk would have asked you if you were all right?

11 A. I was staring at him like I didn't blink.

12 Q. And the defendant came in right after that?

13 A. Yes.

14 Q. Did you -- when the defendant came in did you hear
15 what he said?

16 A. No.

17 Q. All right Jennifer you could have alerted this
18 cashier here you were being kidnapped when you first came
19 in couldn't you have?

20 A. I could have.

21 Q. And play it out. And the cashier could have went
22 and maybe locked the door preventing the defendant from
23 coming back in, right?

24 A. He could have.

25 Q. Prior to this did you see the defendant and the

- 1 cashier laughing it up?
- 2 A. Yes.
- 3 Q. Shaking hands?
- 4 A. Yes.
- 5 Q. Joking?
- 6 A. Yes.
- 7 Q. He's buying stuff for people that are inside this
- 8 store?
- 9 A. Yes.
- 10 Q. Did you know his relationship with that cashier?
- 11 A. No.
- 12 Q. Why did you go to this gas station?
- 13 A. He told me to go there.
- 14 Q. Do you know how often he frequents this gas station?
- 15 A. No.
- 16 Q. Were you willing to take the chance that he wasn't
- 17 friends with him?
- 18 A. Absolutely not.
- 19 Q. Were you willing to take the chance that this
- 20 cashier working at this gas station at 1 o'clock in the
- 21 morning would do the right thing and help you?
- 22 A. Absolutely not.
- 23 Q. Do you know if the glass was bulletproof?
- 24 A. No.
- 25 Q. What happened after that?

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1 A. We leave that gas station and go back to the trailer
2 park that we drove through the first time.

3 Q. Okay. Prior to that night had you ever been to that
4 trailer park before?

5 A. No.

6 Q. Okay. What happened there?

7 A. He parked the car -- on the left side. And he got
8 out of the car and went across the road to the other
9 trailer.

10 Q. All right. When he walked over there did you see if
11 there were other people around?

12 A. Uh Huh. He was talking to somebody. He was talking
13 to a younger kid like around 19 or 20.

14 Q. All right. What happened then?

15 A. Both of them came back to the car and he told me to
16 get out again so the guy could look at me. The kid asked
17 me my name and he told me to shut up and don't say
18 anything. Then he told me to get back in the car and the
19 two of them went back across where they were.

20 Q. Okay. So you're sitting in the car now alone.

21 A. Yes.

22 Q. What are you thinking?

23 A. Now is my time.

24 Q. What did you do?

25 A. I looked behind me and I didn't see him so I tried

1 to without moving so much look in my purse to get the key
2 and I got the key. And I looked behind me again and I
3 didn't see him. I had left the passenger door open when
4 he told me to get out and so I closed the door.

5 I looked behind me again and I didn't see him so
6 then I crawled over to the driver's side, I stuck the key
7 in the ignition. I looked behind me again and I didn't
8 see him and I cranked the car up put it in reverse, put
9 it in drive and I sped out of there.

10 Q. When you were sliding over and when you were closing
11 that door were you nervous?

12 A. Yes.

13 Q. Why?

14 A. I didn't know if he was going to run up from
15 wherever he was and start shooting. I just didn't know
16 what was going to happen. If I could even move the car
17 fast enough. I was just starting to panic again.

18 Q. When you pulled the key out of the purse and stuck
19 it in the ignition were you scared?

20 A. Yes. I took a breath before I cranked it up.

21 Q. When you cranked the car up what did you do?

22 A. I put it in reverse, I floored it and it got stuck
23 in neutral and I got it in drive and I sped out of there.

24 Q. So you didn't drive out slow?

25 A. No.

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- 1 Q. Where did you go from there?
- 2 A. I went downtown.
- 3 Q. Back home?
- 4 A. Yes.
- 5 Q. Okay. What happened when you got home?
- 6 A. The cops were there. My Mom, Justin, and my brother
- 7 Kevin was outside. And I kind of parked the car, I
- 8 jumped out and I hugged Justin.
- 9 Q. And Justin has already testified that you told him
- 10 what ---
- 11 A. --- yes ---
- 12 Q. --- happened ---
- 13 A. --- I told him.
- 14 Q. Do you remember what you told him?
- 15 A. Oh yes, that he fucking kidnapped me.
- 16 Q. All right. You spoke to police that night?
- 17 A. Yes.
- 18 Q. A couple different times?
- 19 A. Yes.
- 20 Q. They ended up showing you a photographic lineup?
- 21 A. Yes.
- 22 Q. I think it was the next day?
- 23 A. Yes, the next day.
- 24 Q. And you identified the defendant?
- 25 A. Yes.

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1 Q. Now Ms. Johnson prior to that night have you ever
2 seen this defendant before?

3 A. Absolutely not.

4 Q. Prior to that night have you ever spoken to him on
5 the phone before?

6 A. Absolutely not.

7 Q. On that night did you agree to meet up with him and
8 willingly then ride around with him?

9 A. Absolutely not.

10 Q. Did you agree to willingly ride around with him and
11 buy him cigarettes, beer, withdraw money from your Mom's
12 account and give it to him?

13 A. Absolutely not.

14 Q. Why did you do all that?

15 A. He told me to.

16 Q. And was he armed?

17 A. Yes, he was.

18 Q. Did you feel like you had a choice?

19 A. No, I didn't.

20 MR. OSBORNE: No further questions, Your Honor.

21

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1 THE COURT: We'll take a break now ladies and
2 gentlemen. Please go to the jury room and please do not
3 discuss the case.

4 [Whereupon, the jury exits at 4:35 p.m.]

5 THE COURT: We will take ten minutes. Ma'am, you
6 can step down but you cannot talk with anyone about your
7 testimony during the break.

8 THE WITNESS: Okay.

9 [Whereupon, the witness exits the witness stand]

10 [Whereupon, court is in recess from 4:35 p.m. until
11 4:47 p.m.]

12 MR. MAYER: Judge, just as a matter before the jury
13 comes back in?

14 THE COURT: Yes, sir.

15 MR. MAYER: There are some kind of thorny
16 impeachment issues with this witness because her prior
17 inconsistent statement was audio and video recorded. And
18 there are a couple marks that I would like to at least
19 refresh her recollection with. I'm looking for some
20 guidance from the court as how to do this the most
21 sparsely and appropriately.

22 THE COURT: Well, as far as extrinsic evidence if
23 you ask someone did they say something on a prior
24 occasion and they agree then that's the end of it. If
25 they deny it it would be used as extrinsic evidence to

1 impeach them. So it all depends on how the testimony
2 flows. Do you agree with that Mr. Osborne?

3 MR. OSBORNE: Absolutely, Your Honor.

4 MR. MAYER: Perfect, Judge.

5 THE COURT: Okay. Come on Ms. Johnson.

6 [Whereupon, Ms. Johnson retakes the witness stand]

7 THE COURT: And you can bring the jury.

8 [Whereupon, the jury enters at 4:50 p.m.]

9 THE COURT: Okay. Cross-Examination.

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CROSS-EXAMINATION

BY MR. MAYER:

Q. Ms. Johnson, you said a couple of things on your direct examination that I want to touch on first because I think your creditability here is real important. You testified a few minutes ago that you didn't smoke marijuana.

A. Right.

Q. And before when you were being interviewed by the police officers isn't it true that you told them that you did in fact smoke marijuana?

A. I'm not sure.

Q. Okay. Is there any reason why you would have said something different to them versus what you said today?

A. No.

Q. Okay. So you're saying it's possible that you told them you had smoked marijuana before?

A. It is. I mean my very first year in college, I was 17 or 18 I tried it before.

Q. Do you remember sitting alone in the interview room after the police when they weren't there talking with you and saying out loud something like all I do is smoke weed?

A. No, I didn't say that. I said that I wish that I -- they asked me had I had something to drink or had I

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1 smoked before this incident happened and I said no, I
2 wish I would have meaning that I was completely sober.

3 Q. And so if they asked you a question did you have
4 something to drink or smoke weed before this incident why
5 would you say that you did smoke weed in general around
6 that time frame. It just doesn't make any sense to ---

7 MR. OSBORNE: --- objection, Your Honor. That's a
8 compound question and improper impeachment.

9 THE COURT: The objection is sustained.

10 MR. MAYER: Judge, I'd like to play the clip. It's
11 just not consistent.

12 THE COURT: Well, you can do whatever you like but
13 the objection is sustained.

14 MR. OSBORNE: I'm going to object to the playing of
15 the clip. She has admitted to having made that comment
16 so to impeach her with that clip is improper.

17 THE COURT: A speaking objection you can respond.

18 MR. MAYER: Your Honor, there are two places in the
19 prior video and audio recorded statement that this woman
20 provided where she says that she smoked weed. And she
21 does not say it in the context of many years ago. It's a
22 present day question that is presented to her at that
23 time and she is here denying that she said that.

24 THE COURT: Anything else from the State?

25 MR. OSBORNE: I will repeat my objection that it is

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1 improper impeachment.

2 THE COURT: I overrule the objection.

3 MR. MAYER: Thank you.

4 Q. [Mr. Mayer] Ms. Johnson, please listen and see if
5 you can understand what you are saying here?

6 [Whereupon, the video clips play]

7 Q. See, that sounds to me like you say you do in the
8 present tense ---

9 A. --- I mean I have -- what?

10 Q. Did I misunderstand that?

11 A. I said I do but I meant like I mean I have. I don't
12 normally smoke weed.

13 Q. And then this is when they are not in there.

14 [Whereupon, the video clip plays]

15 Q. All I do is smoke weed. Did I hear that wrong?

16 A. No, you heard that. But that's -- they were
17 insinuating if I had done any other drugs. No, all I had
18 done is smoke weed.

19 Q. You're saying the people who were talking to you ---

20 A. --- the detectives they were asking had I smoked
21 weed or had I done other drugs.

22 Q. So really what is the answer? I mean at this time
23 around this timeframe when you met Anthony outside your
24 house had you smoked weed or had you not smoked?

25 A. No, I had not. I was on the way to the bar. I had

1 just done putting my kid to bed.

2 Q. And when you said I do smoke weed that seems very
3 present tense.

4 A. It did.

5 Q. Did you smoke some in the last month before then or
6 what?

7 A. No, I haven't but -- no.

8 Q. Do you have some certain things that you like to do
9 that you don't share with your boyfriend?

10 A. No. We go out and we drink together. We hang out
11 together.

12 Q. But you don't smoke weed together?

13 A. No.

14 Q. And you don't do other drugs together?

15 A. No.

16 Q. And so when you met Anthony you had bumped into him
17 once before correct?

18 A. No.

19 Q. And he had actually -- y'all had talked and you got
20 along and you gave him your phone number.

21 A. No.

22 Q. And that was maybe a month before you bumped into
23 him on the street that night.

24 A. I never bumped into him on the street, never.

25 Q. And so you bumped into -- you happen to bump into

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1 him and he asked you if you wanted to get high?

2 A. I never bumped into him, never had a conversation
3 about getting high.

4 Q. I mean all this stuff about the gun and the robbery
5 and stuff that's just something that you made up so that
6 it wouldn't seem like you were trying to ditch out for a
7 few minutes to get high.

8 A. Absolutely not.

9 Q. So when y'all went from your house to go and buy a
10 beer and go over to this hotel room isn't it true that
11 Anthony was going to a guy who he thought would give him
12 drugs on credit?

13 A. I don't know.

14 Q. And he was going to get y'all some crack and y'all
15 were planning to smoke it together.

16 A. No.

17 Q. But when he couldn't get credit from the guy at the
18 hotel room he didn't have any money and you said well,
19 I've got an A-T-M card; let's go to the A-T-M.

20 A. No.

21 Q. And so he took you to an A-T-M and you guys took the
22 money out as we saw, isn't that right?

23 A. Yes.

24 Q. And then it was after that that y'all went and tried
25 for another source for crack and that was over in his

1 neighborhood?

2 A. No. We were in the neighborhood but I don't know
3 anything about crack or whatever you're talking about.

4 Q. And it was in his neighborhood that you finally got
5 some crack and y'all smoked up together?

6 A. No.

7 Q. It was only after y'all succeeded in your original
8 mission of smoking up together that you finally left,
9 isn't that true?

10 A. No.

11 Q. Why are you trying to hide your illegal drug use
12 from this jury?

13 A. I'm not hiding any illegal drug use.

14 Q. And you've got a really convenient answer for a lot
15 of free time when you and Anthony are hanging out and
16 he's probably talking your ear off ---

17 A. --- hanging out? When were we hanging out?

18 Q. For about two hours by my count you were with him.

19 A. When he left me in the car several places?

20 Q. For minutes and minutes, right?

21 A. Of hanging out?

22 Q. It seems like it. And so the first store that you
23 didn't go to at King and Cannon you testified earlier
24 that the reason why you didn't go there is because he
25 said not to go there.

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1 A. Yes.

2 Q. But you told the police in your interview that you
3 decided not to go there because you knew people there.

4 A. No, it was never that I decided. He was telling me
5 everywhere to go. And he decided that he didn't want me
6 to go in that store so he told me to move on.

7 Q. When you first were talking to police, and this is a
8 series of videos ---

9 A. --- correct ---

10 Q. --- isn't it true that you told them that you knew
11 people at that store and you decided not to go into that
12 one. You didn't want to be seen ---

13 A. --- it wasn't that I decided not to go in there.
14 He decided he did not want me to enter that store.

15 MR. MAYER: Your Honor, I don't know the mark for
16 this video portion. I'm not sure so I'm going to need a
17 minute to find it. I'm sorry.

18 THE COURT: Okay. Go ahead.

19 [Whereupon, Mr. Mayer reviews video]

20 [Whereupon, the video plays]

21 Q. [Mr. Mayer] I may stand corrected there, Ms.
22 Johnson. I apologize to you. I thought I heard that
23 different the first time. I guess you were saying you
24 knew people around there. So at the point that you were
25 looking for a getaway, an opportunity to get away when

1 you're sitting at that Stayover Lodge and you're telling
2 this jury that you weren't there willingly and he goes
3 around that corner off into the depths of this lodge why
4 on earth if you really are a victim why on earth didn't
5 you get out of the car and just sprint.

6 A. I had no idea where I was going to go. Was I going
7 to hide in a bush or something ---

8 Q. --- there's a McDonalds lit up right next door ---

9 MR. OSBORNE: --- objection, Your Honor. He asked
10 the question. The witness should be able to answer.

11 THE COURT: You can't argue with the witness.

12 Q. [Mr. Mayer] Go ahead.

13 A. What was your question?

14 Q. I'm sorry, finish your answer.

15 A. No, I was saying I didn't have anywhere to go. I
16 didn't know if anyone there would help me; he had my
17 phone. I didn't feel like I had a safe -- I would be
18 safe to get away.

19 Q. I mean from where you guys were parked you could see
20 the golden arches, you could see McDonalds there ---

21 A. --- yes, but I had a ways to run to get there. It
22 wasn't just right there. I had to come from behind the
23 building down the street. McDonalds was around the
24 corner. It wasn't just -- you can see the golden arches
25 but I couldn't just get there.

State v Anthony McClain
Jennifer Johnson-Cross-Examination by Mr. Mayer
March 14, 2017

1 Q. So I'm confused. Are you claiming with regard to
2 finding this spare key are you claiming that you found it
3 in your wallet?

4 A. It was in my purse.

5 Q. Is that also where your wallet was or was your
6 wallet somewhere else?

7 A. I'm not sure. My wallet was with me. I normally
8 sometimes don't -- I just carry my wallet instead of
9 taking my whole purse sometimes.

10 Q. So on this occasion you're saying you had both your
11 purse and your wallet?

12 A. Yes.

13 Q. And when you're talking about you found these spare
14 keys quote unquote you're not talking about your wallet;
15 you're talking about your bigger purse, is that right?

16 A. My spare key was in my black and white purse that
17 was on that seat in the picture in the car.

18 Q. Okay. You didn't testify today about some alleged
19 second person who you saw on your street that night with
20 my client; somebody with dreadlocks. But when you told
21 the police about there was someone with dreadlocks who
22 was that?

23 A. Because that was the person that was at the hotel
24 room and I assumed that was the person that was in the
25 car. I didn't see who was in the car. I just assumed

State v Anthony McClain
Jennifer Johnson-Cross-Examination by Mr. Mayer
March 14, 2017

1 that was who he was meeting at the room.

2 Q. You testified about two guys who at some point after
3 the King and Cannon store when y'all aborted -- when
4 y'all aborted going to the King and Cannon store, the
5 first store, y'all went somewhere where there was two
6 guys and you're saying my client got out the car and
7 showed him his gun. Where was that at?

8 A. I'm sorry, what happened?

9 Q. That's what I'm trying to figure out. You said
10 there was some stop y'all made that my client got out
11 with this alleged gun ---

12 A. --- yes, he wasn't really out the car. He was
13 standing on the inside of the car and he was leaning over
14 the top of the car. And yes, he had the gun out and he
15 was letting people on the street see that he had a gun
16 because they also took off running.

17 Q. And what street was this on?

18 A. I'm not sure. It is off of Reynolds on that first
19 side street. If you were making a right on Reynolds and
20 you made another right it was that street right there.

21 Q. Were these guys that you knew?

22 A. No.

23 Q. Are they people who are going to come testify and
24 say that he had a gun?

25 A. No ---

State v Anthony McClain
Jennifer Johnson-Cross-Examination by Mr. Mayer
March 14, 2017

1 MR. OSBORNE: --- objection, Your Honor. It's
2 beyond this witness's knowledge.

3 THE COURT: She says she doesn't know.

4 Q. [Mr. Mayer] In this convenience store, the Kangaroo,
5 you went back in. And the video and the audio portion
6 shows you standing there kind of looking straight ahead;
7 I couldn't see your eyes. But when the clerk asks you if
8 you are okay why didn't you tell him no if you really
9 were kidnapped?

10 A. I was about to open my mouth. As I was about to do
11 so he literally walked in the door.

12 Q. I mean you stood there by my count ---

13 A. --- a second.

14 Q. Okay. But before the clerk asked you that question
15 by my count you stood there like for 40 seconds.

16 A. I did.

17 Q. Why didn't you just ---

18 A. --- I wasn't sure. I didn't know him. I didn't see
19 how at any time he would be able to help me.

20 Q. You figure they've got procedures for that these
21 late night convenience stores, right ---

22 A. --- maybe, I don't know ---

23 MR. OSBORNE: --- objection, Your Honor, beyond
24 personal knowledge.

25 THE COURT: She says she doesn't know.

1 Q. [Mr. Mayer] The truth of the matter is that you got
2 in for more than you bargained for but you went in
3 willingly, isn't that true?

4 A. No.

5 Q. You experienced my client as a talker and this whole
6 process took a heck of a lot longer than you anticipated,
7 correct?

8 A. No. I don't know of him to be anything.

9 Q. And then when it took so long and you're out here
10 doing stuff that you're long time boyfriend doesn't know
11 you do and your Mom doesn't know you do you had to come
12 up with some sort of reason for being gone like this and
13 ignoring the calls didn't you?

14 A. No.

15 Q. And you decided to put it all on my client because
16 you don't know him and you don't care about him; that way
17 it's not on you.

18 A. No, absolutely not.

19 Q. So you didn't tell this jury the truth about your
20 illegal drug use of marijuana but yet you're asking them
21 to believe you about this whole far-fetched scenario.

22 A. Well, they can see the clips and they can see that
23 -- they can see for themselves.

24 Q. That's right. Thank you.

25 THE COURT: Redirect?

State v Anthony McClain
Jennifer Johnson-Redirect Examination by Mr. Osborne
March 14, 2017

1	REDIRECT EXAMINATION
2	BY MR. OSBORNE:
3	Q. All right. So these clips that we were watching
4	from your interview just so the jury understands when you
5	gave that statement was that the very next day, which
6	would have been the same morning?
7	A. Yes, the same day.
8	Q. So do you remember did you go to the police station
9	that morning?
10	A. Yes.
11	Q. Or was it that afternoon?
12	A. It was like in the morning maybe 10 or 11.
13	Q. Okay. So is it fair to say when you're giving this
14	statement you are probably working on what three maybe
15	four hours sleep?
16	A. Yes. I really didn't go to sleep that night.
17	Q. Okay. And that was a long interview with the police
18	wasn't it?
19	A. Yes.
20	Q. All right. Let's cover that other incident. He
21	said that you smoked crack with the defendant before I
22	think is what he asked you?
23	A. Yes.
24	Q. Okay. Have you ever smoked crack with him before?
25	A. No.

State v Anthony McClain
Jennifer Johnson-Redirect Examination by Mr. Osborne
March 14, 2017

1 Q. Go ahead and tell the jury, you're under oath, every
2 single time with details that you've smoked crack
3 cocaine.

4 A. I've never smoked crack cocaine.

5 MR. OSBORNE: No further questions.

6 THE COURT: Anything further?

7 MR. MAYER: Nothing from the defense.

8 THE COURT: You may step down.

9 [Whereupon, the witness is excused and exits the
10 witness stand]

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State v Anthony McClain
Proceedings
March 14, 2017

1 THE COURT: All right ladies and gentlemen we have
2 made it to the end of this day. We're going to start
3 back at 9:30 tomorrow morning. When you retire I am
4 appointing juror number 77 to be the foreperson of the
5 jury, Ms. Betty J. Chancey -- I'm sorry, wrong name.
6 Norma H. Davis, that's who I...

7 MS. DAVIS: I'm not 77.

8 THE COURT: No, I have your number; 109. Ms. Norma
9 H. Davis, number 109 will be the foreperson of the jury.
10 So you'll take that first seat right there [indicates].
11 As foreperson it's your job to speak up on behalf of the
12 jury, be their spokesperson and preside over the jury
13 deliberations and complete the verdict form representing
14 the unanimous verdict of the jury. Do you think you can
15 handle that?

16 MS. DAVIS: I'm not sure.

17 THE COURT: Oh yes you can. All right, we'll see
18 you all tomorrow morning at 9:30.

19 [Whereupon, the jury exits at 5:18 p.m.]

20 THE COURT: I'll place the defendant under oath and
21 be sure that I go over all the essential colloquy with
22 him regarding his plea situation.

23

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State v Anthony McClain
Fifth Amendment Rights
March 14, 2017

1 FIFTH AMENDMENT RIGHTS

2 THE COURT: If you will, swear the defendant for me
3 please?

4 [Whereupon, the defendant is duly sworn by the Clerk
5 of Court]

6 THE COURT: If you will remain standing for me Mr.
7 McClain. I just want to be sure you are clear on where
8 this case stands and what you're possibly facing and what
9 the State's plea offer is and make sure that whatever
10 decision that you make with regard to all this you are
11 making a free and voluntary decision after you are fully
12 informed of your rights. As I understand it the State
13 has served you notice of their intention to seek life
14 without the possibility of parole. Is that your
15 understanding?

16 MR. MCCLAIN: Yes, sir.

17 THE COURT: And earlier I mentioned that whether or
18 not you're facing life without the possibility of parole
19 would depend upon that's a sentencing matter. If you're
20 found not guilty then you face nothing. But if you are
21 convicted then I have to determine whether or not this
22 life without the possibility of parole statute applies.
23 And I stated earlier I am making no determination
24 concerning that because I don't know exactly what your
25 criminal history is and that is a sentencing

State v Anthony McClain
Fifth Amendment Rights
March 14, 2017

1 determination. But you know that the State is pursuing
2 it. I made a comment that typically spelled out in the
3 state statute what qualifies as a most serious offence.
4 For example if you are convicted of two most serious
5 offenses a robbery, kidnapping, first degree burglary,
6 rape and other things those are most serious offenses.

7 The statute that this is based on that the state is
8 seeking to make you qualify for life without the
9 possibility of parole the statute 17-25-45(a)(2)(a) that
10 says a person must be sentenced to a term of imprisonment
11 for life without the possibility of parole
12 if a person has one or more prior convictions for a most
13 serious offense, a federal or out of state conviction for
14 an offense that would be classified as a most serious
15 offense under this statute or two or more serious
16 offenses. And you have a federal conviction for what is
17 it CSC or assault and battery or what is it?

18 MR. OSBORNE: It is aiding and abetting in
19 carjacking, aiding and abetting interference of commerce
20 by threats or violence, felon in possession of a firearm,
21 and aid and abet in using and carrying a firearm during
22 and in relation to a crime of violence.

23 THE COURT: Okay. And under 16-140 there is some
24 reference to aiding and abetting and homicide by child
25 abuse, accessory for any offense enumerated or attempt to

1 do certain of these offenses. And this whole thing if
2 you are convicted I have to make -- hear arguments from
3 both sides and make a determination as to whether you are
4 facing life without the possibility of parole. Maybe you
5 will be and maybe not. If you are not facing life
6 without the possibility of parole if you are convicted on
7 these various crimes armed robbery is a minimum of ten
8 years and maximum of 30 years in prison.

9 Kidnapping is up to 30 years in prison, pointing and
10 presenting a firearm two counts of that those are five
11 year offenses. So that is 30, 60, 65, 70 and possession
12 of a weapon during the commission of a violent crime five
13 years. So you're facing up to 75 years in prison
14 regardless of whether or not you are convicted of this
15 life -- or regardless of whether or not the life without
16 the possibility of parole applies.

17 The State indicated that they offered to negotiate a
18 sentence of 25 years. Your lawyer said that is too steep
19 for you to handle. I've indicated to you that you have
20 the right to plead guilty but I make no promises
21 regarding sentencing because I'm not affected by whether
22 or not you plead guilty to this. It's your choice. So I
23 wanted to be certain that the record is clear and that
24 you understand what you're facing and that it's your
25 decision to not accept the plea offer that the State has

State v Anthony McClain
Fifth Amendment Rights
March 14, 2017

1 made to you and it is your decision to have the jury
2 decide this case and not plead guilty. Of course you
3 have a constitutional right to a jury trial and no one
4 can hold that against you; jurors, the court and it
5 cannot be held against you in sentencing the fact that
6 you had a jury trial.

7 But my role at this point is to make certain that
8 you clearly understand where you stand and that I have
9 taken into consideration. There is a case somewhere
10 where plea offers need to be disclosed and discussed on
11 the record and that's what we're doing right now. Is
12 that right? Anything on that, Mr. Solicitor?

13 MR. OSBORNE: No, Your Honor.

14 THE COURT: Anything Mr. Mayer?

15 MR. MAYER: No, Judge.

16 THE COURT: And do you fully understand everything
17 I've explained to you?

18 MR. MCCLAIN: Yes, sir.

19 THE COURT: Do you have any questions about
20 anything that I explained to you?

21 MR. MCCLAIN: I can't say a question but I will
22 say, Your Honor if I had decided to plea because it has
23 been -- but I've thought about it and it would have been
24 a possibility just you know get everything over because
25 this is something that shouldn't even have happened. And

1 what I mean by putting the court through this and
2 people's family through this and my family through this
3 and I would have under the circumstances of things it's
4 not life as it's presumed to be. And I wish I had a
5 chance you know really to express myself not as far as
6 being if I was going to get on the stand and he went back
7 to my past and this and that and another.

8 I know what I've done in the past. However, I'm not
9 saying I'm perfect, Your Honor; I'm a long way from that.
10 But the circumstances of this it's not like that and she
11 knows this as well as I do. But it maybe it portrays me
12 to be something other than what I really am. And me
13 personally I don't think it's fair. Now, I am a man and
14 I know if I done wrong I will accept my responsibility.
15 I have no problem with that.

16 But I will say Your Honor is because you take the
17 word by another person on a he say she say and then offer
18 another man because he has a different past record or
19 whatever the situation may be. And I understand that the
20 charge is serious. However, that don't mean I've done
21 it. I felt that if the plea was more negotiable per se I
22 would have took mine and I'll admit. I'm 52 years old,
23 Your Honor. I don't have too much left. And I can't
24 give my wife ---

25 THE COURT: --- I hope you have a lot left. We

State v Anthony McClain
Fifth Amendment Rights
March 14, 2017

1 have an 81 year old bailiff back there. You're still a
2 young man to him.

3 MR. MCCLAIN: I understand that but ---

4 THE COURT: --- my mother in law lived till she was
5 101.

6 MR. MCCLAIN: I understand that.

7 THE COURT: She has a great aunt who is 103.
8 You're a pretty young man. Fifty how many?

9 MR. MCCLAIN: Fifty-two.

10 THE COURT: Fifty-two? Oh goodness.

11 MR. MCCLAIN: Your Honor, if I knew I could live
12 that long then obviously okay. There is no guarantee I
13 am going to live that long.

14 THE COURT: That's right. Tomorrow is not promised
15 to any of us.

16 MR. MCCLAIN: That's right. So I can't go by that
17 with all due respect and I wish I could. I don't know
18 that, Your Honor, and I'm not willing to just give my
19 life up 25 years for one plea. Now again if it was
20 negotiated a little bit differently I'd probably take it.

21 THE COURT: I understand. Now a negotiated
22 sentence is between you, your lawyer, and the Solicitor.
23 I'm not part of negotiating anything.

24 MR. MCCLAIN: I know.

25 THE COURT: My job is to preside over the trial and

State v Anthony McClain
Fifth Amendment Rights
March 14, 2017

1 make sure that you get a fair trial. And then the jury
2 decides whether you are guilty or not guilty. That's out
3 of your hands.

4 MR. MCCLAIN: Right.

5 THE COURT: Certain things are -- you know we have
6 freedom to do certain things in life and we have
7 consequences regarding things that we do. And when you
8 come to court we don't have a perfect system but we go
9 through this process of picking a jury and all of them
10 say they can be fair and impartial. And both lawyers
11 arguing the case and trying to convince the jury of their
12 respective cases and they go out and they decide it.

13 And you have every right to continue this process
14 and let them -- and have them decide the case. Even with
15 regard to you pleading guilty I don't accept guilty pleas
16 from people who tell me they are not guilty. Even if you
17 decide you want to plead guilty you have to convince me
18 that you're guilty because when I go home at night I
19 don't want anything ringing in my ear that that man said
20 he was not guilty and I sent him to prison even though he
21 said he was not guilty.

22 If you're not guilty then it takes a jury to say
23 that you're guilty. If you negotiate the sentence where
24 you -- if that's what you negotiate that's what you
25 negotiate. I don't accept Alford pleas on serious

State v Anthony McClain
Fifth Amendment Rights
March 14, 2017

1 significant cases involving the type of conduct alleged
2 here without an admission of guilt and convince me that
3 you're guilty; if that's what you decided to do. You
4 know you -- I can't advise you in any way other than to
5 advise you of your rights to proceed, to plead guilty, to
6 try to get your lawyer to negotiate a better deal with
7 the State. But the clock on this case is ticking,
8 ticking, ticking and we will be at the end of this case
9 and then I'll move on to the next case.

10 But I want to be certain that I have made myself
11 clear in everything that I've said to you so that I have
12 explained the law to you accurately and so that as you
13 ponder whatever it is you want to do you have the benefit
14 of good information. So we're getting ready to leave for
15 the day and we'll pick up in the morning. But do you
16 have any additional questions about anything that I've
17 explained?

18 MR. MCCLAIN: The only thing that I would say Your
19 Honor is I appreciate everything and I will want to sleep
20 on that anyway, if I was thinking about this I would want
21 to sleep on that.

22 THE COURT: That's good.

23 MR. MCCLAIN: I also have to talk to my family.
24 However, no disrespect to nobody so please don't take it
25 as such. I'm going to talk to my lawyer again tonight

1 and ask him to talk to Mr. Osborne again and see if we
2 can come to some agreement and maybe I will do that in
3 the morning. I have no problem again taking what I have
4 done. But I can't be guilty -- I'm not going to say I'm
5 guilty of something I didn't do. I'm going to take my
6 part on what I've done.

7 THE COURT: And I will not accept a guilty plea on
8 anything that you say you have not done.

9 MR. MCCLAIN: Other than that, Your Honor, I want
10 to sleep on it.

11 THE COURT: All right. I'll just one additional
12 comment. You made reference to your -- if you testify
13 your past will be brought up and all that. We haven't
14 reached the point in the trial for me to go through an
15 explanation of that with you as to your right to testify
16 or not testify. Obviously you know you do have a right
17 to testify and a right not to testify.

18 But anything, specifically regarding what evidence
19 of what your past is and what may be used to impeach you
20 should you testify we have not had that discussion yet in
21 this trial. And no can be forced to testify and no one
22 will be prevented from testifying. It will be totally up
23 to you as is most of all this. I hope everyone has a
24 good night and we hope to roll again at 9:30 tomorrow
25 morning.

State v Anthony McClain
Fifth Amendment Rights
March 14, 2017

1 MR. MAYER: Thank you, Judge.

2 MR. MCCLAIN: Thank you.

3 MR. OSBORNE: Thank you, Your Honor.

4 [Whereupon, court adjourns at 5:35 p.m.]

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State v Anthony McClain
Certificate of the Court Reporter
March 14, 2017

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 14th day of March, 2017.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

April 20, 2018



Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2015-GS-10-5967
	)	2015-GS-10-5968
	)	2015-GS-10-5969
	)	2015-GS-10-5964
	)	2015-GS-10-5966
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
	)	
ANTHONY MCCLAIN	)	
	)	
Defendant	)	
	)	
	)	
	)	
_____	)	TRANSCRIPT OF RECORD

March 15, 2017
Charleston, South Carolina

VOLUME 3 (OF 3)

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, JR., JUDGE

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March 15, 2017

1 PROCEEDINGS
2 THE COURT: Good morning.
3 MR. MAYER: Good morning.
4 THE COURT: Are you ready for the jury?
5 MR. OSBORNE: Yes, Your Honor.
6 MR. MAYER: Yes, Your Honor.
7 THE COURT: Are you ready to proceed, Mr. McClain?
8 MR. MCCLAIN: Yes, sir.
9 THE COURT: All right, bring them on.
10 [Whereupon, the jury enters at 9:50 a.m.]
11 THE COURT: Good morning. Day number 3. Next
12 witness.
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State v Anthony McClain
Jason Jarrell-Direct Examination by Mr. Osborne
March 15, 2017

1 MR. OSBORNE: The State calls Detective Jason
2 Jarrell.

3 [Whereupon, Detective Jarrell comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: Once seated, please state your
7 first and last name and spell your last name for the
8 record, please.

9 THE WITNESS: Jason Jarrell. The last name is J-A-
10 R-R-E-L-L.

11 - - - - -

12 JASON JARRELL,

13 Having been first duly sworn,

14 Was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. OSBORNE:

17 Q. Good morning, Detective. Where are you employed?

18 A. City of Charleston Police Department.

19 Q. And how long have you worked there?

20 A. A little over nine years now.

21 Q. What are some of the various positions that you have
22 held while you've worked there?

23 A. I'm worked on night patrol, regular patrol. I was
24 part of the community action team and I've been a team
25 investigator, which is a bit of a junior detective type

State v Anthony McClain
Jason Jarrell-Direct Examination by Mr. Osborne
March 15, 2017

1 of position and I've also been a central detective.

2 Q. When you were on patrol what were your assignments
3 there?

4 A. Mostly patrol the area and show officer presence,
5 took reports and things like that.

6 Q. What teams did you work?

7 A. I worked on Team One -- oh, I'm sorry; Team Two
8 which is downtown, the Market and King Street area and I
9 also worked in Team Four, which is West Ashley.

10 Q. Where do you work now?

11 A. I'm in the violent crime unit of the central
12 investigations division.

13 Q. Tell the jury what type of crimes you investigate in
14 the violent crimes unit.

15 A. In violent crimes we investigate aggravated assaults
16 such as shootings, homicides, stabbings, when people get
17 beat up really bad we handle those.

18 Q. Okay. Back in 2015 what was your assignment then?

19 A. I was a robbery detective.

20 Q. And as a detective just briefly tell the jury what
21 are some of your duties and responsibilities.

22 A. We take the cases that are brought into us that are
23 written by the patrolmen, review those and see where
24 we're at on the case, I do follow-up interviews with
25 people involved, if at all possible pull video

1 surveillance and things like that.

2 Q. Okay. Did you become involved in this
3 investigation?

4 A. Yes, I was the case agent in this investigation.

5 Q. And as a case agent are your duties a little
6 different?

7 A. There is a little more responsibility. A good way
8 to explain it would be lead detective. We communicate
9 more with the Solicitor's office and assist with them in
10 anything they may need that we did or did not do.

11 Q. So kind of like point of contact?

12 A. Yes.

13 Q. So let's get started with this investigation. How
14 did you become involved and when?

15 A. When I got into work that morning the reports are
16 there for us to review. I began reviewing the reports
17 and started to more or less delegate what was going to be
18 done and I decided that I myself would go out and start
19 pulling video surveillance.

20 Q. Okay. At this point in the investigation, the
21 morning after, had an arrest been made?

22 A. No.

23 Q. Had the responding detectives or responding officers
24 developed a suspect in the case yet?

25 A. No.

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- 1 Q. Did you have a suspect vehicle description?
- 2 A. It was the description of a small red vehicle.
- 3 Q. Okay. Were there any vehicles located that night?
- 4 A. North Charleston Police Department gave us a few
- 5 vehicles but they were unmanned that morning.
- 6 Q. Okay. Now while reviewing -- you said you reviewed
- 7 incident reports. While reviewing the incident report
- 8 from the night before did you made any other additional
- 9 discoveries?
- 10 A. Yes. We took note that there was a pointing and
- 11 presenting that was reported in the same area around the
- 12 same timeframe of this robbery kidnapping.
- 13 Q. And what was the location of that pointing and
- 14 presenting?
- 15 A. That was near Coming and Morris Streets.
- 16 Q. And what was the time of that incident?
- 17 A. The 911 call came in at 12:47 a.m.
- 18 Q. Okay. So that would have been the night of June the
- 19 2nd or the morning of June the 2nd but the night of June
- 20 the 1st?
- 21 A. Correct.
- 22 Q. Okay. And that was or were they separate victims in
- 23 that incident from the kidnapping and robbery incident?
- 24 A. Yes, they were.
- 25 Q. Did they know each other?

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1 A. No.

2 Q. Now what were some of your observations when
3 comparing those two incidents?

4 A. When looking at the two incidents I realized that
5 both involved a smaller sedan and the suspect in both
6 incidents got out of that sedan at some point and the
7 description of the suspect were fairly similar.

8 Q. Okay. So after reviewing the incident report from
9 the robbery investigation did you realize that you had to
10 collect any evidence?

11 A. Yes. That's when I went out and began to look at
12 the video surveillance.

13 Q. Okay. From what locations?

14 A. I went to 420 Meeting Street, which is an Exxon, 478
15 Meeting Street, which is the Family Dollar, the Rivers
16 Mart at Rivers and Reynolds, also at 27 McMillan the
17 Stayover Lodge and the Kangaroo on Rivers a little
18 further up near 526.

19 Q. And those are all businesses?

20 A. Yes.

21 Q. Did you find a need to get surveillance video from
22 another location?

23 A. We also took video surveillance from the City of
24 Charleston right there at King and Cannon Streets.

25 Q. So we'll get back to the other surveillance videos

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1 in a second. But let's start talking about that King and
2 Cannon surveillance video. So you said it's a City
3 camera. Can you tell the jury a little bit about that?
4 Why do they have a City camera at that location?

5 A. About five years ago the City of Charleston invested
6 in surveillance cameras. Essentially the City of
7 Charleston safety cameras and they were put in high crime
8 areas and a lot of them are in the business district
9 along King Street and Market areas.

10 MR. OSBORNE: Your Honor, may I approach?

11 THE COURT: Yes, sir.

12 Q. [Mr. Osborne] I'm showing you what has been marked
13 as State's exhibit 25. Can you take a look at that and
14 tell me if you recognize it.

15 [Whereupon, the witness is shown exhibit]

16 A. I do.

17 Q. What is it?

18 A. This is the surveillance video from King and Cannon
19 from the City.

20 Q. And how do you know that?

21 A. I initialed it here on the disk.

22 Q. It's a clip of the surveillance video from the night
23 in question, is that correct?

24 A. Yes.

25 Q. And you've seen that before?

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1 A. I have seen it.
2 Q. And you initialed it?
3 A. Yes.
4 Q. And you said you used to work downtown. Have you
5 driven through or been to that area of King and Cannon
6 before?
7 A. Several times.
8 Q. Does the image that's depicted on that surveillance
9 video accurately depict the intersection of King and
10 Cannon?
11 A. Yes.
12 MR. OSBORNE: Your Honor, at this time I'd seek to
13 admit State's exhibit 25 into evidence.
14 THE COURT: Any objection?
15 MR. MAYER: No objection, Your Honor.
16 THE COURT: It's admitted.
17 [Whereupon, State's exhibit number 25 is entered
18 into evidence by the court]
19 Q. [Mr. Osborne] While he's cueing that up just so the
20 jury can understand what they are looking at, is the
21 camera stationary or does it move?
22 A. The camera rotates.
23 Q. Is anyone controlling that or is it rotating
24 automatically?
25 A. It's automatic.

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1 Q. Do you know about how many cameras are throughout
2 the City?

3 A. I don't know the exact number.

4 Q. Why were you interested in obtaining this footage?

5 A. We had information that on the night of the incident
6 that the defendant's car as well as Jennifer's car was at
7 the intersection.

8 Q. Before we get started let's just take a look at this
9 image right here.

10 [Whereupon, the surveillance video plays]

11 Q. What are we looking at here?

12 A. That is King and Cannon. We're facing -- looking
13 down King Street going south towards where we are now.

14 Q. Okay. So King would be off to the left where the
15 rear of the car is?

16 A. Yes.

17 Q. And these two individuals right here would be facing
18 Cannon Street.

19 A. Correct.

20 Q. Cannon being a one way heading toward King?

21 A. Yes.

22 Q. Okay. Stop it right there. All right. So this
23 vehicle that just came up it stopped in front of what?
24 What's that business right there on the corner?

25 A. That's a corner store. I don't know the exact name

1 of the corner store. It's been there as long as I've
2 ever known. It's right there at the corner of King and
3 Cannon.

4 Q. Okay. And what's the time on the video there?

5 A. It's zero 56 which would be 12:56 a.m.

6 Q. And you said the incident with the pointing and
7 presenting was reported at about 12:47?

8 A. Yes.

9 Q. Okay. So this is a short time after that?

10 A. Yes.

11 Q. And you're not sure exactly the time. You might be
12 off a couple of minutes.

13 A. Yes. Actually through my experience the City
14 cameras are frequently off a few minutes.

15 Q. And there's another car that is following it.

16 A. Correct.

17 Q. So the camera pans away and it's still 12:56,
18 correct; well going in to 12:57?

19 A. Yes.

20 Q. Do you know that street right there [indicates] that
21 is facing off to the left?

22 A. That is Wolfe Street.

23 Q. Wolfe? They might want to trim the hedges there.

24 A. Yes.

25 Q. Okay. What road are we looking at now?

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- 1 A. That's Cannon Street.
- 2 Q. That's the fire station right there at King and
3 Cannon?
- 4 A. Yes, sir.
- 5 Q. Okay, stop right there.
- 6 [Whereupon, the video stops]
- 7 Q. So now we're back at that same image that we started
8 with. And what's the time on it now?
- 9 A. It's now 12:58.
- 10 Q. 12:58 so we're looking at about a minute and change
11 after that.
- 12 A. Yes.
- 13 [Whereupon, the video plays]
- 14 Q. Is the car, the dark colored that stopped or had
15 stopped in front of the business still there?
- 16 A. No.
- 17 Q. And now we see another car that wasn't there before
18 parked on Cannon, is that correct?
- 19 A. Correct.
- 20 Q. Facing King?
- 21 A. Yes.
- 22 Q. What is the car doing now?
- 23 A. The car is pulling out onto King Street to make a
24 right.
- 25 Q. Okay. So the car moved from its location about two

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1 minutes later?

2 A. Yes.

3 Q. Or thereabouts. Through your observations did you
4 draw any conclusions as to whose car you thought that
5 was?

6 A. I believe this to be the defendant's car.

7 MR. OSBORNE: Your Honor, may I approach?

8 THE COURT: Yes, sir.

9 Q. [Mr. Osborne] I'm showing you what has been marked
10 as State's exhibit number 26. Can you tell me what it
11 is?

12 [Whereupon, the witness is shown exhibit]

13 A. That is the defendant's car. It's actually owned by
14 Elizabeth Tisdale.

15 Q. And how do you know that?

16 A. I've seen this vehicle several times throughout the
17 investigation.

18 Q. Okay.

19 MR. OSBORNE: Your Honor, at this time I'd seek to
20 admit State's exhibit 26.

21 MR. MAYER: Without objection.

22 THE COURT: It's admitted.

23 [Whereupon, State's exhibit number 26 is entered
24 into evidence by the court]

25 Q. [Mr. Osborne] Okay. This image is kind of rough to

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1 make out. Tell the jury why you thought it was the car.
2 A. In particular there is a small sticker that is just
3 above the license plate on the rear of the vehicle. It's
4 also a four-door sedan and when it's parked there on
5 Cannon Street the front bumper and grill are a match to
6 the vehicle.
7 Q. You mentioned a sticker. You might be able to touch
8 that tablet there [indicates]. Where would it be?
9 A. It is...
10 Q. Is that [indicates] what you're talking about?
11 A. I'm talking about this sticker here [indicates]. It
12 looks like a white sticker.
13 Q. I think you can mark on the tablet there.
14 [Whereupon, the witness complies]
15 Q. Then we'll go back to State's exhibit 25.
16 [Whereupon, the surveillance video plays]
17 Q. So the vehicle keeps going straight on King Street?
18 A. Yes.
19 Q. Okay. And you were in here when Mr. Will Cobbs
20 testified, correct?
21 A. I was.
22 Q. Tell me when you watched that video did you ever see
23 Mr. Cobbs or an individual in that car speak to a white
24 person?
25 A. No.

1 Q. Did you ever see Mr. Cobbs then get into a car and
2 then drive to the Exxon on Meeting Street with that
3 individual?

4 A. No.

5 Q. Did you ever see that individual and Mr. Cobbs then
6 come back to the car and Mr. Cobbs put gas in the car?

7 A. No.

8 Q. In fact, didn't you see the car just drive away a
9 couple of minutes later?

10 A. Yes.

11 Q. It didn't appear to be out of gas did it?

12 A. No.

13 Q. Okay. Let's go ahead and move on to some of the
14 other locations. You said that you were interested in
15 getting the surveillance video from multiple locations,
16 correct?

17 A. Yes.

18 Q. Now isn't it true it took you multiple attempts on
19 some of the locations to get the video. You weren't able
20 to get it right away?

21 A. Yes.

22 Q. Which isn't uncommon, right?

23 A. No.

24 Q. You go, you put in a request and then you end up
25 getting it sometime later.

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1 A. Yes.

2 Q. And you said that you were interested in getting the
3 video at the Exxon; that's 420 Meeting Street?

4 A. Yes.

5 Q. I'm showing you State's exhibit 29. Do you
6 recognize that?

7 [Whereupon, the witness is shown exhibit]

8 A. Yes. This is an overhead view of downtown.

9 MR. OSBORNE: Your Honor, I'd seek to admit State's
10 exhibit 29 into evidence.

11 MR. MAYER: No objection.

12 THE COURT: It's admitted.

13 [Whereupon, State's exhibit number 29 is entered
14 into evidence by the court]

15 Q. [Mr. Osborne] Let's start with the Exxon at 420
16 Meeting. Can you point out where that would be on that
17 location -- on that map I mean?

18 A. It is here [indicates].

19 Q. And that's in the County of Charleston?

20 A. Yes, the City and County of Charleston.

21 Q. Okay. So you said that you eventually viewed the
22 video from the Exxon. What was the time that Jennifer's
23 vehicle arrives at the Exxon?

24 A. At 12:57.

25 Q. And what time did it leave?

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1 A. Just a few minutes later.

2 Q. Did you verify the accuracy of that time that was on
3 the video compared to real time?

4 A. The time actually on the video is about seven
5 minutes fast.

6 Q. Seven minutes fast. So that would mean she got
7 there about 12:50?

8 A. Yes.

9 Q. Okay. And the pointing and presenting was reported
10 at 12:47?

11 A. Yes.

12 Q. Now through your experience working downtown to get
13 from Morris and Coming going two blocks, hang a right on
14 Smith and then a right on Cannon, coming down Cannon and
15 King and then a right on King, left on Wolfe, left on
16 Meeting about three or four minutes? Would that seem
17 about right?

18 A. Yes.

19 Q. Were you able to retain the receipt from the
20 transaction of which Jennifer made the purchase?

21 A. Yes.

22 Q. I'm showing you what has been marked as State's
23 exhibit 28. Can you take a look at that and tell me if
24 you recognize it?

25 [Whereupon, the witness is shown exhibit]

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1 A. This is the receipt from that night from the Exxon.

2 Q. Okay.

3 MR. OSBORNE: Your Honor, at this time I would seek
4 to admit State's exhibit 28 into evidence.

5 MR. MAYER: No objection, Your Honor.

6 THE COURT: It's admitted.

7 [Whereupon, State's exhibit number 28 is entered
8 into evidence by the court]

9 Q. [Mr. Osborne] Did you have a chance to watch the
10 Exxon surveillance video through the rest of the night?

11 A. Yes.

12 Q. Did you ever see the defendant's red car in the
13 Exxon at all?

14 A. No.

15 Q. After?

16 A. No.

17 Q. What about before?

18 A. No.

19 Q. You never saw it there at all?

20 A. No.

21 Q. You did see Jennifer's car though?

22 A. Yes.

23 Q. All right. After that there was testimony that
24 Jennifer went to the Family Dollar. I'm showing you what
25 has been marked as State's exhibit number 30. Can you

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1 take a look at that and tell me if you recognize it?

2 [Whereupon, the witness is shown exhibit]

3 A. Yes. This is the overhead of that area.

4 Q. Okay.

5 MR. OSBORNE: Your Honor, at this time I'd seek to
6 admit State's exhibit 30 into evidence without objection
7 I think.

8 MR. MAYER: No objection.

9 [Whereupon, State's exhibit number 30 is entered
10 into evidence by the court]

11 Q. Can you point on the map where Family Dollar is
12 located?

13 A. The Family Dollar is in this area [indicates].

14 Q. Okay. Did you have the occasion to review and
15 attempt to retrieve the video from the Family Dollar?

16 A. I did.

17 Q. What conclusion did you draw from watching that
18 video?

19 A. There was only one camera that was on the outside of
20 that business that was working and it appeared to point
21 straight down so of no use to us.

22 Q. So no useful video from the Family Dollar?

23 A. No.

24 Q. All right. After that there was testimony that the
25 defendant and Jennifer went to the Rivers Mart. But

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1 before they went there there was testimony that the
2 defendant stopped at a location on Reynolds Avenue and
3 then pulled out a gun and pointed it at some other
4 individuals.

5 A. Yes.

6 Q. Did you or anyone else go to Reynolds Avenue and
7 canvas the area looking for two unknown individuals that
8 had a gun pointed at them the night before?

9 A. No, I did not.

10 Q. Why not?

11 A. No one had called that in to make a complaint about
12 it. That area in particular is usually not very police
13 friendly.

14 Q. If they wanted to talk to the police they would have
15 called the police?

16 A. Exactly.

17 Q. All right. So you viewed the Rivers Mart video, is
18 that correct?

19 A. Yes.

20 Q. And did you make any observations concerning the
21 time on the Rivers Mart video compared to real time?

22 A. That video was about an hour slow.

23 Q. Okay. So what time would that have meant that
24 Jennifer left the Rivers Mart in real time?

25 A. Jennifer would have been leaving the Rivers Mart at

1 about 1:28, 1:29.

2 Q. Okay. Now after that there was testimony that the
3 defendant and Jennifer went to the Stayover Lodge.

4 A. Yes.

5 Q. And you had a chance I guess to look at that video
6 as well, right?

7 A. I did.

8 Q. I'm going to show you State's exhibits 31 and 32.
9 Can you take a look at these and tell me if you recognize
10 them?

11 [Whereupon, the witness is shown exhibits]

12 A. This is the area of the Stayover Lodge is State's
13 exhibit 32 and the area of the Rivers Mart is State's
14 exhibit 31.

15 MR. OSBORNE: Your Honor, at this time I'd seek to
16 admit State's exhibit 31 and 32 into evidence I think
17 without objection.

18 MR. MAYER: No objection.

19 THE COURT: It's admitted.

20 [Whereupon, State's exhibit numbers 31 and 32 are
21 entered into evidence by the court]

22 Q. [Mr. Osborne] All right, 31 can you point on the map
23 where Rivers Mart would be?

24 A. Rivers Mart is here [indicates].

25 Q. Okay. And State's exhibit 32 can you point to where

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1 the Stayover Lodge would be?

2 A. Stayover Lodge is here [indicates].

3 Q. And both those locations are in the County of
4 Charleston?

5 A. Yes.

6 Q. All right. The Stayover Lodge video, were you --
7 did you compare the time that was on the Stayover Lodge
8 video to real time?

9 A. Yes.

10 Q. And was there any difference?

11 A. That was accurate.

12 Q. It was accurate?

13 A. Yes.

14 Q. What time did Jennifer's vehicle leave the Stayover
15 Lodge?

16 A. She left there at about 1:47 I believe.

17 Q. Okay. I'll go ahead and show you State's exhibit 33
18 and 34 now. Can you tell me if you recognize these two?

19 [Whereupon, the witness is shown exhibits]

20 A. State's exhibit 33 is an overhead shot of the
21 Morrison Street area of the neighborhood of Ferndale.

22 And 34 would be the Kangaroo on Rivers Avenue.

23 Q. Okay.

24 MR. OSBORNE: Your Honor, at this time I would seek
25 to admit 33 and 34 into evidence I think without

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1 objection.

2 MR. MAYER: Without objection.

3 THE COURT: It's admitted.

4 [Whereupon, State's exhibit numbers 33 and 34 are
5 entered into evidence by the court]

6 Q. [Mr. Osborne] All right. State's exhibit 33, tell
7 the jury what that is?

8 [Whereupon, the photograph is shown]

9 A. This is an overhead view of the Ferndale
10 neighborhood.

11 Q. Okay. Can you point on here to where Railroad Road
12 is?

13 A. Railroad is this street [indicates] that runs this
14 way.

15 Q. All right. We've heard some testimony about
16 Morrison Street. Can you point to where Morrison Street
17 is?

18 A. Morrison is here [indicates].

19 Q. Okay. I'm now showing you State's exhibit 34.

20 [Whereupon, the photograph is shown]

21 Q. Can you point to where the Kangaroo at Rivers and
22 526 is?

23 A. The Kangaroo is here [indicates].

24 Q. Okay. And these locations -- these locations
25 mentioned are all in Charleston County?

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1 A. Yes.

2 Q. Okay. So let's get back to the investigation now.

3 You said that you wanted to go to Stayover Lodge to get
4 surveillance video. Was there anything else of interest
5 that you wanted to do while you were there?

6 A. I wanted to find out who was renting room 141.

7 Q. Okay. And why was that?

8 A. Because we had information that the suspect had
9 taken the victim Jennifer to that room and that he had
10 gone into that room and spoken to the person there.

11 Q. Okay. And did you speak to the person that was in
12 room 141?

13 A. I did.

14 Q. And who was that?

15 A. It was Bryan Robinson.

16 Q. And I think he has testified in this trial.

17 A. Yes.

18 Q. And as a result of speaking with Bryan Robinson were
19 you able to develop a suspect or a lead in the case?

20 A. Yes. I was able to get a lead. I learned that the
21 suspect had come in an older red Ford Escort with a
22 broken windshield and that his name was Anthony.

23 Q. And did you have any information as to Anthony's
24 girlfriend might be or did you later learn?

25 A. I did learn that Ms. Liz was Anthony's girlfriend.

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1 Q. Were you able to obtain a phone number for her?

2 A. I was.

3 Q. Okay. Now with this information what did you elect
4 to do next in the investigation?

5 A. I learned that Anthony stayed in the Ferndale
6 neighborhood. So myself and Detective English along with
7 North Charleston Police Department went to canvass that
8 area looking for the suspect vehicle.

9 Q. Okay. Now this is the very next day of the
10 incident, correct?

11 A. It would be same day.

12 Q. Same day but next morning I guess. So I'm going
13 back to State's exhibit 33 so you were canvassing the
14 area. Did you have anybody with you?

15 A. I had Detective English with me as well as a
16 patrolman from North Charleston Police Department.

17 Q. Tell the jury what happened when you were canvassing
18 the area.

19 A. We were canvassing the neighborhood there and we
20 actually observed an older model red Ford Escort with a
21 broken windshield driving toward us.

22 We turned around, we wanted the car to get behind it
23 and North Charleston activated the blue lights and made a
24 traffic stop --

25 Q. And who was driving the car?

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- 1 A. Elizabeth Tisdale was driving the car.
- 2 Q. I'm showing you State's exhibit 6.
- 3 [Whereupon, the witness is shown photograph]
- 4 Q. Is that the vehicle she was driving?
- 5 A. It is.
- 6 Q. Now you were in here whenever a jail recording was
- 7 played and the defendant was talking to a female at the
- 8 other end?
- 9 A. Yes.
- 10 Q. Did you have a chance to talk to Ms. Tisdale?
- 11 A. I did.
- 12 Q. Did you recognize the voice that was on the other
- 13 end of the jail recording that we played in the
- 14 courtroom?
- 15 A. Yes.
- 16 Q. Who was the defendant talking to?
- 17 A. The defendant was talking to Ms. Tisdale.
- 18 Q. Okay. So at this point in the investigation you had
- 19 a name of Anthony. Did you learn the whole name?
- 20 A. I did; Anthony McClain.
- 21 Q. And did you learn where he resided or at least some
- 22 of the time?
- 23 A. Yes. Did a DMV search and learned that Anthony
- 24 McClain was registered there to that Morrison Street
- 25 address.

1 Q. Okay. So at that point in the investigation you had
2 the vehicle, you had a name, you elected to compose a
3 photographic lineup I think?

4 A. Yes.

5 Q. And a detective met with the victim or Jennifer
6 Johnson and an identification was made, is that correct?

7 A. Yes.

8 Q. And this was all on the first day of the incident?

9 A. It was.

10 Q. Okay. So what happened on day two?

11 A. On day two I composed a search warrant for the
12 residence of [REDACTED] Morrison Street.

13 Q. All right. And I think we've heard a little bit of
14 testimony about it but I don't think we actually
15 explained what a search warrant is. So very briefly what
16 is a search warrant and why would you get one?

17 A. When conducting an investigation if we have reason
18 to believe that there is evidence that could further the
19 investigation at a residence or a vehicle we can put the
20 facts together that we have learned thus far and present
21 that to a judge.

22 And if the judge believes that we have legal
23 authority to be there the judge would sign a warrant
24 giving us that legal authority to search whatever it is
25 that needs to be searched.

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- 1 Q. What were you looking for in this case?
- 2 A. We were looking for a firearm, keys to a Ford
3 Taurus, an I-phone, and a white t-shirt with Newport
4 Pleasures on it.
- 5 Q. And did you execute the search warrant that day?
- 6 A. I did not myself but it was executed that day.
- 7 Q. Okay, at that residence?
- 8 A. Yes.
- 9 Q. Okay. And I think Detective Tuttle already
10 testified he was one of the executing officers?
- 11 A. Yes.
- 12 Q. Now while that was going on had arrest warrants
13 already been obtained for the defendant?
- 14 A. Yes.
- 15 Q. Did you learn anything from other officers while the
16 search warrant was being executed?
- 17 A. As we arrived there at [REDACTED] Morrison Street to
18 execute the search warrant I did learn that the defendant
19 had been taken into custody.
- 20 Q. And what did you decide to do then?
- 21 A. I decided to relocate back to the CP headquarters to
22 conduct an interview with the suspect.
- 23 Q. To attempt to interview the defendant?
- 24 A. Yes.
- 25 Q. Did he give a statement?

- 1 A. He did.
- 2 Q. And he was under arrest, correct?
- 3 A. Yes.
- 4 Q. Now I know there were breaks but how long was the
5 interview with the defendant?
- 6 A. We started around 1:40 and ended at about 4:40; so
7 three hours.
- 8 Q. Okay. Is that uncommonly long for an investigation
9 of this nature?
- 10 A. No.
- 11 Q. All right. During the interview did the defendant
12 appear to be intoxicated or under the influence of drugs?
- 13 A. No.
- 14 Q. Did the defendant appear to have any physical or
15 mental disability that would have impaired his ability to
16 understand what was being said to him?
- 17 A. No.
- 18 Q. Prior to or during your interview with the defendant
19 did you offer him any breaks; bathroom or otherwise?
- 20 A. Yes.
- 21 Q. Was the defendant denied access to a telephone,
22 food, or drinks?
- 23 A. No.
- 24 Q. Did you make any threats or promises to him?
- 25 A. No.

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1 Q. Did anyone else?

2 A. No.

3 Q. All right. Go ahead and walk the jury through.
4 Tell them what happened in the beginning of the
5 interview.

6 A. At the very beginning I entered the interview room,
7 took the handcuffs off Mr. McClain and offered some
8 water.

9 Q. Okay. Pretty standard?

10 A. Yes.

11 Q. Did you advise him of his Miranda rights?

12 A. I'm sorry.

13 Q. Did you advise him of his Miranda rights?

14 A. Yes.

15 MR. OSBORNE: Your Honor, may I approach?

16 THE COURT: Yes.

17 Q. [Mr. Osborne] I'm showing you State's exhibit 35 and
18 37. Can you take a look at those and tell me if you
19 recognize them?

20 [Whereupon, the witness is shown exhibits]

21 A. State's exhibit 35 is going to be a clip of an
22 interview that was conducted. State's exhibit 37 is the
23 signed Miranda card signed by myself and Mr. McClain.

24 Q. Okay. How do you know State's exhibit 35 contains
25 clips from the interview with the defendant?

1 A. I've watched the clip and it also has my initials
2 there.

3 Q. Okay.

4 MR. OSBORNE: Your Honor, at this time I'd seek to
5 admit State's exhibit 35 and 37 into evidence.

6 MR. MAYER: No objection.

7 THE COURT: It's admitted without objection.

8 [Whereupon, State's exhibit numbers 35 and 37 are
9 entered into evidence by the court]

10 Q. Okay. We're going to start off and we're going to
11 play the first clip.

12 [Whereupon, the video plays]

13 [Whereupon, the video stops]

14 Q. Is that your first interaction with the defendant?

15 A. Yes.

16 Q. All right. We'll play clip two.

17 [Whereupon, the video plays]

18 [Whereupon, the video stops]

19 Q. That individual who is in the room with you, that
20 officer, what's his name?

21 A. That's Sergeant Kosarko [phonetic].

22 Q. What was his assignment?

23 A. He was in charge of the violent crime unit at the
24 time.

25 [Whereupon, the video plays]

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1 THE COURT REPORTER: Tell me his name again.
2 THE WITNESS: Sergeant Kosarko [phonetic].
3 [Whereupon, the video stops]
4 Q. [Mr. Osborne] I'm showing you State's exhibit 37.
5 [Whereupon, the witness is shown exhibit]
6 Q. Is that the Miranda card?
7 A. Yes.
8 Q. And on the front are these the rights that you read
9 to him?
10 A. Yes.
11 Q. Whose signature is that over warning officer?
12 A. That's my signature.
13 Q. And how about the suspect's signature?
14 A. That was signed by him.
15 Q. And the date and time; that's all accurate?
16 A. Yes.
17 Q. Okay. We'll go ahead and play clip 3 now.
18 [Whereupon, the video plays]
19 [Whereupon, the video stops]
20 Q. Okay. I just want to ask you a couple of things
21 there. He said that you spoke to an individual, a buddy
22 of his at the hotel. Do you think he's talking about
23 Bryan Robinson?
24 A. Yes.
25 Q. And you told Bryan Robinson that you wanted to talk

1 to him?

2 A. Yes.

3 Q. And that would have been the day before this?

4 A. Yes.

5 Q. And then he said that you gave a business card to

6 his girlfriend Ms. Tisdale?

7 A. Yes.

8 Q. And said you wanted to talk to him?

9 A. Yes.

10 Q. That would have been the day before this?

11 A. Yes.

12 Q. And then he's arrested on this day June the 3rd?

13 A. Yes.

14 Q. When he was arrested was he on the way to the police

15 station to talk to you?

16 A. No.

17 Q. Did he talk to you the night before?

18 A. No.

19 [Whereupon, the video plays]

20 [Whereupon, the video stops]

21 Q. He said the Tiger Mart on Rivers. Is that the real

22 name of that gas station or is it something else?

23 A. What he's referring to as the Tiger Mart is the

24 Rivers Mart.

25 Q. Okay. And one other thing; at this point in the

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1 investigation he mentioned a Will. Did you have any idea
2 who he was talking about?

3 A. Not then.

4 Q. So you hadn't spoken to Will at this point in the
5 investigation?

6 A. No.

7 [Whereupon, the video plays]

8 [Whereupon, the video stops]

9 Q. Okay. So the defendant said he was out celebrating.

10 THE COURT: Let's take a break now. Ladies and
11 gentlemen if you will, go to your jury room. Please do
12 not discuss the case.

13 [Whereupon, the jury exits at 10:45 a.m.]

14 THE COURT: We'll take five or ten minutes.

15 [Whereupon, court is in recess from 10:45 a.m. until
16 11:05 a.m.]

17 THE COURT: Let's bring them back.

18 [Whereupon, the jury enters at 11:07 a.m.]

19 THE COURT: You may proceed.

20 MR. OSBORNE: Thank you, Your Honor.

21 DIRECT EXAMINATION (resumes)

22 BY MR. OSBORNE:

23 Q. The last second or two of that clip the defendant
24 said he was celebrating his birthday that night. Was
25 that his birthday, that date?

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- 1 A. Not that date.
- 2 Q. And when was his birthday?
- 3 A. June 6th.
- 4 Q. And that would have been what day of the week?
- 5 A. I believe that would be Saturday.
- 6 Q. And do you know what day of the week this incident
- 7 occurred?
- 8 A. This is late Monday night into Tuesday morning.
- 9 Q. All right. Now is it fair to say that this is
- 10 basically the defendant's first story of what happened
- 11 that night?
- 12 A. Yes.
- 13 Q. All right. The last clip we saw before the break.
- 14 A. Yes.
- 15 Q. That he went riding around with Will, right?
- 16 A. Yes.
- 17 Q. And that Will ended up dropping him off at his house
- 18 around midnight or thereabouts; a little bit later.
- 19 A. Yes.
- 20 Q. And at some point after that he was drinking with
- 21 friends, Barry who testified?
- 22 A. Yes.
- 23 Q. And he said that at some point he saw lights coming
- 24 by; the police.
- 25 A. Yes.

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1 Q. And I think he said something like they were looking
2 for someone but they didn't know who they were looking
3 for.

4 A. Yes.

5 Q. And North Charleston was told that night to patrol
6 the area of Ferndale?

7 A. Yes, Officer Polite asked them.

8 Q. And Will would have had his car after midnight, not
9 Anthony?

10 A. Correct.

11 Q. He would have been home. Anything about going
12 downtown at this point?

13 A. No, no mention of downtown.

14 Q. Anything about Jennifer at all?

15 A. No.

16 Q. Anything about running into some college kids?

17 A. No.

18 Q. Did his story make any sense to you?

19 A. No.

20 Q. And why not?

21 A. We had already gathered the video surveillance and
22 had him in several locations and we also had witnesses
23 that placed him downtown.

24 Q. Okay. So when you're doing an interrogation like
25 this and you're facing a story that you find isn't true

1 based on the evidence that you have what do you do?

2 A. We change up our tactics a little and try to
3 minimize what the suspect has allegedly done, maybe
4 vilify the victim; just try to get him to open up more.

5 Q. Okay. Like minimize the severity of the crimes that
6 he has been charged with?

7 A. Yes.

8 Q. Maybe talk bad about the victim?

9 A. Yes.

10 Q. I mean did you try any of those types of tactics in
11 this case?

12 A. I did.

13 Q. Okay. We'll play clip 4 now.

14 [Whereupon, the video plays]

15 [Whereupon, the video stops]

16 Q. Is this one of the tactics you were talking about?

17 A. It is.

18 Q. Sort of like giving him an out I guess.

19 A. Yes.

20 Q. Insinuating there was some sort of relationship or
21 something like that going on between him and Jennifer?

22 A. Yes.

23 Q. Did you or any of the detectives have any evidence
24 at all to suggest that he and Jennifer had any sort of
25 relationship together?

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1 A. No.

2 Q. So this was nothing more than a tactic?

3 A. Right.

4 Q. Did you ever in the investigation have any evidence
5 other than later comments by him to suggest that he and
6 Jennifer had a relationship together?

7 A. No.

8 Q. We'll get more into that later.

9 [Whereupon, the video plays]

10 [Whereupon, the video ends]

11 Q. All right Detective, I'm going to show you State's
12 exhibit 1 again.

13 [Whereupon, the witness is shown exhibit]

14 Q. Can you tell the jury where Mary Street and the bus
15 terminal is?

16 A. Mary Street is this street [indicates]. And this
17 [indicates] would be the bus terminal area.

18 Q. Put an X on it.

19 A. I'm sorry?

20 Q. Put an X on it, where the bus terminal is.

21 [Whereupon, the witness complies]

22 Q. Okay. And then put an X where the first incident of
23 pointing and presenting at Coming and Morris occurred.

24 [Whereupon, the witness complies]

25 [Whereupon, video plays]

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1 [Whereupon, video ends]
2 Q. Okay. So after the encounter with the young pretty
3 girls he ended up at the gas station on Meeting Street?
4 A. Yes.
5 Q. The Exxon?
6 A. Yes.
7 Q. Now he first told you that he didn't know much about
8 downtown. He said I don't know a lot about downtown.
9 But he told you that he knew the bus terminal was on Mary
10 Street what did that make you think?
11 A. That he knew more about downtown that he was telling
12 me.
13 Q. Particularly street names and whatnot?
14 A. Correct.
15 Q. So now you have a second story. He does go
16 downtown. He runs into some girls right off of King
17 Street near the bus terminal and something about a
18 picture of a very pretty girl. Is that all correct?
19 A. Yes.
20 Q. And then he ended up at the Exxon?
21 A. Right.
22 Q. We're going to play clip 5 now.
23 [Whereupon, the video plays]
24 [Whereupon, the video ends]
25 Q. Okay. So once again he mentions his birthday week

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1 and I think we got that covered. His birthday was on
2 Saturday. You're talking to him now on Wednesday?

3 A. Yes.

4 Q. So this whole week here is his birthday week?

5 A. Yes.

6 Q. And he's saying that he will come and talk to you on
7 the following Monday?

8 A. Correct.

9 Q. All you got to do is be a little patient.

10 A. Yes.

11 Q. He'll get to you but he wasn't going to let anyone
12 mess up his birthday week?

13 A. Yes.

14 Q. He mentioned that y'all would have taken the car. I
15 didn't ask you that but y'all did process his car at some
16 point, correct?

17 A. We did.

18 Q. Searched it?

19 A. Yes.

20 Q. But you didn't find any evidence to further this
21 investigation?

22 A. No.

23 Q. Okay.

24 [Whereupon, the video plays]

25 [Whereupon, the video ends]

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- 1 Q. Did that perk your interest at all?
- 2 A. It did.
- 3 Q. Why?
- 4 A. We had already captured him on video surveillance at
- 5 the Kangaroo.
- 6 Q. Was that the first time that he mentioned anything
- 7 about Kangaroo?
- 8 A. Yes.
- 9 [Whereupon, the video plays]
- 10 [Whereupon, the video ends]
- 11 Q. At this point in the statement is there any mention
- 12 of him riding around with a girl?
- 13 A. No.
- 14 Q. Is that a change? Does his story change?
- 15 A. Later it does.
- 16 Q. When does his story change?
- 17 A. I confronted him with a still photo from the
- 18 surveillance from the Kangaroo.
- 19 Q. Okay. So you and Detective Kosarko [phonetic] tried
- 20 to tell him if we heard it correctly that y'all had
- 21 video. Was the tactic there to try to encourage him to
- 22 be more forthright?
- 23 A. Yes.
- 24 Q. Did that work?
- 25 A. No.

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1 Q. So is that why you elected to try to show him more
2 evidence that you had?

3 A. Yes.

4 Q. Seeing if that might work?

5 A. Yes.

6 Q. We're going to play clip 6.

7 [Whereupon, the video plays]

8 [Whereupon, the video ends]

9 MR. OSBORNE: Your Honor, may I approach?

10 THE COURT: Yes.

11 Q. [Mr. Osborne] I'm showing you State's exhibit 38.

12 Can you take a look at that and tell me what it is?

13 [Whereupon, the witness is shown exhibit]

14 A. This is a still image from video surveillance at the
15 Kangaroo on Rivers Avenue.

16 MR. OSBORNE: Your Honor, at this time I'd seek to
17 admit State's exhibit 38 into evidence.

18 MR. MAYER: No objection.

19 THE COURT: It's admitted.

20 [Whereupon, State's exhibit number 38 is entered
21 into evidence by the court]

22 Q. I want to show this to you first so the jury can see
23 what it is you're showing the defendant. What is that
24 again?

25 A. It's a still image from video surveillance at the

1 Kangaroo. The female there at the counter is Jennifer
2 and the male in the white shirt is the defendant.

3 Q. Okay. While we're talking about that Jennifer was
4 interviewed by police that night, correct?

5 A. Yes.

6 Q. And she was interviewed again the next morning, is
7 that right?

8 A. Yes.

9 Q. Had you obtained this surveillance video at either
10 one of those interviews with Jennifer?

11 A. No.

12 Q. So was Jennifer shown any surveillance video when
13 she gave either statement to police?

14 A. No.

15 [Whereupon, the video plays]

16 [Whereupon, the video ends]

17 Q. Okay. So let's go over a couple of things here and
18 I want to know what you were thinking. You suggested
19 that after watching the surveillance video that there
20 could be some sort of relationship between the defendant
21 and Jennifer is that right?

22 A. Yes.

23 Q. And yet when he seems to accept that and starts to
24 provide you information then you press him. You want to
25 know how he knows her.

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- 1 A. Yes.
- 2 Q. How he called her.
- 3 A. Yes.
- 4 Q. When you watched the video did you feel that there
5 was some relationship between the two?
- 6 A. No.
- 7 Q. And why not?
- 8 A. When I watched the video Jennifer did not seem
9 comfortable with the whole situation.
- 10 Q. And did part of your feelings or your inclination to
11 the investigation at this point have anything to do with
12 the fact that he said that he had an encounter with some
13 college girls earlier?
- 14 A. Yes.
- 15 Q. And those college girls in fact reported that he
16 pointed a gun to his face?
- 17 A. Yes.
- 18 Q. Does he mention anything about having a gun?
- 19 A. No.
- 20 Q. He did mention that Jennifer had a newborn child, is
21 that right?
- 22 A. Not exactly. Jennifer had a two year old at the
23 time.
- 24 Q. Okay. And he did mention that Jennifer's boyfriend
25 was Justin, is that correct?

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- 1 A. Yes.
- 2 Q. That must have seemed odd to you that he would know
3 that if she was in fact abducted, right?
- 4 A. No.
- 5 Q. Why not?
- 6 A. Because once she was abducted her boyfriend Justin
7 called her several times, around 50 times, and his name
8 would have been popping up on the phone.
- 9 Q. Okay.
- 10 [Whereupon, the video plays]
- 11 [Whereupon, the video ends]
- 12 Q. Okay. So I want to elaborate on that a little bit.
13 At this point during the interview has the defendant been
14 told who he is accused of robbing?
- 15 A. No.
- 16 Q. And so he's defending himself saying he didn't rob
17 the girl.
- 18 A. Yes.
- 19 Q. Did y'all tell him that he was being accused of
20 robbing Will?
- 21 A. No.
- 22 Q. Did y'all tell him he was being accused of robbing
23 the college kids?
- 24 A. No.
- 25 Q. Did y'all tell him he was being accused of robbing

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1 anybody that he may have encountered that night?
2 A. No.
3 Q. He just assumed that it was a girl.
4 A. Yes.
5 Q. The same girl that he left out for an entire hour of
6 the interview?
7 A. Yes.
8 [Whereupon, the video plays]
9 [Whereupon, the video ends]
10 Q. Okay. He said that he never rode with Jennifer, is
11 that what I heard?
12 A. Yes.
13 Q. And now you're asking him about the Kangaroo. Where
14 does he say he parked?
15 A. He parked on the side of the Kangaroo.
16 Q. With Will?
17 A. Yes.
18 Q. So he's talking about this secret, he wants to keep
19 it a little secret this relationship he has with
20 Jennifer. Well, I mean did he mention this relationship
21 being like he gets high with her or anything like that?
22 A. No.
23 Q. Did he say that at any point that he helps Jennifer
24 with her crack cocaine habit?
25 A. No.

1 Q. Did he say they had ever smoked together or anything
2 like that?

3 A. No.

4 Q. How is he depicting this relationship to you?

5 A. Just as I sat there it seems like a middle school
6 relationship like they just call each other on the phone
7 and talk.

8 Q. Okay. And he wanted to keep that a secret?

9 A. Yes.

10 Q. Does he ever say that he had been with Jennifer
11 prior to this night?

12 A. No.

13 Q. And he said that he had been speaking to her on the
14 phone for a while now?

15 A. Yes.

16 Q. This night does he ever say that he touched Jennifer
17 in any sexual way?

18 A. No.

19 Q. Does he ever say that he kissed Jennifer in any way?

20 A. No.

21 Q. Does he say that he ever did anything inappropriate
22 with Jennifer that he needed to keep a secret?

23 A. No.

24 [Whereupon, the video plays]

25 [Whereupon, the video ends]

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1 Q. We'll go ahead and play clip 7.
2 [Whereupon, the video plays]
3 [Whereupon, the video ends]
4 Q. Okay. He said he got drugs. And did I hear right;
5 she don't know nothing about that?
6 A. Correct.
7 Q. Okay. So not only is he not saying that Jennifer
8 smokes crack he's saying that Jennifer doesn't even know
9 that he smokes crack, is that correct?
10 A. Yes.
11 [Whereupon, the video plays]
12 [Whereupon, the video ends]
13 Q. Let's move on to the next clip.
14 [Whereupon, the video plays]
15 [Whereupon, the video ends]
16 Q. Did you -- you went back and looked at that video at
17 the Exxon?
18 A. Yes.
19 Q. Could you confirm that pickup like he says?
20 A. No, they appeared to arrive together.
21 Q. But before that did you see any pickup?
22 A. No.
23 Q. Okay. Clip 10.
24 [Whereupon, the video plays]
25 [Whereupon, the video ends]

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- 1 Q. Did he just say she spun out like a bat out of hell?
- 2 A. Yes.
- 3 Q. All right. Go to clip 11.
- 4 [Whereupon, the video plays]
- 5 [Whereupon, the video ends]
- 6 Q. So that comment that Jennifer's phone number was
- 7 written on a business card that was on his nightstand is
- 8 that what led y'all to go get a search warrant and go
- 9 back?
- 10 A. Yes.
- 11 Q. And Detective Tuttle has already testified he did
- 12 recover all of those business cards, correct?
- 13 A. Correct.
- 14 Q. Did you have a chance to go through them as well?
- 15 A. I did.
- 16 Q. Did you see Jennifer's phone number on any of those
- 17 cards?
- 18 A. No.
- 19 Q. How about anyone that you knew associated with
- 20 Jennifer?
- 21 A. No.
- 22 Q. And let's talk about that phone. You recovered the
- 23 defendant's phone as well, right?
- 24 A. Yes.
- 25 Q. And was the screen in fact smashed or disabled in

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1 some way?
2 A. It was.
3 [Whereupon, the video plays]
4 [Whereupon, the video ends]
5 Q. All right. Just to clarify here. Do phone records
6 capture voices?
7 A. No.
8 Q. Okay. So was that a little confusing?
9 A. That was quite confusing.
10 Q. Just so -- I'll use the terminology I'll say
11 defendant and then Anthony because he is talking about
12 another person named Anthony. Based on that description
13 and whatnot and what he told you where he lived and
14 everything were you able to locate Anthony?
15 A. Yes.
16 Q. Did you learn Anthony's phone number?
17 A. Yes.
18 Q. Now, we're going to talk more about this in a second
19 but did you have the occasion to get Jennifer's phone
20 records?
21 A. Yes.
22 Q. How far back did you go?
23 A. Three months.
24 Q. Three months from the date of the incident?
25 A. Yes.

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- 1 Q. Why did you choose that number, three months?
- 2 A. He said he had been talking to her for the last two
- 3 or three months.
- 4 Q. Okay. Did you see Anthony's phone number on
- 5 Jennifer's phone records?
- 6 A. No.
- 7 Q. On the date of the incident?
- 8 A. No.
- 9 Q. Not at all?
- 10 A. Not at all.
- 11 Q. How about going back three months?
- 12 A. No.
- 13 [Whereupon, the video plays]
- 14 [Whereupon, the video ends]
- 15 Q. Okay. I think we covered this in the beginning.
- 16 This is about a three hour interview?
- 17 A. Yes.
- 18 Q. And we've watched about an hour and a half. Does
- 19 his story change at all from this point on in reference
- 20 to what happened that night?
- 21 A. No.
- 22 Q. What does he do? Does he just continue to say I
- 23 didn't rob nobody?
- 24 A. Yes.
- 25 Q. There is one other about a minute clip I do want to

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1 play to the jury. Clip 12 now.

2 [Whereupon, the video plays]

3 [Whereupon, the video ends]

4 Q. My mistake. That clip was referring back to the
5 interaction with the college girls?

6 A. Yes.

7 Q. And that's Detective Eric Tuttle who's in there with
8 him now?

9 A. Yes.

10 Q. The same individual who testified?

11 A. Yes.

12 Q. One last clip.

13 [Whereupon, the video plays]

14 [Whereupon, the video ends]

15 Q. All right. Nothing changes after that?

16 A. No.

17 Q. What happened at the conclusion of the interview
18 with the defendant?

19 A. He was read his arrest warrants and taken up to the
20 Al Cannon Detention Center and was booked in.

21 Q. Okay. And Detective Tuttle testified there was some
22 more follow-up to be done on the case?

23 A. Yes.

24 Q. Went back with that search warrant looking for the
25 business cards and the phone?

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1 A. Yes.

2 Q. The phone in particular; why were you looking for
3 that?

4 A. Anthony had said that he had spoken to Jennifer on
5 the phone so I thought looking at his phone could help
6 confirm that.

7 Q. Okay. I think that's already been marked and
8 admitted; the defendant's phone. And you did look at it
9 and the screen is broken?

10 A. Yes.

11 Q. Did you have the occasion to go back and look at or
12 obtain Anthony's phone records?

13 A. Yes.

14 Q. And did you make any observations while looking at
15 the phone records?

16 A. The phone was used quite a bit but no connection
17 between his phone and Jennifer's phone.

18 MR. OSBORNE: Your Honor, may I approach?

19 THE COURT: Yes, sir.

20 Q. [Mr. Osborne] State's exhibit 39, can you take a
21 look and tell me if you recognize that?

22 [Whereupon, the witness is shown exhibit]

23 A. This is the phone records for [REDACTED].

24 Q. And that was the phone number that you identified
25 belonging to the defendant?

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1 A. Yes.

2 MR. OSBORNE: Your Honor, at this time I'd seek to
3 admit State's exhibit 39 into evidence.

4 MR. MAYER: Without objection.

5 THE COURT: It's admitted.

6 [Whereupon, State's exhibit number 39 is entered
7 into evidence by the court]

8 Q. [Mr. Osborne] Just talk about your observations
9 while looking at some of those phone records. First of
10 all where did you get them from?

11 A. They were obtained through a search warrant sent to
12 AT&T.

13 Q. Okay. When you got the phone records back who was
14 that particular phone registered to?

15 A. Elizabeth Tisdale.

16 Q. Okay. Did she have two phones registered to her?

17 A. She did.

18 Q. One that she used and one that the defendant used?

19 A. Yes.

20 Q. When you went back and looked at -- well how far
21 back did you go in his phone records?

22 A. The same as Jennifer's. I went back to March 1st,
23 which would have been three months.

24 Q. Okay. Is there a lot of documents, a lot of phone
25 records in there?

1 A. There are.

2 Q. Were you able to search through those phone records?

3 A. Yes.

4 Q. Did you see any communication between the

5 defendant's phone and Jennifer Johnson's phone?

6 A. No.

7 Q. Did you find any communication between the defendant

8 and Jennifer's Mom?

9 A. No.

10 Q. Brother?

11 A. No.

12 Q. Obviously not the boyfriend.

13 A. No.

14 Q. And that was for two to three months?

15 A. Yes.

16 Q. And how many times did he say he spoke to her during

17 that two to three month period?

18 A. Two to three times a week.

19 Q. I do want to talk about something that did seem to

20 corroborate what he said. Did you notice a drop off in

21 phone activity on the phone records?

22 A. Yes, that was around late May I believe May 27th.

23 Q. Okay. So the phone appeared to have been used more

24 frequently prior to May the 27th than after May the 27th?

25 A. Yes.

State v Anthony McClain
Jason Jarrell-Direct Examination by Mr. Osborne
March 15, 2017

1 Q. Which might corroborate that his phone became not
2 functional at some point?

3 A. Yes.

4 Q. Do you know about how many calls were on his phone
5 records for that time period?

6 A. It's hard to say but I believe there were ten pages
7 of phone records with about 45 calls on each page; so 400
8 or so.

9 Q. None of which were Jennifer's?

10 A. Correct.

11 MR. OSBORNE: Your Honor, may I approach?

12 THE COURT: Yes.

13 Q. [Mr. Osborne] I'm showing you what has been marked
14 as State's exhibit 40. Can you take a look at that and
15 tell me if you recognize it?

16 [Whereupon, the witness is shown exhibit]

17 A. This is phone records for [REDACTED].

18 Q. Okay. And how do you know that?

19 A. I initialed it here [indicates].

20 Q. Have you viewed those records before?

21 A. Yes.

22 Q. And where did they come from?

23 A. They came from Verizon.

24 MR. OSBORNE: Your Honor, at this time I would seek
25 to admit State's exhibit 40 into evidence I think without