

ORIGINAL

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

G. Edward Welmaker, Circuit Court Judge

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MAY 24 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JUWAN DARNELL LOMAX,

APPELLANT

APPELLATE CASE NO. 2012-212485

RECORD ON APPEAL

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1 that sense that they owe one another that they're able to
2 hold strong.

3 Don't know how well you can see it on this picture, but
4 I think it says it pretty well in State's exhibit 14. This
5 young lady's look says loyalty. You can pass it around the
6 jury room. Maybe it'll be easier to see it there. But the
7 point remains, loyalty is the only glue that holds this
8 group together. And it's when that loyalty starts to
9 crumble that we're able to stop it from going any further.
10 That's what this trial is about. That's what this case is
11 about.

12 Now, one of the other things I told you when I spoke to
13 you yesterday was that because of that loyalty the only way
14 these kinds of cases get solved is from the inside out. I
15 told you you would hear from the inside out. You did. You
16 heard from two who were in the mix, who were in on the plan.
17 And they told you exactly how the plan was crafted, exactly
18 how it was supposed to be carried out and how it was
19 ultimately carried out.

20 Now, I think we all agree, hindsight's 20/20. I bet
21 Juwan Lomax and De'Nia Dawkins sure wished they hadn't of
22 done that because they're in a whole mess right now. I bet
23 they wished they could take it back. Regret is not a
24 defense. Your sympathy is not a defense.

25 The two men that came in here and testified and said

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1 this is what we did, this is how we did it, this is why we
2 did it, they took responsibility for what they did. These
3 two are just as responsible. And that's your task now to
4 hold them accountable for the roles that they played.

5 Now, I want to go through the evidence a little bit and
6 start off with the victim's -- the victim and his roommates
7 that were there that night. There's been a lot of talk
8 about this trial, throughout this trial about marijuana in
9 the house, marijuana in the car, who was hiding evidence,
10 who was doing this all of it in an effort to make you
11 believe that these -- that Demetrius Benson somehow deserved
12 what he got, that because he has marijuana in his car and
13 because there may be marijuana inside his house, oh, well,
14 that's what happens, you get shot. That's terrible. That's
15 terrible to suggest that these guys were any less worthy of
16 the protections ---

17 MS. GORTON: Objection, Your Honor.

18 MS. SALISBURY: --- that we all ---

19 THE COURT: What's your objection?

20 MS. GORTON: Mischaracterizing our argument with regard
21 to the marijuana.

22 THE COURT: Your objection is noted. I will allow her
23 to ---

24 MS. GORTON: Thank you.

25 MS. SALISBURY: Thank you, Your Honor.

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1 THE COURT: --- make a statement.

2 MS. SALISBURY: Mr. Benson is no less worthy of the
3 protections that you and I enjoy. He is -- he does not
4 deserve to have his apartment invaded and shot over four
5 hundred dollars, over marijuana. That's not what this case
6 is about.

7 All of that -- all of that evidence, all that you've
8 heard was designed to distract you from the main issue, that
9 a home invasion happened, that a robbery happened, that a
10 shooting happened and that these two were in on the planning
11 of it and the execution of it.

12 After we heard from Mr. Benson -- well, actually, no,
13 before I move on let me mention a couple of things that I
14 think are interesting about Mr. Benson's testimony. And I
15 think I'll overlap with what I talk about when I get to what
16 Ms. Dawkins' statement says.

17 There's a lot of conversation about what was the
18 purpose? What was the point for De'Nia to go over there
19 that night? She says in her statement, I was going to go
20 over there and buy some weed. That was the point. Okay.
21 Mr. Benson says, no, that wasn't what happened. She owed me
22 some money and said she was going to pay me back.

23 Either way, isn't it a little bit curious that all of a
24 sudden, midnight, she calls her ex-boyfriend and says, hey,
25 you know that money I owe you? Well, I've got it. I'm

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1 ready to come pay you back.

2 Isn't it curious that Demetrius says I've never smoked
3 weed with her before. She always told me she didn't want
4 it. She didn't want to smoke. Isn't it curious that all of
5 a sudden, midnight, she says, hey, you know how we've never
6 smoked weed together before and I've always told you in the
7 past that I didn't want -- I didn't want to smoke weed?

8 Well, I changed my mind. I'm ready to buy some from you.
9 Aren't both of those a little bit curious? Does that seem
10 reasonable that that's actually what happened?

11 Isn't it more likely that regardless of the story, I
12 owe you money or I want to buy weed, that it was all
13 designed to get inside that apartment? Let's not forget
14 that Demetrius said she asked me how many people were over.
15 That's kind of a weird question, isn't it? Wanted to know
16 how many people were inside that apartment.

17 Why? So she could come prepared. So she could tell
18 the three waiting outside in the car, this is what is going
19 to happen. This is what to expect when you get inside.
20 She's feeding them information from the inside exactly as
21 they expected her to do. That was her role, get us in.

22 Because remember, of this group, she's the only one
23 that knew Drez Benson. She's the only one that had any
24 relationship with Drez. She's the only one that could have
25 gotten in unless they decided to come in and kick the door

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1 in themselves. This was their in. She was the only
2 connection to him.

3 It's not reasonable to suggest that they followed her
4 over there and snuck upstairs and waited. They were waiting
5 on a sign. They told you they were waiting on a sign. She
6 was going to come to the door. That's when they knew that
7 they could go in. That's how they knew how many people to
8 expect inside. And that's how they knew what was awaiting
9 them when they came inside.

10 Now, Demetrius testified that after the men entered the
11 apartment they took his wallet and they took his laptop. I
12 think the testimony came out later they took four hundred
13 dollars. And even Josh Cline said they grabbed this jar of
14 marijuana. That was the taking that happened. And I'll get
15 to that in a little bit when we talk about each of the
16 crimes individually.

17 But I say all that to say Mr. Benson was targeted for a
18 reason. They thought he had drugs. They thought he had
19 money. Made a good target.

20 More than that, maybe they thought he wouldn't
21 cooperate with the investigation. Maybe they thought he
22 wouldn't come in here and testify. Because as I told you at
23 the beginning of this trial, you were never supposed to hear
24 about this. They were supposed to stick together. That
25 loyalty was supposed to protect them.

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1 They didn't expect Demetrius to testify, to cooperate.
2 They didn't expect him to be able to identify anybody. And
3 they certainly didn't expect each other to fold. Didn't
4 work out that way. And now's the opportunity to hold them
5 accountable.

6 Now, after we heard from Demetrius we heard from his
7 roommates. And they all generally agree when they saw that
8 door come open and one or more guys come in with guns, they
9 beat pavement. They got out of the way.

10 Each of them said they heard one or two shots. It
11 doesn't matter. We know Drez was shot twice in both legs,
12 which is curious too. I'll talk about that in a little bit.

13 They're all very clear about what happened that night.
14 They were home watching a game with their friend, Jaquan,
15 maybe highlights, basketball highlights when these guys
16 burst their way in.

17 But they were all very clear that De'Nia had arranged
18 with Demetrius to come over first. They -- each of them
19 said, they remember Demetrius saying De'Nia's coming over.
20 They knew that she was coming over. She brought somebody
21 with her. And that's when everything went sideways, so to
22 speak.

23 Again, regardless of what's going on inside that
24 apartment, whether each of them was smoking a joint, none of
25 them is any less worthy of the protections that we all

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1 enjoy.

2 We heard from Mr. Woodard who lived in the G building,
3 which was across -- as he described it, across the parking
4 lot from the H building where this happened. And in State's
5 exhibit 12, this is a picture of what Mr. Woodard estimated
6 his view would have been of the H building.

7 He described that he saw the men running out of this
8 particular breeze-way and get in their cars. He described
9 that he was standing on this concrete median when he
10 confronted the three masked men. He heard what they told
11 him, basically to butt out, get out of the way, leave them
12 alone.

13 A very important piece of Mr. Woodard's testimony --
14 now, keep in mind, Mr. Woodard doesn't know any of these
15 people. He's not a victim. He has no incentive to lie. He
16 has nothing at stake in this trial. He's just telling you
17 exactly what he remembers happening.

18 And he recalls that when he heard the shots and looked
19 out his window he saw the white car leave and then he saw
20 the three men run to the black car and leave. Keep that in
21 mind. It's a very important piece of testimony.

22 After that we heard from the officers. And again, the
23 officers on-scene, both Sergeant McCoy and Deputy Picone,
24 testified about their role on the scene. It's their job to
25 sort of figure out what happened, take care of the immediate

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1 needs at the scene and then let the investigators take over
2 the case from there.

3 They testified about speaking with the victims, the
4 witnesses. And then they searched the apartment. They
5 searched for bullet holes, shell casings, anything that
6 would be helpful to a shooting investigation. And as they
7 told you, both Mr. Tobin and Mr. Holland, who were the only
8 other roommates left after Mr. Benson was gone to the
9 emergency room, gave them consent to search, signed consent
10 to search. No problem. Come in. Look.

11 Does that sound like either has a lot to hide? Nine
12 minutes after the shooting happened? Are they really able
13 to hide this secret, nefarious lifestyle? They said, come
14 on in. Take a look. There's blood on the carpet, that's
15 about it.

16 We'll move to the investigation next. And that's when
17 things start to get a lot more clear. Because at the time
18 all the investigators know is that they've got a man that
19 was shot in his apartment and all that man can tell them is
20 that his girlfriend, ex-girlfriend, one time girlfriend,
21 De'Nia Dawkins, had been over there immediately before it
22 happened. That's all they had to go on.

23 So in an effort to start putting the pieces together
24 they try to track down this De'Nia Dawkins person. And they
25 find out, as you've heard, that there had been a recent

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1 traffic stop where De'Nia Dawkins was driving a white, four
2 door car.

3 Well, as Investigator Hoover testified, kind of rung a
4 bell because Mr. Woodard described a white, four door car
5 and the black, what he believed to be a black Nissan Altima,
6 I believe, leaving the scene. And so Investigator Hoover
7 said, ah ha, that might be the same car. Let me look into
8 it.

9 Looked into where that car is registered, went to that
10 house, Juwan Lomax's house. Mr. Lomax is arrested, then
11 he's interviewed. And he gives -- well, before I get to
12 that, Investigator Fortner testified about the process by
13 which he went over Mr. Lomax's rights.

14 Made sure he understood them. Made sure that he knew
15 that he doesn't have to speak. He has a right to remain
16 silent. That anything he says is going to be used against
17 him in court. That he has a right to an attorney. And that
18 if at any time he wants an attorney present or if he wants
19 to change his mind about waiving his rights, he can do that.

20 Mr. Lomax initialed beside each one, that he understood
21 what all these rights meant. And then he signed at the
22 bottom and printed his name that he wanted to give a
23 statement, that he wanted to cooperate.

24 No indication that this was as a result of a threat.
25 Think about Investigator Fortner, did he seem like a

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1 particularly threatening guy? He told you he explained
2 coercion to mean I'm not going to come after your family or
3 pry off your fingernails. Is that the kind of guy that's
4 going to force a statement out of somebody?

5 The more important part, the statement. Because this
6 statement contains largely everything you need to know about
7 what Juwan Lomax knew about this robbery. Because he put it
8 in his own words. He says, I just drove. We went over
9 there to try and get a lick.

10 We heard from more than one witness that everybody
11 understood that to be a robbery. Even the investigators
12 know that's a code for robbery. He knew and told the police
13 that the purpose for going over to Cunningham Villas was to
14 commit a robbery. He tells you as plain as day that he knew
15 exactly what was going to be happening.

16 And his role in this particular case was the get-away
17 driver. You can't carry six people in one car. You need
18 two cars. Besides, they needed him to go pick up Smoke on
19 the front-end.

20 Smoke testified that Juwan and De'Nia came in Juwan's
21 car together to come pick him up at Crooked Creek. Why?
22 Because Juwan Lomax had called Smoke and said, we're going
23 to do a lick. Do you want in? Juwan Lomax knew exactly
24 what was going to happen. And it was his job to carry half
25 of the participants to the scene. And more importantly, get

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1 them away quickly.

2 Now that you've heard more evidence in this case you
3 can piece together the rest of this statement. We know that
4 the two other people in Juwan's car, based on the testimony
5 that we've heard, were De'Nia Dawkins and this person, Envy.
6 I believe at one point we heard her name might be Shamika
7 Johnson. Those people were in Juwan's car.

8 We know in the other car was Raymond Young, Josh Cline,
9 Fats, and Tra'Vis Ware, Smoke. Those were the three people
10 in the other car. Juwan goes on to say that one of those
11 people is the True Disciple. We've heard a lot about
12 Raymond. Maybe that's Raymond.

13 We went to some apartments in Taylors. I don't
14 remember where they are. I just drove. And then, most
15 importantly, we went over there to try and get a lick. It's
16 plain as day.

17 He says, it was one of the people in my car's idea.
18 Well, we know who was in his car. Don't we know that it was
19 De'Nia's idea? Isn't that what everybody else said? Isn't
20 that what Smoke and Fat-So said? That it was -- it was
21 De'Nia's -- and doesn't it make sense that it was her idea
22 since she's the only one that knew the victim? We've got a
23 lick to do. I know a target. I know an easy target. He's
24 got money and he might have drugs.

25 Juwan goes on to say we went over there and the two

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1 people in my car went into the house. It's exactly what you
2 heard, the two girls went inside first. And then the others
3 got out of the other car, Smoke, Raymond, Fats.

4 It was supposed to be like a set-up. He says again, I
5 knew it was going to be a set-up. That's what the plan was,
6 that the girls were going to go in first and get us in. And
7 then the three guys were going to follow and follow through.
8 He says again, it's a set-up.

9 The three people that went inside will do the robbery.
10 They went in about ten to fifteen minutes after the first
11 two went in, after the girls. They went in. And then the
12 two that came out -- they went inside. And the first two,
13 the girls, came outside and they got back in Juwan's car and
14 we left. That was it.

15 They were talking about how they came up inside the
16 house. They were talking about how they hoped the dude got
17 shot. Who could that be? Could it be that De'Nia
18 afterwards was not crying and screaming on the ground and
19 calling her mother and falling out about what a terrible
20 surprise she had been duped into participating in? Or could
21 it be that she was talking about how she hoped the dude got
22 shot?

23 It's apparent that Juwan Lomax knew exactly what was
24 going to happen and played the role that he was assigned,
25 drive the girls over, get them out, pick up Smoke along the

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1 way, carry the other half of the six. That's his role. And
2 I'll talk a little bit about what the law means in just a
3 second when it comes to that particular role.

4 Dawkins' statement is a little bit different. And it's
5 apparent from the statement that Ms. Dawkins recognizes that
6 she's in danger. She's under arrest when she gives this
7 statement. She understands that -- the charges she's been
8 charged with in this case.

9 Is it any surprise that her first inclination is to
10 minimize everything that she's done? Isn't that what you'd
11 expect from somebody who's just been wrapped into a case
12 like this? Oh, no, I'm going to name everybody else, but
13 I'm going to minimize what I did. That's reasonable to
14 expect. That makes sense.

15 But this is why her statement is unreasonable. This is
16 why the things that she said -- says in this statement can't
17 be true. She starts off her statement by putting herself on
18 the scene. She says, yeah, I went there because she
19 probably realizes that she's not going to get away from the
20 fact that Drez is going to say she was there. She knows she
21 can't fight that fact. So she can't say I wasn't there.
22 Okay. I was there. I went over there.

23 But the reason I went over there was to buy some weed
24 from him, um, and I -- I knew -- I knew he had it. That
25 seems like a good cover. They'll buy that, right? They

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1 probably -- they probably know that Demetrius may have had
2 marijuana at that apartment. I think the police will
3 swallow that. That makes sense.

4 She goes on to say this was who was in this car. She
5 puts herself in Juwan's car and then everybody else, Smoke,
6 Raymond, Fat-So in the other one.

7 And then that's when it gets a little bit more
8 fantastic. They were just following us over there. Now, is
9 it reasonable to think that if she went to visit her ex-
10 boyfriend, went to even hang out with him for a little while
11 that a whole other car full of guys would come over there
12 just to sit in a parking lot? It's an impressive entourage,
13 but it's just not reasonable.

14 She said she took Envy inside. She was inside for
15 about five minutes. And then that's when we get -- catching
16 back up to the truth. That's when the door was open, that's
17 when everybody came in. They were wearing all black.
18 That's all consistent with what we've heard. These were the
19 gunmen, this is what they were wearing, this is what they
20 were doing.

21 But then in the best effort to try and keep herself
22 out, keep herself on the fringes of this and not right in
23 the middle where we know she is, she says, when we were
24 outside I was crying and screaming on the ground. Smoke was
25 telling me to get off the ground and get in the car. That

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1 never happened.

2 Tim Woodard told you that he heard shots, peered out
3 his window, saw the white car take off and then three guys
4 masked with guns come running out. And I asked him, what
5 did they do? They got straight in the car. I asked both
6 Smoke and Fats, was De'Nia on the ground crying? Smoke, did
7 you go to her and tell her to get off the ground? No.
8 Because they were gone. They'd already gotten out of there
9 by the time that the three masked men came out.

10 This is just an effort to get you to feel sorry for
11 her. And as I told you, sympathy's not a defense. Regret
12 is not a defense.

13 She can do everything to paint herself as preyed upon,
14 unknowing, unwilling. It's just another part of the
15 deception of the lifestyle to get you to buy into the fact
16 that she's innocent and uninvolved. That's what this is.
17 That's what this last part is. I was crying. I was
18 freaking out. I didn't know what to do.

19 And it's interesting in a last ditch effort to hold
20 tight to that loyalty she says, I don't think they included
21 -- I don't think they included Juwan because he acted like
22 he didn't know. One last effort to try to protect her
23 fellow gang member because it's about loyalty.

24 They weren't counting on the other ones talking. They
25 figured that so long as they could protect one another, you

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1 would never hear about this case. That was the idea. We
2 know better. You know better.

3 You've heard from Juwan's own statement, we were going
4 to do a lick. It was a set-up. And it was one person in my
5 car's idea. It was De'Nia's idea. Both Smoke and Fats were
6 clear, yeah, it was De'Nia's idea. She knew the guy and she
7 said he'd make a good target.

8 They both knew exactly what they were getting into.
9 They both knew exactly what their role was to play. And
10 they knew what was going to happen. They assisted in it.
11 They acted together with these gunmen to make sure these
12 crimes were committed exactly as they intended.

13 Now, I want to talk just very, very quickly about
14 Smoke's testimony and Fats' testimony. Obviously, these
15 guys are not model citizens. They've admitted to it. They
16 stood up in front of the Judge and admitted that they did
17 exactly what they say they did. They went into Demetrius
18 Benson's house with guns and they robbed him and shot him.
19 They've taken responsibility for what they did. And they're
20 willing to face the consequences.

21 Now, has there been some plea negotiations to get them
22 to get on board and help? Yeah. That's the way business
23 works. Sometimes to get everybody you have to make some
24 deals. And that's what happened. They told you exactly
25 what their deal was.

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1 And they understood that so long as they were truthful
2 about their testimony that they would get the benefit of
3 that deal. But they will be sentenced. They will be held
4 accountable, which reminds me of something else.

5 We've heard a lot about Raymond Young. We know that
6 he's charged in this case. I just want to be clear, his
7 trial is for another date. His involvement, his role is not
8 before you. Another jury just as qualified as you, just as
9 bright as all of you will decide his responsibility in this
10 case.

11 The remaining questions today is just these two because
12 those two took responsibility for what they did and told you
13 what they knew about these two being involved. Smoke was
14 very clear. He said Juwan called me and said, we are going
15 to do a lick. Do you want in? He says, well, sure. Come
16 pick me up.

17 And Fats says we were sitting around at Crooked Creek
18 and De'Nia said, I've got a lick. I've got a lick we can go
19 do. He was very specific. It was De'Nia's idea. I've got
20 somebody we can go hit. And from there, their plan was
21 formulated, the meeting up at the Bi-Lo, the changing of
22 cars and then going over there in tandem. That's exactly
23 how it was supposed to happen.

24 Each of these witnesses has been very clear, whether
25 it's from their own mouths or from the unreasonable efforts

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1 they've made to cover themselves. They knew what was going
2 to happen. It was De'Nia's idea.

3 There's been a lot of effort throughout the course of
4 this trial to paint at least De'Nia as not being in the
5 gang, just being -- just being on the fringes, only being in
6 it for a month, not really knowing what it was about,
7 believing the deception about it being a community
8 organization.

9 Whether this was initiation, whether this was an effort
10 to continue to put in work, whether this crime was committed
11 just to get back at Drez or whether it was some other effort
12 to gain rank in the gang, these Defendants are gang members.
13 They cannot be in it, but not of it. Regret, hindsight,
14 apologies do not change the level to which they're -- they
15 should be held accountable for what they did.

16 We'll go through the elements because a lot of the
17 facts in the case are not contested. I told you at the
18 beginning and the Judge is going to instruct you in just a
19 few minutes that armed robbery is the taking of something of
20 value from somebody else with force or intimidation and with
21 the use of a deadly weapon.

22 That's the story that we heard, that three men took
23 money, laptop from Demetrius Benson with the assistance of
24 handguns that they ultimately used. That meets every
25 element of armed robbery.

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1 Burglary in the first degree is the entry into
2 someone's home without consent, whether you force your way
3 in or whether it's done by trick, maybe a ruse, maybe a set-
4 up, with the intent to commit a crime inside. We know it
5 was a plan. They intended to commit this robbery.. That was
6 the crime they intended to commit while they were inside.

7 Now, what makes it burglary in the first degree is that
8 they used deadly weapons as part of that crime or that it
9 occurred in the nighttime. The testimony has been that all
10 three of these gunmen were gunmen, they were armed, but that
11 it happened just around midnight. Either way it's clear
12 that those aggravating factors exist to make this a burglary
13 in the first degree.

14 Now, attempted murder is another charge. And I've told
15 you in the beginning of this trial and the Judge will
16 instruct you that the State must prove that the Defendants
17 or their co-conspirators with the intent to kill attempted
18 to kill Demetrius Benson with malice aforethought.

19 You've heard testimony that he was shot, twice. He
20 says once in each leg. There are probably some pretty
21 particular -- there may be some specific reasons for that.
22 As I said, maybe to keep him from chasing them, maybe to
23 keep him from running away, maybe it was a bad shot, maybe
24 it just happened to be his legs, maybe they were aiming for
25 his head. Who knows?

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1 But you don't fire a gun at somebody wrestling with
2 your friend unless you intend to stop that threat.
3 Regardless of who the gunman was, whether it was Raymond
4 Young on the ground and Smoke standing above him or Smoke on
5 the ground and Raymond standing above him. Whoever was on
6 the ground said, shoot him, shoot him. Get him off me. End
7 this threat. He's about to take my gun from my hands. My
8 clip might have fallen out. It might not. Who knows? Who
9 cares? It doesn't matter whether the clip fell out. The
10 point is that Demetrius was shot twice.

11 You don't shoot a handgun at somebody unless you are
12 acting with the specific intent to severely hurt them or end
13 their life, end the threat. I believe that's the evidence
14 that's been presented, that that was the nature of the
15 situation, that's what was happening.

16 And the Judge is going to instruct you that one more
17 element of attempted murder is malice aforethought. It
18 sounds kind of -- a weird phrase. It basically means
19 meanness. It means ill-will. You had malice when you
20 pulled the trigger. That's what malice aforethought is even
21 if it existed a mere instant before that trigger was pulled.

22 And, finally, these two Defendants are charged with
23 conspiracy. Conspiracy is very straightforward. Two or
24 more people combined for the purpose of committing a crime.

25 You've heard testimony that there were at least five,

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1 maybe six people involved in this particular conspiracy. We
2 don't know a whole lot about whether Envy was there, whether
3 Envy knew what was going on or any role she played.

4 She wasn't charged because as Investigator Hoover
5 testified, I wasn't really able to get any information about
6 her and what she may have known. But at least five people
7 knew about this plan, actively agreed to participate in this
8 plan and played the role they were assigned as it was
9 carried out.

10 Now, you've heard and I told you at the beginning,
11 neither of these Defendants had guns, neither of them shot,
12 neither of them even participated in the robbery. But the
13 Judge is going to instruct you in a few moments of the law
14 in South Carolina. It's his job to explain to you what the
15 law is for you to apply to these facts. And you've all
16 taken an oath to apply that law as it is explained to you.

17 And it is the law in South Carolina that if two or more
18 people combine for the purpose of committing a crime, act
19 together, assist one another and jointly execute that crime,
20 the hand of one of those people is the hand of all. The law
21 says that if you are in for a penny, you are in for a pound.

22 Think about a bank robber. Think about one has to
23 drive the get-away car, one goes inside with the gun and
24 maybe another has the bags in the vault. The man with the
25 gun's job is to approach the teller and say, open the vault,

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1 give me the money. The man with the bags is supposed to
2 load up the money. The man driving the get-away car is
3 supposed to get them away.

4 If that man with the gun shoots the teller, the man
5 with the bags and the man driving the get-away car are just
6 as responsible for that crime because the hand of one of
7 them is the hand of all. And that's exactly why these two
8 Defendants are just as accountable for what happened just
9 after midnight on June 3rd, 2011.

10 They wanted to be gang members. They wanted to run
11 with the big dogs. This is the price of the life. You
12 can't bank on that loyalty forever. Their miscalculation,
13 their mistake, their regret does not change their
14 responsibility.

15 They're all very, very serious crimes. And you've
16 heard a lot about the back-drop, the things that were
17 happening leading up to it. You've heard a lot about the
18 gang life and what it means to be in the mix, to feel the
19 pressure, to feel threatened. No one required these two
20 Defendants to join a gang. No one required them to
21 volunteer Demetrius Benson as a target.

22 This was conceived to help the gang, maybe help
23 themselves in the gang, get more respect, look better. This
24 was a calculated plan with a specific target. Each of these
25 Defendants knew precisely what they had to do to make sure

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1 the plan was carried out. And I ask you to return a verdict
2 that each of these Defendants is guilty of all four crimes
3 with which they're charged. Thank you.

4 THE COURT: Madame Forelady and members of the jury,
5 before I start my instruction to you, I'm going to ask you
6 to go back to your jury room just briefly. I'm going to
7 have the bailiffs bring you some lunch menus, let you order
8 lunch so it can be coming while I'm giving my instruction to
9 you. Don't discuss the case, of course. Everyone else,
10 please remain seated while the jury departs from the
11 courtroom. Thank you.

12 (Whereupon the jury exited the courtroom at 11:50 am)

13 THE COURT: All right. We'll take a short break and
14 get lunch ordered.

15 (Whereupon court was in recess at 11:51 am)

16 (Whereupon court resumed at 12:12 pm)

17 THE COURT: Yes, ma'am. You ---

18 MS. GORTON: Yes, Judge.

19 THE COURT: --- wanted to go on the record?

20 MS. GORTON: Yes, Your Honor. I'd like to renew my
21 motion for directed verdict and cite all the grounds in the
22 case law cited before. And once you make your ruling on
23 that, I have another quick motion to make.

24 MR. IANUARIO: And I would also like to join her
25 motion, Your Honor.

1 THE COURT: I deny your motions for directed verdict.

2 MR. IANUARIO: Thank you, Your Honor.

3 MS. GORTON: The second motion I have, Your Honor, is
4 to renew my motion for the duress instruction.

5 MR. IANUARIO: I'd also like to join in that one, Your
6 Honor.

7 THE COURT: I presume the State's opposed to that.

8 MS. SALISBURY: Yes, Your Honor. It's my understanding
9 that the law in this State is that for duress or coercion to
10 be a defense the coercion or duress must be present,
11 imminent and of such a nature as to induce a well-grounded
12 apprehension of death or serious bodily injury if that act
13 is not done.

14 I don't believe there's been any evidence to support
15 that these two Defendants were forced to commit this crime.
16 And there's certainly no evidence that there was any
17 imminent danger should they not do it. I'd also note that
18 that comes from the Court of Appeals opinion in State versus
19 Holliday.

20 I'd also direct the Court's attention to Brown versus
21 Bailey, which is a Supreme Court opinion and State versus
22 Blurton, which is a Supreme Court opinion both of which
23 indicate that it is not a defense to commit a crime at the
24 instruction of another person, which I believe more closely
25 fits what may have happened in the facts in this case. So,

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1 yes, for those reasons, Judge, I would oppose the
2 instruction.

3 THE COURT: All right. I'll charge that as you
4 requested.

5 MR. IANUARIO: Thank you, Your Honor.

6 MS. GORTON: Thank you.

7 THE COURT: Okay. If our jury is ready you can have
8 them come in, Ms. Sims.

9 (Whereupon the jury entered the courtroom at 12:15 pm)

10 THE COURT: Ladies and gentlemen and Madame Forelady,
11 it's now my opportunity to instruct you on the law. Let me
12 remind you that we have indictments here and these
13 indictments, as you're well aware, charge these Defendants
14 with conspiracy and burglary in the first degree with
15 attempted murder and with armed robbery.

16 The fact that we have indictments and these Defendants
17 have been arrested and charged and indicted, that's not
18 evidence in the case. It shouldn't be considered as
19 evidence by you. It doesn't create any presumption by you
20 of their guilt. The indictment is merely the charging paper
21 by which the case is brought before this Court for
22 disposition.

23 The fact that there's four different charges on each of
24 these Defendants should be considered by you as separate and
25 distinct offenses. In other words, you can decide each or

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(1 you should decide each indictment separately on the evidence
2 and the law applicable to that particular charge
3 uninfluenced by your decision on the other indictments.

4 In other words, a defendant can be convicted or
5 acquitted on any or all of the offenses charged. I'll have
6 separate verdict forms for you to fill out as to the guilt
7 or innocence for each indictment and for each defendant.

8 This case involves two Defendants. And the case of
9 each of these Defendants and the evidence involved
10 concerning that particular Defendant should be considered by
11 you separately and individually. Your verdict does not have
12 to be the same for both Defendants. The fact that you may
(13 find one Defendant guilty or not guilty should not control
14 your verdict as to the other Defendant.

15 When more than one person is charged with a crime, if
16 the evidence warrants, you may convict one, acquit the
17 other, or you may acquit both or you may convict both. It
18 will depend upon your view of the testimony and the
19 evidence. And you must take each Defendant -- consider the
20 evidence as to that Defendant and my instructions to you on
21 the law.

22 Again, you will have verdict forms that will reflect
23 that for each Defendant as well. And as I go through the
24 instruction to you, of course, you should keep that in mind
(25 that there are multiple charges, but also two Defendants in

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1 the case. And when I say the Defendant, of course, it
2 refers to both Defendants.

3 Each of them have entered a plea of not guilty to each
4 of these indictments. And that plea places the burden on
5 the State to prove the Defendant guilty. A person charged
6 with committing a criminal offense in South Carolina is
7 never required to prove himself or herself innocent. That's
8 an important rule of law, that in a criminal trial, no
9 matter how serious that charge may be, the defendant will
10 always be presumed innocent of the crime for which the
11 indictment was issued unless guilt has been proven by
12 evidence satisfying you of that guilt beyond a reasonable
13 doubt.

14 Presumption of innocence doesn't end when you begin
15 your deliberations. It accompanies the Defendant throughout
16 the trial until you've reached a verdict of guilt based on
17 evidence satisfying you of that guilt beyond a reasonable
18 doubt.

19 Presumption of innocence has often been described as a
20 robe a righteousness that's placed about the shoulders of an
21 individual, remains with that defendant until it's been
22 stripped from him or her by evidence satisfying you of that
23 defendant's guilt beyond a reasonable doubt.

24 Presumption of innocence is not a mere legal theory.
25 It's not a legal phrase that's used. It is a substantial

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(1 right to which every defendant is entitled unless you, the
2 jury, are satisfied from the evidence of that defendant's
3 guilt beyond a reasonable doubt. You may ask yourself what
4 is a reasonable doubt in the law? Reasonable doubt is the
5 kind of doubt that would cause a reasonable person to
6 hesitate to act.

7 Now, some of you in the past may have served as a juror
8 in civil cases where you were told that it was only
9 necessary to prove that a fact was more likely true than not
10 true by what was called the preponderance of the evidence or
11 the greater weight of the evidence. In criminal cases the
12 State's proof is more powerful than that. It must be beyond
13 a reasonable doubt. Proof beyond a reasonable doubt is
14 proof that leaves you firmly convinced of a defendant's
15 guilt.

16 Now there are very few things in this world that we
17 know with absolutely certainty. And in criminal cases the
18 law doesn't require proof that overcomes every possible
19 doubt.

20 If, based upon your consideration of the evidence,
21 you're firmly convinced the Defendant is guilty of the crime
22 charged, then you must find the Defendant guilty. If, on
23 the other hand, you think there's a real possibility that
24 the Defendant is not guilty, you must give the Defendant the
25 benefit of the doubt and find that Defendant not guilty.

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1 Now, I remind you, ladies and gentlemen, during the
2 course of this trial you and I have had certain duties to
3 perform. As a trial judge it's my responsibility to preside
4 over the trial of the case, to rule on the admissibility of
5 evidence that's been offered during the course of the trial.
6 You're to consider only the competent evidence that is
7 before you, the testimony that's been presented from the
8 witness stand, the exhibits that have been made a part of
9 the record and introduced into the trial.

10 My job is also to charge you the applicable law
11 relating to this case. I'm the sole judge of the law. It's
12 your duty as jurors to accept the law and apply the law just
13 as I state it to you.

14 If you already have an idea of what the law is or even
15 a notion of what the law ought to be and it's not in concert
16 with what I now tell you the law is, then you must abandon
17 such an idea because under your oath you've sworn to accept
18 the law and apply the law just as I state it to you now.

19 Every case that's tried in this courtroom before a
20 jury, that jury becomes the sole exclusive judge of the
21 facts in the case. A trial judge can't intimate, or state,
22 or comment on or make any statement whatsoever to a trial
23 jury about the facts in a case.

24 Since you, the jury, are the sole judges of the facts
25 you're not to infer from what I've said during the progress

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1 of the trial, any rulings I've made on the admissibility of
2 evidence or otherwise, anything I say to you now in the
3 course of this instruction to you that I have an opinion
4 about the facts. I don't have an opinion about the facts.

5 As I stated to you at the beginning, our Constitution
6 in South Carolina prohibits a trial judge from expressing
7 any opinion or having any opinion about the facts in a case.
8 That's a matter solely up to you, ladies and gentlemen, to
9 determine. It's your duty to decide the effect, the value,
10 the weight and the truth of the evidence that's been
11 presented during this trial.

12 Normally in every trial there's two types of evidence
13 presented. There's direct evidence and there's
14 circumstantial evidence. Direct evidence is the testimony
15 of a person who claims to have actual knowledge of a fact
16 such as an eyewitness. It's evidence which immediately
17 establishes the main fact to be proved.

18 Circumstantial evidence is proof of a chain of facts,
19 circumstances that indicate the existence of a fact. It's
20 evidence which immediately establishes collateral facts from
21 which the main fact may be inferred. Circumstantial
22 evidence then is based on inference and not on personal
23 knowledge or observation.

24 The law makes absolutely no distinction between the
25 weight or the value to be given either direct evidence or

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1 circumstantial evidence. Nor is a greater degree of
2 certainty required of circumstantial evidence than of direct
3 evidence.

4 You should weigh all the evidence in the case. And
5 after weighing that evidence if you're not convinced of the
6 guilt of each of the Defendants beyond a reasonable doubt,
7 then you must find that Defendant not guilty.

8 Of necessity, ladies and gentlemen, you must determine
9 the credibility of witnesses who've testified in the case.
10 Credibility simply means believability. It becomes your
11 duty as jurors to analyze and evaluate the evidence, decide
12 which evidence convinces you of its truth.

13 In determining the believability of witnesses who've
14 testified, you can believe one witness over several
15 witnesses, you can believe several witnesses over one
16 witness. In your discretion you can believe part of the
17 testimony of a witness. You can -- and reject the remaining
18 part of the testimony of that very same witness.

19 You can believe the testimony of a witness in its
20 entirety or reject the testimony of a witness in its
21 entirety. You can consider whether any witness has
22 exhibited to you any interest, or bias, or prejudice or
23 other motive in the case.

24 You can consider the appearance of the witness, the
25 demeanor of the witness while on the witness stand. Was he

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1 or she straight-forward or hesitant in answering? Was the
2 testimony consistent or inconsistent? What was the ability
3 of the witness to know the facts to which that witness
4 testified? Was the testimony of a witness strengthened or
5 weakened by other testimony or evidence in the case? It's
6 your prerogative to determine the credibility of witnesses.

7 Now, in order to establish criminal liability, criminal
8 intent is required. It must be proven by the State beyond a
9 reasonable doubt. Criminal intent is always a matter that
10 must be determined by the jury from the circumstances
11 surrounding the situation.

12 There's no way to prove intent to a mathematical
13 certainty. No way that medical science has devised to
14 dissect a person's brain and determine what that person had
15 in mind. So the law says that criminal intent may be
16 inferred from the circumstances shown to have existed.

17 It's not necessary to establish intent by direct and
18 positive evidence, but intent may be established by
19 inference, in the same way as any other fact, by taking into
20 consideration the acts of the parties, all the facts and
21 circumstances of the case.

22 Criminal intent is a mental state. It's a conscious
23 wrong-doing. It's up to you to determine what the
24 Defendants intended to do based upon the circumstances shown
25 to have existed.

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1 Now, statements alleged to have been made by Defendants
2 have been admitted into evidence in this case. And while
3 the Court has determined that the statements -- as to the
4 admissibility of the statements, I instruct you that you
5 make the ultimate decision of whether or not the statement
6 was made as to each Defendant.

7 If the Defendant did make the statement, you must
8 determine whether the statement was made by that Defendant
9 voluntarily and by his or her own free will. This means the
10 statement was not caused by pressure, or force, or fear, or
11 threats, or coercion, or intimidation, or by the hope of or
12 a promise of leniency or a reward of any kind.

13 In determining whether the statement was voluntary you
14 should consider both the characteristics of the Defendant
15 and the details of the questioning. Some of the factors
16 that you may consider would be the age of the -- each
17 Defendant, the education or lack of education, the mental
18 ability and capacity, the background, the environment, the
19 place, the length of the detention, the nature of the
20 questioning and the advice or lack thereof as to the
21 Defendants Constitutional rights including, but not limited
22 to, the right to remain silent, that any statements could be
23 used against him or her in a court of law, the right to have
24 a lawyer present, that if that Defendant could not afford a
25 lawyer, a lawyer would be appointed to represent him or her

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1 without any costs and that the Defendant could stop making a
2 statement at any time. You must carefully consider all the
3 surrounding circumstances before you give any weight to an
4 alleged statement.

5 The State has the burden of proving beyond a reasonable
6 doubt that the alleged statement was voluntary. If you
7 determine it was, you may give the statement any further
8 consideration that you deem proper. You must decide what
9 weight, if any, should be given to the alleged statement.
10 If you determine the alleged statement was not the free and
11 voluntary statement of the Defendant, you must not consider
12 the statement at all.

13 Now, I instruct you and I emphasize to you the fact
14 that the Defendants did not testify is not a factor to be
15 considered by you in any way in your deliberations and in
16 your consideration of the question of the guilt or the
17 innocence of the Defendant. It must not be considered by
18 you in any manner whatsoever.

19 A Defendant has a Constitutional right to remain
20 silent. And the assertion of this right must not be
21 considered by you in your deliberations. I repeat, under
22 your oath you're not to draw any conclusions whatsoever from
23 the fact that the Defendants in this case did not testify.
24 That fact that there was no testimony by the Defendants
25 should not even be discussed by you in the jury room.

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1 The burden of proof, as I've stated, is on the State of
2 South Carolina. The Defendant is not required to prove his
3 or her innocence. That burden remains on the State
4 throughout the trial to prove guilt beyond a reasonable
5 doubt.

6 You have heard testimony concerning the penalty a
7 person can serve for the crimes alleged in the indictments.
8 In determining the guilt or innocence of the Defendant, you
9 cannot consider any possible penalty for any particular
10 crime. The punishment for a crime or crimes is a matter for
11 me to determine. It should never be considered by you in
12 any way whatsoever at arriving at a fair and impartial
13 verdict as to the guilt or the innocence of each Defendant.

14 Now, the Defendants in this case, ladies and gentlemen,
15 have been charged with violation of State law with
16 conspiracy. To prove conspiracy the State must establish
17 beyond a reasonable doubt that the Defendant combined with
18 one or more persons for the purpose of committing an
19 unlawful act or of committing a lawful act by unlawful
20 means.

21 There must be a mutual understanding, an agreement or a
22 common intention in plan. Mere passive knowledge of or
23 consent to the criminal conduct of another is not enough to
24 make a person a conspirator. There must be guilty knowledge
25 and participation.

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1 Similarly, the mere fact that the Defendant may have
2 associated with another person, or met with another person,
3 or discussed common aims or interests does not necessarily
4 establish proof of the existence of a conspiracy or that the
5 Defendant was involved in a conspiracy. On the other hand,
6 it's not necessary that the agreement be a formal one, that
7 it be in writing, that the person -- the people hold a
8 meeting and expressly state the terms of a common plan or
9 that the agreement be stated in words between them.

10 The agreement of a criminal conspiracy may come into
11 being through an implied, a mutual understanding, the
12 willful intentional and knowing adoption by two or more
13 persons of a common plan is sufficient. No overt acts need
14 to be shown to establish a conspiracy.

15 A conspiracy may be shown by circumstantial evidence
16 and the conduct of the parties. In order to convict a
17 Defendant of conspiracy the State must prove beyond a
18 reasonable doubt not only that the Defendant knew of the
19 unlawful conduct, but that the Defendant agreed to combine
20 with other persons for the purpose of accomplishing the
21 unlawful conduct.

22 When two or more individuals conspire to commit a
23 crime, they're responsible for all incidental and
24 consequential acts growing out of the common design.
25 However, conspirators are not responsible for an independent

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1 act committed by another conspirator or conspirators that
2 are not part of the common design.

3 Each Defendant also is charged with first degree
4 burglary. The State must prove beyond a reasonable doubt
5 that the Defendant entered a dwelling without consent. A
6 dwelling is any building or a portion of a building in which
7 the -- a person ordinarily sleeps.

8 In order to prove the Defendant entered the dwelling
9 the State does not have to show the Defendant's entire body
10 entered the dwelling. The smallest entry is sufficient. It
11 may be any part of a body such as a hand, or a foot or even
12 an instrument such as a hook or other instrument.

13 In addition, the State does not have to prove that
14 force was used to gain the entry. If a person enters a
15 building by using deception, a trick or a misrepresentation
16 to get consent to enter, then this entry would be without
17 consent.

18 Next, the State must prove beyond a reasonable doubt
19 that the Defendant intended to commit a crime, either a
20 felony or a misdemeanor, at the time of the entry. The mere
21 entry into a dwelling without consent is not burglary.

22 If the intent to commit a crime is formed after the
23 entry, it's not a burglary. On the other hand, if the
24 Defendant intended to commit a crime at the time of entry,
25 it is a burglary even if the intent was abandoned after the

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1 entry. It does not matter that the intended crime was not
2 completed. Intent may be shown by acts and conduct of the
3 Defendant and other circumstances from which you may
4 naturally and reasonably infer intent.

5 Finally, to prove burglary in the first degree the
6 State must prove beyond a reasonable doubt that either when
7 entering, or while in the dwelling, or when fleeing the
8 Defendant or an accomplice was armed or displayed a deadly
9 weapon. A deadly weapon, as I'll explain to you now and
10 perhaps later, is any article, or instrument, or a substance
11 which is likely to cause death or great bodily harm.
12 Whether an instrument has been used as a deadly weapon
13 depends upon the facts and circumstances.

14 An example of a deadly weapon, of course, would be a
15 pistol, or a shotgun, or rifle, a knife. A gun may be a
16 deadly weapon even if it's not operating.

17 When entering the building, or while in the dwelling or
18 when fleeing the Defendant or an accomplice caused physical
19 injury to anyone not participating, that would be the second
20 way that a crime of first degree burglary could be
21 established beyond a reasonable doubt.

22 Another method that could be used to establish burglary
23 in the first degree is that the Defendant entered or
24 remained in the dwelling in the nighttime. Nighttime is the
25 period between sunset and sunrise during which there's not

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1 enough daylight to recognize a person's face except by
2 artificial light or moonlight.

3 Next, each of the Defendants are charged with the crime
4 of armed robbery. In order to prove this offense the State
5 must prove beyond a reasonable doubt that the Defendant took
6 personal property from the person or presence of another
7 person. The property is in the presence of a person if it's
8 within that person's reach, inspection, or observation or
9 control so that the person could, if not overcome with
10 violence or prevented by fear, keep possession of that
11 property.

12 The State must also prove beyond a reasonable doubt
13 that the Defendant carried the property away intending to
14 permanently deprive the owner of the property and to keep
15 the property for the Defendant's own use. The slightest
16 removal of the property or the complete possession of the
17 property, even for an instant, by the Defendant is
18 sufficient to show a taking and carrying away of the
19 property. The taking and carrying away of the property must
20 have been done with violence or putting the owner of the
21 property in fear of violence.

22 Finally, the State must prove beyond a reasonable doubt
23 that the Defendant was armed with a deadly weapon during the
24 robbery. Again, a deadly weapon is any article or
25 instrument which is likely to cause death or great bodily

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1 harm. And a pistol would be considered a -- as an example
2 of a deadly weapon.

3 Finally, each of the Defendants is charged with
4 attempted murder. In order to prove this crime the State
5 must prove the Defendant attempted to kill another person
6 with malice aforethought, either express or implied.

7 Malice is hatred or ill-will or hostility toward
8 another person. It's the intentional doing of a wrongful
9 act without just cause or excuse and with the intent to
10 inflict an injury or under the circumstances that the law
11 will infer an evil intent.

12 Malice aforethought does not require that malice exist
13 for any particular time before the act is committed, but
14 malice must exist in the mind of the Defendant just before
15 and at the time of the act being committed. Therefore,
16 there must be a combination of the previous evil intent and
17 the act.

18 Malice aforethought may be expressed or inferred.
19 These terms do not mean different kinds of malice, but
20 merely the manner in which the malice may be shown to exist,
21 that is either by direct evidence or by an inference from
22 the facts and circumstances which are proved.

23 Expressed malice is shown when a person speaks words
24 which express hatred or ill-will for another or when the
25 person prepared beforehand to do the act which was later

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1 accomplished. Malice may be inferred from conduct showing a
2 total disregard for human life. Inferred malice may also
3 arise when the deed is done with a deadly weapon. And I've
4 explained to you what a deadly weapon is.

5 If facts are proved beyond a reasonable doubt,
6 sufficient to raise an inference of malice to your
7 satisfaction, this inference would be simply an evidentiary
8 fact to be considered by you, the jury, along with other
9 evidence in the case. And you may give it the weight that
10 you decide it should receive.

11 Now, ladies and gentlemen, if a crime is committed by
12 two or more people who are acting together, in committing a
13 crime the act of one is the act of all. A person who joins
14 with another to commit an unlawful act is criminally
15 responsible for everything done by the other person which
16 happens as a probable and natural consequence of the acts
17 done in carrying out the common plan and purpose.

18 For an example, two people could be guilty of the crime
19 of arson even though there was only one box of matches and
20 -- but two people were there and only one struck the match
21 and one lit the fire, both could be legally responsible for
22 that arson. If two or more people are acting together,
23 assisting each other in committing the offense, the act of
24 one is the act of all or as sometimes said, the hand of one
25 is the hand of all.

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1 Prior knowledge that a crime is going to be committed
2 without more is not sufficient to make a person guilty of
3 that crime. Mere knowledge that another person is going to
4 commit a crime, even if the Defendant is present when the
5 crime is committed, is not sufficient.

6 To convict a defendant as a principal, guilt as a
7 principal is shown by actual or constructive presence at the
8 scene as a result of prior arrangement. Therefore, a
9 finding of a prior arranged plan or a common scheme to -- is
10 necessary for a finding of guilt as a principal. The State
11 must prove beyond a reasonable doubt by competent evidence
12 the theory of the hand of one is the hand of all.

13 A principal in a crime is one who either actually
14 commits the crime or who is present, aiding, abetting or
15 assisting in committing the crime. When a person doesn't
16 act in the presence of or with the assistance of another,
17 the act is done by both where two or more acting with a
18 common plan or intent are present at the commission of a
19 crime. Does not matter who actually commits the crime. All
20 are guilty. As I said, the hand of one is the hand of all.

21 Presence at the commission of a crime means to be
22 sufficiently near to aid, and abet and assist in the
23 commission of the crime. However, mere presence at the
24 scene of a crime is not sufficient to convict one as a
25 principal on the theory of aiding and abetting.

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1 Intent is also a necessary element for there must have
2 -- be a common design or intent to commit the crime. And
3 the crime must have been pursuant thereto with the person
4 aiding and abetting by some overt act.

5 Intent means intending the results which actually
6 occurred, not accidentally or involuntarily. Intent may be
7 shown by acts and conducts of the Defendant by other
8 circumstances from which you may naturally and reasonably
9 infer intent.

10 The State must prove these elements, of course, beyond
11 a reasonable doubt. I stated to you that mere presence at
12 the scene is not sufficient to prove someone guilty of a
13 crime. A Defendant's presence where a crime is being
14 committed or mere association with the person who commits a
15 crime does not make the Defendant an accomplice or an aider
16 and abetter of the person committing the crime.

17 The burden is on the State to prove every element of
18 the crimes charged. If you find after reviewing all the
19 evidence that the State has proved that the Defendant was
20 only present at the scene of the crime and that the
21 Defendant had or the State has not proven beyond a
22 reasonable doubt any other participation in the crime, then
23 you must find the Defendant not guilty. The law is that
24 proof of -- at the scene of a crime is not sufficient to
25 find someone guilty.

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1 The Defendant has raised the defense of coercion or
2 duress. Coercion or duress is when a person makes another
3 person commit a crime against someone else's person or
4 property by the threat of immediate physical violence. The
5 coercion or duress must be present, imminent and of the type
6 to create a well-grounded fear of death or serious bodily
7 harm if the act is not done.

8 The fear of injury must be reasonable. Coercion or
9 duress is not a defense if there's any reasonable way other
10 than committing the crime for which the Defendant to escape
11 the threat of harm.

12 Defendant must prove the defense of duress by a
13 preponderance of the evidence. If you find the Defendant
14 was coerced into committing the crime, then, of course, you
15 would find the Defendant not guilty.

16 Madame Forelady, I have prepared verdict forms. I
17 believe they'll be self-explanatory for you. The verdict
18 forms are two pages for each Defendant. They have -- rather
19 than making four separate pages, I've put two of the
20 offenses on one page, two on the other. And as I stated to
21 you at the beginning, each of these charges must be
22 considered separate and distinct, one from another.

23 As to each of the Defendants there's a charge of
24 conspiracy and burglary in the first degree. There's a
25 charge of armed robbery, charge of attempted murder with a

CHARGE OF THE COURT

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1 choice of either guilty or not guilty based upon your
2 finding of the proof by the State.

3 There's no significance in the order in which guilt or
4 not -- guilty or not guilty is listed. One has to be listed
5 before the other. So you certainly should not take into
6 consideration the order in any way.

7 After you have determined each of these offenses as to
8 each of the Defendants, then, of course, you would check the
9 appropriate block, sign your name as Foreperson on behalf of
10 your fellow jurors and date it. And then we will receive
11 your verdict back in the courtroom.

12 Your verdict must be a unanimous verdict. All twelve
13 of you must agree upon that verdict. Your verdict cannot be
14 based upon sympathy, or passion, or prejudice, or emotion or
15 any other consideration not in evidence in the case.

16 I remind you, Madame Forelady, and ladies and
17 gentlemen, that you're certainly free to ask me any
18 questions relating to the law and the instructions that I've
19 given you now. Remember, it's impermissible for me to
20 answer any questions you may have about the facts of the
21 case. The facts have been presented. That's your duty and
22 yours alone to be the sole fact-finders.

23 I'm going to ask if you would now please retire back to
24 your jury room. Don't start discussing the case just yet.
25 There's a final matter of law that I need to take care of

CHARGE OF THE COURT

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1 with the attorneys.

2 After which, hopefully we'll be able to send the
3 verdict forms back with the evidence for you to review with
4 instructions then to begin your deliberations. But for
5 right now, don't start your deliberations. I'll call you
6 back in just a few moments. You may retire to your jury
7 room.

8 (Whereupon the jury exited the courtroom at 12:48 pm)

9 THE COURT: Any exceptions to the charge from the
10 State?

11 MS. SALISBURY: No exceptions from the State, Your
12 Honor.

13 THE COURT: From the Defense?

14 MS. GORTON: Judge, I need to inquire about the
15 reasonable doubt. Was your ruling earlier that you would
16 not give my requested instruction ---

17 THE COURT: I did give your -- I gave your -- your
18 requested instruction was the doubt for which you can give a
19 reason.

20 MS. GORTON: Reason to pause. Did you read that?

21 THE COURT: I charged the doubt for which you could
22 give a reason. Do you have other exceptions other than
23 that?

24 MS. GORTON: Did you read independent act?

25 THE COURT: I did.

1 MS. GORTON: All right. Then, no.

2 THE COURT: I think I -- the charge I had on reasonable
3 doubt is reasonable doubt is the kind of doubt that would
4 cause a reasonable person to hesitate to act. I think I
5 read that. I'm confident that I did. And I'm sure I read
6 the independent act ---

7 MS. GORTON: All right. Thank you.

8 THE COURT: --- from the other one 'cause I had it in
9 my notes.

10 MR. IANUARIO: I have no exceptions, Your Honor.

11 THE COURT: Okay.

12 MS. GORTON: Thank you.

13 THE COURT: All right. If y'all would make sure all of
14 the exhibits are together. And I'll give you a verdict
15 form. Y'all make sure all the exhibits that were in
16 evidence are going back. And there are the verdict forms.

17 (Pause)

18 (Whereupon all the exhibits were agreed upon by the
19 attorneys)

20 THE COURT: Everything there? Okay. Ms. Sims, if you
21 would take the verdict forms back with the exhibits. And
22 tell the jury they can begin their deliberations. I need to
23 have the two alternates, Mr. Reese and Mr. Watson, out here
24 before they start to deliberate.

25 (Pause)

1 THE COURT: Mr. Watson and Mr. Reese, thank y'all very
2 much for serving. Your fellow jurors survived. We didn't
3 need you after all. So you're free to go.

4 I'm sure you've ordered lunch. And you won't be able
5 to eat with your fellow jurors, but you can take it with you
6 if you want to wait for it or you can eat it back in one of
7 the rooms back there.

8 If you want to stay with us, we'd love to have you.
9 But you can't be back there with the first twelve jurors
10 now. You're welcome to come and go in the courtroom, if you
11 want to hang around or if you want to go home.

12 I don't know when we'll need you back. I think the
13 latest message is you need to call tonight after 6:00. Be
14 sure to do that. Just call that number that you have and
15 there'll be instructions about whether we'll be starting
16 another trial tomorrow or not. Thank you very much for your
17 service. I appreciate it.

18 MR. REESE: Thank you.

19 MR. WATSON: Thank you.

20 THE COURT: Mr. Dougherty will show you where you need
21 to be to get your lunch, okay?

22 (Whereupon the alternate jurors exited the courtroom)

23 THE COURT: All right. We'll be at ease til we hear
24 from our jury.

25 (Whereupon court was in recess at 12:54 pm)

1 (Whereupon the jury began deliberating at 1:02 pm)

2 (Whereupon court resumed at 2:16 pm)

3 THE COURT: Thank you very much, ladies and gentlemen.

4 All right. Ladies and gentlemen, we've received a note from
5 the Foreperson of the jury, a short note. It says elements
6 of all the charges in writing, please. It's a request.

7 I'm going to bring the jury out and tell them I'm not
8 going to be sending any written charges back with them
9 pursuant to my understanding of the law. But I'll be glad
10 to re-instruct them on the crime of conspiracy, the crime of
11 attempted murder, and the crime of armed robbery and the
12 crime of burglary in the first degree.

13 If they want to stay and listen to it or if they feel
14 like they have enough, then that's what I'll give them at
15 this time. Any comments from either side about my proposed
16 instruction to them?

17 MS. SALISBURY: No, Judge. I'd note for the record
18 that I don't have any objection to you sending back a
19 written version of your instructions, but that solution
20 suits me just fine.

21 THE COURT: Well, I don't know how the other side
22 feels, but as I understand the case law, that's not
23 encouraged to send a charge back. If y'all want to work out
24 an agreement on that, then that might be different. But I
25 -- my written charge is not necessarily legible to the jury

CHARGE OF THE COURT

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1 anyhow unless we do a lot of editing.

2 MS. GORTON: I was going to say, Judge, I wouldn't have
3 an objection as long as it was the whole charge package.

4 THE COURT: Well, what's written and what I said may be
5 different anyhow. Let's have our jury come in. I'm marking
6 this note as a Court exhibit.

7 (Whereupon Court's exhibit 2 was marked)

8 (Whereupon the jury entered the courtroom at 2:21 pm)

9 THE COURT: Madame Forelady and ladies and gentlemen,
10 you've requested the elements of the criminal charges. And
11 I'll be glad now to -- I can't give you a written copy of
12 them, but I'll be glad to go over any and all of those with
13 you. And I'll do so now. And I'll try to do it in a
14 concise way for you to understand.

15 The first charge that I'll go over is that of
16 conspiracy. And what must be proven by the State for this
17 charge, and again, always beyond a reasonable doubt, is that
18 the Defendant combined with one or more persons for the
19 purpose of committing an unlawful act or committing a lawful
20 act by an unlawful means.

21 There must be a mutual understanding, an agreement or a
22 common intention and plan. Mere passive knowledge of or a
23 consent to the criminal conduct of another is not enough to
24 make a person a conspirator. There must be guilty knowledge
25 and participation.

CHARGE OF THE COURT

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1 Similarly, the mere fact that a Defendant may have
2 associated with another person or met with another person,
3 discussed common aims and interests does not necessarily
4 establish proof of the existence of a conspiracy or that the
5 Defendant was involved in a conspiracy. On the other hand,
6 if -- it is not necessary that an agreement be a formal one,
7 that it be in writing, that the person -- the persons
8 involved hold a meeting and expressly state the terms of the
9 common plan or that the agreement be stated in words between
10 them.

11 The agreement of a criminal conspiracy may come into
12 being through an implied, mutual understanding. The
13 willful, intentional and knowing adoption by two or more
14 persons of a common plan is sufficient. No overt acts need
15 be shown to establish a conspiracy.

16 Conspiracy may be shown by circumstantial evidence and
17 the conduct of the parties. In order to convict a Defendant
18 of conspiracy the State must prove beyond a reasonable doubt
19 not only that the Defendant knew of the unlawful conduct,
20 but that the Defendant agreed to combine with the other
21 persons for the purpose of accomplishing the unlawful
22 conduct.

23 When two or more individuals conspire to commit a
24 crime, they're responsible for all incidental and
25 consequential acts growing out of that common design.

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1 However, conspirators are not responsible for an independent
2 act committed by another conspirator that was not part of
3 the common design.

4 Now, as to the charge for first degree burglary, to
5 prove this the State must prove, again, by the standard of
6 beyond a reasonable doubt that the Defendant entered a
7 dwelling without consent. A dwelling is any building or a
8 portion of a building in which a person ordinarily sleeps.

9 Now, to prove the Defendant entered a dwelling the
10 State does not have to show that the Defendant's entire body
11 entered the dwelling. The smallest entry is sufficient. It
12 could be part of the body such as a hand or a foot or even
13 an instrument such as a hook or any other instrument.

14 The State does not have to prove that the force was
15 used to gain entry. If a person enters a building by using
16 deception, or trick or misrepresentation to get consent to
17 enter, then that entry is without consent.

18 Now, again, for burglary the next thing the State must
19 prove beyond a reasonable doubt is that the Defendant
20 intended to commit a crime, either a felony or a
21 misdemeanor, at the time of the entry. The mere entry into
22 a dwelling without consent is not in and of itself a
23 burglary.

24 If the intent to commit a crime is formed after the
25 entry, it's not burglary. On the other hand, if the

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1 Defendant intended to commit a crime at the time of the
2 entry, it is burglary even if the intent was later abandoned
3 after entering the building. It does not matter that the
4 intended crime was not completed. Intent may be shown by
5 acts and conduct of the Defendant and other circumstances
6 from which you may naturally and reasonably infer intent.

7 The final element of proof for burglary in the first
8 degree the State must prove beyond a reasonable doubt at
9 least one of the following; first of all that when entering
10 while in the dwelling or while fleeing the Defendant or an
11 accomplice was armed or displayed a deadly weapon. I
12 explained to you that -- including examples of deadly
13 weapons would be a pistol.

14 Secondly, the State must prove in addition or either
15 number one or number two that when entering or while in the
16 dwelling or when fleeing the Defendant or an accomplice
17 caused physical injury to anyone that was not participating
18 in the crime.

19 Another way that this crime of burglary in the first
20 degree could be proven by the State would be that the
21 Defendant entered or remained in the dwelling in the
22 nighttime. Nighttime is the period between sunset and
23 sunrise during which there's not enough daylight to
24 recognize a person's face except through artificial light or
25 moonlight.

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1 The third offense charged is that of armed robbery.
2 The State must first prove beyond a reasonable doubt that
3 the Defendant took personal property from the person or the
4 presence of another person. Property is in the presence of
5 a person if it's within that person's reach, or inspection,
6 or observation or control so that the person could, if not
7 overcome with violence or prevented by fear, keep possession
8 of that property.

9 The State must also prove beyond a reasonable doubt
10 that the Defendant carried the property away intending to
11 permanently deprive the owner of the property and to keep
12 the property for the Defendant's own use. The slightest
13 removal of the property or the complete possession of the
14 property, even for an instant, by the Defendant is
15 sufficient to show a taking and a carrying away of the
16 property. Now, the taking and the carrying away of the
17 property must have been done with violence or putting the
18 owner of that property in fear of violence.

19 Finally, the State must prove beyond a reasonable doubt
20 that the Defendant was armed with a deadly weapon during the
21 robbery. Deadly weapon is any article, or instrument or
22 substance which is likely to cause death or great bodily
23 harm. And whether an instrument has been used as a deadly
24 weapon depends upon the facts and circumstances of the case.

25 Defendants also charged with attempted murder. In

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1 order to prove this crime the State must prove the Defendant
2 attempted to kill another person with malice aforethought,
3 that malice aforethought either being express or implied.

4 Malice is hatred or ill-will or hostility toward
5 another person. It's the intentional doing of a wrongful
6 act without just cause or excuse and with the intent to
7 inflict an injury or under circumstances that the law would
8 infer an evil intent.

9 Malice aforethought does not require that malice exist
10 any particular time before the act is committed, but malice
11 must exist in the mind of the Defendant just before and at
12 the time of the act being committed. Therefore, there must
13 be a combination of the previous evil intent and the act.

14 Malice aforethought may be expressed or inferred.
15 These terms, expressed or inferred, do not mean different
16 kinds of malice, but merely the manner in which the malice
17 may be shown to exist, that is either by direct evidence or
18 by an inference from the facts and circumstances which are
19 proved.

20 Expressed malice is shown when a person speaks words
21 which express hatred or ill-will for another or when the
22 person prepared beforehand to do the act which is later
23 accomplished. Malice may be inferred from conduct showing a
24 total disregard for human life. Inferred malice may also
25 arise when the deed is done with a deadly weapon. And I

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1 explained to you earlier what kind of instrument would be a
2 deadly weapon, an example of which would be a pistol.

3 If facts are proved beyond a reasonable doubt
4 sufficient to raise an inference of malice to your
5 satisfaction, this inference would simply be an evidentiary
6 fact to be considered by you, the jury, along with other
7 evidence in the case. And you can give it the weight that
8 you decide it should receive.

9 That is the law as to the particular offenses that have
10 been charged. I hope that helps you in your deliberations,
11 ladies and gentlemen. If I can help you in other matters of
12 the law, I'll be glad to do so. You may retire to your jury
13 room and continue your deliberations.

14 (Whereupon the jury exited the courtroom at 2:32 pm)

15 THE COURT: Any exceptions to the charge from the
16 State?

17 MS. SALISBURY: Nothing from the State, Your Honor.

18 THE COURT: From the Defense?

19 MR. IANUARIO: Nothing, Your Honor.

20 MS. GORTON: No.

21 THE COURT: All right. We'll be at ease til we hear
22 from our jury.

23 (Whereupon court was in recess at 2:33 pm)

24 (Whereupon court resumed at 2:48 pm)

25 THE COURT: The jury is deliberating now. I wanted to

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1 let all the parties know that I just received an emergency
2 call. My daughter and her family have been in an automobile
3 accident in North Carolina.

4 I'm going to be leaving to go check on them. Judge
5 Verdin, who is the Administrative Judge for General Sessions
6 purposes will handle the rest of the trial as far as any
7 questions from the jury or taking the verdict.

8 And she'll make the decision whether or not to let the
9 jury continue deliberating tomorrow or whatever. But she's
10 on down the hall and is ready to step in at any time we have
11 a verdict or need anything from the jury.

12 I wanted all of you to know that, but I'll be absent
13 for the rest of the day. Don't know about tomorrow, but if
14 it goes over til then, everything will be up to her to
15 continue working with the case for the rest of the
16 afternoon. Okay. Thank you very much.

17 (Whereupon court was in recess at 2:49 pm)

18 (Whereupon court resumed at 3:20 pm with Judge Verdin
19 presiding)

20 **THE COURT:** Thank y'all. Y'all be seated. All right.
21 It's my understanding that the jury has a verdict. Is there
22 anything we need to take up before we bring the jury back
23 in?

24 **MS. SALISBURY:** Nothing from the State, Judge.

25 **THE COURT:** All right. Anything from the Defense?

VERDICT OF THE JURY

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1 MR. IANUARIO: Nothing from me, Your Honor.

2 MS. GORTON: No.

3 THE COURT: All right, then. Thank you.

4 (Whereupon the jury entered the courtroom at 3:22 pm)

5 THE COURT: Ladies and gentlemen, of the jury, you
6 might have been a little bit surprised when you walked in to
7 see somebody other than Judge Welmaker here. I'm going to
8 tell you that he has had a personal emergency. He feels
9 like everything's going to be fine. But he has had a
10 personal emergency.

11 And never in his career has he ever had to ask anyone
12 to do this, but he had to ask me to be in here to receive
13 your verdict. I am -- my name is -- I don't know that I
14 introduced myself. So I will. My name is Letitia Verdin.
15 And I'm also a judge here in Greenville County.

16 It's my understanding that the jury's reached a
17 verdict. Is that correct?

18 MADAME FORELADY: You're right, Your Honor.

19 THE COURT: Would you, please, hand the verdict forms
20 to the bailiff.

21 MADAME FORELADY: Yes, ma'am.

22 THE COURT: The verdict forms appear to be in order.
23 Madame Clerk, will you publish them, please.

24 MADAME CLERK: Yes, ma'am. Your Honor, in the case of
25 the State of South Carolina versus De'Nia Zsirita On'Jean

VERDICT OF THE JURY

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1 Dawkins in the indictments of 2011-GS-23-8019, 8020, 8021
2 and 8022, we, the jury, unanimously find the Defendant,
3 De'Nia Zsirita On'Jean Dawkins, as to the charge of
4 conspiracy, guilty. As to the charge of burglary in the
5 first degree, guilty. As to the charge of armed robbery,
6 guilty. As to the charge of attempted murder, guilty.

7 In the indictments of 2011-GS-23-7990, 7991, 2011-97 --
8 excuse me, 9673A and 9676A, the State of South Carolina
9 versus Juwan Darnell Lomax, we, the jury, unanimously find
10 the Defendant, Juwan Darnell Lomax, as to the charge of
11 conspiracy, guilty. As to the charge of burglary in the
12 first degree, guilty. As to the charge of armed robbery,
13 guilty. As to the charge of attempted murder, guilty.

14 These are all signed by our Forelady, Elizabeth Klotz.
15 Ladies and gentlemen, if you agree these are the verdicts
16 you reached in your deliberation room, would you please
17 raise your right hand.

18 (Whereupon all jurors raised their right hand except
19 for one)

20 MADAME CLERK: All right. Sir?

21 THE COURT: I see. Sir? Sir? I didn't see you raise
22 your hand. Is this not your verdict?

23 (Whereupon the juror raised his right hand)

24 THE COURT: Oh, you did? I'm sorry.

25 MADAME CLERK: Thank you.

VERDICT OF THE JURY

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1 THE COURT: All right. That makes it then unanimous.

2 Could I ask again, I just -- just to be absolutely clear.

3 And I hate to put you on the spot. But if this is -- if

4 this is your verdict, if you will please signify by raising

5 your right hand.

6 (Whereupon all jurors raised their right hand)

7 THE COURT: All right. And it is unanimous. Thank

8 you. Thank you so much. Is there anything to take up from

9 the State before I release the jury?

10 MS. SALISBURY: No, Your Honor.

11 THE COURT: Any matters before I release the jury from

12 the Defense?

13 MR. IANUARIO: No, Your Honor.

14 MS. GORTON: No.

15 THE COURT: All right, then. All right. Ladies and

16 gentlemen, I thank you for your service. I'm going to step

17 back and speak to you very briefly, and then I'll be back in

18 the courtroom momentarily.

19 (Whereupon the jury exited the courtroom at 3:25 pm)

20 (Whereupon court was in recess at 3:26 pm)

21 (Whereupon court resumed at 3:29 pm)

22 THE COURT: All right. There is some good news about

23 Judge -- from Judge Welmaker. And that is that I think

24 initial reports were that everything was going to be fine

25 and they do think ultimately that things will be fine,

1 however, he felt like he needed to be there today.

2 Sir and ma'am, I think it would be inappropriate
3 because I did not hear this case for me to sentence you and
4 pass sentence on you in any way. I'm going to order that
5 you be held overnight to be brought back to this courthouse
6 tomorrow and sentenced by Judge Welmaker. All right.

7 I would imagine -- we'll say 10:00 tomorrow if that
8 turns out. If for some reason Judge Welmaker is unable to
9 do that, then his clerk will be in touch with you about
10 that. All right.

11 **MS. SALISBURY:** Thank you, Your Honor.

12 **THE COURT:** Thank you.

13 (Whereupon court was in recess at 3:30 pm)

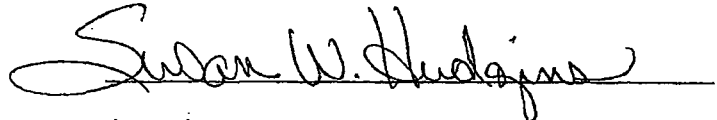
14 (End of requested transcript of record)

1 Certificate of Reporter

2 I, the undersigned, Susan W. Hudgins, Official Court
3 Reporter for the Thirteenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all the
6 proceedings had and evidence introduced in the trial/hearing
7 of the captioned case, relative to appeal, in the Circuit
8 Court for Greenville County, South Carolina, on the 9th -
9 11th day of April 2012.

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

12 October 10, 2012
13
14

15 
16

Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)

2011-GS-23-9676A, 9673A, 7990

PLAINTIFF,)

JULY 11, 2012

-VS-)

JUWAN DARNELL LOMAX,)

DEFENDANT.)

STATE OF SOUTH CAROLINA,)

PLAINTIFF)

2011-GS-23-8020, 8019, 8022, 8021

-VS-)

JULY 11, 2012

DE'NIA ZSIRITA ON 'JEAN
DAWKINS,)

DEFENDANT)

SENTENCING HEARING

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

KATRYNA SALISBURY, ESQUIRE
ATTORNEY FOR THE STATE

ROBERT IANUARIO, ESQUIRE
CASS GORTON, ESQUIRE
ATTORNEYS FOR THE DEFENDANTS

DANETTE P. HANKS
CIRCUIT COURT REPORTER

The State of South Carolina -vs- Juwan Darnell Lomax (2011-GS-23-9676A, 9673A, 7990)
The State of South Carolina -vs- De'Nia Zsirita On 'Jean Dawkins (2011-GS-23-8020, 8019, 8022, 8021)
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EXHIBITS

(NONE)

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The State of South Carolina -vs- De 'Nia Zsirita On 'Jean Dawkins (2011-GS-23-8020, 8019, 8022, 8021)
Sentencing Hearing

3

July 11, 2012

1

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had.)

4

THE COURT: This is the cases of State v.

5

Dawkins and State v. Lomax. We're here for a sentencing

6

after pretrial -- a pre-sentencing report was done by

7

Probation. It's been reviewed by the Court and certainly

8

each side has had an opportunity to review it. Is there

9

anything the State wishes to offer by way of sentencing

10

before I hear from the Defendants?

11

MS. SALISBURY: Very briefly, Your Honor. I

12

would note for the Court's information that I have not

13

been provided a copy of any pre-sentencing report. I

14

haven't had a chance to review it. I don't particularly

15

need it. I just wanted the Court to know that. I don't

16

have any specific knowledge about what Probation

17

recommended with respect to the sentencing of these

18

Defendants.

19

I would note for the Court's information that the

20

State's position on sentencing with respect to Mr. Lomax,

21

if the Court recalls, this trial was -- this case was

22

tried in two separate parts. These two Defendants were

23

tried first and the remaining fifth Defendant was tried

24

the next month after these two. And if the Court, again,

25

recollects how that happened, Mr. Lomax was not called to

1 testify in that case, and I wanted to share with the Court
2 the precise reason that the State made that strategic
3 decision. As the Court is aware, the State has the
4 ability to monitor phone calls made at the Detention
5 Center. And through the course of preparing for that
6 second trial, the State learned both from those phone
7 calls, as well as from the Co-Defendants that cooperated
8 in the first trial and were scheduled and did cooperate in
9 the second trial, that this Defendant, Mr. Lomax, was
10 actively attempting to thwart the prosecution of the
11 remaining fifth Defendant, and that's why Mr. Lomax was
12 not called to testify in that second case, because it was
13 the State's position he would actively assist the
14 remaining Defendant in somehow obstructing the State's
15 ability to prosecute that fifth Defendant.

16 With respect to Ms. Dawkins, I don't have any
17 specific input. I do believe there is a matter that we
18 have to address regarding Ms. Gorton's request for some
19 material about actual jail phone calls that happened after
20 the trial or perhaps during the course of these trials.
21 And so I'll let Ms. Gorton address that with the Court and
22 respond at the appropriate time. But with respect to the
23 specific sentencing, I don't have any specific input. I
24 would just remind the Court the nature of the crime, the
25 fact that it was a staged effort to invade the home of Mr.

The State of South Carolina -vs- Juwan Darnell Lomax (2011-GS-23-9676A, 9673A, 7990)
The State of South Carolina -vs- De'Nia Zsiritia On 'Jean Dawkins (2011-GS-23-8020, 8019, 8022, 8021)
Sentencing Hearing

5

1 Demetrius Benson and that Mr. Benson was in fact shot and
2 robbed inside his apartment that night.

3 That's all I have on that issue.

4 THE COURT: Okay. Thank you, Ms. Salisbury.

5 All right. Mr. Ianuario, be glad to hear from you
6 and certainly from Ms. Gorton, and your clients, as well,
7 if there's anything they would like to say.

8 MS. GORTON: Judge, if I may, before we proceed
9 to sentencing, due to the unusual circumstances that
10 occurred at the end of the trial when you were called
11 away, we never had the opportunity to go through our JNOV
12 motions for a new trial. I didn't feel it was appropriate
13 to do a JNOV in front of a judge who hadn't heard that.

14 THE COURT: All right.

15 MS. GORTON: I would like to just go through the
16 motions and do that so that the future actions will be
17 preserved for the record.

18 MR. IANUARIO: I would like to do the same, Your
19 Honor.

20 THE COURT: I recall three months ago I had to
21 leave for a family emergency while the jury was
22 deliberating. I think Judge Verdin took the verdicts. So
23 your motions for each of you are noted on the record and
24 respectfully denied based upon what I heard in the trial.

25 All right. Anything else I need to take care of?

1 I'll be glad to hear from either one of you.

2 MS. GORTON: Well, I popped in on Mr. Ianuario's
3 -- if we're going to talk about the sentencing, I have a
4 number of things I'm going to want to talk about. But
5 just in response to what Ms. Salisbury said, I would
6 remind the Court, who presided over Mr. Young's trial, I
7 believe, that Ms. Dawkins did come in and testify.

8 THE COURT: All right. You have the floor now.
9 Anything else you want to ---

10 MS. GORTON: Judge, we have a number of things,
11 and I'm not sure how you want to address it. We want to
12 address the sentencing and we want to call a number of
13 witnesses. There's a number of people who would like to
14 speak with you and talk to you about this.

15 THE COURT: I'll be glad to hear from them if
16 they'll just identify themselves and stand and make sure
17 they speak loud enough for the court reporter to get their
18 names. I'll be glad to hear from them.

19 MS. GORTON: Your Honor, who we have is Michael
20 Hutchinson. Mr. Hutchinson, would you stand up? He is
21 the stepfather of De'Nia Dawkins. Do you want me to go
22 through the list first?

23 THE COURT: No, ma'am. I'll be glad to -- they
24 may change their mind; I don't know. I'll be glad to hear
25 from them. If you'll just tell me what you have to say,

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1 sir.

2 MR. HUTCHINSON: I'm not her blood relative.

3 She's not my blood daughter. I got her when she was like

4 seven years old. And now she is my daughter and I love

5 her very much. I believe in her and she's a good young

6 lady. I mean, I can testify to the fact that this had to

7 be some sort of -- I don't understand what went wrong.

8 But she loves that guy, the Defendant. There's a picture

9 in my house right now in her own room taped to the back of

10 the door, a picture of her and him. That's all I can --

11 that's why I know there's some type of misunderstanding.

12 My baby wouldn't do, you know, the things that they're

13 saying that she did.

14 I just ask Your Honor to have mercy on her so that we

15 can, you know, have some sort of life after and so that

16 she can, you know, resume her life and maybe have a child

17 one day and teach her to just, you know, not do anything

18 she did and to get in trouble hanging around with the

19 wrong people.

20 MS. GORTON: Can you talk to the Court about

21 some of the work and the volunteer things and the things

22 that De'Nia ---

23 MR. HUTCHINSON: Yes. Just last year De'Nia

24 worked with Urban League. She volunteered there about six

25 and a half months. She tutored kids. She tutored kids in

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1 our old neighborhood. She does hair for girls that don't
2 have money to get their hair done; charges them ten or
3 fifteen dollars, whatever she's got just in products just
4 so that other people can have good self-esteem. That's
5 the type of person she is. That's the type of woman she
6 is. She's just a good-hearted young lady that got caught
7 up in the wrong thing at the wrong time.

8 MS. GORTON: There was some indication during
9 the trial about her educational background. Can you tell
10 the Judge a little bit about that.

11 MT. HUTCHINSON: Well, she went to college. She
12 finished up two years of college. She came back to
13 Greenville to go back to school there while we were
14 getting pretty much just funding. And we were going to
15 send her back when all this happened. And so she was
16 actually wanting to become a prosecutor. She loves the
17 law. She loves that. She loves that type of thing. She
18 wants to put people in the right places. She just is a
19 good-hearted, good-hearted girl. And I just hope and pray
20 that we don't punish her for something -- a mistake, a
21 mistake that just should not have been done. Obviously
22 she was caught up in the wrong thing at the wrong time.

23 THE COURT: Thank you, sir.

24 MS. GORTON: Mr. Allen. Your Honor, this is
25 Carl Allen.

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1 THE COURT: Yes, sir, Mr. Allen.

2 MR. ALLEN: Judge, if it please the Court, I
3 stand before you knowing De'Nia all of her life; knowing
4 her mother, as well, for multiple years, long duration. I
5 had the opportunity to interact with De'Nia. She's not a
6 stranger. She's not someone who I had the opportunity to
7 observe just on the periphery, but beneath the surface,
8 Judge, from her elementary start in school. She moved to
9 Marty Street, in that community, which is the community
10 that we originated from, as well.

11 And what we observed, Your Honor, I can tell you
12 that, of course, this situation does surprise all of us
13 when it comes to De'Nia and all of the folk in the
14 community, because it is, as the Court has observed within
15 the pre-sentence report, it is something out of character
16 where there's no warnings as it relates to her prior
17 history. There appeared to be a shoplifting would be the
18 only thing, at Sears. The situations that -- you watch a
19 car go from zero to sixty on the commercials. She went
20 from zero to sixty in terms of the seriousness and the
21 nature of offenses for which she found herself before you
22 all.

23 Judge, that is out of character for her. The things
24 we had observed and we know her and we're in a position to
25 tell the court quite candidly and honestly of that. What

1 I also want to indicate to the Court is that in my
2 observations of her, interactions, whether it be car-
3 pooling to elementary school, whether it be on the trips
4 that went to Myrtle Beach and things of that nature, she
5 is kind-hearted. And the thing most compelling about her,
6 she was always the smallest kid in the group and was a
7 follower, not someone who will take the lead. And we
8 can't help but think that perhaps, Your Honor, that as we
9 review these facts I understand that there's some dispute,
10 but the smallest kid involved in this and not being a
11 leader of a type, you wonder how she -- character-wise,
12 how she got from that zero to sixty point.

13 Judge, what we respectfully request of the Court is
14 that you take into consideration our knowledge of her,
15 knowing her genuinely, our knowledge of giving you the
16 make-up of the child that grew up, her involvement in the
17 community, as you heard about the Urban League, as you
18 heard about helping some of the least of these; that's the
19 nature of her heart. How she got involved with and fell
20 in love with this young man and at that point the
21 introduction into all of the things that went along with
22 it, I'm saying to the Court that I think it was more of a
23 situation -- isolated situation for De'Nia. She is a
24 salvageable young lady. She is not a person of ill-will.
25 You know, I think she's learned her lesson.

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1 As you look in the report, of course, Your Honor,
2 from law enforcement's input, you know, it does not
3 surprise me in subsection G about their request or them
4 indicating the minimum type of sentence. Judge, the
5 minimum sentence in this appears to be one that's going to
6 be way harsh, but we understand -- we just want the Court
7 to be as merciful for her as possible to show her as much
8 mercy. I think you'll have a salvageable person once she
9 gets out. But I want the Court to know that it's
10 isolated. We've known her all of her life. We've seen
11 her grow up from a little child to where she is now. Her
12 siblings are doing great. That's the character that she
13 had. And this isolated incident has put her in a very
14 serious situation. Thank you, Your Honor.

15 THE COURT: Thank you, Mr. Allen.

16 MS. GORTON: Thank you. Your Honor, and on that
17 note, I would ask her sibling, Marquis Dawkins, to stand.
18 I think he also wanted to speak with you.

19 THE COURT: Yes, sir. If you would state your
20 name, please, for the record.

21 MR. DAWKINS: Marquis Dawkins.

22 THE COURT: All right, sir.

23 MR. DAWKINS: My sister -- this is something
24 that's out of character. Out of everybody here, I can
25 safely say I've known her for her whole life. I'm seven

1 years apart from her. The only time I've ever been away
2 from my sister is when I was in the Air Force and that's
3 the hardest time I've ever been through. We've been two
4 peas in a pod. We were raised in a house where everything
5 we needed we had, from my parents, my grandparents.
6 Raised in church since we were young. And seeing her now
7 like this has weakened me and my family knowing that
8 something like this is happening. De'Nia is not this
9 person that we know of. She is the complete opposite as
10 far as community work, as far as school. She's a loving
11 aunt to my three year old daughter and my eight year old
12 stepdaughter and my fifteen year old stepdaughter. She
13 has tutored my stepdaughter when it came to problems in
14 school, math and reading. She's just the type of person
15 that even when -- she's younger than me, but when I needed
16 somebody to talk to, she was always there for me, and vice
17 versa. And this is something that nobody likes to see.
18 And I just ask that you have mercy on her. And that God
19 sees all things as possible.

20 THE COURT: Thank you, Mr. Dawkins.

21 MS. GORTON: Judge, we also have Lavinia
22 Robinson. She's a pastor and she's here to speak with the
23 Court.

24 THE COURT: Yes, ma'am. If you'd state your
25 name, please.

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1 MS. ROBINSON: I'm Pastor Lavinia Robinson. I'm
2 the Tree of Life Baptist AME -- Tree of Life AME Baptist
3 Church. And when I heard this, my mind could not
4 correlate the things that I was hearing because it did not
5 fit her character. I was assistant pastor at the church
6 that she was going to before I became pastor of the church
7 I am now. And De'Nia was always one of the kids that we
8 could call upon and she was ready to participate. When I
9 became pastor at the church I am now, we had a block party
10 and we had a lot of things going on. I called De'Nia, I
11 said, De'Nia, I want you to do a praise dance. And she
12 said, oh, I'll be glad to. She got a bunch of her friends
13 together and some of the girls there at our church and she
14 did it.

15 I still can't absorb what was going on. I don't know
16 the young man. I do know some of his people. And I'm
17 sure he probably got out there and got with some of the
18 wrong people, too. We are always -- our judgment makes us
19 who we are. We have to be able to observe what's going
20 on. Not only -- we make bad friends. When in fact, most
21 of the time we only have one real good friend. We have a
22 lot of acquaintances. And young people have to learn the
23 difference between friends and acquaintances. Friends
24 will stick with you no matter what's going on.
25 Acquaintances, when things get rough, they get going.

1 But I've known De'Nia for a long time. I've known
2 her mother. I've known her grandmother for a long, long
3 time. I've known all her family, and it's just not like
4 De'Nia. I don't want to get churchy, but I want you to
5 look at the facts, look at the character, and judge her as
6 God is going to judge us. But this young lady is part of
7 my heart. When I heard this, I said, no, I don't believe
8 it. I wasn't there to see it. And I just do not believe
9 it. I still can't believe it. I still can't believe it.
10 Now that I'm here hearing all of this, it's just not
11 registering in my mind. I would hate to be in your shoes
12 to try to judge this young lady, but I know that that's
13 what you have to do.

14 But remember mercy, remember grace for both of these
15 young people. They've got a lot of living to do. And I
16 pray that some lessons have been learned by them because
17 their families are good people. I know this family is
18 good people. And we can just be influenced by things that
19 hurt us. Very, very strong influences. I'm not going to
20 start preaching. Don't worry, Your Honor, this is your
21 court. But if you come to Tree of Life, I'll preach to
22 you. But I just want you to remember mercy and grace,
23 which we all need in these terrible times.

24 Thank you very much.

25 THE COURT: Thank you, Pastor Robinson.

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1 MS. GORTON: Judge, I guess that leaves my
2 argument. I now would ask you to follow the
3 recommendation of Probation, fifteen year minimum
4 mandatory. She's twenty-one years old. That puts her at
5 thirty-six. When you're talking about somebody who has
6 been so involved in children, so involved in family, to go
7 above that, you take away her ability to have a family in
8 the future. And I would ask you to follow the
9 recommendation. I would ask you to consider that she did
10 come and testify against Raymond Young, which was a
11 terrifying experience for her. You were well aware, based
12 on what Ms. Salisbury told you, that Mr. Young was still
13 exercising his power from the jail. You're aware that
14 people were still involved in trying to save him. And she
15 came and she testified. And I would ask you to take that
16 into account.

17 THE COURT: Thank you, Ms. Gorton.

18 Mr. Ianuario.

19 MR. IANUARIO: First off, Your Honor, I've not
20 received a copy of the recommendation from Probation. I
21 would ask if I can just see that for a brief moment and
22 then proceed.

23 THE COURT: Ms. Gorton, did you get a copy?

24 MS. GORTON: I got a copy of mine, Your Honor,
25 but mine only pertained to ---

1 THE COURT: Yeah. But I'm just wondering why
2 the others didn't get a copy.

3 MR. IANUARIO: If I may, just one moment, Your
4 Honor. I'm ready, Your Honor.

5 THE COURT: All right, sir, be glad to hear from
6 you and your client and anyone else that would like to
7 address the Court.

8 MR. IANUARIO: Just like we had with De'Nia, we
9 also have some members from Juwan's family and members of
10 the community that would like to speak. I'd like to ask
11 you to just hear them out. The first is Lena Dillard, his
12 mother.

13 THE COURT: If you'd stand and please state your
14 name for the record.

15 MS. DILLARD: My name is Lena Dillard.

16 THE COURT: All right, Ms. Dillard.

17 MS. DILLARD: I am Juwan's -- Your Honor, I am
18 the mother of Juwan Lomax. Your Honor, I -- well, when I
19 was pregnant with Juwan, Juwan was -- he was -- our pastor
20 had prophesied over me and she said, that child that
21 you're carrying is a gifted child. Your Honor, when he
22 was five years old, all he wanted for Christmas was music
23 instruments. Other kids would want a football or anything
24 else. But all he wanted was instruments. And he was
25 singing in the choir in church. He was playing the --

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1 he's been playing the drums, Your Honor. He sings. He do
2 his own music. And some of his people that he was singing
3 with are here that he was working in the studio with.

4 I ask that the Court would have mercy on him. He has
5 his sister here. It's just the two of them. It's been
6 just a little bit hard for us, but -- because I've never
7 had to go through anything like this. I was married and I
8 divorced in 2000. But as a single mother, I tried to do
9 the best that I could in raising him. Your Honor, we
10 can't choose the people that we be with, but I tried to
11 always be there and tried to see -- tried to do what -- I
12 tried to see where he was going and what he was doing.

13 Your Honor, I would send him to school and wish the best
14 for him. He was trying to get his GED. He had got signed
15 on with a music recording, Universal. His managers, they
16 were here the last time we was here in Court. They
17 couldn't be here today due to, I guess, the gas prices.
18 But Your Honor, my child that I raised, along with his
19 sister and my grandkids, I ask that the Court would have
20 mercy on him, where he would finish his education and go
21 on with his music and do what God would have him to do.
22 Not man, but what God would have him to do. Your Honor, I
23 ask that the Court would see mercy on him today. Thank
24 you.

25 THE COURT: Thank you, Ms. Dillard.

1 MR. IANUARIO: Would anyone else like to speak
2 for him?

3 THE COURT: Yes, sir, state your name for the
4 record, please.

5 MR. DILLARD: My name is Demetrius Tyrone
6 Dillard.

7 This is my nephew, my sister's son. I watched him
8 grow up. He's a good kid. He made a bad choice. I made
9 bad choices myself. I did time myself. But through the
10 grace and mercy of God, my mother and my family, it
11 changed me. It changed me. So I know it's possible. It
12 changed me overnight. It's not about me, but I want to
13 share a little bit. I did time; I made some bad choices.
14 Now I'm on my own; I own my own barbershop. So I know
15 what God can do and loved one can help.

16 Juwan is a fine young man. He made bad choices. I
17 called him several times. I tried to encourage him. And
18 I'm still going to encourage him, regardless of what
19 decision that's been made. But I pray that you have mercy
20 upon both of these young people. They made bad choices.
21 But that don't make who they are. They did what they did,
22 but that don't make who they are. That ain't who they
23 are. And I hate that they made that decision.

24 Judge, and the lawyers and whatnot, if y'all can just
25 have mercy upon these young people. I know that change

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1 can come about because I am the one that it took place in.
2 So if y'all would please have mercy upon him. But Juwan
3 and Ms. Dawkins, I love y'all. And y'all just keep your
4 head up, because God's going to make a way of out of this.
5 It will happen. Thank you, Your Honor.

6 THE COURT: Thank you, Mr. Dillard.

7 MR. IANUARIO: And another representative from
8 the Urban League to speak on Juwan's behalf.

9 MS. BASS: Good morning, Your Honor. My name is
10 Barbara Bass with the Urban League. Juwan actually made
11 steps and efforts to enroll in the program. Coming into
12 the program is not necessarily an easy process and very
13 in-depth. It requires you to go through testing; so much
14 documentation to kind of prove your eligibility. And he
15 held fast through all of that. Because at times we go
16 back and we say, we need additional information; he did
17 that. Coming into the program, one of the things we
18 recognized is that he needed to work on his basic skills
19 before we could really move forward in his plan, helping
20 him get his GED. And so he had to put in some effort into
21 working on those math and those reading skills. And I'd
22 love to say he did that. And you know, we had some
23 conversations about the need to do so and he was moving
24 forward toward self-correction. Because in the program,
25 we hold self-accountability as really important, because

1 it's really not what we do there. And I would like to say
2 that the Urban League stands open and committed to working
3 with him because even throughout this whole process, we
4 have not closed his case. And the goal was for him to
5 first show that he's really committed by working on those
6 skills and when he's able to show, demonstrated, through
7 an objective assessment that he's really showed some
8 improvement, that we're going to help him in terms of GED
9 classes, get his GED, involving the school. Also help him
10 be able to define his career goals and help him find
11 employment.

12 THE COURT: Thank you, ma'am.

13 MR. IANUARIO: Anyone else like to speak on
14 Juwan's behalf?

15 THE COURT: Your name, please. If you would
16 state your name.

17 MS. DILLARD: Kamica Dillard.

18 THE COURT: All right, Mr. Dillard.

19 MS. DILLARD: I am Juwan's second oldest cousin.
20 I have watched my cousin evolve from a little boy into a
21 grown man. I've watched his changes from him not being
22 able to take responsibility for things that he has done,
23 to taking responsibility. My only request is that the
24 Court will have mercy on him. I've watched him just
25 become who he is, the musical talent within him. I've

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1 watched him through school. I've watched all his life.
2 And I am very proud of my cousin. I'm not proud of the
3 decisions that he has made, but I'm very proud to see him
4 changing, even the minor steps of him getting into Urban
5 League to show the Court today that he was willing to
6 change. So I ask that the Court will have mercy on him.

7 THE COURT: Thank you, Ms. Dillard.

8 Yes, ma'am.

9 MS. GORTON: I'm sorry, Judge. We had asked
10 some representatives of the Urban League to come and speak
11 on De'Nia's behalf. I wasn't aware that she was here. I
12 would just ask that she be recalled to speak to De'Nia.

13 THE COURT: If you have anything you wish to add
14 to ---

15 MS. WEST: Well, actually, De'Nia came to Urban
16 League via -- being referred to complete community
17 service. And I'm the coordinator for the Urban League for
18 that. So she came to the Urban League and we assigned her
19 to -- at the time to Urban League -- Urban Achievers
20 Program to work with after-school kids, primarily
21 elementary aged school kids. I do know that she
22 successfully completed her community service and that the
23 relationship was such with the Director that as she
24 continued to work with De'Nia that actually I think they
25 offered her a part-time job.

1 Now, beyond that -- and I think everything that I
2 saw and knew of her ended on a positive note. But I'm not
3 the person that worked directly with her, but I can attest
4 to those things.

5 THE COURT: Okay. Thank you. Mr. Ianuario,
6 anything you want to state to me?

7 MR. IANUARIO: Your Honor, I'd personally just
8 like to point out he's wearing red because there's a
9 housing issue due to the nature of the case and
10 circumstances surrounding it. He has not been a difficult
11 inmate in any way, shape or form. If you also look
12 carefully, he's got a bible in the front seat -- in the
13 front pocket of his uniform here.

14 I've spoken with Juwan several times in the past few
15 months and I understand that he's been found guilty of
16 what he's done and he has a sentence ahead of him. But if
17 the purpose of sentencing is rehabilitation, I don't think
18 we need to go above and beyond the mandatory minimum in
19 order to do that. He comes from a wonderful family with
20 no history of any sort of issue. No history of law
21 breaking. You know, they're educated. Ms. Dillard has
22 been a wonderful mother and tries to provide what's best
23 for her children. Juwan was on the track of a wonderful
24 and bright future; and unfortunately, like De'Nai's father
25 said, in a few short months things just went crazy. He

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1 got caught up with a bad group and unfortunately made some
2 decisions which led to us being here today. I believe
3 that just simply by watching the conduct of Juwan here
4 today, and his family, that we can really show remorse for
5 the actions that have taken place.

6 And again, I'd like to remind you that he was not a
7 gunman. His job was to simply wait in the vehicle. He
8 didn't know everything that was going to take place and he
9 didn't understand everything that was going on. I'd just
10 simply ask when it comes time to determine his sentence,
11 again, I believe the minimum -- mandatory minimum would
12 serve the needs of the State and rehabilitate Juwan. And
13 I'd really like to see him get out while he's young enough
14 to have a career ahead of him, a life, a future. He
15 hasn't had children yet. He's played by the rules by all
16 accounts, except for this instance. And I just hope and
17 pray that the Court would allow him to have some semblance
18 of a life left by giving him the mandatory minimum and
19 nothing more. Thank you, Your Honor,

20 THE COURT: Thank you, Mr. Ianuario.

21 These are difficult cases when you have young people
22 with such potential, such family support. We celebrated
23 our independence and our freedom a week ago today. Now
24 I'm tasked with the responsibility of depriving two young
25 people full of potential of their freedom. But let me

1 remind you that there's so many folks walking around the
2 streets who are in prisons in different causes. Perhaps,
3 as your uncle expressed, there's a lot of folks behind
4 bars that find real freedom. I hope y'all are able to do
5 that during the course of your incarceration.

6 Okay. This is the case of De'Nia Dawkins, case
7 number 2011-GS-23-8022, the sentence of the Court is the
8 Defendant be committed to the State Department of
9 Corrections for a period of fifteen years. Case 8019 and
10 8020, fifteen year sentences concurrent. 8021, a five
11 year sentence to be concurrent.

12 On Mr. Lomax, case 2011-GS-23-9676A, the sentence is
13 a fifteen year term of confinement to the South Carolina
14 Department of Corrections. 7991, 9673A, fifteen year
15 sentences concurrent. Case 7990, a five year sentence
16 concurrent.

17 Wish the very best for both of you and your families.

18 We'll take a brief recess before we have our jury
19 come back.

20 MS. GORTON: Judge, I had a couple more motions.
21 Do we need to ---

22 THE COURT: I thought those had already been
23 heard. We've got a jury waiting. I thought those were --
24 do they need to be heard by me or can they be heard
25 Friday? I've got revocations. I thought these were

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1 scheduled a month or so ago. I thought they had already
2 been heard.

3 MS. GORTON: It was the jail calls that was
4 scheduled a month ago and the trial was still pending and
5 I understood that Ms. Salisbury did not want those things
6 being released while Mr. Raymond Young was still pending
7 trial. I knew we had this coming so I said we could just
8 continue it. I think by agreement we did that.

9 THE COURT: Is there anything that needs to be
10 heard by a judge? I know Judge -- I guess Judge Miller
11 will be hearing motions Friday.

12 MS. SALISBURY: Judge, the only motion that I've
13 received is a post-trial motion to compel. Obviously, I
14 take issue with even the mechanism by which the motion to
15 compel even exists after trial. But it was scheduled on
16 the docket and I believe that after this Court order,
17 whichever Court it was -- in front of whom it was
18 scheduled directed that it be handled at the sentencing
19 hearing.

20 MS. GORTON: I also had a motion to exceed fees.
21 Frankly, Judge, I don't care whether you hear it or
22 another judge hears it.

23 THE COURT: Well, I don't want to belabor
24 whatever motions you have, but I do have a jury waiting on
25 me. I told them I'd be brief. We need to get the trial

1 going. Can you come back this afternoon or Friday we
2 could try to hear it.

3 MS. GORTON: You tell me when and I'll be here.

4 THE COURT: How many motions are there?

5 MS. GORTON: Just the two, the motion to compel
6 and the motion to exceed the fees.

7 THE COURT: I don't know that I ever saw
8 anything except that one motion to compel. I don't know
9 where the others are. If you can give me copies of them.
10 If y'all can't work those out, then check with us. If the
11 jury is out deliberating, I'll be glad to hear them.

12 MS. GORTON: I don't think she can do anything
13 on the motion to exceed fees.

14 THE COURT: Well, on the other one to compel.
15 If y'all can work those out. I can hear that without an
16 argument. If you'll just submit it to me I'll be glad to
17 review it.

18 MS. GORTON: Okay.

19 THE COURT: Okay. Let's take a ten minute break
20 and then we'll have our jury in.

21

22 (END OF REQUESTED TRANSCRIPT OF RECORD)

The State of South Carolina -vs- Juwan Darnell Lomax (2011-GS-23-9676A, 9673A, 7990)
The State of South Carolina -vs- De'Nia Zsirita On 'Jean Dawkins (2011-GS-23-8020, 8019, 8022, 8021)
Sentencing Hearing

27

CERTIFICATE OF REPORTER

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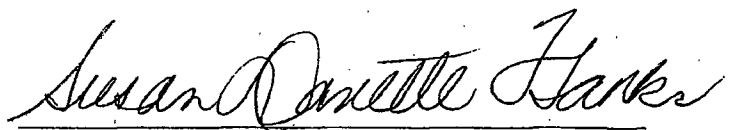
19

I, the undersigned Danette P. Hanks, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 11th day of July, 2012.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

September 14, 2012



Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

1-2011-103828 07-21-2011 1555 HOURS

State 13

I, JUWAN DARNELL LOMAX do hereby give freely and voluntarily this statement to
MICHAEL E. FORTNER and

who have identified themselves to me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement.

I am 18 years old, and I reside at: GREENVILLE, SC 29611, (C)

I have a 11TH grade education, and I can read and write.

ABOUT A MONTH AGO I AND TWO OTHER PEOPLE WERE IN MY CAR. IN THE OTHER CAR WAS THREE OTHER PEOPLE. I DON'T KNOW WHAT THE OTHERS' REAL NAMES ARE. ONE OF THE PEOPLE IN THE OTHER CAR IS THE TRUE DISCIPLE OF THE G'S. WE WENT TO SOME APARTMENTS IN TAYLORS. I DON'T REMEMBER WHERE THEY ARE, I JUST DROVE. WE WENT OVER THERE TO TRY AND GET A LICK. IT WAS ONE OF THE PEOPLE IN MY CAR'S IDEA. WE ALL WENT OVER THERE AND TWO PEOPLE IN MY CAR WENT INTO THE HOUSE AND THEN THE OTHERS GOT OUT OF THE OTHER CAR. IT WAS SUPPOSED TO BE LIKE A SET UP. IT WAS THREE PEOPLE THAT WENT INSIDE TO DO THE ROBBERY. THEY WENT IN ABOUT TEN TO FIFTEEN MINUTES AFTER THE FIRST TWO WENT INSIDE. THEY WENT INSIDE AND THE FIRST TWO CAME OUTSIDE AND THEY GOT IN MY CAR. WE THEN LEFT. THAT WAS IT. THEY WERE TALKING ABOUT HOW THEY CAME UP INSIDE THE HOUSE.

THEY WERE TALKING ABOUT HOW THEY HOPED THE DUDE GOT SHOT. I TOLD THEM THAT I HEARD THE SHOT. ONE PERSON WAS SAYING SOMETHING ABOUT SOMEBODY WAS IN THERE SHOOTING. WHEN WE LEFT FROM THERE WE WENT TO SOMEONE ELSE'S HOUSE. I THINK THAT PERSON LIVES IN A TRAILER PARK ON OLD GROVE RD.

Nothing to add to this statement

END OF STATEMENT

I have read the above statement of 1 pages and it is true and correct as best I recall.

WITNESS:-

Michael E. Fortner

Juwan Lomax

I HAVE RECEIVED A COPY OF THIS STATEMENT

Juwan Lomax

Sworn before me this _____ day of _____ 19 _____

NOTARY PUBLIC FOR SOUTH CAROLINA



WITNESSES

Michael Fortner

Greenville County Sheriffs Office

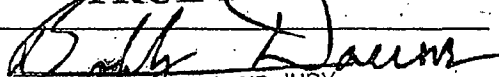
7/21/2011

ARREST WARRANT NUMBER

J992280

ACTION OF GRAND JURY

TRUE BILL



FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-23-

KBS

009650

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2011

THE STATE

vs.

JUWAN DARNELL LOMAX

Indictment for

0186

POSSESSION OF MARIJUANA WITH INTENT TO
DISTRIBUTE

VIOLATION § 44-53-0370

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

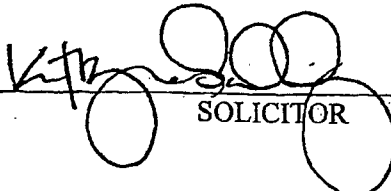
INDICTMENT FOR
POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

At a Court of General Sessions, convened on DEC 20 2011 the Grand Jurors of Greenville

County present upon their oath:

That JUWAN DARNELL LOMAX did in Greenville County, on or about the 21st day of July 2011, possess with intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Marijuana, a controlled substance, such possession not having been authorized by law. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

Michael Fortner

Greenville County Sheriffs Office

7/27/2011

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

DOB: 04-25-1993 B/M SSN: 250-91-8431

ACTION OF GRAND JURY

TRUE BILL

Billy L. Davis

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-23-
KBS

009672A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2011

THE STATE

vs.

JUWAN DARNELL LOMAX

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

[Signature]

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on

DEC 20 2011

the Grand Jurors of Greenville

County present upon their oath:

That JUWAN DARNELL LOMAX did in Greenville County, on or about the 15th day of July 2011, willfully and unlawfully enter the dwelling of CALVIN YOUNG located at , without consent and with the intent to commit a crime therein, and the burglary was accompanied by circumstances of aggravation, to wit: armed with a deadly weapon, and/or displayed what was or appeared to be a firearm. This is in violation of §16-11-0311 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

B. A. Brown

Greenville County Sheriffs Office

7/29/2011

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

DOB: 04-25-1993 B/M SSN: 250-91-8431

ACTION OF GRAND JURY

TRUE BILL



Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:DOCKET NO. 2011-GS-23-
KBS

009673A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2011

THE STATE

vs.

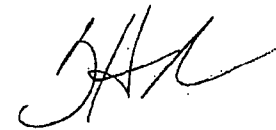
JUWAN DARNELL LOMAX

Indictment for

✓ 3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029



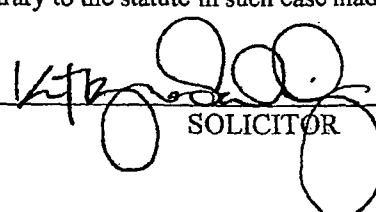
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on **DEC 20 2011** the Grand Jurors of Greenville
County present upon their oath:

That JUWAN DARNELL LOMAX did in Greenville County, on or about the 3rd day of June 2011,
unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Demetrius Benson. This
is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
 STATE VS.
Juwan Darnell Lomax
 AKA:
 Race: BLACK Sex: M Age: 18
 DOB: SS#
 Address:
 City, State, Zip: Greenville
 DL#: SID#:

INDICTMENT/CASE#: 2011GS2309673A
 A/W#: 2011GS2309673A
 Date of Offense: 6/3/2011
 S.C. Code § : 16-03-0029
 CDR Code #: 3410

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: ATTEMPTED MURDER

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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

Attorney: Salisbury, Katryna Bevis 734991 SC Bar# 734991 Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2-11-12
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Recipient:

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

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

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

Clerk of Court/ Deputy Clerk Paul B. Wickman
 Court Reporter: S. Hudgins
 SCCA/217 (03/2011)

Presiding Judge
 Judge Code: 2137
 Trial Sentence Date: 4-11-12
 Sentence Date: 7-11-2012

WITNESSES

B. A. Brown

Greenville County Sheriffs Office

7/29/2011

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

DOB: 04-25-1993 B/M SSN: 250-91-8431

ACTION OF GRAND JURY

TRUE BILL

Bobby L. Damm

FREEMAN OF THE COURT

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-23-

KBS

009676A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2011

THE STATE

vs.

JUWAN DARNELL LOMAX

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY FIRST DEGREE

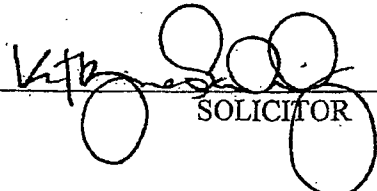
At a Court of General Sessions, convened on
County present upon their oath:

DEC 20 2011

the Grand Jurors of Greenville

That JUWAN DARNELL LOMAX did in Greenville County, on or about the 3rd day of June 2011, willfully and unlawfully enter the dwelling of DEMETRIUS BENSON located at
without consent and with the intent to commit a crime therein, and the burglary was accompanied by circumstances of aggravation, to wit: the entering and/or remaining did occur during the nighttime hours, and/or armed with a deadly weapon, and/or displayed what was or appeared to be a firearm. This is in violation of §16-11-0311 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville

STATE VS.

Juwan Darnell Lomax

AKA:

Race: BLACK Sex: M Age: 18

DOB: SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: BURGLARY 1ST DEGREE

INDICTMENT/CASE#: 2011GS2309676A

A/W#: 2011GS2309676A

Date of Offense: 6/3/2011

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Salisbury, Kathryn Bevis

73909
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ca \$

Proviso 90.5 (SCCJA Surcharge) \$5. \$ 5

3% to County (if paid in installments) \$

TOTAL \$

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning _____

\$ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Paul B. Wickensmeyer

Court Reporter:

S. Hudgins

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2137

Sentence Date: 4-11-12

Sentence Date: 7-11-2012

WITNESSES

B. A. Brown

Greenville County Sheriffs Office

7/29/2011

ARREST WARRANT NUMBER

J992551

ACTION OF GRAND JURY

TRUE BILL

B. A. Brown

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-23-

KBS

007990

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2011

THE STATE

vs.

JUWAN DARNELL LOMAX

Indictment for

0049

CONSPIRACY

VIOLATION §16-17-0410

RECEIVED

OCT 27 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

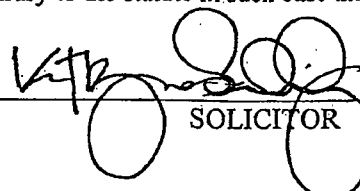
INDICTMENT FOR
CONSPIRACY

At a Court of General Sessions, convened on DEC 20 2011 the Grand Jurors of Greenville

County present upon their oath:

That JUWAN DARNELL LOMAX did in Greenville County, on or about the 3rd day of June 2011, willfully and unlawfully combine with RAYMOND YOUNG, and/or TRA VIS D. WARE, and/or JOSHUA A. CLINE, and/or DENIA Z.O.J. DAWKINS for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: ARMED ROBBERY. This is in violation of §16-17-410 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)
STATE VS.)
Juwan Darnell Lomax)
AKA:)
Race: BLACK Sex: M Age: 18)
DOB: SS#)
Address:)
City, State, Zip:)
DL#: SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2307990
A/W#: J992551
Date of Offense: 6/3/2011
S.C. Code § : 16-17-0410
CDR Code #: 0049

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: CONSPIRACY

☒ CONVICTED OF or ☐ PLEADS

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

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

ATTEST: 73909
Salisbury, Katryna Bevis SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____

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

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

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

Clerk of Court/ Deputy Clerk Paul B. Wickham
Court Reporter: S. Hudson
SCCA/217 (03/2011)

Presiding Judge _____
Judge Code: 2137
Tol Sentence Date: 4-11-12
Sentence Date: _____

WITNESSES

B. A. Brown

Greenville County Sheriffs Office

7/29/2011

ARREST WARRANT NUMBER

J992548

ACTION OF GRAND JURY

TRUE BILL

Bobby Lamm

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-23-

KBS

007991

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December TERM 2011

THE STATE

vs.

JUWAN DARNELL LOMAX

Indictment for

0139

ARMED ROBBERY

VIOLATION §16-11-0330

RECEIVED

OCT 27 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on

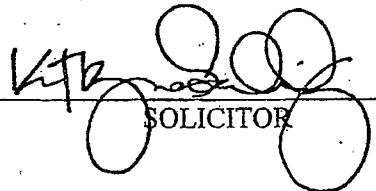
DEC 20 2011

the Grand Jurors of Greenville

County present upon their oath:

That JUWAN DARNELL LOMAX did in Greenville County, on or about the 3rd day of June 2011, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: a laptop computer from the person or presence of DEMETRIUS BENSON. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Juwan Darnell Lomax

AKA: _____
 Race: BLACK Sex: M Age: 18
 DOB _____ SS# _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: ARMED ROBBERY

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2307991

A/W#: J992548

Date of Offense: 6/3/2011

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Salisbury, Katryna Bevis

73981
 SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,

for a determinate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

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

_____ days/hours Public Service Employment.

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Paul B. Wickersham

S. Hudgins

Presiding Judge

Judge Code: 2137

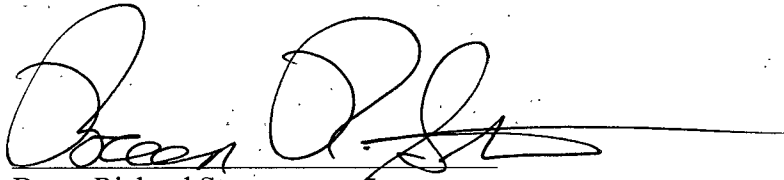
Trial Sentence Date: 4-11-12

Sentence Date: _____

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 24, 2013

A handwritten signature in black ink, appearing to read "Breen Richard Stevens", with a long horizontal flourish extending to the right.

Breen Richard Stevens
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT