

RECEIVED

Dec 14 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County

Honorable L. Casey Manning, Circuit Court Judge

MARCUS MCFADDEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2022-000543

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

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

ZACHARY W. JONES
Assistant Attorney General
P.O. Box 11629
Columbia, SC 29211
(803) 734-1680

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED SEPTEMBER 20 – 21, 2016.....	1
TRANSCRIPT OF HEARING ON MOTION FOR A NEW TRIAL AND MOTION FOR RECONSIDERATION DATED OCTOBER 11, 2017	289
APPLICATION FOR POST-CONVICTION RELIEF	298
RETURN AND MOTION FOR A MORE DEFINITE STATEMENT	305
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	312
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED FEBRUARY 14, 2022.....	314
ORDER OF DISMISSAL	350
INDICTMENT	359

State of South Carolina) In the Court of General Sessions
) Third Judicial Circuit
 County of Sumter) 2016-GS-43-0880

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.)
)
 Latique Kareem Bracey,)
)
 Defendant.)

 The State of South Carolina,)
)
 Plaintiff,)
)
 vs.)
)
 Marcus Codell McFadden,)
)
 Defendant.)

Transcript of Record

September 20, 21, 2016
 Sumter, South Carolina

B E F O R E:

The Honorable William Jeffrey Young, Judge, and a jury

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

John P. Meadors, Esquire, Assistant Solicitor
 Attorney for the State

Jason E. Bridges, Esquire
 Attorney for Defendant Bracey

Michael M. Jordan, Esquire
 Attorney for Defendant McFadden

Reported By:
 Maryann S. Nevers, CVR-M-CM
 Circuit Court Reporter

Elizabeth B. Harris, CVR-M-CM
 Circuit Court Reporter

I N D E X

<u>Description</u>	<u>Page No.</u>

TUESDAY, SEPTEMBER 20, 2016

Jury Voir Dire.	10
Jury Selection.	18
Opening Remarks by the Court.	41
Opening Statement by Mr. Meadors.	49
Opening Statement by Mr. Jordan	59
Opening Statement by Mr. Bridges.	65

State's Case in Chief

Artemis Bryant

Direct Examination by Mr. Meadors.	70
Cross-examination by Mr. Jordan.	99
Cross-examination by Mr. Bridges	113
Redirect Examination by Mr. Meadors.	113

Tiffany Calvin

Direct Examination by Mr. Meadors.	116
Cross-examination by Mr. Jordan.	139
Cross-examination by Mr. Bridges	154
Redirect Examination by Mr. Meadors.	160

<u>Description</u>	<u>Page No.</u>
<i>WEDNESDAY, SEPTEMBER 21, 2016</i>	
Monique Francis	
Direct Examination by Mr. Meadors.	164
Cross-examination by Mr. Jordan.	169
Cross-examination by Mr. Bridges	174
Redirect Examination by Mr. Meadors.	175
Johnny Kinlaw	
Direct Examination by Mr. Meadors.	176
Cross-examination by Mr. Jordan.	184
Cross-examination by Mr. Bridges	190
Rodney McFadden	
Direct Examination by Mr. Meadors.	195
Cross-examination by Mr. Jordan.	206
Cross-examination by Mr. Bridges	211
Redirect Examination by Mr. Meadors.	212
<i>End of State's Case in Chief</i>	
Closing Argument by Mr. Meadors	222
Closing Argument by Mr. Bridges	239
Closing Argument by Mr. Jordan.	244
Jury Charge	253

<u>Description</u>	<u>Page No.</u>
Verdict	272
Polling of the Jury	273
Sentence of the Court	285
Certificate Page.	288

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>
S-1	Map	39	85
S-2	Map	39	85
S-3	Photograph	39	85
S-4	Photograph	39	85
S-5	Photograph	39	85
S-6	Photograph	39	85
S-7	Photograph	39	85
S-8	Photograph	39	85
S-9	Photograph	39	85
S-10	Photograph	39	85
S-11	Photograph	39	85
S-12	Photograph	39	85
S-13	Photograph	39	85
S-14	Photograph	39	85
S-15	Photograph	39	77
S-16	Photograph	39	77
S-17	Photograph	39	85

5			
1	No.	Description	I.D. Ev.
2	S-18	Photograph	39 83
3	S-19	Photograph	39 85
4	S-20	Photograph	39 85
5	S-21	Photograph	39 85
6	S-22	Photograph	39 85
7	S-23	Photograph	39 85
8	S-24	Photograph	39 85
9	S-25	Photograph	39 85
10	S-26	Photograph	39 85
11	S-27	Photograph	39 94
12	S-28	Photograph	39 94
13	S-29	Photograph	39 94
14	S-30	Photograph	39 94
15	S-31	Photograph	39 85
16	S-32	Photograph	39 85
17	S-33	Photograph	39 85
18	S-34	Photograph	39 85
19	S-35	Photograph	39 85
20	S-36	Photograph	39 85
21	S-37	Photograph	39 85
22	S-38	Photograph	39 85
23	S-39	Photograph	39 85
24	S-40	Photograph	39 85
25	S-41	Photograph	39 85

	6			
1	<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>
2	S-42	Photograph	39	85
3	S-43	Photograph	39	85
4	S-44	Photograph	39	85
5	S-45	Gun and Ammunition	39	85
6	S-46	Photograph	204	204
7	S-47	Photograph	204	204
8	S-48	Photograph	204	204
9	S-49	Photograph	204	204
10				
11	C-1	Jury Note		271
12				
13				
14				
15				
16				
17				
18				
19				

1 TUESDAY, SEPTEMBER 20, 2016

2 MR. MEADORS: May it please the court?

3 THE COURT: Yes, sir.

4 MR. MEADORS: Your Honor, this is the State of South
5 Carolina. We're calling the case of Sumter County
6 true-billed indictment 2016-GS-43-0880, *The State vs.*
7 *Latique Kareem Bracey* and *The State vs. Marcus C. McFadden*.
8 They are charged on count one of this indictment with
9 burglary first degree and assault and battery by mob third
10 degree. Count three of the indictment charges Latique
11 Bracey with pointing and presenting a firearm. Count four
12 of the indictment charges Latique Bracey with possession of
13 a weapon during the commission of a violent crime.

14 THE COURT: All right.

15 All right, ladies and gentlemen, good morning again.
16 I'm Jeff Young. I'm a circuit court judge, and I was
17 originally scheduled to have common pleas court, but there
18 was not a whole lot of that this week. So, I'll be doing
19 some general sessions.

20 The first case called by the state is -- concerns two
21 defendants, and it's under indictment 2016-GS-43-880, which
22 charges Latique Kareem Bracey -- or this would be for
23 Marcus McFadden.

24 And that's all four counts on that. Is that correct,
25 Solicitor?

1 MR. MEADORS: McFadden and Bracey are in count one and
2 two together. Three and four are Bracey.

3 THE COURT: Okay. Count one charges -- states that
4 Latique K. Bracey, Dominique A. Ross, and Marcus McFadden
5 did in Sumter County on or about April 9, 2016, did enter
6 the dwelling of Tiffany Calvin, located at 515 East
7 Charlotte Avenue, without consent with the intent to commit
8 a crime therein, said entering occurring during the
9 nighttime hours, and/or cause -- causes physical injury to
10 any person who is not a participant in the crime in
11 violation of section 16-11-311 of the South Carolina code
12 of laws 1976 as amended, and, and that would be both
13 charges under indictment 880.

14 Count two reads that Latique Kareem Bracey and Marcus
15 C. McFadden did in Sumter County on or about April 9, 2016,
16 commit an assault and battery by mob in the third degree
17 upon the victim Artemis Bryant which resulted or could have
18 resulted in bodily injury to said victim in violation of
19 section 16-3-210(d) of the South Carolina code of laws 1976
20 as amended.

21 Count three states that Latique Kareem Bracey did here
22 in Sumter County on or about April 9, 2016, point or
23 present a loaded or unloaded firearm, to wit a firearm, at
24 one Artemis Bryant in violation section 16-23-410 of the
25 South Carolina code of laws 1976 as amended.

1 And then count four states that possession of a weapon
2 during the commission of a violent crime. Says that
3 Latique Kareem Bracey did in Sumter County on or about
4 April 9, 2016, possess a firearm or visibly display what
5 appeared to be a firearm or visibly display a knife during
6 the commission or attempted commission of a violent crime
7 in violation of section 16-23-490 of the South Carolina
8 code of laws, 1976 as amended.

9 Now, ladies and gentlemen, let me remind you. The
10 fact that these defendants were arrested, charged, and
11 indicted is no way indicative that they have committed
12 these crimes. The defendants have pled not guilty and,
13 therefore, the state has the burden of proving each and
14 every element of each of these charges beyond a reasonable
15 doubt. The defendants do not have to prove anything. The
16 burden is completely on the state to prove the defendants'
17 guilt beyond a reasonable doubt.

18 Now, ladies and gentlemen, and I, and I remind you
19 that just because it's written down, these indictments,
20 doesn't mean anything either. It, it's just that these are
21 the charging papers that bring this case into court and
22 again in no way is indicative that they have committed
23 these charge -- crimes.

24 Now, ladies and gentlemen, before we strike our jury,
25 there's a number of questions that I'm going to need to ask

1 you.

2 So, would you please place the jury panel under oath?

3 (WHEREUPON, THE JURY PANEL IS SWORN.)

4 *JURY VOIR DIRE*

5 THE COURT: Thank you.

6 Now, ladies and gentlemen, the reason that you're
7 under oath is because this is such a crucial stage of the
8 trial. You know, just like the building must have a firm
9 foundation to be strong and protective of those who live in
10 it, so must a jury be strong as a basis of a fair and an
11 impartial trial for those who participate -- the
12 solicitor's office for the state and the defendants who are
13 on trial -- and your answers to these questions are the
14 foundations by which these attorneys will build a jury.
15 And they're relying on your truthful answers to help them
16 strike an unbiased jury who will diligently listen to the
17 facts and deliver a true and just verdict, and thank you
18 for your complete truthfulness as I ask these questions.

19 Now the first question, has anybody in the jury panel
20 ever been related by blood or marriage to the, to the
21 victim -- that would be Tiffany Calvin or Artemis Bryant --
22 or the alleged defendants, Mr. Latique K. Bracey or Marcus
23 C. McFadden? If so, please stand.

24 Did I get everybody in that?

25 MR. MEADORS: Yes, sir.

1 THE COURT: Okay. All right, thank you. No one is
2 standing.

3 Now, ladies and gentlemen, there's a list of possible
4 witnesses that I have.

5 Do I have the state's witnesses? I don't have a copy
6 of your list of witnesses.

7 (A PAUSE.)

8 THE COURT: All right, ladies and gentlemen, I'm going
9 to go through this list, the whole list, and then I'm going
10 to ask you basically the same question. Tiffany Calvin,
11 Johnny Kinlaw, Corporal Rodney McFadden of the Sumter
12 Police Department, Detective John Melton of the Sumter
13 Police Department, Sergeant David Capel of the Sumter
14 Police Department, Artemis Bryant, James Allsbrooks of the
15 Sumter Police Department, Officer Ben Coker of the Sumter
16 Police Department, Officer Amanda Snap of the Sumter Police
17 Department, Monique Francis, Dominique Ross, and Pamela
18 Diane Bracey. Has any member of the jury panel ever been
19 related by blood or marriage or had a close personal or
20 business relationship with any of these potential witnesses
21 in this case? If so, please stand. All right, thank you.
22 No one's standing.

23 All right, the attorneys who will be trying this case
24 is Mr. John Meadors for the state.

25 Mr. Meadors, would you like to introduce yourself and

1 your team?

2 MR. MEADORS: May it please the court? My name is
3 John Meadors. I work with your elected solicitor, the
4 Honorable Ernest A. Chip Finney, III. Here from the Sumter
5 Police Department Rodney McFadden and our investigator, Tom
6 Miller. Thank you.

7 THE COURT: Mr. Jordan and Mr. Bridges, would you like
8 to introduce yourself first, Mr. Jordan, and then Mr.
9 Bridges?

10 MR. JORDAN: Thank you, Your Honor.

11 Ladies and gentlemen, I'm Michael Jordan. Practiced
12 law here in Sumter twenty-two years. I represent Marcus
13 McFadden, seated to my left.

14 THE COURT: Mr. Bridges.

15 MR. BRIDGES: Ladies and gentlemen, I'm Jason Bridges.
16 I work for the Sumter County Public Defender's Office. My
17 client is Latique Bracey, seated to my right.

18 THE COURT: All right. Thank you.

19 Ladies and gentlemen, has any member of the jury panel
20 ever been related by blood or marriage, or had a close
21 personal or business relationship, or ever been represented
22 by any of these attorneys or by the Third Circuit
23 Solicitor's Office, or the Third Circuit Public Defender's
24 Office? If so, please stand.

25 Yes, ma'am, state your name and juror number.

1 JUROR: Alechia Cooper, juror number 30.

2 THE COURT: Okay, and who were you represented by?

3 JUROR: Not -- the solicitor's office.

4 THE COURT: Okay, and would the fact that you have
5 been represented by the solicitor's office make it so that
6 you can't be fair and impartial to the state or the
7 defendant in this particular case?

8 JUROR: No, sir.

9 THE COURT: All right. Thank you very much.

10 Has any member of the jury panel formed or expressed
11 any opinion about any issue or matter involved in this
12 case? If so, please stand.

13 (NO ONE STANDS.)

14 THE COURT: All right, does any member of the jury
15 panel know anything about the events that occurred on April
16 9th at 515 East Charlotte Street or read anything in the
17 newspaper or heard on the news anything about this case
18 outside of the four walls of what you've heard this
19 morning? If so, please stand. All right, thank you. No
20 one is standing.

21 Is there any member of the jury panel who is related
22 by blood or marriage to someone who has -- or related by
23 blood or marriage who has been the victim of or charged
24 with a violent crime or a crime of burglary? If so, please
25 stand.

1 (NO ONE STANDS.)

2 THE COURT: Okay. Is there any member of the jury
3 panel who is also a member of the grand jury that indicted
4 this case? If so, please stand.

5 (NO ONE STANDS.)

6 THE COURT: All right. Thank you. Is there any
7 member of the jury panel who is aware of any bias or
8 prejudice towards either the state or the defendant in this
9 case? Thank you. No one is standing.

10 Is there any member of the jury panel who is a member
11 of or a contributor to any group that has as its primary
12 concern the promotion of law enforcement? Now, these
13 groups would consist of but certainly would not be limited
14 to the South Carolina Law Enforcement Officers Association,
15 the Mothers Against Drunk Drivers, Students Against Drunk
16 Drivers, Citizens Against Violent Crime, the Fraternal
17 Order of the Police, or anyone who is a member of a group
18 that promotes defendants' rights to such as the American
19 Civil Liberties Union? If so, please stand, and that would
20 also include contributing your time as a volunteer to any
21 of these groups. If that's applies to you, please stand at
22 this time. All right, thank you. No one is standing.

23 Is there any member of the jury panel who is related
24 by blood or marriage to any federal law-enforcement agent
25 or official, federal or state or local, or anyone who is a

1 member of law enforcement? If so, please stand.

2 Yes, ma'am, state your name and number.

3 JUROR: Tammy Tolbert, juror 169.

4 THE COURT: Okay.

5 JUROR: My husband is a federal correction officer.

6 THE COURT: Okay. Would the fact that your husband is
7 a federal correction officer, would that make it so that
8 you can't be fair and impartial to the state or the
9 defendants in this case?

10 JUROR: No.

11 THE COURT: Thank you, ma'am.

12 Yes, sir.

13 JUROR: Charles Galloway, number 56.

14 THE COURT: Yes, sir.

15 JUROR: My cousin's a police officer.

16 THE COURT: Okay. Would the fact that your cousin is
17 a police officer make it so that you can't be fair and
18 impartial to the state or the defendant in this case?

19 JUROR: No, sir.

20 THE COURT: Thank you.

21 Yes, sir, state your name and number.

22 JUROR: Tony Bines, juror 13.

23 THE COURT: Yes, sir.

24 JUROR: My brother and brother in-law are both
25 correction officers and work for the Department of

1 Department of Mental Health.

2 THE COURT: All right. Would the fact that your
3 brother and brother-in-law are correctional officers or
4 work with the Department of Mental Health make it so that
5 you can be fair and impartial to the state for the
6 defendant?

7 JUROR: No.

8 THE COURT: Thank you very much.

9 Is there any member of the jury panel who is a
10 contributor or a member of any organization whose focus or
11 purpose is gun control? If so, please stand. Thank you.
12 No one's standing.

13 Is there any member of the jury panel who is a friend
14 on Facebook or other social media with any of the witnesses
15 or victims or defendants in this case? If so, please
16 stand.

17 Yes, ma'am. State your name and number again.

18 JUROR: Tammy Tolbert, juror 169. I believe I'm
19 friends with Detective Melton on Facebook.

20 THE COURT: Okay.

21 JUROR: Possibly McFadden as well.

22 THE COURT: Okay. Would the fact that you are friends
23 with these officers on Facebook make it so that you can't
24 be fair and impartial to the state or the defendant?

25 JUROR: No, sir.

1 THE COURT: Thank you.

2 Does any member of the jury panel follow any of the
3 witnesses or parties in this matter on Twitter or any other
4 type of social media? If so, please stand. Thank you. No
5 one's standing.

6 All right, does any member of the jury panel know of
7 any reason whatsoever why he or she should not serve as a
8 juror in this case, with particular emphasis being placed
9 on your ability to be fair and impartial to both the state
10 and the defendants in this case? If so, please stand. All
11 right, thank you. No one's standing.

12 Does the state have any additional questions it would
13 like for me to ask?

14 MR. MEADORS: Nothing from the state.

15 THE COURT: Okay, Mr. Jordan, does your defendant have
16 any other questions?

17 MR. JORDAN: No, Your Honor.

18 THE COURT: All right, Mr. Bridges, does your client
19 have any other further ---

20 MR. BRIDGES: Nothing, Your Honor.

21 THE COURT: All right. Well, ladies and gentlemen,
22 what's going to happen now -- I think y'all might have
23 experienced this yesterday in the striking of the jury.
24 The computer is going to come up with a list of names. If
25 your name is called, please come to the podium, face the

1 exit, and then the attorneys will have an opportunity to
2 strike you from this jury pool. Please don't take it
3 personally if you're stricken. Each side has an idea as to
4 what they think an optimal juror will be in this particular
5 case.

6 And also I'll tell the first person who comes up.
7 When you stand there, the question will be asked what saith
8 the state. Well, I had a juror come up one time and that
9 happened, and the juror kind of puffed up real proud that
10 they were going to get the answer to that question right,
11 and they said the State of South Carolina. Well, that's
12 not the right -- that's not the correct answer. Actually,
13 it's for the state, the prosecution, to answer that
14 question. So, the best thing is just don't say anything
15 when you come up here. Okay. All right.

16 (A PAUSE.)

17 *JURY SELECTION*

18 BAILIFF: Please the court, Your Honor?

19 THE COURT: Yes, sir.

20 BAILIFF: Juror number 185, Deborah Williams. What
21 saith the state?

22 MR. MEADORS: Please present the juror.

23 BAILIFF: What saith Defendant McFadden?

24 MR. JORDAN: Please present Ms. Williams.

25 BAILIFF: What saith Defendant Bracey?

1 MR. BRIDGES: Please present Ms. Williams.

2 BAILIFF: Have a seat in the jury box, please, ma'am.

3 Juror number 104, Mary Little. What saith the state?

4 MR. MEADORS: Please present the juror.

5 BAILIFF: What saith Defendant McFadden?

6 MR. JORDAN: Court's indulgence.

7 (A PAUSE.)

8 MR. JORDAN: Please present Ms. Little.

9 BAILIFF: What saith Defendant Bracey?

10 MR. BRIDGES: Please excuse Ms. Little.

11 BAILIFF: Have a seat back with the panel. You've

12 being excused from this trial, please, ma'am.

13 Juror number 137, Kenneth Peak. What saith the state?

14 MR. MEADORS: Please present the juror.

15 BAILIFF: What saith Defendant McFadden?

16 MR. JORDAN: Court's indulgence.

17 (A PAUSE.)

18 MR. JORDAN: Please present Ms. Peak -- Mr. Peak.

19 BAILIFF: What saith Defendant Bracey?

20 MR. BRIDGES: Please present Mr. Peak.

21 BAILIFF: Have a seat in the jury box, please, sir.

22 Juror number 62, Carlton Greene. What saith the

23 state?

24 MR. MEADORS: Please present the juror.

25 BAILIFF: What saith Defendant McFadden?

1 MR. JORDAN: Please present Mr. Greene.

2 BAILIFF: What saith Defendant Bracey?

3 MR. BRIDGES: Please present Mr. Greene.

4 BAILIFF: Have a seat in the jury box, please, sir.

5 Juror number 155, Geraldine Sanders. What saith the
6 state?

7 MR. MEADORS: Please present the juror.

8 BAILIFF: What saith Defendant McFadden?

9 MR. JORDAN: Please present Ms. Sanders.

10 BAILIFF: What saith Defendant Bracey?

11 MR. BRIDGES: Please excuse Ms. Sanders.

12 BAILIFF: Have a seat back with the panel. You're
13 being excused from this trial, please, ma'am.

14 Juror number 13, Tony Bines. What saith the state?

15 MR. MEADORS: Please present the juror.

16 BAILIFF: What saith Defendant McFadden?

17 MR. JORDAN: Please excuse this juror.

18 BAILIFF: Have a seat back with the panel. You're
19 being excused from this trial, please, sir.

20 Juror number 190, Blanche Wright. What saith the
21 state?

22 MR. MEADORS: Please present the juror.

23 BAILIFF: What saith Defendant McFadden?

24 MR. JORDAN: Please present Ms. Wright.

25 BAILIFF: What saith Defendant Bracey?

1 MR. BRIDGES: Please present Ms. Wright.

2 BAILIFF: Have a seat in the jury box, please, ma'am.

3 Juror number 30 Alechia Cooper. What saith the state?

4 MR. MEADORS: Please present the juror.

5 BAILIFF: What saith Defendant McFadden?

6 MR. JORDAN: Please excuse this juror.

7 BAILIFF: Have a seat back with the panel. You're
8 being excused from this trial, please, ma'am.

9 Juror number 186, James Wilson. What saith the state?

10 MR. MEADORS: Please present the juror.

11 BAILIFF: What saith Defendant McFadden?

12 MR. JORDAN: Please present Mr. Wilson.

13 BAILIFF: What saith Defendant Bracey?

14 MR. BRIDGES: Please present Mr. Wilson.

15 BAILIFF: Have a seat in the jury box, please, sir.

16 Juror number 52, Alyceson Fugate. What saith the
17 state?

18 MR. MEADORS: Please present the juror.

19 BAILIFF: What saith Defendant McFadden?

20 MR. JORDAN: Please excuse this juror.

21 BAILIFF: Have a seat back with the panel. You're
22 being excused from this trial, please, ma'am.

23 Juror number 191, Ceonte Washington. What saith the
24 state?

25 MR. MEADORS: Please present the juror.

1 BAILIFF: What saith Defendant McFadden?

2 MR. JORDAN: Please present Mr. Washington.

3 BAILIFF: What saith Defendant Bracey?

4 MR. BRIDGES: Please present Mr. Washington.

5 BAILIFF: Have a seat in the jury box, please, sir.

6 Juror number 28, Scott Christman. What saith the
7 state?

8 MR. MEADORS: Please present the juror.

9 BAILIFF: What saith Defendant McFadden?

10 MR. JORDAN: Please excuse this juror.

11 BAILIFF: Have a seat back with the panel. You're
12 being excused from this trial, please, sir.

13 Juror number 134, Reba Nelson. What saith the state?

14 MR. MEADORS: Please present the juror.

15 BAILIFF: What saith Defendant McFadden?

16 MR. JORDAN: Please excuse this juror.

17 BAILIFF: Have a seat back with the panel. You're
18 being excused from this trial, please, ma'am.

19 Juror number 16, Patricia Bradford. What saith the
20 state?

21 MR. MEADORS: Please present the juror.

22 BAILIFF: What saith Defendant McFadden?

23 MR. JORDAN: Please present the juror.

24 BAILIFF: What saith Defendant Bracey?

25 MR. BRIDGES: Please excuse Ms. Bradford.

1 BAILIFF: Have a seat back with the panel. You're
2 being excused from this trial, please, ma'am.

3 Juror number 88, Samuel Jennings. What saith the
4 state?

5 MR. MEADORS: Please present the juror.

6 BAILIFF: What saith Defendant McFadden?

7 MR. JORDAN: Please present Mr. Jennings.

8 BAILIFF: What saith Defendant Bracey?

9 MR. BRIDGES: Please present Mr. Jennings.

10 BAILIFF: Have a seat in the jury box, please, sir.

11 Juror number 56, Charles Galloway. What saith the
12 state?

13 MR. MEADORS: Please present the juror.

14 BAILIFF: What saith Defendant McFadden?

15 MR. JORDAN: Please excuse this juror.

16 BAILIFF: Have a seat back with the panel. You're
17 being excused from this trial, please, sir.

18 Juror number 108, Kimberly MacLean. What saith the
19 state?

20 MR. MEADORS: Please present the juror.

21 BAILIFF: What saith Defendant McFadden?

22 MR. JORDAN: Present Ms. MacLean.

23 BAILIFF: What saith Defendant Bracey?

24 MR. BRIDGES: Please excuse Ms. MacLean.

25 BAILIFF: Have a seat back with the panel. You're

1 being excused from this trial, please, ma'am.

2 Juror number 19, Linarda Brown. What saith the state?

3 MR. MEADORS: Please present the juror.

4 BAILIFF: What saith Defendant McFadden?

5 MR. JORDAN: Please excuse Ms. Brown.

6 BAILIFF: Have a seat back with the panel. You're
7 being excused from the trial, please, ma'am.

8 Juror number 3, Michael Adamson. What saith the
9 state?

10 MR. MEADORS: Please present the juror.

11 BAILIFF: What saith Defendant McFadden?

12 MR. JORDAN: Please present Mr. Adamson.

13 BAILIFF: What saith Defendant Bracey?

14 MR. BRIDGES: Please present Mr. Adamson.

15 BAILIFF: Have a seat in the jury box, please, sir.

16 Juror number, 186 Gerald Jenkins. What saith the
17 state?

18 MR. MEADORS: Please present the juror.

19 BAILIFF: What saith Defendant McFadden?

20 MR. JORDAN: Present Mr. Jenkins.

21 BAILIFF: Excuse me?

22 MR. JORDAN: Present Mr. Jenkins.

23 BAILIFF: What saith Defendant Bracey?

24 MR. BRIDGES: Please excuse Mr. Jenkins.

25 BAILIFF: Have a seat back with the panel. You're

1 being excused from this trial, please, sir.

2 Juror number 35, April Davis. What saith the state?

3 MR. MEADORS: Please present the juror.

4 BAILIFF: What saith Defendant McFadden?

5 MR. JORDAN: Please excuse this juror.

6 BAILIFF: Have a seat back with the panel. You're
7 being dismissed from this trial, please, ma'am.

8 Juror number 157, Travis Scarborough. What saith the
9 state?

10 MR. MEADORS: Please present the juror.

11 BAILIFF: What saith Defendant McFadden?

12 MR. JORDAN: Present Mr. Scarborough.

13 BAILIFF: What saith Defendant Bracey?

14 MR. BRIDGES: Present Mr. Scarborough.

15 BAILIFF: Have a seat in the jury box, please, sir.

16 Juror number 169, Tammy Tolbert. What saith the
17 state?

18 MR. MEADORS: Please present the juror.

19 BAILIFF: What saith Defendant McFadden?

20 MR. JORDAN: Please excuse this juror.

21 BAILIFF: Have a seat back with the panel. You're
22 being excused from this trial, please, ma'am.

23 Juror number 127, Tiffany Miller. What saith the
24 state?

25 MR. MEADORS: Please present the juror.

1 BAILIFF: What saith Defendant McFadden?

2 MR. JORDAN: Present Ms. Miller.

3 BAILIFF: What saith Defendant Bracey?

4 MR. BRIDGES: Please excuse Ms. Miller.

5 BAILIFF: Have a seat back with the panel. You're
6 being excused from this trial, please, ma'am.

7 Juror number, 159 Donald Shuler. What saith the
8 state?

9 MR. MEADORS: Please present the juror.

10 BAILIFF: What saith Defendant McFadden?

11 MR. JORDAN: Present Mr. Shuler.

12 BAILIFF: What saith Defendant Bracey?

13 MR. BRIDGES: Present Mr. Shuler.

14 BAILIFF: Have a seat in the jury box, please, sir.

15 Juror number 117, Tierra McDaniel. What saith the
16 state?

17 MR. MEADORS: Please present the juror.

18 BAILIFF: What saith Defendant McFadden?

19 MR. JORDAN: Please present Ms. McDaniel.

20 BAILIFF: What saith Defendant Bracey?

21 MR. BRIDGES: Please present Ms. McDaniel.

22 BAILIFF: Have a seat in the jury box, please, ma'am.

23 Juror number 175, Eleanora Walker. What saith the
24 state?

25 MR. MEADORS: Please present the juror.

1 BAILIFF: What saith Defendant McFadden?

2 MR. JORDAN: Present Ms. Walker.

3 BAILIFF: What saith Defendant Bracey?

4 MR. BRIDGES: Please excuse Ms. Walker.

5 BAILIFF: Have a seat back with the panel. You're
6 being excused from this trial, please, ma'am.

7 Juror number 26, Jenie Champion. What saith the
8 state?

9 MR. MEADORS: Please present the juror.

10 BAILIFF: What saith Defendant McFadden?

11 MR. JORDAN: Please present Ms. Champion.

12 BAILIFF: What saith Defendant Bracey?

13 MR. BRIDGES: Please present Ms. Champion.

14 BAILIFF: Have a seat in the jury box, please, ma'am.

15 THE COURT: We'll have one alternate.

16 BAILIFF: Juror number 33, James Crawley.

17 THE COURT: We may have two.

18 BAILIFF: What saith the state?

19 MR. MEADORS: Please present the juror.

20 BAILIFF: What saith Defendant McFadden?

21 MR. JORDAN: Present Mr. Crawley.

22 BAILIFF: What saith Defendant Bracey?

23 MR. BRIDGES: Present Mr. Crawley.

24 BAILIFF: Have a seat in the jury box, please, sir.

25 THE COURT: We'll, we'll have enough for one more.

1 BAILIFF: One more?

2 THE COURT: Yeah, one more.

3 BAILIFF: Juror number 128, Bernadine Moore. What
4 saith the state?

5 MR. MEADORS: Please present the juror.

6 BAILIFF: What saith Defendant McFadden?

7 MR. JORDAN: Present Ms. Moore.

8 BAILIFF: What saith Defendant Bracey?

9 MR. BRIDGES: Please excuse Ms. Moore.

10 BAILIFF: Have a seat back with the panel. You're
11 being excused from this trial, please, ma'am.

12 Juror number 162, Lillian Sims. What saith the state?

13 MR. MEADORS: Please present the juror.

14 BAILIFF: What saith Defendant McFadden?

15 MR. JORDAN: Present Ms. Sims.

16 BAILIFF: What saith Defendant Bracey?

17 MR. BRIDGES: Present Ms. Sims.

18 BAILIFF: Have a seat in the jury box, please, ma'am.

19 THE COURT: Please call out the names of the ---

20 BAILIFF: Yes, sir, Your Honor.

21 THE COURT: --- jurors.

22 BAILIFF: Ladies and gentlemen of the jury, when I
23 call your name, raise your hands, please. Deborah

24 Williams, Kenneth Peak, Carlton Greene, Blanche Wright,

25 James Wilson, Ceonte Washington, Samuel Jennings, Michael

1 Adamson, Travis Scarborough, Donald Shuler, Tierra
2 McDaniel, Janie Champion, James Crawley, Lillian Sims.
3 Thank you.

4 THE COURT: Thank you, Mr. Bradley.

5 All right, ladies and gentlemen, y'all have been
6 selected as jurors for this trial. At this time I'm going
7 to send you back into the jury room for just a few minutes
8 while I take up some matters with the attorneys.

9 While you're back there, if you could please decide
10 amongst yourselves -- and it's really the primary jurors,
11 the first twelve selected -- who you want to be the
12 foreperson of your jury. Now, the foreperson will be the
13 one who leads the deliberations, will be the jury
14 spokesperson here in court, and, and so if y'all could just
15 select amongst yourselves who you want to have that
16 position, but I'll send you back for about ten minutes
17 while I take up a few matters, all right?

18 Thank you ladies and gentlemen. Please do not discuss
19 anything about the case while you're back there.

20 (THE JURY EXITS AT 10:56 A.M.)

21 THE COURT: All right, are there any exceptions to the
22 jury that has been selected or the manner in which they
23 have been selected from the state?

24 MR. MEADORS: No, sir.

25 THE COURT: From the -- Mr. Jordan?

1 MR. JORDAN: No, Your Honor.

2 THE COURT: Mr. Bridges?

3 MR. BRIDGES: No, Your Honor.

4 THE COURT: All right. Thank you. Then they will be
5 our jurors.

6 Solicitor.

7 MR. MEADORS: May I approach, Your Honor?

8 THE COURT: You may.

9 (OFF-THE-RECORD BENCH CONFERENCE.)

10 THE COURT: Well, ladies and gentlemen, I'm sorry that
11 y'all did not get selected on this trial. However, you
12 will have an opportunity to be selected again. So, I'm
13 going to give you a ten-minute recess and ask that you
14 reassemble in courtroom 3B where you will have an
15 opportunity to serve as a juror. Thank you so much, and
16 have a nice break.

17 (THE JURY PANEL EXITS.)

18 THE COURT: Mr. Jordan, you want to put your motion on
19 the record?

20 MR. JORDAN: Right now?

21 THE COURT: Yeah.

22 MR. JORDAN: Please the court?

23 THE COURT: Yes, sir.

24 MR. JORDAN: Please the court? Your Honor, at this
25 time on behalf of Defendant Marcus McFadden, I move for,

1 for severance of these trials. Your Honor, the basis of
2 that is that there are different allegations in the
3 indictment and from the warrants. There are different
4 charges facing our codefendant, Latique Bracey, than are
5 facing my client, Marcus McFadden. And, Your Honor, on
6 that basis we believe that, that the evidence that pertains
7 to defendant Latique Bracey, some of which does not pertain
8 to defendant Marcus McFadden.

9 Your Honor, it's my understanding that this trial is
10 the result -- this is, this is a September 8th indictment
11 and alleges a crime committed April 9, 2016. It is my
12 understanding that the reason for this speedy trial some
13 six months, five to six months later is because of a, of a
14 motion for speedy trial and Latique Bracey's continued
15 detention. So, Your Honor, that sets the background for
16 why we're here so quick on an April charge and a September
17 indictment.

18 Your Honor, on the motion to sever, we were noticed or
19 we believed that we would be at trial independently. Then
20 I understood at the beginning of the week that Mr., Mr.
21 Bracey's position had changed and we would be in a joint
22 trial.

23 Your Honor, as I reviewed the discovery, we gave a
24 statement and the discovery indicates that all three
25 codefendants gave statements and, and you'll recall that

1 one of the codefendants, Dominique Ross, is not standing
2 trial today, and he has been listed on the potential
3 witness list of the state. So, the discovery reveals that
4 there are -- that all, all codefendants gave, gave
5 statements. The only one I received in discovery is the,
6 is the statement of Marcus McFadden. The discovery says
7 they all gave their version of events. So, Your Honor,
8 the, the problem with a joint trial is that I've not seen
9 the statement of Latique Bracey, and if it is admitted and
10 he becomes my accuser, in our statement we do mention
11 things that Latique Bracey has done.

12 So, Your Honor, the only way to protect against
13 prejudice from a joint trial where statements are given is
14 to serve those and allow each individual defendant to
15 confront his accuser and to address or be able to call the
16 other party or the other codefendant as a witness if that
17 witness becomes the accuser.

18 Now, Your Honor, in, in chambers I know there was
19 mention made that none of the statements would be -- were
20 going to be used, so still want to just protect my position
21 on the record, but I just found out that just a little
22 while ago.

23 But, Your Honor, there's still -- because the
24 indictment charges Latique Bracey with additionally
25 carrying a firearm during a violent crime and pointing and

1 presenting that firearm, that evidence against him tends
2 to, in my mind, dilute the, the defenses and the ability of
3 my client, Marcus McFadden, to get an independent
4 determination beyond reasonable doubt on the two things
5 that he's charged with, which are burglary first and
6 assault by mob.

7 So, Your Honor, we would ask that -- other differences
8 are again Mr., Mr. Bracey is accused of, of having the gun.
9 We never, we never had the gun. We're not accused of that.
10 So, Your Honor, the end effect of that is a joint trial
11 will be prejudicial, and the worry and concern is that the
12 jury, even beyond instructions, will lump the two
13 defendants that are at trial together and consider us on
14 the -- consider this evidence of pointing, presenting a
15 firearm and possession of a weapon during a violent crime
16 against my client when in a separate trial they would not
17 be allowed to do that since we were not charged with it.
18 So, Your Honor, we would move at this time for severance
19 and/or redaction. It brings in the *Bruton* issues but, Your
20 Honor, again I know we've had that, we've had that
21 clarification in chambers that no statements would be
22 admitted. We still believe that an independent trial both
23 -- one, because Mr. Bracey apparently made a speedy trial
24 motion and, two, because the indictment sets up separate
25 offenses against the two codefendants. Thank you, Your

1 Honor.

2 THE COURT: Thank you.

3 Mr. Bridges, are you joining in his motion?

4 MR. BRIDGES: Yes, sir.

5 THE COURT: Thank you.

6 Mr. Meadors.

7 MR. MEADORS: May it please the court?

8 THE COURT: Yes, sir.

9 MR. MEADORS: First of all, I don't have my joinder
10 law with me. I just learned of this motion, but I, I think
11 I know it, Your Honor. It's basically the same, the same
12 evidence, the same -- this is all one event, Judge. To
13 separate them would almost be, respectfully, absurd to try
14 the burglary and assault by mob. It's clearly three actors
15 at one time, the same time, the same house, same incident.

16 There are two separate charges, which a gun -- which
17 clearly are separately listed in the indictment. There's
18 no other way to do it, and it's clearly just against Mr.
19 Bracey. Evidence is going to come out that way. There's
20 no question about that, the gun -- any other evidence will
21 say anybody else had the gun.

22 As far as the statements from Ross or Bracey, there
23 are none. I have none. Have not been provided any. I
24 don't -- they didn't make a statement that I'm aware of,
25 and I would have turned them over if they had. The only

1 statement that was made that I'm informed by law
2 enforcement of was made by Mr. McFadden. That's been
3 turned over. In addition to that, some notes Mr. Melton
4 took, I think, following up with Mr. McFadden. I think
5 they have those.

6 We've been criticized when we're too slow; now we're
7 getting criticized because we're moving too fast. It's a
8 five-month old case. It's a jail case against Mr. Bracey.
9 I was ordered by another circuit judge to try it this month
10 or he was going to make bond. That's why we're trying it.

11 THE COURT: All right, I'm going to respectfully deny
12 your motion.

13 MR. JORDAN: Thank you, Your Honor.

14 THE COURT: All right.

15 MR. JORDAN: One more?

16 THE COURT: Are there any pretrial motions?

17 MR. JORDAN: Yes, sir.

18 THE COURT: Yes, sir.

19 MR. JORDAN: Your Honor, we would also ask, just renew
20 our motion for discovery. I hear what Mr. Meadors is
21 saying. I just read in this incident report that -- so, I,
22 I take it that we won't have any written or oral statements
23 by law enforcement.

24 The, the, the information I'm concerned about is on
25 page 2 of the, of the investigative report provided by law

1 enforcement that says:

2 All suspects were presented a waiver of rights
3 individually. All three signed and all proceeded
4 to tell their version of events that occurred at
5 515 East Charlotte Avenue.

6 So, I understand there's no other written statements,
7 but if we get into oral, then we need a *Jackson, Denno*
8 hearing, and again I would renew my motion about severance.
9 If there's statements that are conflicting, that would be
10 handled differently at a separate trial. Thank you, Your
11 Honor.

12 THE COURT: Mr. Meadors.

13 MR. MEADORS: Your Honor, just to further -- I talked
14 to Officer -- then detective, now officer -- Ben Coker this
15 morning. Looking back there last night to make sure that
16 waivers were and Miranda rights were administered to
17 Defendant McFadden and Bracey, but I confirmed with him
18 this morning. I said there's no written statements or any
19 statements? He said there were not. Investigator Melton
20 took the statement from McFadden. Excuse me, there are no
21 statements from Ross or Bracey, and I confirmed that with
22 Detective Coker.

23 And, Judge, then finally, and I think, I think it's
24 clear but the one written statement by Defendant McFadden,
25 I will not be offering that into evidence. I respectfully

1 disagree with the last appellate court decision regarding
2 *State vs. Dangelo Jackson*, but that is the law, and I do
3 respectfully -- but I will not be attempting to redact that
4 in this case. So, I will not be offering that.

5 THE COURT: All right. Very well.

6 MR. JORDAN: And, Your Honor, the discovery also
7 mentions DNA swab kits, and I'm not aware of any SLED
8 report or result, but apparently they did DNA swabs and
9 they did GSR kits, and to my knowledge we don't have any,
10 we don't have any results from that. That could be
11 exculpatory evidence but would not -- I've not seen -- I
12 don't think local lab -- I know they can test drugs now,
13 but I don't think they can do gunshot residue from the
14 palms, and I don't think they can do DNA testing here
15 locally. So, if there's any evidence from SLED regarding
16 this forensic evidence, then I'd move that they be required
17 to disclose that because it's potentially exculpatory. I
18 think it would show that my client never touched a gun.
19 Thank you.

20 THE COURT: All right, Mr. Meadors.

21 MR. MEADORS: And I would have turned that over if we
22 had it. This isn't a forensics case. There is no
23 evidence. It's not ---

24 THE COURT: There's no evidence of shooting or
25 anything?

1 MR. MEADORS: No, sir.

2 THE COURT: So there wouldn't be any GSR.

3 MR. MEADORS: There is evidence that when they left
4 there was a shot fired, but there's no evidence -- and then
5 a gun was found later, but there's no forensic testing or
6 evidence that was done.

7 THE COURT: All right.

8 MR. MEADORS: All the parties know each other in this
9 case, Judge. It's not an ID case and, and -- anyway...

10 THE COURT: All right. Very well, then we will
11 proceed.

12 MR. MEADORS: Can, can -- we started a little earlier
13 today than we thought. I thought I'd be going at 2. Can I
14 just have a few minutes to get some pictures together and
15 mark them? I think it would be smoother.

16 THE COURT: All right. Well, why don't we take a --
17 let the -- get the jurors some Co-Colas or something like
18 that, and we'll start at 11:30.

19 MR. MEADORS: Thank you. Thank you very much.

20 THE COURT: That work?

21 MR. JORDAN: Judge, just opening statements?

22 THE COURT: Just opening statements? We'll see where
23 we go. I don't know what witnesses y'all have lined up.

24 MR. MEADORS: Thank you, sir.

25 THE COURT: Thank you. Court's in recess until 11:30.

1 (OFF THE RECORD.)

2 (MAP MARKED AS STATE'S EXHIBIT NUMBER 1 FOR
3 IDENTIFICATION.)

4 (MAP MARKED AS STATE'S EXHIBIT NUMBER 2 FOR
5 IDENTIFICATION.)

6 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBIT
7 NUMBERS 3 THROUGH 44 FOR IDENTIFICATION.)

8 (GUN AND AMMUNITION MARKED AS STATE'S EXHIBIT NUMBER
9 45 FOR IDENTIFICATION.)

10 THE COURT: Please take your seats. Anything before
11 we bring our jury?

12 MR. JORDAN: Not from Defendant McFadden, Your Honor.

13 THE COURT: Mr. Bridges, you good, too?

14 MR. BRIDGES: No objections, Your Honor.

15 THE COURT: Anything?

16 MR. MEADORS: Yes, sir. Thank you. What's your
17 intent after openings?

18 THE COURT: I guess, seems -- how, how long y'all's --
19 y'all want to go ahead and break after openings, or do
20 y'all have a short witness we can start?

21 MR. MEADORS: No, sir. That's -- this whole -- the
22 first two will probably be the case, and that's why it
23 might be better to start ---

24 THE COURT: Oh. Well, then we'll break. Yeah, we'll,
25 we'll break as soon as you do openings. We'll give them a

1 long lunch, and when we'll come back at 2.

2 MR. MEADORS: And I, I think we can finish most of the
3 factual witnesses today and do law enforcement tomorrow.

4 THE COURT: Okay.

5 MR. MEADORS: I mean, just generally.

6 THE COURT: That's fine with me. Like I said, I had
7 nothing else to do this week.

8 MR. MEADORS: Thank you.

9 THE COURT: So, just trying to help out.

10 MR. MEADORS: And we're glad you did. Thank you.

11 THE COURT: All right, let's bring our jury in.

12 (THE JURY ENTERS AT 11:34 A.M.)

13 THE COURT: Y'all can sit anywhere you want to except
14 for you. You're the foreperson; you've got to sit there.

15 All right, thank you, and, ladies and gentlemen, like
16 I said, it doesn't matter whether you're an alternate or a
17 primary. You can sit anywhere you want to. I do find that
18 after you put your behind in those seats about three times,
19 most jurors become very territorial and will fight you for
20 a seat, but, but you don't have to do that today.

21 Thank you for being the foreperson of this jury. I'll
22 give you all the instructions you'll need at the
23 appropriate time. Thank you.

24 Please swear the jury.

25 (A PAUSE.)

1 THE COURT: Just for your information, at this time we
2 will have my opening charge and have opening statements
3 from the attorneys, and then we'll break for lunch with the
4 instructions that you be back here at 2:00. We won't start
5 the taking of testimony this morning.

6 (WHEREUPON, THE JURY IS SWORN.)

7 THE COURT: All right, ladies and gentlemen, again
8 thank you for being jurors in this trial today, and want to
9 tell you before we begin this trial, I want to tell you it
10 will probably be different from what you might expect. You
11 know, most people never have an opportunity to participate
12 in an actual court case as you are today. They may think
13 from watching TV or movies or reading books that trials are
14 always full of high drama, intense action, and riveting
15 circumstances.

16 Well, now while all these things might be true at
17 times, this case is not for entertainment. This is a real
18 trial which is a fundamental part of our democracy, and
19 it's the search for the truth to ensure that justice is
20 done, and searching for the truth and ensuring that justice
21 is done is often slow, repetitive, and deliberate, the
22 exact opposite of what you've seen on TV, movies, or read
23 in books.

24 Now, ladies and gentlemen, this courtroom is a place
25 of honor that is dedicated to the protection and the

1 preservation of our citizens' rights through what has been
2 called -- and I truly believe in the bottom of my heart to
3 be the greatest justice system ever created by mankind.

4 The attorneys who are appearing before you are
5 advocates for the parties that they represent. But first
6 and foremost, ladies and gentlemen, they are officers of
7 this court who are sworn to uphold the integrity and the
8 fairness of our system and help you in your search for the
9 truth. Now, ladies and gentlemen, you should expect them
10 to be professional, competent, and ethical in the
11 representation of their clients' interest, but remember,
12 ladies and gentlemen, you also just took an oath to listen
13 to the evidence in this case and reach a fair and just
14 verdict, and you are expected to be professional,
15 reasonable, and ethical as well, and again thank you for
16 taking on this very important responsibility of jury
17 service, and your contribution to -- I say our justice
18 system because this is your justice system as well.

19 Now, ladies and gentlemen, what I'm going to tell you
20 now is just intended to be an introduction to the trial of
21 this case. These remarks are not a charge on the law
22 because I'm going to charge you the law that is to be
23 applied to this case at the end of the trial. This is
24 merely an explanation of the procedure that we will follow
25 so you may better understand what is happening.

1 Now, ladies and gentlemen, let me say up front that
2 you will not be allowed to take notes during this trial.
3 Therefore, it's very important that you listen closely
4 throughout this trial.

5 Now, ladies and gentlemen, the defendants are charged
6 by indictment filed in this court with burglary in the
7 first degree, assault and battery by mob third degree,
8 pointing and presenting a firearm as -- and that's to Mr.
9 Bracey, and to Mr. Bracey possession of a weapon during the
10 commission of a violent crime, and the specific elements of
11 each of those charges will be explained to you later.

12 Now, ladies and gentlemen, as I said earlier the
13 indictment charging the defendants is only the document
14 which this case is brought into court. It is not in any
15 sense any evidence of the charges or the allegations
16 contained therein. The defendants have pled not guilty to
17 the charge, so the state has the burden of proving each and
18 every element of each charge beyond a reasonable doubt.

19 Now, ladies and gentlemen, it will be your duty to
20 determine whether or not the state has met that burden, but
21 your purpose in this trial is to determine the facts in
22 this case. You'll determine the facts in this case from
23 the witness who will be testifying from the witness stand
24 and any other evidence that is introduced here in court,
25 and it will be up to you to determine the inferences which

1 you believe should be properly drawn from the evidence that
2 is presented.

3 Now, ladies and gentlemen, it's especially important
4 that you perform your duty diligently and conscientiously
5 because ordinarily there is no way to correct an erroneous
6 determination of facts by a jury. On the other hand but
7 with equal emphasis, the same law that makes you the judges
8 of the facts makes me the judge of the law, and the law as
9 given to you by me is the only law that you may consider.
10 Now, you must accept and apply the law as I give it to you
11 even though you might disagree, and I'll make an agreement
12 with you right now. I will not tell you what the facts
13 are, and you will not disagree with me about what the law
14 is or what the law ought to be. Your job is to take the
15 law as I give it to you by -- and apply it to the facts as
16 you find them from the testimony of the witness and any
17 other evidence that is presented, and then after hearing
18 that evidence, you will deliberate and render a verdict
19 under the solemn oath that you took as jurors.

20 Now, ladies and gentlemen, until I advise you to begin
21 your deliberations at the end of the trial, you must not
22 discuss the case with others, including your fellow jurors.
23 You may not use a computer, cellular phone, or other
24 electronic device with communications capabilities while in
25 attendance here at trial or during your deliberations. Of

1 course these devices may be used when you break for lunch
2 or when you come home for the evening, but even then they
3 may not be used to disclose any information about the
4 trial. And information about the trial would include but
5 certainly would not be limited to the following:
6 information about a party, a witness, an attorney, or a
7 court officer; any news accounts about the case; and any
8 information collected through juror research on any topic
9 raised or testimony offered by a witness; or any
10 information collected through juror research on any other
11 topic that you think might be helpful in deciding this
12 case.

13 Ladies and gentlemen, after the case is submitted to
14 you, you must discuss it only in the jury room with your
15 fellow jurors. And I tell the attorneys and parties in
16 this matter: they are advised that they are not to talk to
17 you at all. So, if you see anyone who's involved in this
18 case in this small courthouse square and they don't even
19 say hello, well, they're not being rude or unfriendly.
20 They're just following my instructions.

21 Well, ladies and gentlemen, it's very important that
22 you keep an open mind and not decide any issue in this case
23 until all of the evidence has been presented, the attorneys
24 have made their closing arguments, and I have given you my
25 instructions on the law in this case. It's your solemn

1 responsibility to determine the guilt or innocence of the
2 defendants, and your verdict must be based solely on the
3 evidence as is presented in this trial and on the law as I
4 give it to you at the close of the trial.

5 Now in just a moment, ladies and gentlemen, the
6 solicitor will, will make what is known as an opening
7 statement which he will explain to you what he believes the
8 issues are in this case. The defendant -- the attorneys
9 for the defendants may also make opening statements, but
10 they are not required to do, but I will remind you what
11 anybody tells you during opening statements is not
12 evidence. It's only their contention as to what they
13 believe the issues are in this case.

14 Now, ladies and gentlemen, from time to time during
15 this trial you may hear one of the lawyers say something
16 like Your Honor, I believe we have a matter or a question
17 of law to discuss with you, or Your Honor may we approach
18 the bench. Or sometimes I might find it necessary to
19 excuse you from the courtroom for a short period of time
20 while the attorneys and I discuss a matter of law. The
21 reason for this is, as I said, you are the judges of the
22 facts, and sometimes when I'm discussing a issue of law
23 with the attorneys, it may be necessary for me to make some
24 comment concerning the facts in connection with whether or
25 not a particular law applies. And as I've said, I'm not

1 supposed to tell you what the facts are, so I will excuse
2 you from the courtroom while these discussions take place
3 so you will in no way be influenced by anything that I
4 might say or do in connection with the facts.

5 Also during the trial, ladies and gentlemen, you may
6 hear one of the attorneys make an objection to certain
7 evidence that is about to be presented. Whether I sustain
8 the objection, which would be to grant it, or overrule the
9 objection, which would be to deny it, should not be
10 construed that I favor one side over the other. I, I do
11 not. Nor should you infer that the objecting party is
12 trying to hide something from you.

13 Ladies and gentlemen, in this court, as in all
14 situations in life, there are specific rules that must be
15 followed and the attorneys, as officers of the court, are
16 merely trying to follow the rules of evidence in making
17 their objections, and I am only ruling based upon what I
18 believe the law to be in this state concerning the evidence
19 being presented.

20 Now, ladies and gentlemen, in determining what the
21 true facts are in this case, you must determine whether or
22 not the testimony of a witness is believable. Now, it will
23 be my responsibility as the presiding judge to rule as a
24 matter of law as to whether certain testimony is
25 admissible. Well, once the testimony is admitted, whether

1 or not you decide to believe it is solely for you to
2 determine.

3 Now, ladies and gentlemen, in deciding whether or not
4 to believe the testimony of a witness, you have the right
5 to consider the interest of any witness, the bias of any
6 witness, the prejudice of any witness, the opportunity for
7 the witness to have actually observed the things about
8 which the witness might testify, and the way the witness
9 acts on the witness stand. Ladies and gentlemen, you have
10 the right to consider anything that is in the record that
11 will help you evaluate the testimony of a witness and,
12 therefore, it means that you have a duty to pay close
13 attention to the witness, to observe the witness, to listen
14 to the witness, and to pay close attention to the attorneys
15 and to the court. Ladies and gentlemen, please don't let
16 your thoughts wander, but give strict attention to the
17 testimony in this case.

18 After the presentation of all the testimony, after the
19 argument of counsel, and the charge on the law by me, you
20 will then be in a position to determine what the facts are,
21 apply those to the law, and thus render a true and just
22 verdict.

23 Now, Madame Forelady, in addition it will be your
24 responsibility to preside in the jury room and be the jury
25 spokesperson here in the court. It will also be your duty

1 to write down the verdict on the verdict form that I give
2 you, but I'll provide you further instructions on that at
3 the appropriate time.

4 Now, in order to protect everyone's rights, I'll give
5 the parties an opportunity to object to anything that I
6 have stated to you.

7 Does the state have any objection to anything I've
8 told this jury?

9 MR. MEADORS: No, sir.

10 THE COURT: Mr. Jordan? Mr. Bridges?

11 MR. JORDAN: No, Your Honor.

12 MR. BRIDGES: No, Your Honor.

13 THE COURT: Thank you very much.

14 All right, ladies and gentlemen, we'll begin the trial
15 of this case.

16 Mr. Meadors.

17 MR. MEADORS: May it please the court?

18 THE COURT: Yes, sir.

19 MR. MEADORS: I'll kill you if you don't leave.

20 Bitch, I'll kill you. Those are the words of Latique
21 Bracey that he screamed and screeched at Artemis Bryant ---

22 Raise your hand, Artemis.

23 --- and Tiffany Calvin on the early morning hours of
24 April 9th of this year, 2016, after Latique Bracey and
25 Marcus McFadden forced their way into Tiffany Calvin's

1 house. I'll kill you if you don't leave to Artemis.
2 Bitch, I'll kill you. That's what this case is about: a
3 burglary, unlawful entry into the home of another for the
4 purpose of causing harm to Artemis Bryant. That's what
5 we're here about.

6 Ladies and gentlemen, good morning. Good morning.

7 JURY: (*en masse*) Good morning.

8 MR. MEADORS: As I introduced myself earlier, my name
9 is John Meadors. I work for your elected solicitor, Ernest
10 H. Chip Finney, III. I'm here today representing the
11 Sumter Police Department, Rodney McFadden ---

12 Rodney, please raise your hand.

13 --- along with Tom Miller, my investigator,
14 representing the people of the State of South Carolina,
15 representing the county of Sumter against the defendants,
16 Marcus McFadden and Latique Bracey, who you met and been
17 introduced to their lawyers previously, Jason Bridges,
18 Michael Jordan.

19 As the judge said, you've all seen this on TV. It's
20 not going to be like TV; it's not going to be as near as
21 quick as TV, in one hour. This case has been investigated,
22 and now we're going to bring witnesses in to kind of take
23 you back to April 9th at 515 East Charlotte, the home of
24 Tiffany Calvin. And we're going to bring witnesses in
25 here, and you're going to be able to watch them and listen

1 to them.

2 As the judge said, he's the law; there's no question
3 about it. He determines the law. He'll tell us if we
4 follow the law during the trial, and he'll tell you what
5 the law is after the trial, and that's what you'll decide
6 the case on. But until that point -- and Mr. Campbell
7 didn't put you through a jury school but, but you're kind
8 of a judge, too. You're the judge of the facts. You'll
9 decide what is believable and credible.

10 And as I said, you didn't go to a school to determine
11 what to do as a juror, but you've been in that school your
12 whole life. It's life. It's dealing with people,
13 interacting with people, watching people, deciding what the
14 truth is, common sense, and you'll use all those attributes
15 and qualities you have gathered that are a part of you,
16 woven into you as you listen and determine what the truth
17 is from this witness stand. And that's true in every case,
18 and that's what's so beautiful about this system,
19 credibility, believability from witnesses you hear from the
20 stand, and that's all you can decide it on. You can only
21 decide this case on evidence that comes from this stand or
22 other physical evidence or pictures that His Honor lets in.
23 Credibility, believability.

24 Now, what's the -- what are the defendants charged
25 with? As His Honor told you, they're both charged with

1 burglary first degree and assault and battery by mob in the
2 third degree. I think everybody probably knows what
3 burglary, burglary is. It's entering the dwelling of
4 another without consent with the intent to commit a crime.
5 And for burglary first to be -- for y'all to find burglary
6 first, it either must occur during the nighttime hours --
7 that's kind of common sense. At night it's dark.
8 Allegations are in this case it happened about 12:30 in the
9 morning, clearly at night. That's one way you can find
10 burglary first. Burglary first, if one enters or several
11 people enter and cause physical injury to someone in the
12 house. Burglary first, physical injury to Artemis Bryant
13 as he'll testify this afternoon about. Or one can be armed
14 with a deadly weapon as they enter a house, which would
15 make it burglary first. And His Honor is going to charge
16 you all this at the end, but that's what the state must
17 prove to you, the elements we must prove to you for
18 burglary first.

19 Assault and battery by mob is third degree. Thank
20 goodness the injuries weren't worse than they were. He's
21 going to tell you and show you pictures of what his
22 injuries were, but in this case we had three people that
23 entered the residence and hit Artemis Bryant about the
24 body, face and body, and I'll tell you in a minute. He
25 ended up driving himself to the hospital. Assault and

1 battery by mob third degree. First degree, second degree,
2 third degree. This is third degree, must be -- could have
3 been injuries or there were injuries. You'll see some
4 marks to his face and his ear and all. Again, thank
5 goodness they weren't worse, but they were injuries, and
6 he's going to tell you about those, and those are the two
7 offenses that both of these defendants have been charged
8 with.

9 In addition to that, Mr. Bracey, out of the same
10 circumstances, is charged with pointing or presenting a
11 firearm, Artemis Bryant, and also charged with possession
12 of a weapon during the commission of a violent crime.
13 Those are kind of self-explanatory. Those are the charges
14 that y'all must consider.

15 Now, what was -- what must the state do for you to
16 find these defendants guilty, and you all know what it was.
17 What's our burden? Our burden is proof beyond a reasonable
18 doubt, proof beyond a reasonable doubt. Not proof beyond
19 all doubt. There's no way anyone could do that, and the
20 law doesn't require that, and His Honor will tell you that
21 in his close at the end. It's not proof beyond all doubt.
22 If that was it, we didn't need this beautiful new
23 courthouse. It's proof beyond a reasonable doubt, proof
24 beyond a reasonable doubt. You'll know it. It's like
25 common sense.

1 What happened in this case? We're going to take you
2 back to -- well, there's one other thing I forgot, the
3 different types of evidence. I've talk to you about
4 testimony from eyewitnesses. You have people that see
5 things with one of their senses. They hear things, they
6 smell it, they touch it, and they come in here and take the
7 stand and tell y'all this is what I heard, saw, smelled,
8 and touched. That's called direct evidence.

9 You can have indirect evidence or circumstantial
10 evidence, which is proof of a fact and another fact which
11 leads to a fact in question. I'm ready for it, but it's
12 not here yet. If we woke up this morning and it snowed, we
13 might have been sleeping and didn't see it, but we know it
14 snowed. That's an example of circumstantial evidence.

15 There will be documentary evidence. There may be
16 another type of evidence that isn't always used in trials:
17 co-conspirator evidence. You may hear from the third
18 person involved in this case, Dominique Ross, this
19 afternoon or tomorrow, but that's something you will be
20 able to consider also.

21 Now, what happened? It's April 9th of this year,
22 2016. We're going to take you to 515 East Charlotte, East
23 Charlotte Street. Y'all may know where it is. If you go
24 down Lafayette, before you get to the Dollar General you
25 take a right. You go down there and 515 East Charlotte is

1 on the left down there. It's a little white house. We're
2 going to show you pictures.

3 Well, what happened? How did this come about? Well,
4 we believe the evidence is going to show that Tiffany and
5 Artemis used to work at Color-Fi in Sumter. Just used to
6 work together. Now, her injury back there did not come
7 from this; that's nothing to do with this case. I want to
8 say it right off the bat, but that is why, the evidence
9 will show, Artemis came to see her. She was in an
10 automobile wreck, bad one. Her leg's messed up bad.
11 Artemis, who's now in another part of the state, was coming
12 back to Sumter to see his niece for her birthday. While he
13 was here, he said I'm going to call Calvin, Tiffany Calvin,
14 and go see her. Just an old friend, and he stopped and got
15 some movies. We're going to show you a picture of the
16 movies he bought. Then he went and got three Little
17 Caesars pizzas to come back and give her a pizza and just
18 visit with a friend. That's all he was doing; that's what
19 the evidence will show. They watched some movies, fed the
20 kids. There were two kids at this house, at 515 East
21 Charlotte, and then they kind of dozed off.

22 The next thing Artemis hears is yelling at the front
23 door: I'm going to shoot the door down. Yelling. Then
24 they go to the back side door, and we'll show you pictures
25 of these, and there's pulling and there's tugging. We're

1 going to show you where the door frame for the door handle
2 was off. Going to show you the side of the door that's
3 ripped in the frame. Tiffany, we believe, will say she
4 wakes up. Artemis says what's going on. She says I don't
5 know, and then he starts to unlock the door to see what's
6 going on, and at that point they force their way in. They
7 force their way in to 515 East Charlotte. That's against
8 their will, without consent. Entered the dwelling and they
9 go after Artemis. McFadden does, Latique Bracey does, and
10 eventually Dominique Ross does, and they start hitting
11 Artemis Bryant about his face and body.

12 Now, he's a pretty big boy, pretty big man. He covers
13 himself up. He's going to tell you what happened. They're
14 hitting him about the face. They're hitting him about the
15 body. Latique Bracey is pointing a gun at him: I'm going
16 to kill you if you don't leave. He's yelling at him. He's
17 telling her bitch, you better leave, cussing at her,
18 slapping at her. That's what -- the testimony you're going
19 to hear.

20 Artemis goes outside. They're either pushing him or
21 pulling him outside. He's trying to get away. You're
22 going to see a picture where his shoe's outside where he
23 was leaving. Left his shoe there. Collected later and
24 given back to him, but there's a tussle, there's a fight,
25 and he's between these three -- these two individuals and

1 Dominique Ross and Tiffany Calvin. That's what this case
2 is about.

3 Artemis goes to the hospital, drives himself to
4 Tuomey. Calls 911 on the way and says look, y'all may
5 think I'm drunk or something, but I'm driving myself
6 because I've been injured.

7 Tiffany -- someone else -- 911 is called. Police go.
8 Corporal McFadden arrives at the scene. Corporal gets
9 there. Says what happened. As a result of that, McFadden,
10 Bracey, and Ross are identified. She knows them all. They
11 came to our house. They broke in. They assaulted Artemis.
12 He's at the hospital. Here's what they were driving. It's
13 a tan Buick with Floyd paper tags on it, and that goes out.

14 You're going to hear from Tiffany's dad who saw, who
15 saw who Latique Bracey later on that night, who saw him
16 with a gun. Couple hours go by. Another 911 call comes
17 in: the car is back at 515 East Charlotte. She calls.
18 McFadden comes back. He knows there's been a report of a
19 gun when they left the first time, and I left this out.
20 The testimony will be a gunshot went off as they were
21 fleeing from the house. After Artemis had left, the other
22 three leave, and there's a gunshot outside. You're going
23 to hear that testimony.

24 McFadden gets the information that they've come back
25 now in the same car with the same Floyd, Floyd paper tags.

1 I know I'm talking too fast; I apologize. Stops the car at
2 the Dollar General on Lafayette, ladies and gentlemen --
3 y'all know where it is, right up here on Lafayette right
4 outside of East Charlotte -- couple of hours later. And
5 the evidence will show that Bracey's in there, McFadden,
6 Dominique Ross in the same car, and they find a gun in the
7 console that matches a description of the gun that was
8 pulled on Artemis and that came out at 515 East Charlotte.

9 Now, Tiffany Calvin and Latique Bracey used to date,
10 but they had broken up. He did not live at that house; the
11 keys had been taken from him. He did not stay there and
12 was told you cannot come back there. And we believe the
13 evidence will show that she thought -- excuse me, that
14 Latique Bracey thought she was with another man and he got
15 mad, and he was with two of his buddies and he went to do
16 something about it: the intent to commit a crime to go see
17 what was up.

18 Wait, wait to hear from Artemis. Wait to hear his
19 background. They were friends. There was no romantic
20 relationship. Even if there had been, it wouldn't have
21 justified this, I can assure you, but there wasn't any.
22 They were just friends, and Latique Bracey got his buddies,
23 got mad, went over, broke into the house where he was not
24 allowed to be, and assaulted Artemis, yelled at her, cursed
25 at her, and fired a gun when they left, and then came back

1 a few hours later. That's what this case is about.

2 I don't think it will be that long; I think we'll
3 finish tomorrow. Obviously whatever the judge tells us we
4 do, but I think we'll finish tomorrow, and you'll get this
5 case probably late tomorrow, early Thursday. All I can ask
6 you, all any of us can ask you is just pay attention. I
7 know you will. Use your common sense as you evaluate the
8 testimony from this witness stand and the other evidence
9 you get. That's all we can ask and if you do that, as I
10 know you will, and to listen, you'll come back with a
11 verdict that speaks the truth, and that's what verdict
12 means, to speak the truth, and that's all we can ask you.
13 And we believe, after you've heard the evidence, the
14 verdict that will speak the truth is that on April 9, 2016,
15 Latique Bracey and Marcus McFadden forced their way into
16 515 East Charlotte without consent with the intent to do
17 harm to Artemis Bryant, and they're guilty. Thank you.

18 THE COURT: Thank you.

19 Mr. Jordan.

20 MR. JORDAN: Please the court?

21 Ladies and gentlemen of the jury, I introduced myself
22 earlier. I'm Michael Jordan. I practice law here in
23 Sumter County, the only place I've ever practiced law,
24 proud to say, twenty-two years, and I represent Marcus
25 McFadden. You'll see him seated over there next to me to

1 my right, and this is his day. This is his day in court.

2 You've all taken an oath to weigh the evidence
3 carefully, to act fairly, and the thing I love about this
4 process is within these walls, we're all even. We're all
5 equal. We came from different places. We'll go home to
6 different places, but in here we're all even.

7 This is about your decision. It's not about Michael
8 Jordan. It's not about John Meadors. It's not about Chip
9 Finney. It's not about the Sumter Police Department. This
10 is about your decision; you decide the ultimate issue in
11 this case of guilt or innocence.

12 Now the judge, His Honor, Judge Young, told you this
13 is a great system, and I believe that is the case. Every
14 person that comes in this courtroom is presumed innocent,
15 and it's the state's burden of proof to remove that
16 presumption. It's like a cloak. So, as Marcus McFadden,
17 as Latique Bracey sit over there, they are presumed
18 innocent. Law enforcement has no impact on that. They can
19 put up evidence, but you and you alone decide whether that
20 evidence has met the burden of proof of beyond a reasonable
21 doubt and removed that cloak of innocence.

22 Now, you heard about -- you've heard about the factors
23 for burglary first and you heard about a weapon. I submit
24 to you that you will not hear not one witness say that
25 Marcus McFadden ever touched a gun, not one. You will hear

1 that they did tests on his hands and out of all the
2 evidence, not one witness and not one document will show
3 that Marcus McFadden touched a gun. So, when you're
4 considering burglary first and these, and these aggravating
5 factors, again you will not hear that he touched a gun. I
6 think that's undisputed.

7 Beyond reasonable doubt, what does that mean? Well,
8 His Honor defined that early on as a doubt that you can
9 assign reason to. So, one would be never touched a gun.

10 I submit to you that it's not as simple as the state
11 lays out. I submit to you that beneath all this is a love
12 story and an intimacy and a man and a woman who have been
13 involved together. He's been to that house before. He's
14 been to that door and many, many times that door was opened
15 just like this time.

16 He's heated. I can talk him out of it. Open the
17 door. Same as all other times. An intimate relationship
18 between people, and I think the evidence will show they
19 were sharing some bills. So, there's more to it than came
20 over and barged in and busted up the door. There is a
21 history. There is a relationship there, and there's
22 intimacy there. And we all know that when a man and a
23 woman get involved in an intimate relationship and trust
24 erodes when you find somebody else there, you lose your --
25 you lose all thought and judgment, and you react on

1 emotions. And I submit to you that that's what happened in
2 this case.

3 You're not going to hear that somebody profited from
4 this. You're not going to hear that there was a scheme or
5 a plan or a conspiracy to go into the property of someone
6 else and take something out. If you hear anything about
7 taking stuff, you're going to hear about stuff that was
8 believed to belong to the person who took it. Cleaning my
9 stuff out. Obviously there's somebody else up in here. I
10 don't need to be paying the bills. So, I submit that that
11 is at the root and the base of this trial and this case, a
12 relationship gone bad and, and a discovery that another man
13 is in the house.

14 Latique Bracey and Tiffany Calvin had a relationship,
15 and this is what it led to. He was paying bills there as
16 late as May of, as late as May of this year. This incident
17 happened in April. This is not that old of an incident,
18 and that is at the root and the base of this trial, not
19 some in -- home invasion or some challenge against her
20 residence and the place that she lived. It was between
21 them because he learned that she had another man in the
22 house, and he believed that she was not honest with him,
23 she was not trustworthy, and all this happened.

24 Now, it's Latique Bracey's girlfriend; it's Latique
25 Bracey's car. The only evidence is Latique Bracey carried

1 a weapon. So, when you're weighing this evidence, you have
2 to consider the defendants separately. You have to
3 consider it separately. They want to lump everybody in
4 together.

5 And that leaves me -- what about, what about Dominique
6 Ross? Wonder why he's not sitting over there with us. I
7 submit that if he comes in this courtroom, he'll sit over
8 here. He's bought him a ticket to sit on this side of the
9 courthouse, and it'll be up to you to believe when -- to --
10 whether or not to believe when he takes that stand if that
11 ticket he bought impacts what he has to say because all he
12 had to do was purchase that ticket and move from this side
13 of the courtroom, the scary side where Marcus McFadden sits
14 and trembles and where Latique Bracey sits, and move over
15 to this side of the courtroom. All he had to do was buy
16 that ticket. So, he wasn't even mentioned until the end,
17 but let's, let's find out what his role was when you listen
18 to the evidence.

19 Again, there is a presumption of innocence and you and
20 you alone -- not Sumter County, not Michael Jordan, not
21 John Meadors, not Chip Finney -- you and you alone will
22 weigh that evidence and determine if it's beyond reasonable
23 doubt.

24 Now, some of y'all may have heard of different
25 standards of proof. You may have been involved in civil

1 cases. There are multiple standards of proof. The lowest
2 is preponderance of the evidence. That's not what we're
3 here about; that's a civil standard. It's not clear and
4 convincing evidence; that's a civil standard. The highest
5 burden of proof under our law is beyond reasonable doubt.
6 So, you have to determine that all the evidence that they
7 present meets that standard of beyond reasonable doubt
8 before you can even consider removing that cloak of
9 righteousness or that presumption of innocence from Marcus
10 McFadden. Again, not even his girlfriend, not his car, not
11 his gun, not his ordeal. Wasn't driving the car. Didn't
12 go there by his own, didn't go there by his own decision.
13 Didn't take anything out of this house.

14 Everybody knew each other; they knew each other.
15 They'd been around the, the neighborhood before. This was
16 not where some people laid in wait and decided when these
17 people are gone, we're going to go in that house and we're
18 going to take what we want. Has nothing to do with that.
19 Has everything to do with the broken relationship between
20 Tiffany Calvin and Latique Brace, and that's what you've
21 got to decide here is does that make this a burglary. I
22 submit to you that that's the ultimate issue.

23 Now, I want to thank you. I don't expect it to be a
24 long trial. The judge has instructed you, and I know y'all
25 will pay particular close attention, but as you use your

1 collective conscience, before we all go back to different
2 locations, while we're in here, weigh all the evidence for
3 each defendant, especially Marcus McFadden, in light of
4 that standard of non-reasonable doubt the same as any one
5 of us would want. Justice is treating your fellow man how
6 you would want to be treated, and I believe in that. Older
7 lawyer told me that about ten years ago, and it's just
8 carried with me. So, that's all I ask of you today.
9 That's all your oath requires. Thank you.

10 THE COURT: Thank you, Mr. Jordan.

11 Mr. Bridges.

12 MR. BRIDGES: May it please the court?

13 THE COURT: Yes, sir.

14 MR. BRIDGES: Good, morning ladies and gentlemen of
15 the jury. My name is Jason Bridges. I introduced myself
16 at the jury selection, and I am a public defender here in
17 Sumter County, and Mr. Latique Bracey is my client. I want
18 to emphasize though Latique Bracey was appointed in my case
19 and I am an employee of Sumter County, I solely represent
20 Mr. Bracey's interest. I am not representing, representing
21 the state in any way, and I'm solely here to defend Mr.
22 Bracey on his charges.

23 You've been informed by His Honor of the, the burden
24 the state has to prove. They have to meet -- that they
25 have to prove each element of each offense beyond a

1 reasonable doubt to you before you can find Mr. Bracey
2 guilty.

3 In this case, one of the, the -- the heaviest charge
4 is first-degree burglary and a main element, as Mr. Meadors
5 mentioned in his opening statement, is that -- is the entry
6 into the dwelling of another without consent. To Mr.
7 Bracey, this, the dwelling on 515 East Charlotte Avenue,
8 was his dwelling. He, he did not need consent from the
9 owner because he, because he was one of the owners. He was
10 financially responsible for parts of the household. He had
11 a relationship with Ms. Calvin's children. He was a big
12 part of her life. They shared a life together and, and I
13 would submit that this case is much more a domestic
14 dispute, dispute than a -- any kind of home invasion or
15 anything that state's trying to allege.

16 And I believe the, the testimony and evidence that
17 will come out over the course of this trial will support
18 the position that Mr. Bracey had a right to be in this
19 dwelling and that, in fact, was his residence. And as you
20 hear from the witnesses, keep in mind that to Mr. Bracey,
21 when he entered this dwelling, he found a strange man there
22 with his, with his girlfriend and that that, I think, puts
23 the confrontation that is alleged after Mr. Bracey's entry
24 into the dwelling in perspective.

25 And I don't over emphasize the burglary charge as

1 well. The state has the same burden on the assault and
2 battery by mob third degree and both weapons charges
3 against Mr. Bracey. They have to prove each element of the
4 offense by beyond reasonable doubt, and through the course
5 of the trial, you'll hear the technical aspects of each
6 offense. Just keep in mind that the state for, for each
7 one, they have to prove their case. They, they can't just
8 say -- they can't just allege that Mr. Bracey entered the
9 house and brandished a weapon so, therefore, it's a
10 burglary. Mr. Bracey had a right to enter the house or he
11 had consent to enter the house. It would, therefore, not
12 be first-degree burglary.

13 And in conclusion, I would just like to thank you all
14 for your time and your service. I know jury duty is often
15 inconvenient and unpleasant, but it's the bedrock of our
16 judicial system and really we would not -- none of us would
17 have a right to a fair trial without it. So, thank you
18 very much for your time and patience, and hopefully by the
19 end of the week we'll be able to finish this trial. Thank
20 you.

21 THE COURT: All right, ladies and gentlemen, now is
22 the time I will send you to lunch. I'm going to remind you
23 two things. One, don't talk to anybody about the case. I
24 wouldn't go out there and tell everybody you see that
25 you're on a jury because what's going to happen is they're

1 going to say, you know, I was on a jury one time, and this
2 is what happened and -- well, you don't need to hear that.
3 You know, you just need to hear what happens in this case.

4 And also don't go out and eat a huge lunch because
5 you'll come back this afternoon and you'll be falling out.
6 I had one juror who was falling out, and I stopped the
7 testimony. Said stop everything. Everybody stand up.
8 Well, that juror was so asleep, they didn't stand up. They
9 were snoring. They were very embarrassed, and you don't
10 want to be like that juror, so eat a light lunch and come
11 back here. I don't think we'll be that long this
12 afternoon, but be prepared to if we need to.

13 All right, thank you, ladies and gentlemen. The
14 bailiffs will lead you out and show you where you need to
15 come back to at 2:00, all right? Thank you.

16 (THE JURY EXITS AT 12:19 P.M.)

17 THE COURT: Anything before we ---

18 MR. MEADORS: Yes, sir. Judge, as has been my
19 practice for thirty years -- the jury's now picked. I
20 would respectfully ask that Marcus McFadden be taken into
21 custody. It is a potential life sentence.

22 THE COURT: Oh, they weren't all -- they weren't
23 already...

24 MR. MEADORS: Bracey was. McFadden was out. We'd
25 ask that he be taken in at this time, please.

1 THE COURT: Okay, Mr. Jordan.

2 MR. JORDAN: Judge, he's on bond. He's here. He's
3 come every time I've asked him to. He was here this
4 morning. He was here Monday. I haven't had any problem
5 with him coming. I understand some judges just do it.

6 THE COURT: Yeah. I, I basically -- on a charge this
7 serious, I always do that, so his bond is revoked at this
8 time. Please take him into custody.

9 MR. JORDAN: I understand. Thank you.

10 THE COURT: Feed him lunch. He'll get a free lunch.
11 All right, court's in recess until 2:00.

12 MR. MEADORS: Thank you, Your Honor.

13 MR. JORDAN: Thank you, Your Honor.

14 (OFF THE RECORD.)

15 THE COURT: All right, Sam, let's bring our jury in.

16 (THE JURY ENTERS AT 2:14 P.M.)

17 THE COURT: Well, I hope y'all had a nice lunch. I
18 broke the rule I told you not to break. I went home and we
19 had some good taco leftovers at the house, and I ate more
20 than I should have. So, of course if I nod off, she'll
21 punch me, so y'all don't have to worry about that, but I
22 won't. Haven't done it yet out of twelve years. I haven't
23 nodded off in a trial yet. Don't intend to start now.

24 All right, state ready to proceed?

25 MR. MEADORS: Yes, sir.

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

70

1 THE COURT: State may call its first witness.

2 MR. MEADORS: May it please the court?

3 THE COURT: Yes, sir.

4 MR. MEADORS: The State of South Carolina would call
5 Artemis Bryant.

6 THE COURT: Come forward and be sworn.

7 ARTEMIS BRYANT, BEING DULY SWORN,
8 TESTIFIES AS FOLLOWS:

9 BAILIFF: State your name, and spell your last name
10 for the record.

11 WITNESS: Artemis Bryant, B-R-Y-A-N-T.

12 THE COURT: You may proceed.

13 MR. MEADORS: Thank you, Your Honor.

14 DIRECT EXAMINATION BY MR. MEADORS:

15 Q. Good afternoon Mr. Bryant.

16 A. Good afternoon.

17 Q. You a little nervous?

18 A. Yeah.

19 Q. Just talk into there so these ladies and gentlemen
20 will be able to hear you, Mr. Bryant.

21 A. Yes, sir.

22 Q. Where you from?

23 A. I was born on Shaw and I'm from here, from Sumter.

24 Q. Born and raised here?

25 A. Yes, sir.

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

71

1 Q. Where did you go to school here?

2 A. Sumter Christian from K through tenth grade, then
3 Sumter High last two years.

4 Q. And, and when did you get out of Sumter high?

5 A. 2004.

6 Q. 2004?

7 A. Yes, sir.

8 Q. What did you do after that?

9 A. Pretty much worked at Carolina Furniture Works until I
10 went to the, the military.

11 Q. Carolina Furniture Works?

12 A. Yes, sir.

13 Q. How long did you work there?

14 A. I want to say, like, three, three years.

15 Q. Okay.

16 MR. JORDAN: Judge, I'm just having a little, a little
17 trouble hearing.

18 THE COURT: Yeah. He needs to speak up.

19 MR. JORDAN: He speaks very softly.

20 THE COURT: I can hear him real well because I've got
21 a microphone that's blaring in my ear, but if you could
22 speak up, sir.

23 WITNESS: Yes, sir.

24 BY MR. MEADORS:

25 Q. Did you go to Central Carolina before that?

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

72

1 A. Yes, sir.

2 Q. What did you do after Carolina Furniture Works?

3 A. Joined the Marines and got injured in basic.

4 Q. Got injured in basic training?

5 A. Yes, sir.

6 Q. And when did you get out of the Marines?

7 A. It was May 2013.

8 Q. Were you honorably, honorably discharged?

9 A. Yes, sir.

10 Q. After that, Mr. Bryant, what did you do?

11 A. Found a job at -- got a job at Color-Fi.

12 Q. What is Color-Fi?

13 A. We take recycled plastics and turn it into fabric.

14 Q. You may be a little too close now to the microphone.

15 Say that one more time.

16 A. We take recycled plastics and turn it into fabric.

17 Q. Okay, and how long were you at Color-Fi?

18 A. About a year and a few months.

19 Q. What did you do after that?

20 A. I, I broke both my feet. Corrective surgery.

21 Q. Was that from something that happened in the military?

22 A. Yes, because the boots were making my feet bleed. So
23 they were, like, you try and try and do something and,
24 like, two weeks if not, you're out because you need
25 surgery.

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

73

1 Q. So, did you end up getting corrective surgery?

2 A. Yes, sir.

3 Q. Okay. What did you do after that?

4 A. I work now for HDRICA. Do bridge maintenance.

5 Q. And where is that?

6 A. In Charleston.

7 Q. Bridge maintenance?

8 A. Yes, sir.

9 Q. And how long have you been doing that?

10 A. For, for about a year, for a little over a year now.

11 Q. Is that your daddy in the courtroom right there?

12 A. Yes, sir.

13 MR. MEADORS: Would you please raise your hand?

14 Q. Now, let me ask you. When you worked at Color-Fi, did
15 you get -- did you meet Tiffany Calvin?

16 A. Yes. Yes, sir.

17 Q. And had you known her before that?

18 A. No, sir.

19 Q. And what -- how long did y'all work together at
20 Color-Fly -- Color-Fi?

21 A. I think a few months. Like, I want to say, like,
22 four.

23 Q. Okay.

24 A. Four.

25 Q. You were there for a year, but she ---

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

74

1 A. Yeah, she, she was in there.

2 Q. That's how you knew Tiffany Calvin?

3 A. Yes, sir.

4 Q. Now, let's, let's jump up to this year, go forward to
5 this year from Color-Fi to April of 2016, specifically the
6 date of this incident. It was April 9th, I believe. Did
7 you have any reason to come to Sumter during that time
8 period?

9 A. Yes, to visit my family.

10 Q. Okay. Your family is still here?

11 A. Yes, sir.

12 Q. And did anybody have a birthday or something you were
13 coming to?

14 A. My niece.

15 Q. And what, what year birthday party was it?

16 A. Oh, it was -- it would have been 11th, April 11th.

17 Q. Okay. How old is your niece?

18 A. She's, like, three.

19 Q. So, you were coming to Sumter anyway?

20 A. Yes, sir.

21 Q. Did you learn Tiffany Calvin had been in an accident?

22 A. Yes, sir.

23 Q. Okay, and as a result of that knowledge, did you want
24 to come visit her?

25 A. Yes, sir.

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

75

1 Q. How did you arrange that meeting?

2 A. She, she called me out of the blue and I was, like,
3 haven't spoken to her forever so I was, like, this is
4 weird.

5 Q. And when you say forever, had it been since Color-Fi
6 or ---

7 A. Yeah, pretty much, yeah.

8 Q. Okay.

9 A. And then, then she told me how, like, she was kind of
10 down and whatnot because, like, all the people she was
11 there for wasn't there for her, and I know how that feels.
12 When I was in the military and I got injured and again when
13 I broke both my feet, and so I was, like, no one should
14 ever feel that way. So, I was, like, I'll bring some
15 pizza and movies for you and the kids and just visit
16 because I ---

17 Q. Bring pizza and what?

18 A. Movies and -- yeah.

19 Q. Okay. I don't want to interrupt you, but your -- you
20 would describe your relationship with Tiffany as what?

21 A. We're friends.

22 Q. Friends?

23 A. Yes, just friends.

24 Q. Don't take this any bad way, Artemis. Nothing more or
25 less?

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

76

1 A. No.

2 Q. Okay, and do you remember going to Ms. Calvin's house
3 on April 9th?

4 A. Yes, sir.

5 Q. Do you know about what time you got there?

6 A. I want to say around 9, 9:30.

7 Q. And had you been -- did you know where to go?

8 A. No. My GPS.

9 Q. So, did she have to give you the address?

10 A. Yes, sir.

11 Q. And when you got there, what did you have with you?

12 A. Two boxes of pizza and some wings and some movies.

13 Q. And were, were Tiffany Calvin's children at this
14 residence?

15 A. Yes, sir.

16 Q. Okay. Did you get to meet them?

17 A. Yes, sir.

18 Q. Okay. Do you know how old they were?

19 A. I think...

20 Q. If you don't, that's fine.

21 A. Yeah.

22 Q. And what happened there at Ms. Calvin's house after
23 you got there with the movies and the pizza? What did
24 y'all do?

25 A. I think they already had food, so it was just pretty

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

77

1 much her and me just eating, but I have to set up the DVD
2 player and -- through the TV. So, it took a while. I
3 finally got it set up. Then we put in *Star Wars*.

4 Q. I'm going to show you what's marked State's 16. Do
5 you recognize that?

6 A. Yes, sir.

7 Q. Does it relate to your testimony in State's Exhibit
8 15?

9 A. Yes, sir.

10 (COUNSELORS CONFER.)

11 MR. MEADORS: State's 15 and 16 without objection,
12 Your Honor.

13 THE COURT: All right.

14 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
15 NUMBER 15.)

16 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
17 NUMBER 16.)

18 BY MR. MEADORS:

19 Q. And what is State's, State 16, Artemis?

20 A. A bunch of my movies.

21 Q. Is that what you brought over?

22 A. Yes, sir.

23 Q. Okay, and State's 15?

24 A. *Star Wars*.

25 Q. Is that what y'all had watched?

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

78

1 A. Yes, sir.

2 Q. Okay. How long did this -- how long did you stay
3 there watching movies?

4 A. It, it took a good, like, forty-five minutes to get
5 everything set up and then we were -- I -- we would put it
6 on and she was, like, dozing in, like, twenty minutes and I
7 was, like, shortly after that because she was on one couch
8 and I was on the other.

9 Q. All right. Where were the children?

10 A. They were in the room already. They were sleeping.

11 Q. So -- okay. Around 12:30 that night, did anything
12 unusual happen outside, or did you hear any noise on the
13 morning of April 9, 2016?

14 A. Yes, sir.

15 Q. Now, I want you to tell the ladies and gentlemen of
16 the jury. What did you hear? What's the first thing --
17 something brought to your attention, if anything? What was
18 it?

19 A. Heard some banging at the door and some yelling, and
20 they were saying that's, like, the guy from *Continental* or
21 something.

22 Q. What's the words? What did they say?

23 A. That's that nigga from *Continental*, I think.

24 Q. Do you know who was saying this?

25 A. No. I can't -- I couldn't say who.

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

79

1 Q. And were they being loud?

2 A. Yes, sir.

3 Q. All right. What happened next?

4 A. I, I woke Tiffany up and I was, like, is this, is this
5 normal around here and she's, like, no. And then I gave
6 her her phone and -- yeah.

7 Q. Did you hear them yelling anything else?

8 A. They were going to shoot through the door, and if they
9 would have shot through one door, it would have went to the
10 kids' room and if they would have shot through the other
11 door, it would have hit her on the couch.

12 Q. So, you heard somebody yelling we're going to shoot
13 through the door?

14 A. Yes, sir.

15 Q. What else were they yelling?

16 A. Just, just yelling. Just being loud.

17 Q. Did they open the door?

18 A. No, sir.

19 Q. Any key open the door?

20 A. No, sir.

21 Q. Did Tiffany wake up?

22 A. Yes, sir.

23 Q. And what's going through Artemis Bryant's mind right
24 now? Not right now but right then? You know what I mean?

25 A. Yes, sir.

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

80

1 Q. What, what are you thinking about?

2 A. I was, like, what, what, what the heck did I get
3 myself into. Like, what's -- what is this.

4 MR. JORDAN: Judge, again I can't hear.

5 THE COURT: He can't -- he's got to speak up. Turn,
6 turn the microphone up if we need to. Do you know how we
7 do that?

8 (A PAUSE.)

9 BY MR. MEADORS:

10 A. It was, it was, like, this is a rush of questions and
11 I couldn't tell you.

12 (A PAUSE.)

13 MR. MEADORS: Can I proceed?

14 THE COURT: You may.

15 BY MR. MEADORS:

16 Q. After Tiffany woke up, what did you do? What happened
17 next?

18 A. I gave her her phone and then we discussed, like,
19 what, what, what do we do now. And then she was, like, I
20 think, I think I know him. So, I mean, we should talk to
21 him. You know, like, just open the door and just, like,
22 talk to him, try to calm him down. And so I had a bad
23 feeling, so I took my wallet and I tucked it in the couch
24 and ---

25 Q. You took your wallet and tucked it in the couch?

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

81

1 A. Yeah. Yes, sir.

2 Q. Why did you do that?

3 A. Because I just had a eerie feeling in my stomach, and
4 it turned out I was right.

5 Q. So, what did you do next after you hid your wallet?

6 A. I go to the door and I kind of crack it to see. Like,
7 to talk to them. And the second I opened it, the gun's in
8 my face and he's, like, who the fuck are you, and I said
9 I'm Artemis Bryant, and then, then he went over to Tiffany,
10 like, choked her. Then the other two came in and they
11 were, like, who are you? Who are you and they started
12 hitting on me, and I tripped and fell. Then I was pretty
13 much beated in the corner for a while, but then Bracey came
14 back to me and put the gun to my head, and one of the other
15 two were searching through my pockets. Like, what the fuck
16 you got, nigga? And then they were saying, like, Red Bay
17 and just shouting and stuff.

18 And then after that, they, they all left, and then I
19 went to the bathroom to call the cops, and then they all
20 came running back in. It's, like, what the hell are you
21 doing here? Get out. So, Bracey had the gun on me in the
22 bathroom and the other two beat me.

23 So, I just grabbed what I could, my phone and I think
24 my iPod, and they beat me outside, and then I finally get
25 to my truck. My glasses are smashed. These are the ones

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

82

1 from basic, and so I was holding my glasses and trying to
2 shift. I actually ran into the tree backing up. And they
3 were, like, come back or we'll kill you. If you, if you
4 come back we'll kill you.

5 And so I finally get into the truck. I run into the
6 tree and I make my way to the, the street somehow, and then
7 I drive. And by the time I got to the corner where Safe is
8 at, I got a hold of the operator, called the -- after I
9 called 911. Then I gave them my statement.

10 Q. And you -- by the time you got to Safe Federal, right?

11 A. Yes, sir.

12 Q. You called 911?

13 A. Yes, sir.

14 Q. Did they want you to stay there or?

15 A. She, she's, like, pull over.

16 MR. JORDAN: Objection to hearsay, Your Honor.

17 MR. MEADORS: Your Honor, we're not offering it for
18 the truth of the matters asserted.

19 THE COURT: Yeah. Overruled.

20 BY MR. MEADORS:

21 Q. What happened? Did you drive yourself to the
22 hospital?

23 A. Oh, yes, sir.

24 Q. And they wanted you to stay, but you drove yourself?

25 A. Yes, sir.

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

83

1 Q. When you were in the house, what -- you said they came
2 in. You said some -- when you opened the door, there was a
3 gun. Who had the gun?

4 A. Bracey.

5 Q. Okay. Was it pointed right at you?

6 A. Yes, sir.

7 Q. And, and, and is that Bracey to the left there of Mr.
8 Bridges?

9 A. Yes, sir.

10 Q. And, and after that first encounter, where did they --
11 or you said they were hitting on you. Where in the house
12 were you?

13 A. So, you go into the -- it was a side door, so.

14 (A PAUSE.)

15 A. Yeah. Like, it would have been...

16 (COUNSELORS CONFER.)

17 MR. MEADORS: State's 18 without objection, Your
18 Honor.

19 THE COURT: All right, State's 18 is admitted without
20 objection.

21 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
22 NUMBER 18.)

23 BY MR. MEADORS:

24 Q. This is -- is this the outside of the residence?

25 A. Yes, sir.

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

84

1 Q. Does this help you show where they first -- you said
2 these individuals first beat you?

3 A. Yeah. So, once we get in the house, it would have
4 been in this corner right here because I tripped and fell
5 and I was pretty much, like, just trying to protect the
6 vital points.

7 Q. Is it depicted in State's 9?

8 A. It would have been in, like, this, this corner.

9 Q. Okay.

10 (COUNSELORS CONFER.)

11 MR. MEADORS: State's 9, I believe, without objection.

12 THE COURT: Which ones are in without objection? 1
13 through?

14 MR. JORDAN: Judge, if we can approach?

15 THE COURT: Yes.

16 (OFF-THE-RECORD BENCH CONFERENCE.)

17 MR. MEADORS: Your Honor, we'd offer 1 through 26
18 without objection and 31 through 45 without objection. Is
19 that correct, Mr. Jordan?

20 MR. JORDAN: That's correct.

21 THE COURT: Mr. Bridges?

22 MR. BRIDGES: Yes.

23 THE COURT: All right, then those are in evidence.

24 MR. MEADORS: Thank you.

25 THE COURT: Thank you.

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

85

1 (MAP MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
2 1.)

3 (MAP MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
4 2.)

5 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
6 STATE'S EXHIBIT NUMBERS 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,
7 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26.)

8 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
9 STATE'S EXHIBIT NUMBERS 31 THROUGH 44.)

10 (GUN AND AMMUNITION MARKED INTO EVIDENCE AS STATE'S
11 EXHIBIT NUMBER 45.)

12 BY MR. MEADORS:

13 Q. Show the ladies and gentlemen how you were defending
14 yourself. You say you're in the corner here of this part
15 of the house, correct?

16 A. Yeah. Like, it would have been ---

17 Q. State's 23?

18 A. Yeah. It would have been against, like, that window.

19 Q. Against this -- on the inside?

20 A. I'm on the inside.

21 Q. Show the ladies and gentlemen how you were defending
22 yourself.

23 A. Pretty much fetal position and like this.

24 Q. Like ---

25 A. On the ground on my side.

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

86

1 Q. And this is the first time, correct, when they first
2 came in?

3 A. Yes, sir.

4 MR. MEADORS: Can I approach, Judge?

5 THE COURT: You may.

6 BY MR. MEADORS:

7 Q. And how, how were, how were these -- who were the
8 other individuals that were hitting you?

9 A. Ross and McFadden. They all did.

10 Q. Is Mr. McFadden in the courtroom?

11 A. Yes, sir.

12 Q. Is he next to Mr. Jordan?

13 A. Yes, sir.

14 Q. And what was he doing to you when he came in the
15 house, McFadden?

16 A. It was either him or Ross were first, and they just
17 started throwing punches. I was, like, what's going on and
18 then I fell.

19 Q. So, they were both hitting?

20 A. Yeah, they were both hitting me.

21 Q. Where were they hitting you?

22 A. Like, in my face.

23 Q. I mean, were they hitting you hard?

24 A. Yes.

25 Q. I don't mean just slapping you. Were they hitting you

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

87

1 about the body?

2 A. Yes, sir.

3 Q. What were you doing to cover yourself?

4 A. I just, you know, that.

5 Q. Did you know either one of them?

6 A. Never seen any of them before in my life.

7 Q. How long did that encounter happen, the first
8 encounter when they came in?

9 A. That's, that's the blur. I honestly couldn't tell
10 you.

11 Q. How close were you to the gun that Latique Bracey
12 pointed when you opened the door?

13 A. This close.

14 Q. So when you opened the door, you saw the gun?

15 A. Yes, sir.

16 Q. Put my hand where it was to your face.

17 A. Like, this close.

18 Q. Were you, were you scared at that point?

19 A. Yes.

20 Q. You'd been in whatever room it is when you said they
21 beat you. What happened? They, they being McFadden and
22 Ross at that point. Where was Mr. Bracey when they had
23 you, beating you initially when they came in? What was Mr.
24 Bracey doing then?

25 A. He was choking and had the gun to her, to Tiffany.

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

88

1 Q. To Tiffany Calvin. Did you leave then after that?

2 A. No. I, I couldn't. I, I, I got up to go to the
3 bathroom after they, they all left, and then I thought they
4 were gone for good. So, I went to go to the bathroom and
5 call the cops, and then they came back.

6 Q. So, it, it wasn't -- how long was it, the time they
7 left and came back?

8 A. It might have been a minute maybe.

9 Q. And when you came back, where was your encounter with
10 them the next time, them being McFadden, Bracey, and Ross?

11 A. All, all in the bathroom. Bracey was in the back. He
12 had the gun on me, and the other two were just wailing on
13 me.

14 Q. And when you say Bracey was in the back, had the gun
15 on you, tell me where ---

16 A. So ---

17 Q. Is he standing up?

18 A. Yeah. They, they were all standing up because I, I
19 was standing up, so.

20 Q. And where was the gun pointed to you then by Bracey?

21 A. Just, like, like, neck up.

22 Q. All right. Was he saying -- were any of them -- what
23 were they saying to you?

24 A. They just, just beating, just beating me up.

25 Q. And the other two were hitting you about your body?

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

89

1 A. Yes, sir.

2 Q. Well, how were you defending yourself?

3 A. Same, same thing. Just trying to block what I can.
4 This time I -- by this point my glasses are smashed, so I
5 couldn't see anything coming, so I was just...

6 Q. And no disrespect. I wear glasses. Do you have a
7 hard time seeing when you don't have your glasses?

8 A. Yes, sir. It's a miracle I made it to the hospital.

9 Q. So, your glasses were broken. You couldn't see as
10 well?

11 A. Yes, sir.

12 Q. I'm going to show you State's 13. Do you recognize
13 that, and if you don't that's fine.

14 (A PAUSE.)

15 Q. State's 19, is that the front of the house?

16 A. Yes, sir.

17 Q. Is this the first time you'd been to this house?

18 A. Yes, sir.

19 Q. So, were you familiar with the layout of the front and
20 back door at the time?

21 A. No, sir.

22 Q. Do you recognize 4?

23 A. Yes, sir.

24 Q. And what is, what is this part of 4 where the light
25 is?

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

90

1 A. The front of the house.

2 Q. Okay, and if we go around to where my finger is on 4.

3 A. That's the side.

4 Q. Okay.

5 A. Where they entered.

6 Q. Is that where they entered?

7 A. Yes, sir.

8 Q. Okay. Okay. You're in the back room. They're beating
9 you. Bracey's got the gun on you. What happens next?

10 A. They're, like, they were pulling me out and still,
11 like, hitting on me, telling me to get out and come back,
12 we'll kill you.

13 Q. Say that last part again.

14 A. Come back, we'll kill you.

15 Q. Come back, we'll kill you?

16 A. Yeah.

17 Q. Did you, did you take that to heart? I mean, did you
18 think they were serious?

19 A. Yes. Yes. That's why I never been back.

20 Q. You've never been back?

21 A. No.

22 Q. And this is State's 38. Do you recognize that?

23 A. Yes, sir.

24 Q. How do you recognize that?

25 A. It's the one he put in my face and to my temple.

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

91

1 Q. And you say he put it in your face to your temple, do
2 you mean he actually put it on your temple?

3 A. Yes, sir.

4 Q. Could you feel it?

5 A. Yes, sir.

6 Q. Put, put -- my hand's a gun. Put it on there.

7 A. Because I was on my, my right side, so it would have
8 been like that.

9 Q. You were on your right side?

10 A. Yeah.

11 Q. On the ground?

12 A. Yeah, when I was in the corner when they first came.

13 Q. So, you're in the corner on the ground?

14 A. Yeah.

15 Q. He's got the -- did you think that was serious?

16 A. Yes.

17 Q. And were the other two beating you while Bracey had
18 the gun on your head?

19 A. Yes, sir.

20 Q. That would be McFadden and Ross?

21 A. Yes, sir.

22 Q. Any doubt that was a gun that was against your head?

23 A. No. No. That, that was a gun.

24 Q. And State's 45, is that the gun?

25 A. Yes, sir.

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

92

1 Q. That you just described?

2 A. (NO VERBAL RESPONSE.)

3 Q. Was that, was that yes?

4 A. Yes, sir. Yes, sir.

5 Q. You don't have to say sir.

6 A. Oh.

7 Q. When you got outside, I'm not -- were you helped
8 outside or did you go outside? How did you get from -- the
9 second time when they were there, how did you get back out?

10 A. They would just beating me, like, telling me to get
11 out, and so I was getting out the door.

12 Q. Did you have shoes on?

13 A. No, sir.

14 Q. Sir?

15 A. No, sir.

16 Q. Okay. What happened to your shoes?

17 A. When I come to a new house that -- I just take my
18 shoes off by the door.

19 Q. So you won't mess up the house?

20 A. Yes, sir.

21 Q. This is State's 24. Do you recognize that shoe?

22 A. Yes, sir.

23 Q. Whose shoe is that?

24 A. It's, it's mine.

25 Q. Do you know how it got in the yard?

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

93

1 A. I probably kicked it, kicked it out, yeah.

2 Q. So, when you are running out of the house, you were
3 barefooted?

4 A. Oh, yes. Yes, sir. Well, I had socks on.

5 Q. I'm sorry. Say?

6 A. Oh, I had socks on.

7 Q. Okay. I understand that.

8 A. Yes, sir.

9 Q. So, you didn't take time to get -- pick up your shoes
10 when you went out?

11 A. Oh, no, sir. No, sir.

12 Q. Why?

13 A. Because they were, like, on me.

14 Q. Were they yelling at you as you were leaving?

15 A. Yes, sir.

16 Q. What? What were they saying?

17 A. Come back, come back, we'll kill you, so.

18 Q. You went to the hospital?

19 A. Yes, sir.

20 MR. MEADORS: Beg the court's indulgence.

21 THE COURT: Yes.

22 (A PAUSE.)

23 MR. MEADORS: May I approach again, please?

24 THE COURT: You may.

25 BY MR. MEADORS:

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

94

1 Q. When you get to Tuomey, what happened when you got
2 there?

3 A. I pull up to the entrance, and there was, I think,
4 there was a cop and a -- I think EMS with a wheelchair out
5 there waiting on me.

6 Q. Now this is 26, which has already been admitted. Is
7 that -- was that your body and your T-shirt there?

8 A. Yes, sir.

9 MR. MEADORS: Judge, I think we need to approach now.

10 THE COURT: All right.

11 (OFF-THE-RECORD BENCH CONFERENCE.)

12 THE COURT: What numbers are those?

13 MR. MEADORS: 27 through 30.

14 THE COURT: All right, admitted over Mr. Bridges's
15 objection.

16 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
17 STATE'S EXHIBIT NUMBERS 27, 28, 29, 30.)

18 (A PAUSE.)

19 BY MR. MEADORS:

20 Q. All right, let me show you what's marked State's 27.
21 Is that you?

22 A. Yes, sir.

23 Q. What does this show, Artemis?

24 A. The left side.

25 Q. Left side of your head?

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

95

1 A. Yeah. The right side.

2 Q. 29?

3 A. That's the left.

4 Q. Can you tell speak up? Just tell us what this is.

5 A. That's the left.

6 Q. Could you tell us what that is, Artemis, 29?

7 A. My ear.

8 Q. Is that where you got hit?

9 A. Yes, sir.

10 Q. 30?

11 A. Where I got hit.

12 Q. 28?

13 A. Hit.

14 Q. What does that show a picture of?

15 A. Face, lips.

16 Q. Was, was side of your -- part of your face swollen?

17 A. Yes, sir.

18 Q. Did it swell up the ---

19 A. Yes.

20 Q. --- next few days, too?

21 A. Yes, sir.

22 Q. Did it hurt?

23 A. Yes, sir.

24 Q. And all these pictures with State's 35, is that your
25 blood on your shirt?

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

96

1 A. Yes, sir.

2 Q. And on State's 31, Artemis, does your left side -- you
3 look up here, please?

4 A. Yes, sir.

5 Q. Is your -- is that your left cheek that's swollen?

6 A. Yes, sir.

7 Q. As a result of the assault by McFadden and Ross?

8 A. And Bracey, yes.

9 Q. Sir?

10 A. And Bracey, yes.

11 Q. Bracey. Excuse me. Did Bracey also hit you?

12 A. Yes, sir. They all did.

13 Q. In addition to pointing the gun at you?

14 A. Yes, sir, they all did.

15 Q. Well, what -- they were all hitting you at one point?

16 A. Yes, sir.

17 Q. All three of them?

18 A. Yes, sir.

19 Q. Did you ever strike back?

20 A. I, I did a little, but I didn't do any damage. I
21 didn't want to hurt anybody.

22 Q. You didn't want to hurt anybody?

23 A. No.

24 Q. So, you defended yourself the whole time?

25 A. Yes, sir.

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

97

1 Q. And State's 37, is that also a picture of your face
2 swollen?

3 A. Yes, sir.

4 Q. Did you consent for them to come in this house?

5 A. No, sir.

6 Q. And again -- well, how long had you known Dominique
7 Ross?

8 A. I'd never seen him before, any of them.

9 Q. Marc, Marcus McFadden or Latique Bracey?

10 A. No.

11 Q. Didn't know any of them?

12 A. No, sir.

13 Q. You didn't have any bad blood against them, did you?

14 A. No.

15 MR. MEADORS: Beg the court's indulgence.

16 THE COURT: Yes.

17 (A PAUSE.)

18 MR. MEADORS: Sorry, Your Honor. Very briefly.

19 BY MR. MEADORS:

20 Q. Before they forced their way in, according to your
21 testimony, did you see any damage to the door?

22 A. I didn't notice anything like that when I came in.

23 Q. The first thing you noticed, the gun?

24 A. Yes, sir.

25 Q. Now, is the person in this room who you said put a gun

A. BRYANT - DIRECT EXAMINATION BY MR. MEADORS

98

1 to you?

2 A. Yes, sir.

3 Q. Soon as he came in, put a gun actually on your temple,
4 who helped take part in the beating, according to your
5 testimony, is that person in the courtroom?

6 A. Yes, sir.

7 Q. Would you point him out?

8 A. Bracey.

9 Q. You're pointing to Mr. Bracey?

10 A. Yes, sir.

11 Q. Next to Mr. Bridges?

12 A. Yes, sir.

13 THE COURT: The record will so reflect that the
14 witness identified Mr. Bracey.

15 BY MR. MEADORS:

16 Q. And is the other individual or helped beat you about
17 your face and body at 515 East Charlotte in -- is this in
18 Sumter County, by the way ---

19 A. Yes, sir.

20 Q. --- where this happened? Is that person in the room?

21 A. Yes, sir.

22 Q. Who is that?

23 A. McFadden.

24 Q. Marcus McFadden?

25 A. Yes, sir.

A. BRYANT - CROSS-EXAMINATION BY MR. JORDAN

99

1 THE COURT: The record will reflect that the witness
2 identified Marcus McFadden as an assailant.

3 MR. MEADORS: Thank you. That's all.

4 THE COURT: Mr. Jordan.

5 CROSS EXAMINATION BY MR. JORDAN:

6 Q. Mr. Bryant, is, is the third individual in the
7 courtroom?

8 A. No, sir.

9 Q. And that was Dominique Ross?

10 A. Yes, sir.

11 Q. He's not here?

12 A. No, sir.

13 Q. And you finished Sumter High School 2004?

14 A. Yes, sir.

15 Q. Correct?

16 A. Yes, sir.

17 Q. And did you go -- some college. I think I heard you
18 say Central Carolina?

19 A. Yes, sir.

20 Q. And then the Marines?

21 A. Yes, sir.

22 Q. I imagine you're pretty proud of that, and I imagine
23 your dad is pretty proud of that. That's a difficult
24 regimen, right?

25 A. Yes, sir.

A. BRYANT - CROSS-EXAMINATION BY MR. JORDAN

100

1 Q. Parris Island?

2 A. Yes, sir.

3 Q. You spent a number -- how long did you spend at Parris
4 Island?

5 A. It was a few months.

6 Q. And you were a Marine before the injury, I guess?
7 You, you completed basic ---

8 A. No.

9 Q. You completed basic training?

10 A. I didn't, I didn't complete. I was still phase 1. I
11 twisted my testicle, and then my feet were bleeding before
12 that from the shoes and then once I twisted my testicle,
13 they took me out for the boots, and then I was in GoFasters
14 or New Balances. So, that's why I wear New Balances
15 mainly.

16 Q. Okay. Well, so you, so you -- did you ever complete
17 the training and ---

18 A. No.

19 Q. --- become a Marine?

20 A. No. I'm not a Marine.

21 Q. Okay.

22 A. Yes.

23 Q. But you got military training?

24 A. Yes, sir.

25 Q. Okay, and then after that, some, some college and then

A. BRYANT - CROSS-EXAMINATION BY MR. JORDAN

101

1 you worked at the Color-Fi?

2 A. Yes, sir.

3 Q. And how many years ago was that that you worked at
4 Color-Fi?

5 A. This would be, like, two, two years, two or three
6 years.

7 Q. And that's where you met Tiffany ---

8 A. Yes, sir.

9 Q. --- Calvin, and y'all became friends?

10 A. Yes, sir.

11 Q. And y'all communicate?

12 A. Like, it was, like, every once in a blue moon, yeah.

13 Q. Okay, and you know her children? You know their
14 names?

15 A. Not really, no.

16 Q. Okay, but you brought them pizza and movies on this
17 night in April. I think it's April 9th?

18 A. Yes, sir.

19 Q. This year. Okay, and when you got over there, what,
20 what time was it?

21 A. Like, around 9:30.

22 Q. I didn't ask you this. Are you a married man or
23 single?

24 A. Single.

25 Q. Any children?

A. BRYANT - CROSS-EXAMINATION BY MR. JORDAN

102

1 A. Negative.

2 Q. Okay. Okay, but movies and pizza were in part for
3 Tiffany's children as far as for ---

4 A. It's for everybody, yeah, because ---

5 Q. Well, who ---

6 A. --- I was hungry, too.

7 Q. Who's everybody? Who were the ---

8 A. Well, Tiffany, the kids, and myself.

9 Q. And were you familiar with Tiffany's relationship with
10 Latique Bracey before you went over there?

11 A. No, sir.

12 Q. Had you ever heard the name Latique Bracey before you
13 went over there?

14 A. No, sir.

15 Q. Had you ever heard the name Marcus McFadden before you
16 went over there?

17 A. No, sir.

18 Q. Had you ever heard the name Dominique Ross before you
19 went over there?

20 A. No, sir.

21 Q. Okay, but you know all three names now?

22 A. Yes, sir.

23 Q. And your testimony was that, that you heard this
24 commotion at the door. Is that right? You said loud and,
25 and you were uncomfortable with it, and you tucked your

A. BRYANT - CROSS-EXAMINATION BY MR. JORDAN

103

1 wallet in the couch.

2 A. Uh-huh.

3 Q. Isn't that what you said?

4 A. Yes, sir.

5 Q. Now, that wallet never went anywhere, did it?

6 A. No, sir.

7 Q. Okay. Nobody took any money from you, did they?

8 A. No, sir.

9 Q. Nobody took any property from you, did they?

10 A. No, sir.

11 Q. Okay. This was a fight?

12 A. Yes, sir.

13 Q. And a threat?

14 A. Yes, sir.

15 Q. And do you now know that, that Tiffany Calvin had a, a
16 intimate relationship with Latique Bracey?

17 A. Yes, sir.

18 Q. You know that now?

19 A. Yes, sir.

20 Q. Has Tiffany Calvin ever, ever had an intimate
21 relationship with Marcus McFadden, to your knowledge?

22 A. I, I have no idea.

23 Q. Okay. Has she ever had a intimate relationship with
24 Dominique Ross, to your knowledge?

25 A. I have no idea.

A. BRYANT - CROSS-EXAMINATION BY MR. JORDAN

104

1 Q. All right. So, so, you hear this commotion at the
2 door and you wake her up?

3 A. Yes, sir.

4 Q. She's fallen asleep. You fell asleep.

5 A. Yes, sir.

6 Q. Okay. You remember which movie was playing at that
7 time?

8 A. *A New Hope: Star Wars.*

9 Q. Okay. One of my favorites. All right. So, so, did
10 y'all peek out outside the windows?

11 A. No, I, I didn't.

12 Q. Okay. Well, did you, did you see her doing that?

13 A. No. She, she was on the couch. Like, she was...

14 Q. How is it that she told you before the door was even
15 open that she knew who they were?

16 A. I guess from the sound of the voice, and I gave her
17 her cell phone because it was going off.

18 Q. And she told you I know them. We can talk them down.
19 Is that right?

20 A. Yes, sir.

21 Q. I think that was your testimony. You remember exactly
22 what she said?

23 A. I, I couldn't tell you exactly what.

24 Q. Did she ---

25 A. It was, like...

A. BRYANT - CROSS-EXAMINATION BY MR. JORDAN

105

1 Q. Did she ever tell you that Latique Bracey had been
2 staying there with her?

3 A. No.

4 Q. But she did tell you they were -- they had had a
5 relationship?

6 A. Like, after, after all this, yeah.

7 Q. Okay. Did she tell you how long their relationship
8 last?

9 A. No. We never talked about any relationship.

10 Q. Okay, but nonetheless, she knew who was on the other
11 side of that door, and she knew all of them?

12 A. I guess. Yes, sir.

13 Q. And that's how now you know all of them, correct?

14 A. Yes, sir.

15 Q. It's because y'all talked about it. These are kids
16 from the neighborhood. They're all young guys, right?
17 They're all in their twenties?

18 A. Yes, sir.

19 Q. Okay. So, she said I know them. We can talk. We can
20 -- I can talk them down. Told you to let them in, correct?

21 A. Yes, sir.

22 Q. So, you started to let them in, but you didn't fully
23 let them and -- even though she said let them in. Is that
24 right? They came ---

25 A. Yeah.

A. BRYANT - CROSS-EXAMINATION BY MR. JORDAN

106

1 Q. --- rush -- rushing through?

2 A. Yes, sir.

3 Q. All right, and did she start to talk to Latique
4 Bracey?

5 A. No. No one, no one got a word out. I, I couldn't
6 even, like, say, like, hello. Like, the second I opened
7 the door, the gun's in my face and he said who are you. I
8 said Artemis and then the second I said Artemis, he ran
9 over to Tiffany and choked her and had her at gunpoint, and
10 then the other two came at me.

11 Q. Okay.

12 A. I could, I could look in their eyes and say that there
13 wasn't any reason. I couldn't reason. I couldn't calm it
14 down, so I just, just beared, beared it.

15 Q. No girlfriend?

16 A. No, sir.

17 Q. Had one?

18 A. Years and years ago.

19 Q. Did you ever help her with her bills and expenses at
20 the house or help her out financially?

21 A. Yes.

22 Q. Did you ever -- did you have any expectations out of
23 her since you were helping her out financially?

24 A. No. We were just boyfriend and girlfriend. Then we
25 broke up.

A. BRYANT - CROSS-EXAMINATION BY MR. JORDAN

107

1 Q. Okay. Did -- while this was going on, did you
2 understand or did you come to understand that the reason
3 Latique Bracey was there and act ---

4 MR. MEADORS: Your Honor, objection to what -- the
5 reason Latique Bracey ---

6 THE COURT: Yes, sustained. Speculation.

7 BY MR. JORDAN:

8 Q. Did you hear Latique and Tiffany communicate with each
9 other during this event?

10 A. Yes.

11 Q. Did you hear any of them mention their relationship?

12 A. I think so.

13 Q. You can't recall?

14 A. I can't really recall.

15 Q. But you can recall everything else that happened, just
16 not that?

17 A. Yeah.

18 Q. Is that right?

19 A. Yes, sir.

20 Q. All right. You don't recall any statements that were
21 made about their relationship?

22 A. Like, he's, like -- I don't know.

23 Q. Because it's not, it's not clear on your mind today,
24 right?

25 A. No, sir.

A. BRYANT - CROSS-EXAMINATION BY MR. JORDAN

108

1 Q. I mean, it has been five and a half months.

2 A. Yes, sir.

3 Q. Now, did you, did you hear Tiffany or Mr. Bracey say
4 anything about who paid the bills at the house?

5 A. No. No, sir.

6 Q. All right. So, she tells you let them in. I know I
7 can talk them down, and that is why the door was opened,
8 correct?

9 A. Yes, sir.

10 Q. This was the side door on the house?

11 A. Yes, sir.

12 Q. So, this ---

13 A. Yeah.

14 Q. --- the door this way was opened?

15 A. Yes, sir.

16 Q. You open that door, and is it a wooden door that opens
17 in and a storm door that opens out?

18 A. I honestly don't remember. I just remember opening
19 the door.

20 Q. And was the door ever pushed off its hinges?

21 A. I don't -- couldn't -- they were, they were banging at
22 the door, so it probably -- I wasn't really looking at the
23 door at the time.

24 Q. Can you say under oath to this jury that this damage
25 to this door was caused -- who came through the door first?

A. BRYANT - CROSS-EXAMINATION BY MR. JORDAN

109

1 A. Bracey.

2 Q. Can you tell this jury today under oath that this
3 damage to this doorway was called by Latique Bracey on
4 April 9, 2016, about, oh, 12 p.m. -- 12 a.m?

5 A. I, I can't say that.

6 Q. Because that was your first time at the home?

7 A. Yes, sir.

8 Q. Okay. Thank you. Who came in second?

9 A. Either McFadden or Ross. They came in, like, right
10 after him, so.

11 Q. And again, Mr. Ross is not even here, right?

12 A. Yes, sir.

13 Q. Mr. Meadors asked you about how long this lasted. I
14 know longer than you wanted it to, but do you, do you know
15 at the time -- did you ever have a chance to look at your
16 watch or anything like that?

17 A. I couldn't tell you.

18 Q. Okay, and out of the three, can you say which one was
19 making these threats and making these statements, or were
20 you, were you, were you just protecting yourself? Do you,
21 do you know the sound of each other -- of, of their
22 different voices?

23 A. I couldn't tell you. I just -- I -- all I can say is
24 that he had the gun and they were shouting, like, come
25 back, we'll kill you.

A. BRYANT - CROSS-EXAMINATION BY MR. JORDAN

110

1 Q. And while you were there, was the gun ever fired?

2 A. Yes, when I was leaving. When I was in the truck, he
3 fired a shot in the air.

4 Q. He?

5 A. Yeah.

6 Q. Do you know which one?

7 A. Yeah, Bracey. He's the only one that had the gun.

8 Q. Only one that had the gun?

9 A. Yes, sir.

10 Q. All right. Now, this started in the -- at the side
11 door and continued into the bathroom. At some point you
12 were in the bathroom?

13 A. Yes, sir.

14 Q. In the fetal position?

15 A. No, no. I was standing up just like, just like this.

16 Q. I'm sorry?

17 A. Like, like this.

18 Q. Okay, and you said you did, you did defend yourself
19 and maybe throw a punch or two?

20 A. It wasn't nothing. It wasn't nothing serious.

21 Q. Okay, and, and, Artemis, I guess how, how -- what's
22 your size and weight? You about 6 feet tall?

23 A. Yeah. 5-11, 260.

24 Q. Okay. So, you're no -- you're not a, you're not a
25 small guy.

A. BRYANT - CROSS-EXAMINATION BY MR. JORDAN

111

1 A. No, sir.

2 Q. Have, have you ever had to defend yourself before?

3 A. Like -- no, not really.

4 Q. Okay. Did you talk with -- all right. So, so, so,
5 you left and you drove yourself to, to Tuomey?

6 A. Yes, sir.

7 Q. You didn't get back and hadn't been back?

8 A. No, sir.

9 Q. Understandably so. Did you -- have you had any
10 communicate -- did you have any communications after the
11 fact with Tiffany Calvin about this?

12 A. Yes. Like, off and on.

13 Q. Did she tell you any more details about her
14 relationship with Latique Bracey?

15 A. Like, they were seeing each other and then -- yes.
16 It's, like, their business. I don't really pay attention
17 to it, so.

18 Q. Did she tell you anything else about Marcus McFadden?

19 MR. MEADORS: Your Honor, that's technically hearsay.
20 She'll be testifying next.

21 THE COURT: Sustained.

22 BY MR. JORDAN:

23 Q. Again, do you know what time you, you left your house
24 to, to head to the hospital?

25 A. My glasses were broken. I couldn't see time.

1 MR. JORDAN: Court's indulgence.

2 THE COURT: Yes.

3 MR. JORDAN: Thank you, Mr. Bryant. I don't have any
4 other questions.

5 THE COURT: Mr. Bridges.

6 MR. BRIDGES: Before I begin questioning, can I
7 request a bench conference?

8 THE COURT: Yes.

9 (OFF-THE-RECORD BENCH CONFERENCE.)

10 THE COURT: All right, ladies and gentlemen, this is
11 probably a good time to take a recess. We've been here for
12 about an hour. I don't want anybody getting drowsy. So,
13 go back and get a Co-Cola and then we'll come back.

14 All right, thank you. Please do not discuss anything
15 about the case.

16 Sir, you are on the stand. You may get down, but you
17 may not discuss with anyone any of your testimony, okay?

18 WITNESS: Yes, sir.

19 THE COURT: Thank you.

20 (THE JURY EXITS AT 3:05 P.M.)

21 THE COURT: All right, court will be at ease for the
22 next five minutes while you two talk, and then we'll see
23 what we can do.

24 (OFF THE RECORD.)

25 THE COURT: Thank you. Please take your seat. All

A. BRYANT - CROSS MR. BRIDGES / REDIRECT BY MR. MEADORS 113

1 right, let's bring them up. Can't waste anymore time
2 today.

3 (A PAUSE.)

4 THE COURT: All right, let's bring our jury in.

5 (THE JURY ENTERS AT 3:24 P.M.)

6 THE COURT: Mr. Bridges, you may cross-examine now.

7 MR. BRIDGES: May it please the court?

8 CROSS-EXAMINATION BY MR. BRIDGES:

9 Q. Just have a few questions for you, Mr. Bryant. It's
10 mostly -- just be a summary of kind of what you've already
11 said. But prior to the -- that -- you meeting Ms. Calvin
12 -- is that the first time you'd been to that house?

13 A. Yes.

14 Q. And that was also the first time that you had ever
15 seen Latique Bracey or Marcus McFadden?

16 A. Yes.

17 Q. And prior to you opening the door, did Ms. Calvin tell
18 you to let them in?

19 A. Yes.

20 MR. BRIDGES: Thank you. No further questions.

21 THE COURT: Thank you.

22 Mr. Meadors.

23 MR. MEADORS: May it please the court?

24 REDIRECT EXAMINATION BY MR. MEADORS:

25 Q. Mr. Jordan asked you if anybody took any money or

A. BRYANT - REDIRECT EXAMINATION BY MR. MEADORS

114

1 property. Did you testify that they checked your pocket?

2 A. Yes, sir.

3 Q. Okay, and do you know why they were doing that?

4 MR. JORDAN: Objection, Judge. Calls for speculation.

5 THE COURT: Sustained.

6 BY MR. MEADORS:

7 Q. Did they look, actually look in your pocket?

8 A. Yes. One, one of them did.

9 Q. Was there anything in there?

10 A. No. I just had, like, Gummy Bears.

11 Q. Okay. If you had not hidden your wallet, would it
12 have been in your pocket?

13 A. Yes, sir.

14 Q. And did you have a gun put to your head?

15 A. Yes, sir.

16 Q. Now, I think, I think it was Mr. Jordan asked you
17 about if you had ever had a girlfriend and paid bills or
18 something like that.

19 A. Yes, sir.

20 Q. Do you remember him asking you that?

21 A. Yes, sir.

22 Q. Have you ever had an ex-girlfriend that you broke into
23 her house and beat somebody ---

24 MR. JORDAN: Objection, Judge.

25 Q. --- that was a visitor?

A. BRYANT - REDIRECT EXAMINATION BY MR. MEADORS

115

1 MR. JORDAN: Objection. Leading.

2 THE COURT: Sustained.

3 MR. MEADORS: Judge, I was -- he, he asked about a --
4 his girlfriend. Could I ask him have you ever broken into
5 an ex-boyfriend's house?

6 WITNESS: No, sir.

7 THE COURT: He can answer that. Leave it there.

8 BY MR. MEADORS:

9 Q. And you, you were asked, I think, by Mr. Jordan about
10 not fighting back or you didn't fight back. Did one of the
11 three have a gun on you?

12 A. Yes, sir.

13 Q. Did you have a gun?

14 A. No, sir.

15 MR. MEADORS: That's all. Thank you.

16 THE COURT: Any recross based on his redirect?

17 MR. JORDAN: Not from Defendant McFadden, Your Honor.

18 THE COURT: Okay.

19 MR. BRIDGES: Nothing, Your Honor.

20 THE COURT: Thank you. You may step down.

21 WITNESS: Yes, sir.

22 (THE WITNESS EXITS THE STAND.)

23 MR. MEADORS: May we approach?

24 THE COURT: You may.

25 (OFF-THE-RECORD BENCH CONFERENCE.)

T. CALVIN - DIRECT EXAMINATION BY MR. MEADORS

116

1 MR. MEADORS: Your Honor, the state calls Tiffany
2 Calvin.

3 THE COURT: All right.

4 MR. MEADORS: Judge, due to her situation, can we have
5 your guidance? I don't know if we need to do her in front
6 or if we can wheel her down there.

7 THE COURT: There's a ramp. They ought to be able to
8 wheel her up. Move the chair and just put her right there.

9 (A PAUSE.)

10 TIFFANY CALVIN, BEING DULY SWORN,
11 TESTIFIES AS FOLLOWS:

12 THE COURT: If you can get her around, please don't
13 hurt her leg.

14 (A PAUSE.)

15 BAILIFF: State your name. Spell your last name for
16 the record.

17 WITNESS: I'm Tiffany Calvin, C-A-L-V-I-N.

18 (A PAUSE.)

19 DIRECT EXAMINATION BY MR. MEADORS:

20 Q. What's your name?

21 A. Tiffany Calvin.

22 Q. Tiffany, as I do with every jury, tell them, tell them
23 a bit about Tiffany Calvin. Where you from?

24 A. I'm from Alcolou, South Carolina.

25 Q. Alcolou. Were you born and raised?

T. CALVIN - DIRECT EXAMINATION BY MR. MEADORS

117

1 A. Yes, sir.

2 Q. Tell them, tell these folks where you went to school.

3 A. From primary, elementary to junior high, that would be
4 in Manning, South Carolina. Then my mother move us to
5 Florida, Fort Lauderdale, Florida, and I finished school
6 there. Graduated there from South Plantation.

7 Q. From where?

8 A. South Plantation High in Fort Lauderdale, Florida.

9 Q. Yes, ma'am.

10 A. Is where I currently graduated and I stayed there, and
11 we move back down here, and my mom passed in 2005.

12 Q. I'm sorry.

13 A. And I moved back there to Fort Lauderdale, and I
14 stayed there for eight years and a half, and I came back
15 2011, and that's where I currently met Latique Bracey.

16 Q. When you say you moved back, do you mean back to ---

17 A. We moved back to South Carolina from Fort Lauderdale,
18 Florida.

19 Q. And you moved back to where, here? Sumter?

20 A. Sumter, South Carolina, yes.

21 Q. Why, why not Manning?

22 A. Because I moved back with my sister.

23 Q. And your sister is back here in the yellow?

24 A. Monique Francis.

25 Q. Francis. Just this past weekend got married, right?

T. CALVIN - DIRECT EXAMINATION BY MR. MEADORS

118

1 A. Yes, sir.

2 Q. Okay. So, you moved back to be with her?

3 A. Yes, sir.

4 Q. And what year?

5 A. In 2011.

6 Q. Now, how did you meet Latique Bracey?

7 A. When I moved with Monique Francis in 2011, I met
8 Latique Bracey.

9 Q. So, was that through a friend of your sister's you met
10 him?

11 A. Yes.

12 Q. Okay, and as a result of that, did y'all develop a
13 relationship?

14 A. I'm sorry? Say that again.

15 Q. After you met him, did y'all have -- start a
16 relationship?

17 A. Yes, sir. We started -- we was friends and then we
18 started dating.

19 Q. And when did you start dating?

20 A. Well, I just -- since 2011.

21 Q. Okay. Maybe that's not a fair question, and y'all
22 were dating on and off until when?

23 A. All the way up until 2016 of February when he wanted
24 to split off.

25 Q. He wanted ---

T. CALVIN - DIRECT EXAMINATION BY MR. MEADORS

119

1 A. After -- well, I been in a car accident in January the
2 16th of 2016.

3 Q. Okay.

4 A. And Latique, he wanted to kind of split the
5 relationship off and he wanted to, you know, go his way and
6 he wanted to be friends. So, I accepted it as that.

7 Q. He -- after the car accident, he wanted to break up?

8 A. Uh-huh.

9 Q. Why?

10 A. Maybe the car accident when they wanted to amputate my
11 leg or the things that I was going through maybe was just
12 too much for him to bear. I have the slightest...

13 Q. Well, let's get to this. You've had your -- what's
14 wrong with your leg? It was the result of a car accident?

15 A. Correct.

16 Q. Okay. So, it, it doesn't have anything to do with
17 this trial?

18 A. No, sir.

19 Q. I just want to get that on the record as far as the
20 injury, correct?

21 A. Correct.

22 Q. All right, and this accident was in January?

23 A. Correct.

24 Q. And after that, Latique Bracey and you broke up?

25 A. Yes, sir.

T. CALVIN - DIRECT EXAMINATION BY MR. MEADORS

120

1 Q. Right, and how long were you in the hospital for this,
2 for your leg -- I'm sorry -- for the record.

3 A. Well, I was in, I was in and out of the hospital, but
4 I stayed, like, for, like, two months, but I was back and
5 forth.

6 Q. And are you going to be that way for a while?

7 A. Yes, sir.

8 Q. On April 9th of this year, 2016, Ms. Tiffany, were you
9 together with Latique Bracey?

10 A. No, sir.

11 Q. And was he residing at your house at 515 East
12 Charlotte?

13 A. No, sir.

14 Q. And how long had it been since he was not residing at
15 515 East Charlotte?

16 A. I'm not sure the exact date, but I'll say February of
17 2016 before I was discharged out of Richland Memorial
18 Hospital where my dad -- when my dad gathered my keys and
19 he let me know Latique remove his clothes and everything
20 from the house. And from my understanding, he move with
21 his sister, Kim, here in Sumter.

22 Q. And your guess was that was February?

23 A. Yes, sir.

24 Q. So, from February through April, he was not staying
25 there?

T. CALVIN - DIRECT EXAMINATION BY MR. MEADORS

121

1 A. Correct.

2 Q. And you said your daddy. Is your daddy in the
3 courtroom?

4 A. Yes, sir.

5 Q. What's his name?

6 A. Johnny Kinlaw.

7 MR. MEADORS: Mr. Johnny Kinlaw, would you raise your
8 hand and let the jury see you?

9 Q. If you said this a minute ago, I just forgot. I'm
10 sorry. When did you get out of the hospital?

11 A. I got out of hospital in -- I think it was the end,
12 end of March.

13 Q. And were you able to get around enough to go home and
14 be by yourself at the house?

15 A. Not quite.

16 Q. Okay.

17 A. I needed, I did needed assistance.

18 Q. Okay. Did your sister help you?

19 A. Yes, sir. My dad, my stepmother, and both of my
20 sisters.

21 Q. And how many children do you have, Tiffany?

22 A. I have two.

23 Q. Now Artemis Bryant, how did you meet him?

24 A. I met Artemis in Color -- through Color-Fi, which was
25 a job we work, worked at recycling plastic making fiber,

1 and I met Artemis through there. Not just me. I met him
2 through some cousins also that I had working there that he
3 was also friends with besides me.

4 Q. And nothing insinuating either way to either one of
5 you, but did you ever have a relationship with Artemis
6 Bryant?

7 A. Never.

8 Q. Okay. So, your relationship was?

9 A. Just friends.

10 Q. So, let's move right to April 9, 2016, Ms. Tiffany
11 Calvin. Your home -- we've got a couple of blowups here.
12 I'm going to bring them out. Tell these folks where your
13 house is.

14 A. Lafayette on East Charlotte.

15 Q. 515?

16 A. 515.

17 Q. And how long had you been staying there at 515 East
18 Charlotte?

19 A. Going on two years.

20 Q. This is State's 19. Is that 515 East Charlotte?

21 A. Yes, sir.

22 Q. Okay. Is that the front of your house?

23 A. Yes, sir.

24 Q. So, who was staying there on April 9th of 2016?

25 A. Me and my two kids.

T. CALVIN - DIRECT EXAMINATION BY MR. MEADORS

123

1 Q. How old are your kids?

2 A. Well, she just had a birthday pass, but at the time
3 she was six.

4 Q. And your other child?

5 A. And he is four.

6 Q. I met them the other day at the house, right?

7 A. Yes, sir.

8 Q. Y'all are still there?

9 A. Yes, sir.

10 Q. Do you remember seeing Artemis Bryant on April 9th?

11 A. Yes, sir.

12 Q. Or either April 8th going into April 9th, the morning
13 maybe?

14 A. Yes, sir.

15 Q. Some of these questions I have to ask, so I'm not
16 doing them for anything. And where did you see him?

17 A. He came, he came to my house and...

18 Q. And what, if anything, did he bring?

19 A. He brang three boxes of pizza, some wings, and a bag
20 of movies.

21 Q. And what did y'all do then?

22 A. Well, we came in or whatnot. He was more concerned
23 about my well-being, and we talked about the accident, and
24 he was just giving out his sympathy for me. We -- well, I
25 had fed the kids already, so they didn't eat the pizza with

T. CALVIN - DIRECT EXAMINATION BY MR. MEADORS

124

1 us or whatnot. I fed them, let them wash, and send them to
2 bed, and me and Artemis remained in the front room. He sit
3 on one couch; I sit on the other one. At the time, I was
4 not able to move around as much as I'm doing now.

5 Q. You still ---

6 A. Because I had -- well, I had six surgeries where I had
7 open wounds on my left leg, on the ankle. So, he was
8 mostly mainly, like -- he set up the DVD for me, fixed the
9 pizza for me, made sure the kids was laying in the bed for
10 me, cut off the light, lock the door for me, little stuff
11 like that.

12 Q. And did y'all watch *Star Wars*?

13 A. Yes. He, he got the DVD player out my room and he
14 hook it up in the front room for me and he put on *Star*
15 *Wars*.

16 Q. Did the 8th become the 9th after 12:00 that morning?

17 A. Yeah.

18 Q. Did you, did you doze off?

19 A. Yes, sir.

20 Q. Okay. Do you know whether or not Artemis dozed off?

21 A. Pretty sure he did.

22 Q. Tell the ladies and gentlemen of this jury, Tiffany
23 Calvin, what's the next thing you remember.

24 A. And the next thing I remember was after I doze off,
25 Artemis, he came over. He woke me up, you know, and he let

T. CALVIN - DIRECT EXAMINATION BY MR. MEADORS

125

1 me know that he hear unusual noise outside, hear -- me
2 trying to get up, trying to see what, you know, what was
3 going on, see what he was talking about. And I finally got
4 up to where I hear the banging around the house from the
5 front door. Came from the front door. Came to the side
6 door, beating on the door. Open the door. They're shoot
7 in the house. I hear kicking on the, on the side door, and
8 when I notice and told Artemis to go check to see what's
9 going on, to open the side door to where before he even got
10 to the side door where the door was, actually came --
11 coming in -- I'm not sure who was kicking at the time, who
12 was kicking in the door, but someone was trying to come in
13 the door. So, at that time I sent Artemis to the door to
14 open the door.

15 So, when he unlocked the door and begin to open the
16 door, the next thing there was a bum rush. They bum rush
17 in the door without him even, you know, getting to open the
18 door good to see who, who was who. Latique came in with a
19 gun. Black Marc, Marcus came in and Ross, he came in but
20 he stand at the door, and they beat him from the door, from
21 the chair, from the chair to the side of the chair. And
22 when they beat him, Latique came to me, put a gun to my
23 head, telling me to shut up, bitch. I'll kill you, you
24 slut. This, that, all kind of stuff.

25 So, I really was afraid at the time because I never

1 seen Latique since the time that I did -- dated Latique and
2 been around Latique and had him around my kids. I never
3 had seen him react the way that he did act on that night,
4 which I was scared. And that was the first ever in life
5 that I had a gun pointed in my face, touching my skin.

6 I was, I was scared. I did what he told me. I didn't
7 say anything. I tried to explain, like, hey. Hold up, you
8 know, it ain't, it ain't that. He's telling me to shut up.
9 I got slapped. I got choked and I don't -- like, he knew
10 my -- he knew my well-being. He knew what I was going
11 through. He knew that I was in much pain. He knew that I
12 was fighting to keep this left leg, and still yet I felt
13 that that he had no sympathy for me.

14 My kids was in the room. They just -- thank God they
15 never woke up that night, but they slept through that whole
16 incident. They slept through that night.

17 And once he slapped me and choked me, he end up going
18 back to Artemis, and then that's when Ross, Dominique Ross,
19 came in as Black Marcus gave him the eye, which is Marcus,
20 Marcus McFadden gave Dominique the eye, and Dominique came
21 in and proceed -- and beat on Artemis as well.

22 So, what happened was, I did was I made my way -- I
23 was not able to get my wheelchair. I was not able to get
24 my crutches. When Latique got off of me and went to
25 Artemis and started beating Artemis, I made my way. I

T. CALVIN - DIRECT EXAMINATION BY MR. MEADORS

127

1 hopped. I fall. I did any -- anything that I could to --
2 got out of the house, and when I enter out of the side
3 door, I fall. I fell on the, I fell on the porch. Latique
4 came running out the door and pushed me, choked me, and
5 slapped me there. Cussed me out. I, I, was -- all kind of
6 names.

7 He put the gun here and I just felt like if I didn't
8 get away, I would have lose -- I, I -- something, something
9 would have happened that night. So, when he did that and
10 slapped me and left me on the porch, what I did -- went
11 back in the house. He went back in, inside. I can't tell
12 you -- since I was on the porch, I can't tell you what
13 happened after I was outside on the porch, but I know I
14 heard Artemis -- all still in there screaming, hollering,
15 whatnot. So, I was assuming that they still beating on
16 him. So, I ran. I hop. I fall. I made my way to the
17 next-door neighbors' house to even -- where I even fell
18 under the car. This leg went under the car. The screws
19 went in this leg till I had some wounds and scratches on my
20 right leg.

21 He came back out. The reason why I knew he came back
22 out is ---

23 Q. Who is, who is he?

24 A. Latique Bracey. He came back out. He's standing on
25 the porch, and he yelled for me: Bitch, where you at. I'm

1 mistakenly thinking that he must be -- thought that I was
2 -- went around the house, but actually I made it enough to
3 lay down on the next-door neighbors' porch without saying
4 anything because I did not want him to know where I made
5 it, where I made it at.

6 So, what I did was crawl from under -- take this leg
7 and crawl from under her car. And I was, I was able to
8 make it on her porch, and I laid there up until I heard he
9 walked back in the house and the screen door shut. And I
10 laid on the porch and I knock on the door softly to the
11 next-door neighbor house until she let me in. Once she
12 opened the door, they picked me up off the porch, put me on
13 -- laid me on her couch and kind of clean up my wounds and
14 whatnot.

15 The next thing I know, I, I called my dad, which is
16 Johnny Kinlaw, and my stepmom. They ended up coming there.
17 I was worried about my kids, so I sent the next-door
18 neighbor boyfriend and my dad back to my house to check on
19 my kids because they was inside in the room sleep, and then
20 the police came. So, they came. They rush in the
21 neighbors' house because they wanted to speak to me, and
22 they took my statement from there.

23 Q. Were you running with that leg in the same contraption
24 it's in ---

25 A. I hop. I run. I fall.

T. CALVIN - DIRECT EXAMINATION BY MR. MEADORS

129

1 Q. So, yes, that was the same?

2 A. I -- yes.

3 Q. Okay. Before you went out the first time, when you --
4 testimony was you saw Artemis getting beat. You said that
5 Marcus McFadden gave Dominique Ross the eye?

6 A. Yeah, because when Dominique ---

7 Q. What does that mean?

8 A. When -- Dominique was the last person to step foot in
9 the house and when they -- when, when Marcus and Latique
10 came in and already was in a rage and went to beat on
11 Artemis before Latique got to me to choke me and put the
12 gun to my head, Dominique Ross, he standing there. He --
13 you could tell he really didn't wanted to move, really
14 didn't want to do anything.

15 MR. JORDAN: I'm going to, I'm going to object to ---

16 THE COURT: Sustained.

17 MR. JORDAN: --- the I and ---

18 THE COURT: Well, she's, she's speculating.

19 MR. MEADORS: Judge, that's ---

20 MR. JORDAN: We just ask that be stricken.

21 MR. MEADORS: Judge, I wasn't objected to before, and
22 she said that Marcus McFadden gave him the eye, and that's
23 when he got involved. I'm just trying to clear that up.

24 THE COURT: I know, but at this point in time, she's
25 kind of testifying as to what she think he was trying to

1 say.

2 MR. MEADORS: Okay.

3 BY MR. MEADORS:

4 Q. What was Dominique Ross doing?

5 A. He was at -- he was, he was actually standing at the
6 door.

7 Q. And where was Marcus McFadden at that point?

8 A. He was beating on Artemis.

9 Q. And then subsequent to that, did Ross start beating on
10 Artemis after McFadden?

11 A. Yes, sir.

12 Q. Did McFadden look in Ross's direction?

13 A. Yes, sir.

14 Q. Prior to that?

15 A. Yes, sir.

16 Q. Did you see them both beating Artemis?

17 A. Yes, sir.

18 Q. I'm going to show you a couple of pictures, please.

19 MR. MEADORS: If I can approach?

20 Q. This is State's 6. Do you recognize that, and State's
21 13, pictures of the door frame?

22 A. Yes, sir.

23 Q. 6 and 13.

24 A. That's the -- I have three doors to the house. The
25 front door, the back door, and that's the side door with

T. CALVIN - DIRECT EXAMINATION BY MR. MEADORS

131

1 the incident.

2 Q. Was that door like this before they came in that
3 night?

4 A. No, sir. I had my screen door locked, and I had the
5 top lock lock and the bottom lock lock.

6 Q. You had all those locked?

7 A. Yes, sir.

8 Q. And was this damage on 6 and 13 done as a result of
9 their entry?

10 A. Yes, sir.

11 Q. Could you see it as it was happening?

12 A. Yes, sir.

13 Q. Did it appear to you the door was about to bust?

14 A. Yes, sir.

15 Q. Is that why you said open?

16 A. Yes, sir.

17 Q. Did you want them to come in that night? Did you want
18 them in your house that night? Did you give them
19 permission to come in that night?

20 A. I didn't gave permission. I gave Artemis permission
21 to go to the door to see what was going on due to my
22 condition.

23 Q. State's -- it's just another picture higher up,
24 State's 10. Does that also depict your door?

25 A. Yes, sir.

T. CALVIN - DIRECT EXAMINATION BY MR. MEADORS

132

1 MR. MEADORS: Beg the court's indulgence.

2 THE COURT: Yes.

3 BY MR. MEADORS:

4 Q. State's 16, is that the tapes that Artemis brought?

5 A. Yes, sir.

6 Q. And State's 15, is that the *Star Wars* y'all were
7 watching?

8 A. Yes, sir.

9 Q. Now in State's Number 18, there appears to be a light?

10 A. That's the front of my house.

11 Q. Okay. Is that the door that they eventually came in
12 without your consent?

13 A. No, sir.

14 Q. Okay. Where on State's 18 is the door that shows
15 those cracks in the side of the door frame?

16 A. On the side.

17 Q. State's Number 4, does that also show the side
18 entrance where my right hand is?

19 A. Yes, sir.

20 Q. Now, State's Number 5.

21 A. That's the side of the door.

22 Q. Okay, State's Number 5, is that the side door that was
23 entered?

24 A. Yes, sir.

25 Q. What is this object down here at the bottom here at

T. CALVIN - DIRECT EXAMINATION BY MR. MEADORS

133

1 the bottom of State's Number 5?

2 A. That's the, that's the latch, the door latch they --
3 off, they, they pulled off where they entered in where I
4 had, where I had that screen door actually lock.

5 Q. State's Number 25?

6 A. And that's the side, that's the side door.

7 Q. And here's State's Number 10.

8 A. And that's the, that's the crack on the side door.

9 Q. So, where did this handle on State's Number 5 come
10 from? What was that attached to prior to this?

11 A. The screen door of the side door.

12 Q. And where they came in?

13 A. Correct.

14 Q. Was it on the door prior to this?

15 A. Yes, sir.

16 Q. Okay. So, it was yanked off on the entry?

17 A. Yes, sir.

18 Q. What's this, this State's number 10, what is this
19 right here?

20 A. That's where the latch is gone.

21 Q. Okay. Where the latch is ---

22 A. Off the screen door where they entered in.

23 Q. I guess my question, is there a latch on the inside
24 and outside on this screen door?

25 A. Uh-huh.

1 Q. Is that a yes? You have to say ---

2 A. Yes, sir.

3 Q. --- for the court reporter. Okay. So, there's a
4 latch on the inside and outside, and how many doors or
5 locks were locked on that side door?

6 A. I'm sorry?

7 Q. How many locks did you have? How many, how many locks
8 to keep folks from coming in that side door?

9 A. Just that, the screen door lock and then the big door.
10 That's two locks, the bolt, the bolt lock and then the
11 actual doorknob lock.

12 Q. I think that's all I have on that. Now, this is
13 State's 9. Who is that in the State's 9?

14 A. That's, that's me.

15 Q. Okay, and this was taken the next day or later that
16 day?

17 A. No. That's that night.

18 Q. Okay, that same evening?

19 A. Right.

20 Q. April 9th, I guess.

21 A. April 9th when I was writing, giving my statement.

22 Q. Does it actually show you giving your statement?

23 A. Yes, sir.

24 Q. Now, you testified about the gun, correct, the gun?
25 You testified about it? You told them about the gun?

T. CALVIN - DIRECT EXAMINATION BY MR. MEADORS

135

1 A. Yes, sir.

2 Q. Okay, and showing you what State's 45. Does that
3 appear to be the gun?

4 A. Yes, sir.

5 Q. And that's the gun you felt?

6 A. Uh-huh.

7 Q. On your skin?

8 A. Yes, sir.

9 MR. MEADORS: Beg the court's indulgence.

10 THE COURT: Yes, sir.

11 (A PAUSE.)

12 BY MR. MEADORS:

13 Q. Looking back at State's 9, where were your children?
14 Can you show the room they were in?

15 A. Well, that door, they was to the right in their room.

16 Q. To the right?

17 A. Yes, sir.

18 Q. Now, did you see Artemis later that night?

19 A. No, sir. The, the next time I seen him, when we had a
20 bond hearing.

21 Q. Okay. Now, you, you, you described Marcus McFadden as
22 Black Marcus earlier. Is that how you know him?

23 A. Yes, sir.

24 Q. Okay, and had you known him for a while, Marcus
25 McFadden?

T. CALVIN - DIRECT EXAMINATION BY MR. MEADORS

136

1 A. Yes, sir, through -- when I moved down from Fort
2 Lauderdale and moved with my sister, she was staying on Red
3 Bay on Patricia Drive, where I met Latique Bracey, where I
4 also met Marcus McFadden and where I also met Dominique
5 Ross.

6 Q. Okay. Had Marcus McFadden, Marcus McFadden, had he
7 been, been over to this house much on 515 East Charlotte?

8 A. Since I've moved to 515 East Charlotte, Dominique Ross
9 nor Marcus McFadden never step foot in my yard.

10 Q. Never?

11 A. Never.

12 Q. Until this morning?

13 A. Until April 9th.

14 Q. And is the individual that pointed a gun at you and
15 said all those bad things to you and said he was going to
16 kill you in this courtroom?

17 A. Yes, sir.

18 Q. Please point him out.

19 A. Over here to the left, Latique Bracey.

20 MR. MEADORS: We would ask the record, record to
21 reflect.

22 THE COURT: The record will so reflect that the
23 witness pointed out Latique Bracey.

24 BY MR. MEADORS:

25 Q. Is one of the individuals that you saw assaulting

T. CALVIN - DIRECT EXAMINATION BY MR. MEADORS

137

1 Artemis Bryant inside your house ---

2 A. Yes, sir.

3 Q. --- in this courtroom?

4 A. Yes, sir.

5 Q. And would you point him out?

6 A. Marcus McFadden.

7 Q. Now, did you give permission to Latique Bracey, Marcus
8 McFadden, or Dominique Ross to come into your house ---

9 A. No ---

10 Q. --- that morning?

11 A. No, sir.

12 Q. Did you want them to come into your house that
13 morning?

14 A. No, sir.

15 Q. Did you hear a gunshot?

16 A. Me, the neighbors. I believe my dad at, at the time
17 been out there also.

18 Q. And, and how long after the first time did they come
19 back?

20 A. After, after the police came to the neighbors' house,
21 took my statement, and they left, my dad end up toting me
22 back home. Well, he -- I'm lying. My dad actually brought
23 my wheelchair to the neighbors' house and took me there,
24 took me from there and pushed me back home. And I say
25 probably about, like, twenty minutes after, after the

T. CALVIN - DIRECT EXAMINATION BY MR. MEADORS

138

1 police left and took the statements and everything, and I
2 sent him to the hospital to give Artemis ---

3 Q. You can't say him without saying who it is. I'm
4 sorry.

5 A. I sent Johnny Kinlaw, which is my dad.

6 Q. Okay.

7 A. To the hospital to give Artemis his shoe that was left
8 in the yard and his wallet that he actually stuffed behind
9 my leg that night. He's -- he gave it back to Artemis, and
10 he let me know that -- Johnny Kinlaw, my dad, he called me
11 and he let me know that, hey, you know, they still
12 circling.

13 Q. Don't say what he said.

14 THE COURT: Yeah.

15 Q. So, Bracey, McFadden, and Ross came back a short while
16 after the initial time, correct?

17 A. Yes, sir.

18 Q. Did you call the police then?

19 A. Yes, sir.

20 Q. And when I say came back, did they come back to your
21 -- they didn't -- did they come back inside?

22 A. When my dad came back from the hospital, which is
23 Johnny Kinlaw, I don't know what him and Latique Bracey
24 discussed on the outside.

25 Q. And you can't testify to that. My question is when

T. CALVIN - DIRECT EXAMINATION/ CROSS-EXAMINATION

139

1 they came back by there, your house, did you call the
2 police again?

3 A. Yes, sir.

4 Q. Okay, and that was shortly after they'd been there the
5 first time inside your house, correct?

6 A. Yes, sir.

7 Q. Okay.

8 MR. MEADORS: Thank you. That's all.

9 THE COURT: Mr. Jordan.

10 MR. JORDAN: Please the court?

11 CROSS-EXAMINATION BY MR. JORDAN:

12 Q. Ms. Calvin, I'm Michael Jordan, and I represent Marcus
13 McFadden in this. I have a couple questions for you, okay?

14 A. Yes, sir.

15 Q. You and Latique were in a five-plus year relationship?

16 A. Off and on.

17 Q. That's a long time. What do you mean by off and on?

18 A. Break up, make up, break up, make up. Off and on.

19 Q. Was there ever any time -- was there ever a time when
20 you were seeing other people, he was seeing other people?
21 Is that what you mean?

22 A. I haven't the slightest in the break up of what he was
23 seeing, but we was breaking up, make up, break up, make up
24 throughout the five years and a half that we were seeing
25 each other.

T. CALVIN - CROSS-EXAMINATION BY MR. JORDAN

140

1 Q. Okay, and y'all were seeing each other and, and you
2 mean intimately? Y'all were in the bedroom, y'all were,
3 y'all were intimate with one another, right?

4 A. Yes, sir.

5 Q. Okay, and, and I mean that, that brings in a very
6 emotional connection and, and -- between y'all. Y'all, did
7 y'all tell each other you loved each other?

8 A. Yes, sir.

9 Q. Okay. So, no question that when he was over that
10 night, the fact that Artemis was over there was, was a big
11 deal. Is that right?

12 A. No, sir, because prior to that, I also had, besides
13 Artemis, other friends that came, you know, once I was in
14 the accident, that came and visit me and seeing me besides
15 Artemis.

16 Q. Okay.

17 A. As well.

18 Q. Okay. Did, did you ever tell Latique you loved him?

19 A. Yes, sir.

20 Q. He tell you he loved you?

21 A. Yes, sir.

22 Q. Okay, and for five and a half years, y'all were on
23 again, off again boyfriend, girlfriend?

24 A. Yes, sir.

25 Q. Now your, your two children are not by Latique. Is

T. CALVIN - CROSS-EXAMINATION BY MR. JORDAN

141

1 that right?

2 A. No, sir.

3 Q. Okay, but did Latique develop a relationship with your
4 two, your two children, four and six?

5 A. Yes, sir.

6 Q. Okay. So, they know who he is?

7 Q. Yes.

8 Q. Has he ever spend the night over at your house?

9 A. He did.

10 Q. In fact, he had clothes over at your house. Is that
11 right?

12 A. He did.

13 Q. Okay.

14 A. Not around the time of this incident.

15 Q. Okay, but for five years prior to, you -- he, he had
16 clothes and stuff at wherever you stayed?

17 A. Not everywhere I stayed.

18 Q. Okay.

19 A. But when ---

20 Q. All right. Well, let's, let's go back just a little
21 bit. You signed a lease for, for 515 East Charlotte
22 January 2015. Is that right? Is that what you recall?

23 A. Yes, sir.

24 Q. Okay. I'll just show you a copy of it just to -- is
25 that, is that what you signed on to and agreed? Just use

T. CALVIN - CROSS-EXAMINATION BY MR. JORDAN

142

1 it to refresh your recollection. I'm not asking you ---

2 A. Yes, sir.

3 Q. Okay, and, and, and, and in January 2015, Latique's
4 name was not on there, was it?

5 A. No, sir.

6 Q. But he had clothes over there, didn't he?

7 A. A few pieces.

8 Q. Did he ---

9 A. I'll say not as if he was there. He had, he had a few
10 pieces.

11 Q. Did he spend the night?

12 A. Yes, sir.

13 MR. MEADORS: Your Honor, forgive me, but when is he
14 talking about? He's just saying ---

15 THE COURT: Yeah. Please be specific as ---

16 MR. MEADORS: --- general times.

17 THE COURT: --- to the exact time.

18 MR. MEADORS: He's not saying specific.

19 THE COURT: You can recross.

20 BY MR. JORDAN:

21 Q. Did ---

22 THE COURT: I'll give you redirect.

23 Q. Did Latique Bracey spend the night with you at 515
24 East Charlotte Avenue?

25 A. Yes, sir.

T. CALVIN - CROSS-EXAMINATION BY MR. JORDAN

143

1 Q. In 20 -- during the year of 2015?

2 A. Yes, sir.

3 Q. And did you realize that there was only one adult
4 listed on that lease, and his name wasn't on there?

5 A. Yes, sir.

6 Q. So, that's kind of a problem with your landlord,
7 right? We got to be quiet about it?

8 A. Not quiet about it. I, I wouldn't say I've been quiet
9 about it.

10 Q. Okay. Well, doesn't your lease say these are the
11 only, the only -- this is -- the only adult is you?

12 A. Yes, sir.

13 Q. Did Latique Bracey spend the night any time in 2016?

14 A. Yes, sir.

15 Q. Okay. When did he remove his clothes and belongings
16 from your home?

17 A. I can't give you the exact date, but I, I believe
18 February 2016, but I was still in Richland.

19 Q. Now, did, did Latique help you with the bills on the
20 house?

21 A. No, sir. I paid my rent, my light, my water, and when
22 I was currently down, my condition and hospitalized, my
23 sister, Monique Francis, took my card every month and made
24 sure my bills were paid.

25 Q. Well, was the, was the cable bill in his name at your

1 house?

2 A. The cable bill, yes, sir.

3 Q. Any other bills in his name?

4 A. No, sir.

5 Q. How did that cable bill come to be in his name?

6 A. Prior to. We was dating.

7 Q. Because he was helping you out?

8 A. No, sir.

9 Q. Got to have kid -- got to have TV for the kids, right?

10 A. No.

11 Q. All right. Tell me why.

12 A. For Christmas we got a, got a Xbox. He wanted, he
13 wanted to join Monique, Monique Francis's husband online on
14 to T -- whatever the game that they played online so they
15 could play together. So, what I told him -- because prior
16 to -- before he got cable in his name, I had my own cable
17 in my name, but I end up cutting it off because of the fact
18 that I didn't had help like that with my bills, and things
19 was getting behind. So, I cut it off. So, what he did was
20 he decides to -- since he, he got to the game and the Xbox,
21 he decides to get the cable in his name. And I agreed,
22 hey, if you want, if you want the cable to play the game or
23 whatnot when you come over, that's fine. You will be
24 paying, you will be paying that bill. So, that's how that
25 cable bill actually currently got at 515 East Charlotte.

T. CALVIN - CROSS-EXAMINATION BY MR. JORDAN

145

1 Q. And did it remain in his name even after April of this
2 year?

3 A. I can't tell you. I haven't -- well, since I haven't
4 gone home, I haven't had cable. It wasn't on. They came
5 and took the box, cut the wires.

6 Q. Now turning your attention to April of this year, did
7 you ever see Marcus with a gun?

8 A. No, sir.

9 Q. Did you ever see Dominique Ross with a gun?

10 A. No, sir.

11 Q. Can you tell us who came through the door first?

12 A. Latique Bracey.

13 Q. And isn't it true that you told Artemis I know these
14 guys? I can talk.

15 A. No.

16 Q. Isn't that true?

17 A. No, sir.

18 Q. You didn't, you didn't tell ---

19 A. No. I told Artemis to go check, check and see who was
20 there at the door. By the time he got to the door and
21 unlocked the door, I noticed Latique Bracey, Marcus
22 McFadden, and Dominique Ross entered in. I was not even
23 aware of who was on the outside of the door; I didn't even
24 know who they were.

25 Q. Now, didn't you testify earlier today that you sent

1 Artemis to open the door?

2 A. Yes, sir.

3 Q. So, did you send him to open the door, or did you send
4 him to check the door?

5 A. To open and check -- how -- what I said? To go check
6 and see who's at the door.

7 Q. And open it?

8 A. I mean, of course he would've had to open it. I don't
9 have a peep hole.

10 Q. And that's what he did, right? I mean, that's what
11 you instructed him to do and that's what he did?

12 A. Yes, sir.

13 Q. And then and only then you recognized that you knew
14 them. Is that right?

15 A. Right, as they bust in and entered in.

16 Q. So before they came in, you did not know who was out
17 there?

18 A. No, sir.

19 Q. You didn't look through a window? You didn't, you
20 didn't look out? You said you don't have a peep hole. You
21 didn't listen? You didn't hear the voices? You didn't
22 know who was outside?

23 A. No, because really at the time I was, I was actually
24 getting up from sleep.

25 Q. Okay. So, you recognize them for the first time when

T. CALVIN - CROSS-EXAMINATION BY MR. JORDAN

147

1 they come in?

2 A. Correct.

3 Q. And this is Latique, and you just need to talk to him,
4 right? I mean, y'all were in a ---

5 A. Well, once he came in, once he came in and I seen the,
6 the reaction when they came in, I, like I said, I never
7 seen Latique act the way that he did once he came in. So,
8 when I did try to talk to Latique, I couldn't say anything
9 because I was choked, slapped, and demanded to shut the
10 fuck up. So, that's ---

11 Q. Not by Marcus?

12 A. --- what I did.

13 Q. Not by Marcus?

14 A. Not. By ---

15 Q. Not by ---

16 A. --- Latique Bracey.

17 Q. Not by Dominique?

18 A. Followed by Marcus beating on Artemis, but he had
19 never said anything to me.

20 Q. And you knew them, you knew them all. You said they'd
21 never stepped foot on the property, but you knew them all?

22 A. Correct.

23 Q. All right, and Dominique's not here today?

24 A. No, sir.

25 Q. Not in this courtroom?

T. CALVIN - CROSS-EXAMINATION BY MR. JORDAN

148

1 A. No, sir.

2 Q. Certainly not at that table?

3 A. No, sir.

4 Q. Okay. So, so, was Latique yelling and screaming about
5 Artemis being in the house? Is that, that the big problem?

6 MR. MEADORS: Your Honor, objection to what ---

7 THE COURT: Sustained. The prior is speculation.

8 A. I'm not going to say ---

9 THE COURT: Don't answer it. Don't answer it. It
10 requires speculation.

11 BY MR. JORDAN:

12 Q. What, if anything, else did Latique Bracey say besides
13 what you've already said?

14 A. He was, like, he was, like, oh, you said that you
15 weren't going to talk to nobody. You wasn't going to talk
16 to anybody. You don't talk to nobody and just basically
17 calling me a hard ho, bitch, slut. I was getting slapped
18 basically and just from me to Artemis until I make -- end
19 up making, making my way out of the house.

20 Q. Did -- or isn't it true that Marcus McFadden never
21 said anything to you?

22 A. Correct.

23 Q. All right. Now, once you got, once you got out of the
24 house, they were still inside?

25 A. On Artemis.

T. CALVIN - CROSS-EXAMINATION BY MR. JORDAN

149

1 Q. Okay. You went out the side door on the front door?

2 A. The side door.

3 Q. Okay, and you went to the next-door neighbors' house?

4 A. Correct.

5 Q. Okay, and tell me what happened, what happened after
6 that. You didn't, you didn't come face-to-face with them
7 again after that?

8 A. No, sir.

9 Q. Okay, and on the -- so, after you learned that, that
10 Artemis had come out and left, you went to the neighbors'
11 house and you contacted your dad?

12 A. No, sir.

13 Q. Who did you contact?

14 A. When I left out and made it to the neighbors' house,
15 Artemis left.

16 Q. Okay.

17 A. He didn't left before -- he -- I didn't -- I -- he
18 didn't left before I did. I left and made it to the
19 neighbors' house before he actually got out of the house.
20 So, as he was, as he was leaving, as he was leaving, my
21 neighbors was looking, looking and they let me that know
22 he, he drove off. We heard one shot and then that's -- my
23 dad pulled up and my stepmother, who is Johnny Kinlaw and
24 his wife, and they pulled up, came to the next-door
25 neighbors' house to see about me. And minutes before that,

T. CALVIN - CROSS-EXAMINATION BY MR. JORDAN

150

1 the police came.

2 Q. Okay, and after this, at that point in time, then you
3 said Latique Bracey came back later. Is that right?

4 A. Correct.

5 Q. And what, if anything, did he have in -- inside the
6 house at that point in time?

7 A. Nothing. He told my dad that he needed to come in and
8 get his stuff but when he came in, he never get anything.
9 He stayed there. He went in the room. He was, like --
10 went to -- I'm lying. I don't know if he went in the room.
11 He went back towards the room. Came back, stand there,
12 fuss at me. Oh, I beat the shit out of him. That's -- oh,
13 if I see him again, I'll kill him. This and that. Oh, he
14 did that. And I told him you did that. The consequences
15 behind that, the same thing my dad, Johnny Kinlaw, told
16 him. He stand there for a few minutes and quarreled with
17 me, fussed with me, pick about what he did, how they beat
18 him, and then my dad let them leave, let them, let them go
19 out the door and left.

20 Q. Now, that's twice in your testimony you raise your
21 hand and say, oh, I'm lying. What do you mean by that?

22 A. Just getting it correct.

23 Q. I want to ask you. I want to ask you to refresh your
24 recollection. You gave law enforcement a statement,
25 correct?

T. CALVIN - CROSS-EXAMINATION BY MR. JORDAN

151

1 A. Yes, sir.

2 Q. Okay, and I just want to show it. After you determine
3 that's yours, do you recall what you told them between
4 those two lines on, on the statement? Could you just
5 refresh your recollection and tell us what you said there?

6 MR. MEADORS: Your Honor, is he offering that
7 statement?

8 MR. JORDAN: Judge, I'm asking her ---

9 THE COURT: You ---

10 MR. JORDAN: --- to, to refresh her ---

11 THE COURT: You can ---

12 MR. JORDAN: --- recollection.

13 THE COURT: --- ask a question, but don't ---

14 A. This is where Artemis opened ---

15 THE COURT: Hold on.

16 A. --- where I told him to check ---

17 THE COURT: Hold on.

18 What is the purpose of -- you just want her to look at
19 it?

20 MR. JORDAN: I, I want her to look at it, refresh her
21 recollection.

22 THE COURT: Okay.

23 MR. JORDAN: And I want to ask her a ---

24 THE COURT: And then you can ask her.

25 MR. JORDAN: --- question about what she told law

T. CALVIN - CROSS-EXAMINATION BY MR. JORDAN

152

1 enforcement.

2 BY MR. JORDAN:

3 A. The same I just told you.

4 Q. Okay. So, you said ---

5 MR. MEADORS: Your Honor, if he's going to publish it,
6 he needs to offer it.

7 Q. Tell, tell me what you said about Artemis and opening
8 the door.

9 A. I gave Artemis permission to go check and open the
10 door, and I said I didn't ---

11 Q. That's all I needed to ask you.

12 A. Okay.

13 Q. So, you gave him permission to check the door?

14 A. However you want to call it. Check, open. My
15 condition, I couldn't do it. I couldn't get up to the door
16 as fast as he could, so I let him do it, and that's what he
17 did for me.

18 MR. JORDAN: Court's indulgence.

19 THE COURT: Yes.

20 (A PAUSE.)

21 BY MR. JORDAN:

22 Q. Ms. Calvin, you, you've been at the house a year and
23 nine months or so at, at 515 East Charlotte?

24 A. Yes.

25 Q. Okay, and you -- do you know the year the house was

T. CALVIN - CROSS-EXAMINATION BY MR. JORDAN

153

1 built?

2 A. No, sir.

3 Q. You know, is it a older home? Can you tell from --
4 you know, do you know how old the home is?

5 A. I mean, from the pictures, I mean, it's not the
6 newest.

7 Q. Yes, ma'am. Has there been any damage to the home in
8 any of those photographs and to the door that was not
9 related to this incident?

10 A. When I moved there, no.

11 Q. Okay. You agree with me that the photograph of the
12 door that's been admitted -- if I can put my hands on it.
13 Do you know where it is? Thank you. All right, so you
14 agree with me that, that it looks like there's been repairs
15 and wood putty applied to that door?

16 A. I don't know all about that. I know it was not
17 corrected. It wasn't -- it was not damaged. It was -- it
18 could have lock top and bottom. Screen door could have
19 lock.

20 Q. Okay, but you're telling me you, you've never made any
21 repairs to this door?

22 A. No, sir.

23 Q. Okay, and to your knowledge, what you're saying is is
24 that this damage happened on the night of April 9, 2016?

25 A. Yes, sir.

T. CALVIN - CROSS-EXAM BY MR. JORDAN / CROSS-EXAM BY MR. BRIDGES 154

1 Q. Okay, and no, no wood came out of the door and was on
2 the floor, anything like that?

3 A. Just what you see.

4 Q. Only what you see and only what you've taken pictures
5 of?

6 MR. JORDAN: Thank you, ma'am.

7 WITNESS: You're welcome.

8 MR. JORDAN: No further questions.

9 THE COURT: Mr. Bridges.

10 MR. BRIDGES: May it please the court?

11 CROSS-EXAMINATION BY MR. BRIDGES:

12 Q. Hi, Ms. Calvin. Jason Bridges. I'm the attorney for
13 Latique Bracey.

14 A. How you doing?

15 Q. Doing well. How you doing?

16 A. All right.

17 Q. Just have questions for you to continue what's already
18 been asked.

19 So, you have been in an on and off relationship with
20 Mr. Bracey for -- from 2011 until, you said, February 2016?

21 A. Correct.

22 Q. And during those periods of time, was there any other
23 -- how -- would he typically spend the night? How many
24 times would he typically spend the night during that period
25 of time?

T. CALVIN - CROSS-EXAMINATION BY MR. BRIDGES

155

1 A. I can't count them offhand. We was dating. We was on
2 and off and that's who I was dealing with at the time. So.

3 Q. When, when you moved into the house at 515 East
4 Charlotte, how often would he spend the night in that
5 house?

6 A. Off and on, off and on, off and on.

7 Q. So, no, no, like, set ---

8 A. No.

9 Q. --- like set at least at that time?

10 A. No.

11 Q. Was he with, was he with you in January when you had
12 the car accident?

13 A. Yes, sir. He was actually in the car accident with
14 me.

15 Q. Was he injured as well?

16 A. Yes, sir.

17 Q. Did he visit you at the hospital?

18 A. Yes, sir.

19 Q. Did he visit you at your home when you ---

20 A. Yes, sir.

21 Q. --- got back from the hospital?

22 A. Uh-huh.

23 Q. So, when you say he moved out in late February, he
24 officially broke up with you in late February?

25 A. Uh-huh, and that was the end of actually the

1 relationship that we had, the end of him staying, the end
2 of Latique and Tiffany. So, it was basically -- the basic
3 -- just as -- on as friends.

4 Q. But after February, did you, did see him any more
5 times at, at the house on East Charlotte? Between February
6 and the night of April 9th, was there ---

7 A. He had been there and came to -- when he broke off
8 with me, he letted me know, you know, could be friends.
9 Anything that I need, you know, the kids need or whatnot,
10 you know, that he would have been there. So, whenever he
11 felt that, you know, he wanted to come by throughout the
12 day or whatnot to check on me, if he had time, he would do
13 so. Yes.

14 Q. So, was this like a, a weekly basis from February to
15 April 9th or ---

16 A. It was actually not a weekly basis. Whenever he felt
17 because a week went by and sometimes I didn't see him. So,
18 I can't say it that it was a weekly basis.

19 Q. But it was ---

20 A. It was just when he felt that he wanted to come by and
21 check on me and the kids. It basically -- it was not even
22 the kids because my kids was actually out of my home then.
23 Their grandmother had them, and she actually was the one
24 that -- keeping them. So, it was actually just me at the
25 home alone.

T. CALVIN - CROSS-EXAMINATION BY MR. BRIDGES

157

1 Q. What, what type of relationship did Latique have with
2 your kids? Did he ever give them any gifts or, or any kind
3 of presents?

4 A. I'll say my son.

5 Q. Is that your youngest?

6 A. Yes, sir, because that's the one he actually was more
7 close to was my son.

8 Q. What kind of things did he provide to your son?

9 A. Well, it was just basically when we was dating just,
10 you know, just spend time with him. Maybe probably take
11 him to the park whenever he get a chance. It was not
12 really he, you know, really, you know, went shopping for
13 him, with him, you know, as if I do or the grandmother
14 would do or my sister would do. Just, he would just take
15 him out, just spent a little time with him.

16 Q. When Mr. Bracey had his stuff at your house on East
17 Charlotte, did he ever make purchases for the home as in
18 buying any kind of ---

19 MR. MEADORS: Your Honor, going to make an objection
20 to relevance on April 9th.

21 THE COURT: Sustained.

22 BY MR. BRIDGES:

23 Q. And prior to April 9th, had, had Mr. Bracey ever
24 received mail at your residence other than the
25 aforementioned cable bill?

T. CALVIN - CROSS-EXAMINATION BY MR. BRIDGES

158

1 A. I'm sorry. Say that again.

2 Q. Has, has Latique ever received any email at the 515
3 East Charlotte residence other than the cable bill that was
4 listed in his name?

5 A. No, not that I've seen.

6 Q. And you mentioned earlier to Mr. Meadors and to Mr.
7 Jordan that you, you had other friends at your house other
8 than Mr. Artemis?

9 A. Correct.

10 Q. Prior to April 9th, and these were -- there were male
11 friends?

12 A. Not just males. Females also.

13 Q. Okay.

14 A. But I have a couple of male friends beside Artemis.

15 Q. And did Latique know about any of these?

16 MR. MEADORS: Objection.

17 THE COURT: Sustained. Requires speculation.

18 BY MR. BRIDGES:

19 Q. Did Latique come over, over any of these other times
20 you have friends over other than April 9th?

21 A. Well, he did pop over once with -- I believe it was
22 one, one, one of the guys that came there.

23 Q. Do you recall what day that was?

24 A. I don't remember; I can't recall.

25 Q. Do you know if it was after February of 2016?

T. CALVIN - CROSS-EXAMINATION BY MR. BRIDGES

159

1 A. Yes.

2 Q. Now back to the 9th of -- April 9th, you said after
3 you went to your neighbors' house and called the police,
4 Latique came back to your residence at 515 Charlotte?

5 A. Incorrect. I never called the police when I went to
6 my neighbors' house.

7 Q. When they...

8 A. They end up coming there off of Artemis's call.

9 Q. Okay, and then when Latique returned to your house, he
10 spoke to your father. Did he also speak to you?

11 A. No, he didn't spoke to me. My dad -- I, I was
12 actually laying on a chair and my stepmom, she was, she was
13 in there. I seen my door open. My dad came and Latique
14 came in behind him, and I asked my -- anyways, Latique came
15 in behind him.

16 Q. And you guys did not exchange words?

17 A. Besides the things that he was saying. No, we was
18 just going back and forth. Like, he was just picking
19 basically about what he did to Artemis and what he'll do
20 again and just throwing that out there. And I let him
21 know, like, hey, you did that. It's consequences behind
22 that. I ain't worried about that. You did that. You got
23 that. My dad let him out.

24 Q. Did, did he have any personal items in the house at
25 this time on April 9th?

T. CALVIN - REDIRECT EXAMINATION BY MR. MEADORS

160

1 A. No, sir.

2 Q. Did he take anything with him when he went the last
3 time?

4 A. Change.

5 MR. BRIDGES: Thank you. No further questions.

6 THE COURT: Any redirect?

7 MR. MEADORS: Brief redirect.

8 REDIRECT EXAMINATION BY MR. MEADORS:

9 Q. Follow up on that last question of Mr. Bridges. He
10 said any personal items. Did he have any clothes or
11 anything at your house on April 9th of 2016?

12 A. No, sir.

13 Q. Did he have any keys to the house?

14 A. No, sir.

15 Q. And I -- you said Marcus McFadden had never been there
16 before?

17 A. Never.

18 Q. Did you see the car again after they came by? Someone
19 was asking about the second time. Did you see the car
20 again after the -- after they left the first time?

21 A. After they left the first time, I haven't seen the
22 car. My dad seened it.

23 Q. Who called the police the second time?

24 A. I did.

25 Q. Has he broken into the house before?

T. CALVIN - REDIRECT EXAMINATION BY MR. MEADORS

161

1 MR. JORDAN: Objection.

2 A. No, sir.

3 MR. JORDAN: Objection.

4 MR. MEADORS: Your Honor, they asked -- him --
5 about ---

6 THE COURT: Well, sure.

7 MR. MEADORS: --- if he'd been there before.

8 THE COURT: Yeah.

9 BY MR. MEADORS:

10 Q. He broke into your house, didn't he?

11 MR. JORDAN: Judge.

12 THE COURT: Well.

13 MR. JORDAN: May we approach?

14 THE COURT: You may.

15 (OFF-THE-RECORD BENCH CONFERENCE.)

16 THE COURT: Mr. Jordan, any recross based on his
17 redirect?

18 MR. JORDAN: No, Your Honor.

19 THE COURT: All right, Mr. Bridges, any recross based
20 on Mr. Meadors's redirect?

21 MR. BRIDGES: No, Your Honor.

22 THE COURT: All right. Thank you. You may step down.

23 WITNESS: Thank you.

24 THE COURT: Or, I'm sorry, you may roll around.

25 If somebody could help her, please? She's actually

1 pretty good on that thing.

2 (THE WITNESS EXITS THE STAND.)

3 THE COURT: Let me see the attorneys real quick.

4 (OFF-THE-RECORD BENCH CONFERENCE.)

5 THE COURT: All right, ladies and gentlemen, we will
6 break for this evening. Please get a good night's rest.
7 Some of you need to get more sleep than others, but, but
8 get a good night's rest and we will start at 10:00 tomorrow
9 morning. So, follow the bailiff's instructions about which
10 door to come in and everything like that, and he'll take
11 good care of you.

12 Please do not discuss anything about this with anyone
13 over the evening, and if there's anything in the newspaper
14 tomorrow, which I don't suspect there would be, please do
15 not read it. All right, thank you, ladies and gentlemen.
16 Have a wonderful evening.

17 MR. JORDAN: Your Honor, we'd have a motion afterward.

18 THE COURT: Yeah.

19 (THE JURY EXITS AT 4:30 P.M.)

20 THE COURT: You had a motion?

21 MR. JORDAN: Yes, Your Honor. My client would request
22 that he be continued on bond for the evening. The bondsman
23 is Joe Brown. He's still here. My client very concerned
24 about wanting to see his, see his family, his children
25 tonight.

1 I know your court -- I know Your Honor's ruling at the
2 break was that essentially there is no bond once the trial
3 has begun. I understand that. There's nothing to do --
4 we've talked about that, but it has been my experience that
5 on occasion -- we're going to finish tomorrow. I would
6 just ask the court consider -- reconsider your decision
7 from earlier, given the fact that the bondsman here has
8 told me he'd be willing to continue on it, if it would be
9 appropriate or okay for Marcus McFadden to remain on bond
10 until we conclude the trial. Thank you.

11 THE COURT: I don't think it's okay. I'm not going to
12 reconsider. He's going to be locked up tonight.

13 MR. JORDAN: Thank you, Your Honor.

14 THE COURT: Court's adjourned until 10:00 tomorrow
15 morning.

16 MR. MEADORS: We'll be ready. Thank you.

17 (WHEREUPON, THE CASE IS AT EASE.)

18 WEDNESDAY, SEPTEMBER 21, 2016

19 (COURT RESUMES AT 10:11 A.M.)

20 THE COURT: Let me see the attorneys up here.

21 (OFF-THE-RECORD BENCH CONFERENCE.)

22 THE COURT: Let's bring our jury in.

23 (THE JURY ENTERS AT 10:12 A.M.)

24 THE COURT: Well, good morning, ladies and gentlemen.

25 THE JURY: (*en masse*) Good morning.

M. FRANCIS - DIRECT EXAMINATION BY MR. MEADORS

164

1 THE COURT: I don't know about the rest of you. What
2 a better place to be than right here on a rainy day like
3 this.

4 Is the state ready to proceed?

5 MR. MEADORS: Yes, sir.

6 THE COURT: Defense?

7 MR. JORDAN: Ready, Your Honor.

8 THE COURT: All right.

9 MR. BRIDGES: Ready, Your Honor.

10 MR. MEADORS: May it please the court? Your Honor, we
11 call -- the state would call Monique Francis.

12 MONIQUE FRANCIS, BEING DULY SWORN,
13 TESTIFIES AS FOLLOWS:

14 BAILIFF: State your name and spell your last name for
15 the record.

16 WITNESS: Monique Francis, F-R-A-N-C-I-S.

17 DIRECT EXAMINATION BY MR. MEADORS:

18 Q. Good morning, Ms. Francis.

19 A. Good morning.

20 Q. How long have you been Francis?

21 A. Not quite a week yet.

22 Q. Got married a week ago?

23 A. Uh-huh.

24 Q. And for the record, if you'd just say yes or no for
25 the court reporter, that'd be great. Congratulations.

M. FRANCIS - DIRECT EXAMINATION BY MR. MEADORS

165

1 A. Thank you.

2 Q. How are you related to Tiffany Calvin?

3 A. That's my sister.

4 Q. And tell the, tell the ladies and gentlemen of this
5 jury a little bit about you. Where, where are you from?

6 A. I'm from Alcolou.

7 Q. Okay. Born and raised?

8 A. Yes.

9 Q. What about your background? Where did you, where did
10 you go to school?

11 A. I went to school in -- from primary to I would say
12 about middle school I attend school in Manning, South
13 Carolina. Then moved to Florida and I went to school at
14 the Seagull. It's alternative school for -- basically
15 alternative school for young mothers.

16 Q. Yes, ma'am.

17 A. And finished school there and I came back in '05 after
18 my mother passed.

19 Q. I'm sorry about your mother. What did you do after
20 that?

21 A. Basically I'm a home mom.

22 Q. How many children do you have?

23 A. I have three kids.

24 Q. Now, let's go back to February of this year, please,
25 Ms. Francis. And your sister lives where?

1 A. On East Charlotte, 515.

2 Q. 515 East Charlotte, and do you know Latique Bracey?

3 A. Yes.

4 Q. Okay. How long have you known Latique Bracey?

5 A. I've known him since -- I believe that will be 2010,
6 2011.

7 Q. And how did Latique get to know Tiffany, if you know?

8 A. Basically through me. They used to be at my house
9 when, when I was staying on Red Bay, and she met him when
10 she came from Florida to stay with me.

11 Q. Do you know Marcus McFadden?

12 A. Yes.

13 Q. And how long have you known Marcus McFadden?

14 A. I don't know him, like, that personally, but I know of
15 him because he also used to come to my house on Red Bay.

16 Q. Okay. When did your sister Tiffany get in an
17 automobile accident?

18 A. Huh?

19 Q. When did she get in an automobile accident?

20 A. In January.

21 Q. Okay, of 2016?

22 A. 2016.

23 Q. In February of 2016, did you have an occasion to go to
24 Latique Bracey's mother's house?

25 A. Yes.

M. FRANCIS - DIRECT EXAMINATION BY MR. MEADORS

167

1 Q. Why did you do that?

2 A. To take his clothes, and also I went to pick him up
3 from work, and I told him she said give her her keys, and
4 he said that he didn't know where her keys were.

5 Q. And you said you took him some clothes?

6 A. Uh-huh.

7 Q. And then again, it's not for me. Just for the ---

8 A. Yes.

9 Q. --- court reporter, if you'd say yes or no. Thank
10 you. How much clothes did you take?

11 A. Like a handful, a few pieces.

12 Q. You talking about house keys?

13 A. Yes.

14 Q. That you asked for? What did you do with the clothes?
15 Did you leave him at his mother's?

16 A. No. His mom came to the door and got the clothes.

17 Q. Did you have an occasion -- and when was that, the
18 best you remember?

19 A. February.

20 Q. Of 2016?

21 A. 2016.

22 Q. And after he said he didn't have the keys or didn't
23 know where they were, did you have an occasion to go back
24 to 515 East Charlotte?

25 A. Yes, but I went and I locked her door because it

1 wasn't locked.

2 Q. So, you went back there and it wasn't locked, so you
3 locked it?

4 A. Yeah.

5 Q. How did you do that?

6 A. I went in through the door and locked the doors.

7 Q. Okay, and did you have a key to 515?

8 A. No.

9 Q. And did you see Latique Bracey after that?

10 A. No. I didn't see him after I took him to work, you
11 know.

12 Q. And at that point in February of 2016, was he living
13 at 515, Latique Bracey?

14 A. Said after, after -- no.

15 Q. He was not?

16 A. No, he was not.

17 MR. MEADORS: Beg the court's indulgence.

18 THE COURT: Yes, sir.

19 BY MR. MEADORS:

20 Q. Do you know where he was living?

21 A. He was staying with his mom.

22 Q. Is his mom in the courtroom?

23 A. Yes.

24 Q. Can you point her out? Thank you. So, he was staying
25 with her in February of 2016?

M. FRANCIS - CROSS-EXAMINATION BY MR. JORDAN

169

1 A. Uh-huh.

2 Q. And again ---

3 A. Yes.

4 Q. --- is that yes? I'm sorry.

5 MR. MEADORS: Judge that's all we have. Thank you.

6 THE COURT: Mr. Jordan.

7 MR. JORDAN: Please the court?

8 CROSS-EXAMINATION BY MR. JORDAN:

9 Q. Ms. Francis, I'm Michael Jordan and I represent Marcus
10 McFadden. You said you, you know him?

11 A. Uh-huh.

12 Q. Been to your house before on Red Bay. Is that right?

13 A. Yes.

14 Q. And is Red Bay in the same general area as East
15 Charlotte?

16 A. No.

17 Q. How far away is it?

18 A. On the other side of Lafayette but not as close.

19 Q. Have you ever been in -- have you ever taken Marcus
20 anywhere in your vehicle?

21 A. No.

22 Q. Just Latique?

23 A. Yes.

24 Q. How about, how about Dominique Ross? Do you know who
25 that is?

1 A. Yes.

2 Q. Had you ever carried him in your vehicle?

3 A. No.

4 Q. Okay. How did you know him? Had he ever been over to
5 your home at Red Bay?

6 A. Who?

7 Q. Dominique Ross.

8 A. Yes.

9 Q. Okay. Now, how close are you to your sister, Tiffany?

10 A. Close. That's my sister.

11 Q. So, you knew she was in a relationship with Latique?

12 A. Yes.

13 Q. Because they met through you?

14 A. If you want to say, yeah.

15 Q. Okay. How would you say it?

16 A. They got they own mind. I mean...

17 Q. Okay. All right. So -- and they dated for quite a
18 while, didn't they?

19 A. Yeah.

20 Q. 2010 they met or 2011 they met?

21 A. Yes.

22 Q. 2012 they were dating?

23 A. Wasn't it -- I can't say how it went to their
24 understanding. It was on and off because she was staying
25 with me.

M. FRANCIS - CROSS-EXAMINATION BY MR. JORDAN

171

1 Q. What does that mean in your mind, on and off?

2 A. On and off? I mean, if you're going through
3 something, I mean -- he gets to go home, she's here with
4 her sister, so it's not steady.

5 Q. It's not steady?

6 A. It's not steady.

7 Q. There's no commitment?

8 A. No commitment.

9 Q. Wow. Does that -- well, on and off, does that mean
10 there's intimacy?

11 A. If that's what they want to...

12 Q. Okay. I mean, just in your mind and I, I know when
13 somebody says -- I'm forty-eight years old, so I'm -- you
14 know, these terms. What does it mean when you're dealing
15 with? What does that mean in your mind, when you're
16 dealing with somebody?

17 A. I mean, people can deal with plenty of people, so.

18 Q. Okay.

19 A. Just how far they take it.

20 Q. So, they were on and off, and you had to take his
21 clothes to his mom's house because they were over there at
22 515 East Charlotte Avenue. Was it a car load of clothes?

23 A. No.

24 Q. Couple of pairs of jeans, a couple of shirts, couple
25 of pairs of boots or shoes?

1 A. Couple of items.

2 Q. And no question he'd been spending the night over
3 there to your knowledge?

4 A. I stay somewhere else, so that's something I don't
5 know they got going on.

6 Q. Yes. Yes, ma'am. You asked him for the key. Said he
7 didn't have it or he said he didn't know where it was.
8 What -- tell me again exactly what you said about that.

9 A. I asked him for her keys, and he say he didn't know
10 where her keys was.

11 Q. When you were over at her house, did you, did you ever
12 discuss with her or with him the Time-Warner bill?

13 A. No.

14 Q. Okay. So, you don't know what was going on ---

15 A. No.

16 Q. --- with the bills over at the house?

17 A. No.

18 Q. Okay. To your knowledge, was he supporting her at
19 all?

20 A. I can't say about that, but I know I was. She was
21 staying with me, too.

22 Q. You were? You were supporting her?

23 A. Yes.

24 Q. Okay, and you said, you said you have three children?

25 A. Yes.

M. FRANCIS - CROSS-EXAMINATION BY MR. JORDAN

173

1 Q. And Tiffany has two children?

2 A. Yes.

3 Q. They're about the same age?

4 A. Yes.

5 Q. Okay, and y'all were in Florida together attending
6 school there?

7 A. Yes.

8 Q. And did y'all come back to South Carolina at the same
9 timeframe when ---

10 A. Yes, but she left.

11 Q. --- when your mom passed? Is that what you said?

12 A. Yes.

13 Q. When you took Latique to work, did you continue to
14 take him to work after you took the clothes back?

15 A. No, I didn't continue to take him to work. Actually,
16 I got him from his mom's house to take him to work, and he
17 asked me could I take him to work, and I told him no
18 problem. I don't have a problem but the gas situation, and
19 I told him that wasn't my job because he told me that his
20 mom couldn't take him to work like that. So, I said okay.
21 I'll take you to work. So, I took him to work on that day,
22 and that's the day that I asked for the keys.

23 Q. So, you took him to help him out?

24 A. Pretty much.

25 MR. JORDAN: Thank you, ma'am. No further questions.

M. FRANCIS - CROSS-EXAMINATION BY MR. BRIDGES

174

1 THE COURT: Mr. Bridges.

2 MR. BRIDGES: May it please the court?

3 CROSS-EXAMINATION BY MR. BRIDGES:

4 Q. Ms. Francis, my name is Jason Bridges and I represent
5 Latique Bracey in this case. I just have a few follow-up
6 questions about what you said.

7 So, the amount of clothes that Latique's mother picked
8 up from the house, how would you describe the number of
9 clothes?

10 A. No, she didn't picked up no clothes from the house.

11 Q. You, you took the clothes?

12 A. Yes, to ---

13 Q. You delivered ---

14 A. --- her house.

15 Q. --- them to her house?

16 A. Uh-huh.

17 Q. And so you said it was a handful of items?

18 A. Yes.

19 Q. So, that would mean less than ten articles of
20 clothing, would you say?

21 A. Probably ten or less, yeah.

22 Q. And that was the only day in February when you took
23 Latique to work? Was that, was that the only day that you
24 took Latique to work, that day in February?

25 A. I probably had done took him to work before, I mean,

M. FRANCIS - CROSS BY MR. BRIDGES / REDIRECT BY MR. MEADORS 175

1 but that's the day that I took the clothes. That was the
2 last time I took him to work.

3 Q. That was -- so, there's no days after that that you
4 took ---

5 A. No.

6 Q. Were you in -- and I think you said earlier you, you
7 went to 515 Charlotte after that day in February though?

8 A. Yeah. That's my sister's house.

9 Q. And did you see Latique there during any of those
10 visits?

11 A. No.

12 Q. Did you see any of his items or anything in, in the
13 house when you were there ---

14 A. No.

15 Q. --- during those visits?

16 MR. BRIDGES: Thank you. No further questions.

17 THE COURT: Any redirect?

18 MR. MEADORS: Yes, sir. Please the court?

19 REDIRECT EXAMINATION BY MR. MEADORS:

20 Q. So, you took the clothes to what house?

21 A. His mom house.

22 Q. That's where he was staying?

23 A. Yes.

24 Q. And you took him to work from his mother's ---

25 A. His mom's house.

J. KINLAW - DIRECT EXAMINATION BY MR. MEADORS

176

1 Q. And as far as you know, he wasn't staying at 515
2 anymore?

3 A. No.

4 MR. MEADORS: Thank you. That's all.

5 THE COURT: Any recross?

6 MR. JORDAN: No, Your Honor.

7 THE COURT: Any recross?

8 MR. BRIDGES: Nothing further, Your Honor.

9 THE COURT: Thank you. You may step down.

10 (THE WITNESS EXITS THE STAND.)

11 THE COURT: Yes, sir.

12 MR. MEADORS: Johnny Kinlaw, state would call.

13 JOHNNY KINLAW, BEING SWORN DULY

14 SWORN, TESTIFIES AS FOLLOWS:

15 BAILIFF: State your name ---

16 WITNESS: Johnny ---

17 BAILIFF: --- and spell your last name for the record.

18 WITNESS: Johnny Kinlaw. Last name K-I-N-L-A-W.

19 DIRECT EXAMINATION BY MR. MEADORS:

20 Q. Good morning, Mr. Kinlaw.

21 A. Good morning.

22 Q. Please tell the ladies and gentlemen of this jury
23 about Johnny Kinlaw. Where are you from?

24 A. I'm Johnny Kinlaw, born and raised in Manning, South
25 Carolina. Went to school Manning. Graduate there. Then

J. KINLAW - DIRECT EXAMINATION BY MR. MEADORS

177

1 left and went to truck driving school and did a little
2 truck driving. Then I went to school again for mechanic
3 and later on got a job Sumter Chrysler here in Sumter and
4 worked there. Then I left there. I went to Sumter
5 Transport, diesel mechanic, and left there and went to
6 truck driving in a trucking company out of Charleston and
7 got hurt and kind of -- right now I'm home now for a while.

8 Q. So, you're -- a career in truck driving and mechanic?

9 A. Yeah.

10 Q. And how many children do you have, Mr. Kinlaw?

11 A. I got seven.

12 Q. And for today's purposes, Tiffany and Monique are your
13 children?

14 A. Yeah, my two daughters.

15 Q. How many grandchildren do you have?

16 A. Seventeen.

17 Q. I want to take you back to this time period, Mr.
18 Kinlaw, April of this past year. Do you live here in
19 Sumter now?

20 A. Yes, sir.

21 Q. And are you familiar with 515 East Charlotte?

22 A. Yes. That's where my daughter live.

23 Q. And are you familiar with Latique Bracey?

24 A. Yes, sir.

25 Q. In February of 2016, did you have an occasion to see

1 Latique Bracey?

2 A. Yeah.

3 Q. And, and, and again I -- no offense to you. Just yes
4 or no for the court reporter.

5 A. Yes, sir.

6 Q. And you don't have to say yes, sir. Just so she can
7 write yes or no, please.

8 Where did that take place in February? Where did you
9 see Latique Bracey?

10 A. During the time of the incident.

11 Q. Did you see him prior to that in February?

12 A. Yeah.

13 Q. Okay. Did you have an occasion to discuss some keys
14 with him?

15 A. Yeah.

16 Q. Okay, and could you tell the ladies and gentlemen of
17 this jury about that, please?

18 A. Well, when I talked to my daughter at the hospital,
19 she asked me can I go by and, and see if Latique was there
20 so she could get her keys. And when I called him, he told
21 me he was at work and that when he get off, he would meet
22 me, and so that's what he did. When he got off, he met me
23 and he gave me the keys and ---

24 Q. And this, this -- go ahead. Was -- this was February
25 of 2016?

J. KINLAW - DIRECT EXAMINATION BY MR. MEADORS

179

1 A. February, yeah. He gave me the keys and we went
2 separate ways, and I ain't seen him no more until that,
3 that, that incident, during that time.

4 Q. And I'm going to ask you about that in a minute. Do
5 you know if your conversation with Latique Bracey happened
6 after your daughter Monique had talked to him?

7 A. Say that again?

8 Q. Did your conversation with Latique Bracey happen after
9 Monique had talked to him?

10 A. Yeah. Uh-huh.

11 Q. So, you got the keys from him?

12 A. Yeah.

13 Q. And at that point in February, was he out of the house
14 at 515 East Charlotte?

15 A. Yeah, pretty much I think it was because I ain't see
16 him no more there.

17 Q. And you got the keys?

18 A. Yes, sir.

19 Q. Now let's go to this incident, please, Mr. Kinlaw,
20 April 9th of 2016. Do you remember that evening?

21 A. Yeah. Yes, sir.

22 Q. Okay. You don't have to say sir.

23 A. Oh, okay.

24 Q. That's all right.

25 A. I'm sorry.

1 Q. What's the first thing you remember about this
2 incident that night?

3 A. Well, my daughter, she called me around about 12,
4 12:30, somewhere up in there, and, and she was hysterical
5 and crying and, and I, and I got up and, and got in my car
6 and went over to her house in my truck, and she wasn't
7 there.

8 I went in there, start looking around in the place. I
9 see blood all over the place and that's -- I looked in the
10 room. My two grands was in there sleep.

11 Q. Your two grands?

12 A. Yeah, and the door was open. Then I got on the phone
13 and tried to call her. She never answered, so then I kind
14 of browsed around the house and I ain't see no nobody, and,
15 and finally I got her on the phone, and she said she was
16 next door. That's -- I went over there and she was on the
17 couch crying, and they was trying to -- well, the
18 neighbors, they was trying to clean her up from, from the
19 blood and the, and the bruises that she had on her leg and
20 foot. And so then the, the police came. I guess they did
21 the investigation and after that ---

22 Q. Let me stop you just there. You said this was 12:30
23 at night?

24 A. Yeah, somewhere up in there about that time.

25 Q. Clearly during the nighttime. It was at night?

J. KINLAW - DIRECT EXAMINATION BY MR. MEADORS

181

1 A. Yeah.

2 Q. All right. Sorry I interrupted you. What happened
3 next? You said the police came?

4 A. Yeah.

5 Q. And do you remember Corporal McFadden?

6 A. Yeah.

7 Q. Okay. Police talked to your daughter to get some
8 information and left?

9 A. Uh-huh. Then they left and my, my daughter asked me
10 would I check -- I don't -- what is -- Armis? I don't
11 really know him.

12 Q. Artemis?

13 A. Artemis. She asked me would I take his belongings to
14 the hospital. So, I took his wallet and a shoe there and,
15 and drop it off there and I came back. On my way coming
16 back, I seen Latique and, and when I pulled up -- and I
17 notice he was, he was pulling up, too.

18 Q. Pulling up where?

19 A. Pulling up to my daughter's, and he got out and we, we
20 began to start talking, and I told him. I said, well, you
21 know, you can't come back in here, man. You -- after what
22 happened. He, and he was saying that, hey, you know, she
23 did me wrong and I, you know, I don't like that and this
24 and the third. So, I said, well, you didn't had to did
25 what you do because there's some consequences behind that.

1 And so I said, well, you can't come in.

2 I notice -- I look, seen -- just looked like a gun
3 hanging out of his pocket. So, he said, well, I'm going in
4 here, man. I got to get the rest of my stuff. I said,
5 well, okay. Let's, let's, let's talk about this thing
6 here, man, before you -- no, I'm going to go in to get my
7 stuff. So, I said okay. I let him in the house to get his
8 stuff.

9 Q. Did you see the gun?

10 A. Yeah.

11 Q. Is that one of the reasons you let him in the house?

12 A. Yeah. So, when I -- that's, that's -- he went in
13 there. I thought he was going to get some stuff, but I, I
14 notice he, he didn't come out with no clothes or nothing.
15 He just had some change in something that he got and ---

16 Q. He didn't come out with anything but some change?

17 A. Yeah. So when he came, he did a little arguing first,
18 and I kind of beg him let's go, let's go because the police
19 coming. You need to go, get out of here, man.

20 Q. So, said the police had been called again?

21 A. Yeah, and so that's when he, he got in his car and he
22 left and went back down the road, and then I ain't seen him
23 no more.

24 MR. MEADORS: Beg the court's indulgence?

25 THE COURT: Yes, sir.

J. KINLAW - DIRECT EXAMINATION BY MR. MEADORS

183

1 (A PAUSE.)

2 BY MR. MEADORS:

3 Q. Did Latique say anything to you about the incident
4 earlier?

5 A. No. He just kind of been bragging about what he did
6 to the guy and all.

7 Q. Bragging about it?

8 A. Well, it seemed like bragging, being that -- saying
9 yeah, I -- you know, he, he, he bust him and he did this
10 and that, but I really didn't pay that no attention.

11 Q. Is Latique Bracey in the courtroom?

12 A. Yeah.

13 Q. Okay. Could you point him out?

14 A. Right there.

15 Q. And did you -- you know Marcus McFadden?

16 A. No. I don't know him.

17 Q. So, you don't even know Marcus McFadden?

18 A. No. I don't even know him.

19 Q. Far as you know, he'd never been to 515 East
20 Charlotte, Marcus McFadden?

21 A. Well, he wasn't there at the time I was coming there.
22 I'd never seen him.

23 Q. Okay.

24 MR. MEADORS: Mr. Kinlaw, thank you.

25 Thank you, Judge. That's all.

J. KINLAW - CROSS-EXAMINATION BY MR. JORDAN

184

1 THE COURT: Mr. Jordan?

2 MR. JORDAN: May it please the court?

3 CROSS-EXAMINATION BY MR. JORDAN:

4 Q. Good morning, Mr. Kinlaw.

5 A. Good morning.

6 Q. How are you?

7 A. Fine.

8 Q. How old are you, sir?

9 A. I'm fifty-two.

10 Q. Seven kids?

11 A. Uh-huh.

12 Q. All girls?

13 A. No.

14 Q. And seventeen grandchildren?

15 A. Uh-huh.

16 Q. I'm not trying to embarrass you, but can you name them
17 all?

18 A. Yeah.

19 Q. Okay, let's go.

20 A. Name the -- my kids?

21 Q. Grandkids.

22 A. They got nicknames. I, I, I remember all the
23 nicknames and I -- let me see.

24 Q. Okay. I mean ---

25 A. I got one ---

J. KINLAW - CROSS-EXAMINATION BY MR. JORDAN

185

1 Q. --- memory's tough.

2 A. Tunisia.

3 Q. Okay.

4 A. I mean -- yeah, Tadaris, Little Junior, Little J.

5 Going with the girls, Senia, Little Nugget. I just got to
6 think about it.

7 Q. I understand.

8 A. I don't, I don't see them every day. I just, I see
9 them once in a while but I, I, I can name some more of
10 them, but I just...

11 Q. You don't have to.

12 A. Okay.

13 Q. The fact of the matter is sometimes memory is not what
14 we want it to be, right?

15 A. Well, yeah. You can say that.

16 Q. Okay. Now, I want to talk to you. Are you a married
17 man?

18 A. Yeah.

19 Q. Okay. Do you -- you've heard the expression off and
20 on?

21 A. Uh-huh.

22 Q. What does that mean to you?

23 A. Off and on?

24 Q. Yes, sir.

25 A. On and on means, I guess, when you -- you're on one

1 day and you're off the next day.

2 Q. Is that an accurate -- in your mind, is that an
3 accurate description of what you saw of your daughter's
4 relationship, Tiffany's relationship with Latique Bracey,
5 off and on? Is, is that, is that what you saw?

6 A. Well, it's, it's -- a lot things change when I come
7 around. You know, it seem like they, they, they get
8 along fine when I'm around, but I don't know what goes on
9 when I'm not, when I'm not there, but a lot of stuff is
10 kind of ---

11 Q. Yes.

12 A. --- clear when I come around. That's all I -- I, you
13 know, can see good when I'm around but when, when I'm gone,
14 I been hearing a lot off and on or whatever you want to
15 call that, but...

16 Q. Would you agree with me that off and on means no
17 commitment whatsoever?

18 A. Well, I can't agree with that because ---

19 Q. Okay.

20 A. -- I don't have off and on relationship.

21 Q. Me neither. All right. Now, now, you've been over to
22 the house?

23 A. Yeah.

24 Q. Isn't it true that Latique Bracey was paying the
25 Time-Warner bill over at that house?

J. KINLAW - CROSS-EXAMINATION BY MR. JORDAN

187

1 A. Well, I did hear her mention about, about a bill need
2 to be paid, but I, I really, I really didn't pay that no
3 attention, but I don't, I don't know about that.

4 Q. Okay. Let me back up one question. Do you agree with
5 an on and off relationship? Does that suit your ---

6 MR. MEADORS: Object to relevance.

7 THE COURT: Sustained. Don't answer.

8 BY MR. JORDAN:

9 Q. So, you knew he was paying the bill over there?

10 A. No, he wasn't paying no bill there. That just been a
11 cable bill that, that I, I remember was talk about, about a
12 cable bill, but, like, light bill, water bill, rent, he
13 never had paid never one of those.

14 Q. Were you aware that their relationship, your daughter
15 and Latique's, lasted over five years?

16 A. Well, I'm kind of, I'm kind of aware of that because
17 he was around during that, during that -- about that period
18 of time.

19 Q. And you went over there on the night of April 9th. Is
20 that correct?

21 A. Yeah.

22 Q. And you went over there to see what was going on. You
23 checked on your grands?

24 A. Uh-huh.

25 Q. And you checked on your daughter?

- 1 A. Yeah.
- 2 Q. And Latique came over?
- 3 A. Well, he -- yeah, he came ---
- 4 Q. Pulled up?
- 5 A. He came up after the police left.
- 6 Q. And you said you -- you said he told you what she did?
- 7 A. Well, he was kind of hysterical about she had somebody
- 8 in the house.
- 9 Q. Okay.
- 10 A. And he didn't like that, but he didn't know what was
- 11 going on with that. So, I guess when he find out that it
- 12 just was a friend came by and seen her, I don't how he take
- 13 that afterward.
- 14 Q. Was there arguing? Were y'all arguing, you and
- 15 Latique?
- 16 A. No. We wasn't arguing.
- 17 Q. Now, you understood what had already taken place,
- 18 right? You said you saw blood?
- 19 A. Yeah.
- 20 Q. You said you talked to Tiffany?
- 21 A. Uh-huh.
- 22 Q. You said you saw a gun in his pocket?
- 23 A. Yeah. I saw -- when he was approaching me, I seen it.
- 24 Q. And you told him to get out of here, man, the police
- 25 are coming?

J. KINLAW - CROSS-EXAMINATION BY MR. JORDAN

189

1 A. Yeah.

2 Q. You didn't tell him stay right here?

3 A. No.

4 Q. We got to deal with ramifications behind this?

5 A. No, because I ain't one to trip him up because he
6 might would have shot me.

7 Q. So, you told him to get on out of here?

8 A. No. I told him he, he couldn't come in the house. I
9 didn't really -- you know, we wasn't fussing or arguing,
10 nothing. I just told him he needed to leave because the
11 police was coming.

12 Q. And that night you never saw Marcus McFadden?

13 A. No.

14 Q. Never had a communication ---

15 A. Well, well, when they came up in the car, they never
16 get out the car, and this is the first time I ever seen him
17 but, you know, I know some people was in the car, but I
18 didn't know who it was. Couldn't even really even see him.

19 Q. Okay. So, you don't -- you didn't see him that night?

20 A. No.

21 Q. You certainly didn't have a, a conversation with him?

22 A. No.

23 Q. And he certainly wasn't bragging about nothing?

24 A. Who?

25 Q. Marcus.

J. KINLAW - CROSS-EXAMINATION BY MR. BRIDGES

190

1 A. No, no, no.

2 Q. And you certainly never saw him with any kind of gun?

3 A. No, no.

4 MR. JORDAN: Thank you.

5 THE COURT: Yes, sir.

6 MR. BRIDGES: May it please the court?

7 THE COURT: Yes, sir.

8 CROSS EXAMINATION BY MR. BRIDGES:

9 Q. Good morning, Mr. Kinlaw.

10 A. Good morning.

11 Q. Jason Bridges. I represent Latique Bracey.

12 A. Okay.

13 Q. I'm going to first ask you about what you'd already
14 mentioned about February, about meeting Latique after work
15 and getting keys from him. Did, did you know how many sets
16 of keys your daughter had for her house?

17 A. It had to be one.

18 Q. So, so, that set you recovered from Latique, you think
19 that was the only set that ---

20 A. Yeah, because it was on, it was on, it was on a, a
21 kind of -- like a string, like, and that's -- and the --
22 that's the key that I remember her having on a -- it was on
23 a string.

24 Q. So, did they share that set?

25 A. They probably did.

J. KINLAW - CROSS-EXAMINATION BY MR. BRIDGES

191

1 Q. Thank you. I'm now going to go back to April, the
2 night of April 9th.

3 A. Uh-huh.

4 Q. You said when you arrived at the 515 Charlotte Street
5 address, Latique's car was behind you or ---

6 A. No. When I rode -- when I, when I, when I arrived
7 there, I came -- no one, no one was at the, at the house
8 with the kids. They was in the bed sleep, and I just
9 walking around viewing and to see what going on, and I
10 noticed -- I said I seen a lot of blood all over the place.
11 So, I, I start calling her and she never answered me the
12 first, second time. Round about the time she, she answered
13 and she told me she was next door.

14 Q. And then how long -- and then Latique's car did pull
15 up?

16 A. Well, I left and went to the hospital to bring Marnis
17 [sic] his, his wallet and a shoe, and on my way coming
18 back, that's when I seen him and I pulled, pulled up first
19 and he pulled behind me.

20 Q. About how long did it take you to go to the hospital
21 with Artemis?

22 A. I want to say about twenty, twenty-five minutes.

23 Q. And then when you came back to the house, that's when
24 you saw Latique?

25 A. Well, he came up. He pulled up behind me when I

1 pulled up.

2 Q. You said he asked to enter the house?

3 A. Yeah. He, he, he asked me can he come back in there
4 and get the rest of his stuff, and I told him no. I'll get
5 it. He said no. I need to go in there and get -- and, and
6 when I, when I was -- when he was approaching me, I seen
7 something sticking out of his -- gun sticking out of his,
8 his front pocket.

9 Q. Did you -- so, you saw what you believed was a gun in
10 his pocket?

11 A. Well, yeah. I know a gun when I see it.

12 Q. Did he, did he in any way say that he had a gun or any
13 -- or point it or any motion that he was going to ---

14 A. No. He didn't say anything about the gun. He didn't
15 approach me with it.

16 Q. Or any ---

17 A. But I seen it, but he didn't never pull it out or
18 nothing, so.

19 Q. And when you say that -- at first you, you offered to
20 get -- go in the house and get his stuff?

21 A. Yeah.

22 Q. Did you know if he had any stuff in there at the time?
23 Did you answer that question?

24 A. Well, I really didn't know whether -- what he had in
25 there, but he didn't came back out with nothing.

J. KINLAW - CROSS-EXAMINATION BY MR. BRIDGES

193

1 Q. And then he, he went in the house?

2 A. He went in the house and went in the room. He had
3 some, had some change or something in his hand. So, that
4 probably what he went in there and got. I didn't see what
5 he got.

6 Q. And you said he continued to argue and ---

7 A. And he turned around and he started arguing. He
8 started arguing again and, and I asked him to leave
9 because, you know -- I told him the police coming. You
10 better leave, man.

11 Q. Can you tell me how long, just estimate how long you
12 think you spoke to your daughter for when you got back in
13 the house?

14 A. Probably a good five, ten minutes.

15 MR. BRIDGES: Thank you very much, Mr. Kinlaw. No
16 further questions.

17 WITNESS: Thank you.

18 THE COURT: Any ---

19 MR. MEADORS: No questions.

20 THE COURT: Thank you. You may step down.

21 Any objection to this witness being excused?

22 MR. JORDAN: No, Your Honor.

23 MR. BRIDGES: No, Your Honor.

24 MR. MEADORS: He may be staying.

25 THE COURT: He can stay as long as he wants. He's --

1 but he doesn't have to. Thank you.

2 (THE WITNESS EXITS THE STAND.)

3 MR. MEADORS: Can we approach?

4 THE COURT: You may.

5 (OFF-THE-RECORD BENCH CONFERENCE.)

6 THE COURT: All right, ladies and gentlemen, we're
7 going to take a fifteen-minute recess at this time. Please
8 enjoy coffee or Co-Cola that they'll provide for you.
9 Please do not discuss the case with anyone while you're
10 back there. Thank you. And if you do need to smoke,
11 they'll take you to some place you can do that.

12 (THE JURY EXITS AT 10:51 A.M.)

13 THE COURT: All right, we're in recess for fifteen
14 minutes.

15 (OFF THE RECORD.)

16 THE COURT: Please take your seats. You ready?

17 MR. MEADORS: Yes.

18 THE COURT: Let's bring our jury in.

19 (THE JURY ENTERS AT 11:10 A.M.)

20 THE COURT: State call its next witness.

21 MR. MEADORS: May it please Your Honor? Call Rodney
22 McFadden.

23 THE COURT: All right.

24 RODNEY McFADDEN, BEING DULY SWORN,
25 TESTIFIED AS FOLLOWS:

R. McFADDEN - DIRECT EXAMINATION BY MR. MEADORS

195

1 BAILIFF: State your name for the record and spell
2 your last name.

3 THE COURT: Rodney McFadden, M-C-F-A-D-D-E-N.

4 DIRECT EXAMINATION BY MR. MEADORS:

5 Q. Good morning, Officer McFadden.

6 A. Good morning.

7 Q. Please tell the ladies and gentlemen of this jury
8 about yourself, and specifically about your background and
9 training in law enforcement, please.

10 A. Born and raised in North Carolina. Graduated high
11 school in 2002. Did some time in college up above
12 Charlotte. Moved here in about 2008. Got hired with the
13 Sumter Police Department about 2009 and been with the
14 Sumter Police Department ever since. Had all different
15 kind of training far as traffic interdiction, high-risk
16 warrants, drug interdiction, undercover, alcohol, and all
17 sorts of other types of training.

18 Q. And you're a corporal now?

19 A. Yes.

20 Q. Have you been a -- are you on a -- what's NET?

21 A. It's the Neighborhood Environment Team.

22 Q. Are you on that?

23 A. Yes, sir.

24 Q. Now back in April of 2016, this year, what was your
25 role for the sheriff -- for the chief of police? The

1 police department, excuse me.

2 A. I was assisting the shift patrol.

3 Q. What does that mean?

4 A. It's patrol shift that they respond to 911 emergency
5 calls.

6 Q. And as a result of that, did you have an occasion to
7 respond to 515 East Charlotte Street?

8 A. Yes.

9 Q. And I think I asked you before. If I didn't, is that
10 in Sumter County?

11 A. Yes.

12 Q. When you arrived, what did you see?

13 A. The yard, I saw a hat in the yard, shoe in the yard,
14 dirt that has been dismantled. If you look at the
15 residence, the side door on the left side, the wood molding
16 to the door was cracked and torn. The screen door handle
17 was off on the cement part of the house. Inside there was
18 blood on the floor. There's been -- distraught. Things
19 was moved and pushed around. Things was broken.

20 Q. Was the door pointed out to you by somebody in the
21 home?

22 A. Yes.

23 Q. Now State's 4, is that a picture of 515 or the side of
24 it?

25 A. Yes.

R. McFADDEN - DIRECT EXAMINATION BY MR. MEADORS

197

1 Q. Now where the light is on State's 4, what is that?

2 A. Front porch.

3 Q. And around here to where my finger is on the right,
4 what is that?

5 A. That's the side door.

6 Q. And State's, State's 5, what is that a picture of?

7 A. The handle to the screen door.

8 Q. And what porch is that on?

9 A. That's on side porch on the left side of the
10 residence.

11 Q. State's 10?

12 A. That's the door frame molding.

13 Q. And you've been around a while, correct?

14 A. Yes.

15 Q. I don't mean that in any bad way. Been in law
16 enforcement. You've been to numerous scenes?

17 A. Yes.

18 Q. Did this appear to be fresh to you?

19 A. Yes.

20 Q. And State's 6?

21 A. Yes.

22 Q. Is that a picture of the molding?

23 A. Yes.

24 Q. You get there. You make these observations. Do you
25 have an occasion to talk to Tiffany Calvin?

1 A. Yes.

2 Q. And did she know who the persons were that had gone
3 into her house?

4 A. Yes.

5 Q. Did she identify them?

6 A. Yes.

7 Q. Marcus McFadden?

8 A. Yes.

9 Q. Latique Bracey?

10 A. Yes.

11 Q. Dominique Ross?

12 A. Yes.

13 Q. Some cases you don't know a suspect right off the bat,
14 correct?

15 A. Correct.

16 Q. But at this point, you knew who the suspects were as
17 soon as you got there?

18 A. Yes.

19 Q. What time did you get there?

20 A. Right before 12:30, midnight approximately. I think
21 the exact time may have been 12:24 a.m.

22 Q. And that's on April 9th?

23 A. Yes.

24 Q. 2016?

25 A. Yes.

R. McFADDEN - DIRECT EXAMINATION BY MR. MEADORS

199

1 Q. For the record, was that during the nighttime hours?

2 A. Yes.

3 Q. Did you see Artemis Bryant there?

4 A. No.

5 Q. At, at 515? I apologize.

6 A. No.

7 Q. Did you ever see him?

8 A. No.

9 Q. Okay, and when I say see, you've seen him this week,
10 but that night around when this started, you did not see
11 him?

12 A. No.

13 Q. After you'd gotten the information from Ms. Calvin,
14 what did you do?

15 A. We, we received information, did our investigation,
16 and then we left the scene and after that worked on the,
17 the incident report for the scene.

18 Q. And, and was that the first incident report you
19 prepared?

20 A. Yes.

21 Q. And did you have an occasion to go back to 515 East
22 Charlotte?

23 A. Yes.

24 Q. Why?

25 A. We got a second 911 call saying that Mr. Bracey had

1 came back to the residence.

2 Q. And after that first response, Corporal, did you get a
3 description from Ms. Calvin or somebody about the car that
4 was driven by the individuals that went in her house?

5 A. Yes. It was -- description was given out as a tan
6 Buick with Floyd's paper tag.

7 MR. MEADORS: Beg the court's indulgence?

8 THE COURT: Yes.

9 (A PAUSE.)

10 MR. MEADORS: Judge, I apologize to everybody. I
11 can't find them right now.

12 BY MR. MEADORS:

13 Q. But it's a tan car with what tags on it?

14 A. Floyd paper tag.

15 Q. When you responded the second time or got the second
16 call, what time was that?

17 A. Approximately about a hour later.

18 Q. And did you -- tell the jury as you're going back the
19 second time to 515 East Charlotte, what did you observe as
20 you were coming?

21 A. I took the route of Lafayette to East Charlotte and
22 turned by the gas station, and I -- as I got close to 515
23 East Charlotte, I saw a tan Buick with Floyd paper tags
24 traveling towards North Lafayette as I'm a few houses down
25 from 515 East Charlotte.

R. McFADDEN - DIRECT EXAMINATION BY MR. MEADORS

201

1 Q. And, and, and was that the same car you'd been
2 described earlier?

3 A. Yes.

4 Q. And had you heard -- or had you gained information
5 that a shot had been fired back at that first incident?

6 A. Yes.

7 Q. After the first time you arrived there?

8 A. Yes.

9 Q. So, what's in your mind as you see the same car?

10 A. The -- automatically assumed there's a gun in the
11 vehicle.

12 Q. What did you do when you saw -- where did you first
13 see it?

14 A. On East Charlotte maybe -- still in the 500, the 500
15 block of East Charlotte.

16 Q. And from, from 515 East Charlotte how close was it?
17 You say in the area. How close was ---

18 A. Maybe three to four houses down.

19 Q. So, what do you do after you see it?

20 A. I turn around.

21 Q. And where do you follow the car to?

22 A. First off, I advise the other patrol units in the
23 dispatch that, you know, I see the car. I get ready to
24 conduct a traffic stop and the -- Mr. Bracey, the driver of
25 the vehicle, as I light him up on a Lafayette, he pulls

R. McFADDEN - DIRECT EXAMINATION BY MR. MEADORS

202

1 into the Dollar General on North Lafayette.

2 MR. MEADORS: Judge, could I ask him to step down just
3 for a moment?

4 THE COURT: Yes. Please, please speak up when you're
5 away from the microphone.

6 BY MR. MEADORS:

7 Q. Could you speak -- come over here and talk loud enough
8 so the court reporter can...

9 MR. MEADORS: Your Honor, can we ---

10 THE COURT: You certainly may position yourself any
11 way you want.

12 BY MR. MEADORS:

13 Q. I'm going to show you what's marked State's 2, which
14 is an aerial of this area.

15 MR. MEADORS: And, Your Honor, I believe this is
16 without objection.

17 THE COURT: Is there any objection to that?

18 MR. JORDAN: No, Your Honor.

19 THE COURT: Without objection.

20 Mr. Bridges?

21 MR. BRIDGES: No objection, Your Honor.

22 THE COURT: Thank you.

23 BY MR. MEADORS:

24 Q. Can you show the jury where 515 East Charlotte is?

25 A. This. This is my 515 East Charlotte. This would be

R. McFADDEN - DIRECT EXAMINATION BY MR. MEADORS

203

1 Charlotte Avenue. This is 515.

2 Q. So, Lafayette is going to be in what direction?

3 A. Lafayette would be in this direction.

4 MR. MEADORS: Now this is State's 1, which I believe
5 is without objection, Your Honor.

6 MR. JORDAN: No objection.

7 MR. BRIDGES: No objection.

8 THE COURT: I think 1 through 48 are already in
9 without objection. That was on the record.

10 BY MR. MEADORS:

11 Q. Is this a broader aerial view of the area we're
12 talking about?

13 A. Yes.

14 Q. Show the ladies and gentlemen of the jury. Where is
15 515 East Charlotte?

16 A. There in that corner, 515 East Charlotte.

17 Q. All right, and approximately the second time you were
18 called to this residence, where did you see the vehicle,
19 the tan vehicle with Floyd paper tags, and where did you
20 follow it?

21 A. Vehicle was about right here on East Charlotte. I
22 turned around, followed the vehicle to Lafayette and made a
23 left on Lafayette, and I conducted a traffic stop and the
24 driver, Mr. Bracey, pulled into the Dollar General parking
25 lot here.

R. McFADDEN - DIRECT EXAMINATION BY MR. MEADORS

204

1 Q. Was anybody else with you at that point?

2 A. Not, not off the bat. Nobody was with me, but shortly
3 after I had another unit pull up behind me.

4 Q. That's all for this. Thank you.

5 MR. MEADORS: Beg the court's indulgence.

6 THE COURT: Yes.

7 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
8 46, 47, 48, 49 FOR IDENTIFICATION.)

9 MR. MEADORS: Your Honor, 46, 47, 48, 49, I thought
10 they'd already been marked. That's my fault. I'd move
11 them in without objection.

12 THE COURT: Any objection, gentlemen?

13 MR. JORDAN: No, Your Honor, not from us.

14 MR. BRIDGES: No, Your Honor.

15 THE COURT: All right. Thank you, and they are part
16 of the evidence.

17 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
18 46, 47, 48, 49.)

19 BY MR. MEADORS:

20 Q. You described a tan Buick with Floyd tags?

21 A. Yes.

22 Q. State's 46, is that it?

23 A. Yes.

24 Q. And you said you stopped this car at the Dollar
25 General?

R. McFADDEN - DIRECT EXAMINATION BY MR. MEADORS

205

1 A. Yes.

2 Q. Is that the sign of the Dollar General on Lafayette?

3 A. Yes.

4 Q. And that's State's 47 and then State's 48, is that
5 where the vehicle was at the Dollar General on Lafayette?

6 A. Yes. That's the final stop.

7 Q. You had information that a -- there'd been a gun fired
8 after, after you responded initially, correct?

9 MR. JORDAN: Yes, I'm going to object to hearsay. If
10 that was communicated to him by a source that's not in
11 court, it's hearsay.

12 MR. MEADORS: I think it's been...

13 BY MR. MEADORS:

14 Q. Did you find a gun in the car?

15 A. Yes.

16 THE COURT: Okay.

17 Q. Is that State's 49?

18 A. Yes.

19 Q. And is that the gun you found in the console of the
20 tan Buick?

21 A. Yes.

22 Q. Did you collect it?

23 A. Yes.

24 Q. And State's 45, is that the gun?

25 A. Yes.

R. McFADDEN - DIRECT BY MR. MEADORS / CROSS BY MR. JORDAN 206

1 Q. And was there a spent shell casing in the gun?

2 A. Yes.

3 Q. Now, tell the ladies and gentlemen of the jury. Can
4 you -- who was driving the car, the tan Buick?

5 A. Mr. Bracey, Latique Bracey.

6 Q. And who was in the front passenger side?

7 A. Marcus McFadden.

8 Q. And who was in the rear of the tan Buick?

9 A. The rear passenger side, Mr. Dominique Ross.

10 MR. MEADORS: Beg the court's indulgence.

11 THE COURT: Yes.

12 (A PAUSE.)

13 BY MR. MEADORS:

14 Q. And were Mr. Bracey, Mr. McFadden, and Mr. Ross
15 subsequently arrested?

16 A. Yes.

17 MR. MEADORS: Thank you. That's all.

18 THE COURT: All right, Mr. Jordan.

19 MR. JORDAN: Please the court?

20 CROSS-EXAMINATION BY MR. JORDAN:

21 Q. Morning, Officer McFadden.

22 A. Good morning.

23 Q. How are you? Does your training include any forensic
24 training?

25 A. Yes.

R. McFADDEN - CROSS-EXAMINATION BY MR. JORDAN

207

1 Q. Okay. Can you test DNA?

2 A. No.

3 Q. Can you, can you read fingerprints?

4 A. No.

5 Q. So, you're not forensic examiner for law enforcement,
6 correct?

7 A. Correct.

8 Q. All right. Now, you weren't there that night when
9 this occurred, right?

10 A. Correct.

11 Q. So, a lot of what you're relying on is your interviews
12 and what -- you talked to the witnesses, right?

13 A. That and training and experience.

14 Q. Training and experience, but that night you didn't
15 talk to Artemis Bryant, did you?

16 A. No.

17 Q. Okay, and when you say that the door was fresh and
18 splintered, you're, you're -- or cracked, you're relying on
19 what you were told. Is that right?

20 A. No. I'm relying on what I observed.

21 Q. Are you relying partially on what you were told?

22 A. No.

23 Q. Okay. Now, did you collect any wood splinters or
24 anything off the floor from, from where it was fresh?

25 A. No.

1 Q. Okay, because you would have. If you'd seen that, you
2 would have collected and put it in a little baggie, would
3 you not?

4 A. No.

5 Q. You would not?

6 A. No.

7 Q. You would leave it for someone else to do?

8 A. No.

9 Q. Well, did you, did you collect fingerprint lift cards?

10 A. No.

11 Q. Did you collect DNA swabs?

12 A. No.

13 Q. Okay. I want to just show you, just show you a
14 document. You see that evidence inventory chain?

15 A. Yes.

16 Q. Is that, Mr. McFadden, your signature at the bottom?

17 A. Yes.

18 Q. Did you collect DNA swabs?

19 A. No.

20 Q. Did you collect fingerprint cards?

21 A. No.

22 Q. Can you tell us why your name is on the bottom of that
23 form and it says those two things?

24 A. Yes, because there's -- the back with the chain is not
25 signed over where the tech collected it. You don't have a

R. McFADDEN - CROSS-EXAMINATION BY MR. JORDAN

209

1 copy of the back where it's the chain of custody.

2 Q. Okay.

3 A. And if you look at the first one, two, three, four,
4 five lines, that's my handwriting. If you look at the last
5 two, that's a different handwriting.

6 Q. All right, but you signed this form?

7 A. Yes.

8 Q. Did you see these on the form when you signed it?

9 A. Yes.

10 Q. Okay. So, those collected. You didn't do it?

11 A. Yes.

12 Q. Okay. Now you see on that, State's 6, does that look
13 like wood putty to you?

14 A. No.

15 Q. Okay. You know what that is, where there's
16 discoloration?

17 A. No.

18 Q. Okay, and you hadn't examined -- I mean, you'd never
19 been over there before, had you?

20 A. No.

21 Q. You never look at that door before?

22 A. No.

23 Q. Okay. So, everything -- and you've not been back
24 since, have you?

25 A. No.

R. McFADDEN - CROSS-EXAMINATION BY MR. JORDAN

210

1 Q. Okay. So, everything you're telling this jury is from
2 the observations you had on that evening on April 8, April
3 9, 2016?

4 A. Say that again?

5 Q. Everything that you are testifying to as your
6 observation was limited to that period in time, April 8,
7 2016?

8 A. Yes.

9 Q. And the door wasn't knocked off the hinges, was it?

10 A. No.

11 Q. And the lock was still intact, was it not?

12 A. Which door?

13 Q. Well, the door we're talking about.

14 A. Say, say that question again.

15 Q. The lock still worked, didn't it, on the door we're
16 talking about?

17 A. I'm not sure. I didn't ---

18 Q. You didn't check it?

19 A. --- check it.

20 Q. So, you're certainly not here to tell the jury that it
21 was broken, are you?

22 A. Say that again?

23 Q. You're not here to tell the jury that that lock was
24 broken, are you?

25 A. No. That was forced open.

R. McFADDEN - CROSS BY MR. JORDAN / CROSS BY MR. BRIDGES

211

1 Q. Okay. I'm sorry?

2 A. That the door was forced open.

3 Q. Now, you're making that as your opinion, or you're
4 telling us what you were told?

5 A. I'm telling it by the split in the door frame.

6 Q. But you'd never examined it before.

7 A. Correct.

8 Q. So, you don't know if that split was there or not
9 before.

10 A. Correct.

11 MR. JORDAN: Thank you. I don't have any further
12 questions.

13 THE COURT: Yes, sir, Mr. Bridges.

14 MR. BRIDGES: May it please the court?

15 CROSS-EXAMINATION BY MR. BRIDGES:

16 Q. Officer McFadden, just have a couple of questions
17 about the stop at the Dollar General.

18 A. Yes, sir.

19 Q. So, you approach the car and you notice that there was
20 a gun in the center console. Was it, was it covered up in
21 the center console, or did you reveal that through a
22 search?

23 A. It was not covered.

24 Q. So, you were able to see it from the, from the outside
25 of the car?

R. McFADDEN - CROSS BY MR. BRIDGES / REDIRECT BY MR. MEADORS 212

1 A. No.

2 Q. Did any, did any of the occupants of the car claim
3 ownership of the gun at the time of the stop?

4 A. No.

5 Q. Was there ever a shell casing found either in the car
6 or when you were on the scene at East Charlotte?

7 A. In the gun.

8 Q. Was the barrel -- did you handle the gun? Did you --
9 after you made the stop, did you, did you pick up the gun
10 and examine it yourself?

11 A. With gloves.

12 Q. Was, was the barrel -- did you notice if the barrel
13 was hot or, or anything like that?

14 A. No.

15 MR. BRIDGES: Thank you, Officer McFadden.

16 No further questions, Your Honor.

17 THE COURT: Any redirect?

18 REDIRECT EXAMINATION MR. MEADORS:

19 Q. A revolver wouldn't leave a shell casing, right?

20 A. Correct.

21 MR. MEADORS: Thank you. That's all.

22 THE COURT: Any recross based on his redirect?

23 MR. JORDAN: No, Your Honor.

24 THE COURT: Mr. Bridges?

25 MR. BRIDGES: No, Your Honor.

1 THE COURT: Thank you. You may step down.

2 (THE WITNESS EXITS THE STAND.)

3 THE COURT: Any objection to this witness being
4 excused?

5 MR. JORDAN: No, Your Honor.

6 MR. BRIDGES: No, Your Honor.

7 MR. MEADORS: Beg the court's indulgence.

8 THE COURT: Yes, sir.

9 (A PAUSE.)

10 MR. MEADORS: Your Honor, the State of South Carolina
11 rests.

12 THE COURT: All right. Thank you.

13 All right, ladies and gentlemen, I'm going to send you
14 back to the jury room for just a few moments while we take
15 up a very few matters of law. All right, thank you.
16 Please do not discuss anything about the case while you're
17 back there.

18 (THE JURY EXITS AT 11:35 A.M.)

19 THE COURT: Thank you. Are there any motions?

20 MR. JORDAN: Please the court, Your Honor? On behalf
21 of Defendant Marcus McFadden, we would move for directed
22 verdict on the count of the indictment for burglary. The
23 State's evidence has been the testimony of Artemis Bryant
24 that the instruction by -- on instruction by Tiffany
25 Calvin, he opened the door. She knew him and she could

1 talk him, she could talk him down. We believe that viewing
2 the light -- viewing the evidence in the light most
3 favorable to the state, there is still no question but that
4 consent was given, Your Honor.

5 There's also been testimony about Mr. Latique Bracey's
6 possessory rights or occupancy rights at the home and that
7 he had stuff there so that we would, Your Honor, we would
8 argue that the evidence in the light most favorable to the
9 state does not lead to different inferences from which the
10 jury could, could, could draw a conclusion of guilt. So,
11 we would ask that, that a directed verdict be granted.

12 I'd also renew my motion for severance. In Mr.
13 Meadors's opening, he mentioned the gun and possession of
14 the gun being an aggravating circumstance to rise to the
15 level of burglary second -- burglary first. Your Honor,
16 we're not charged with a gun on the indictment. So, we
17 would just say that we're prejudiced and not able to have
18 our separate trial on the fact that if the jury were to
19 find that the only aggravating circumstance -- if they
20 found burglary and found it because of the possession of
21 weapon, we weren't indicted for that. Thank you, Your
22 Honor.

23 THE COURT: Yes, sir.

24 MR. BRIDGES: I'm, I'm joining Mr. Jordan's motion in
25 regards to the first-degree burglary charge and the

1 possession of a firearm during a violent crime. I make no
2 motions on the additional two charges.

3 THE COURT: All right. Thank you.

4 MR. MEADORS: Your Honor.

5 THE COURT: Mr. Meadors.

6 MR. MEADORS: In the evidence rule, I think there's
7 ample evidence. And Ms. Tiffany Calvin's testimony I
8 remember was for Artemis to check it out. He did and the
9 first thing he saw was a pistol pointed at him. Under the
10 one -- the hand of one, the hand of all, obviously that
11 applies to all of them who entered as far as that
12 aggravating circumstance.

13 But in addition to that, you have burglary in the
14 nighttime and an individual not involved in the felony who
15 was injured, also another way that burglary first can be
16 found by the jury.

17 Judge, we think there's ample evidence for it to go to
18 the jury. Thank you.

19 THE COURT: All right. At this stage of the trial,
20 the court is more concerned with the existence of evidence,
21 and even though then it must be more than mere suspicion.
22 I find that there is at least some evidence that would
23 allow this to go to the jury. Therefore, your motions are
24 respectively denied.

25 All right, if you would please place the defendants

1 under oath.

2 MR. BRIDGES: Your Honor, would you like us to stand?

3 THE COURT: No. You can stay right there. I'll just
4 do one at a time.

5 MR. BRIDGES: Yes, sir.

6 (WHEREUPON, DEFENDANTS MARCUS McFADDEN AND LATIQUE
7 BRACEY ARE DULY SWORN.)

8 THE COURT: Thank you. Remain standing.

9 All right, Mr. Marcus McFadden and Mr. Latique Bracey,
10 at this time I'm going to explain to you certain of your
11 rights. If you do not understand what I'm telling you,
12 please let me know. If you want me to explain in greater
13 detail, I will be happy to do so.

14 We have now reached the stage of this trial where you
15 may present your defense. You have the right to claim the
16 protections granted to you by the Fifth Amendment of the
17 United State's Constitution, which states in part that no
18 person shall be compelled in any criminal case to be a
19 witness against himself. Now, this means that you cannot
20 be required to testify in this case, but you do have a
21 right to testify on your own behalf. However, no one can
22 make you testify. This is a personal right and no one may
23 waive it except for you.

24 Now, if you decide to testify, then you will be
25 subjected to the same rules that govern other witnesses,

1 and you may be examined and cross-examined on any relevant
2 issue in this case. In addition, if you have any
3 convictions involving dishonesty or false statements or for
4 crimes punishable by imprisonment of more than one year and
5 I determine that the probative value of admitting this
6 evidence outweighs the prejudicial effect on you, then the
7 state can use this evidence to attack your credibility.

8 Now, Solicitor, if Mr. McFadden testifies, is there
9 anything that would fall into that category that would be
10 presented in -- on cross-examination?

11 MR. MEADORS: There are numerous pending charges.
12 There may be some magistrate. I, I don't think so.

13 THE COURT: Sure. Okay.

14 MR. JORDAN: Judge, all I'm aware of this a ---

15 MR. MEADORS: I don't think there are any is what I'm
16 saying.

17 MR. JORDAN: Okay.

18 THE COURT: Okay, how about Mr. Bracey?

19 MR. MEADORS: There is a pending -- nothing.

20 THE COURT: Nothing? Okay. All right.

21 So, you understand that if you take the stand, there
22 will be no mention of any other charges. Even though
23 they're pending, the state will not be able to bring that
24 up because you're still presumed to be innocent of these
25 charges, as you are on this one. But if you decide to

1 testify, the decision on your part must be made freely,
2 voluntarily, knowingly, and intelligently, and with the
3 knowledge of the protections given to you by the Fifth
4 Amendment and the consequences of your decisions to
5 testify.

6 Now, if you decide not to testify, I will instruct the
7 jurors that they cannot give the fact that you did not
8 testify any consideration whatsoever, and there is to be
9 absolutely no prejudice to you should you decide not to
10 testify. It will be left entirely up to you whether or not
11 you want to testify. You may talk to your attorney, your
12 family and friends, or anyone else but the final decision
13 will be left up to you entirely.

14 Do you understand me, Mr. Bracey?

15 DEFENDANT BRACEY: Yes, sir.

16 THE COURT: Okay, do you understand me, Mr. McFadden?

17 DEFENDANT McFADDEN: Yes, sir.

18 THE COURT: All right. Do you have any questions for
19 me, Mr. Bracey?

20 DEFENDANT BRACEY: No, sir.

21 THE COURT: Mr. McFadden?

22 DEFENDANT McFADDEN: No, sir.

23 THE COURT: Do you need time to speak to your
24 attorney, Mr. Bracey?

25 DEFENDANT BRACEY: Yes, sir.

1 THE COURT: You need time? You want some time to
2 speak to speak with your attorney?

3 DEFENDANT BRACEY: No. I'm all right.

4 THE COURT: Okay, Mr. McFadden?

5 DEFENDANT McFADDEN: No, sir.

6 THE COURT: All right. Have you decided whether or
7 not you want to testify, Mr. Bracey?

8 DEFENDANT BRACEY: No, sir.

9 THE COURT: You do not want to testify?

10 DEFENDANT BRACEY: No, sir.

11 THE COURT: Mr. McFadden?

12 DEFENDANT McFADDEN: No, sir.

13 THE COURT: All right. Very well. All right, you may
14 be seated.

15 Let's bring the jury back in. I'll let you rest on
16 the record. I assume you're going to rest. You have any
17 other witnesses?

18 MR. JORDAN: No, Your Honor.

19 THE COURT: Then y'all will get the last argument.

20 All right, what we'll do is we'll bring the jury in,
21 we'll allow you to rest on the record, then we'll break,
22 and then we'll argue and charge at 2 p.m. today. All
23 right, thank you.

24 (THE JURY ENTERS AT 11:44 A.M.)

25 THE COURT: All right, Mr. Jordan for Mr. Marcus

1 McFadden.

2 MR. JORDAN: Your Honor, Defendant Marcus McFadden
3 rests his case.

4 THE COURT: All right.

5 Mr. Bridges for Latique Bracey.

6 MR. BRIDGES: Your Honor, Defendant Latique Bracey
7 rests his case.

8 THE COURT: All right, thank you.

9 All right, ladies and gentlemen, that's all the
10 evidence that you're going to hear in this case. It's
11 early, so we're going to -- I'll go ahead and send you to
12 lunch with instructions that you be back here just a little
13 bit before 2 p.m. At that time, the attorneys will give
14 you their closing arguments. I'll charge you on the law,
15 and then you will begin your deliberations.

16 All right, ladies and gentlemen, it's especially
17 important that you not speak to anyone, as well as last
18 night. But even more important now between now and 2 p.m.
19 concerning this case, even amongst yourselves, you're not
20 allowed to start your deliberations early. So, have a nice
21 lunch, and I'll see you back just a little bit before 2.
22 All right, thank you.

23 (THE JURY EXITS AT 11:46 A.M.)

24 THE COURT: All right, Tina is working on the charge.
25 Have y'all seen a draft of it? She's going to email you a

1 draft. If you have any additional charges that you would
2 like, please inform us by about 1:30 p.m., and then we'll
3 have a conference on it if necessary. All right, thank
4 you.

5 Mr. Bridges, what is your email address?

6 MR. BRIDGES: It's JBRidges@SumterCounty.gov.

7 THE COURT: Okay. Very good. Court's adjourned until
8 2 p.m.

9 (OFF THE RECORD.)

10 THE COURT: All right, Mr. Frank, Mr. Vann, what we're
11 going to do is we're going to argue and charge, and then
12 we're going to, while the jury is deliberating, take care
13 of your case.

14 (A PAUSE.)

15 (THE JURY ENTERS AT 2:11 P.M.)

16 THE COURT: All right, ladies and gentlemen, I hope
17 you had a good lunch. It's nasty out there. I told you it
18 would be better in here than it is out there. So, we'll,
19 we'll give you time to sit here as long as you want to.

20 As I told you, all the evidence has been presented.
21 Now is the time the attorneys will give you their closing
22 arguments. After that, I will charge you on the law in
23 this case, and then you will be able to deliberate.

24 State ready to proceed?

25 MR. MEADORS: State's ready.

1 THE COURT: Defense ready?

2 MR. JORDAN: Ready Defendant McFadden, Your Honor.

3 MR. BRIDGES: Ready Defendant Bracey, Your Honor.

4 THE COURT: All right. Very well.

5 Mr. Meadors.

6 MR. MEADORS: May it please Your Honor?

7 THE COURT: Yes, sir.

8 MR. MEADORS: Madame Forelady, ladies and gentlemen,
9 good afternoon. First and foremost, thank you for being
10 here; thank each and every one of you for being here.
11 Thank you for your attention. Thank you for the qualities
12 you brought in here and that you gathered through your life
13 and that you will use to determine credibility. Thank you.

14 Being a juror is not easy but without all of you
15 serving, we couldn't do this. This is what makes this
16 system pure, but shortly you're going to have a decision to
17 make. You're going to have a choice to make. My father
18 always taught me the greatest power is the power to choose.
19 It's true with everybody. You're going to be choosing,
20 making a decision, a decision based on the facts,
21 circumstances, and the credibility you heard from that
22 witness stand. There are a lot of choices that were made
23 throughout this trial that I'm going to talk about, but the
24 final choice is going to be up to you. Thank you.

25 I'm going to kill you. I'm going to kill you. If you

1 don't leave, I'm going to kill you. I'm going to kill you,
2 bitch. What was their intent when they went to 515 East
3 Charlotte on April 9, 2016? What was their intent? It's
4 12:30 in the morning, 12:30 in the morning. Their intent
5 was to go and beat up, threaten whoever was in that house
6 with Tiffany Calvin, to go scold her and to beat up and
7 threaten whoever was in that house. That was their intent.
8 Is there any doubt about it? And here's the other thing.
9 They didn't even know who was in there. They did not know
10 who was in the house with her. It didn't matter. We're
11 going to go kick some tail. We're going to go beat him up
12 and show him who the boss is. That was their intent, and
13 that's what they did.

14 There's a four-letter word I haven't used in a long
15 time. I've been doing this thirty years. I used to use it
16 a lot in Columbia, but it's real. This case is real.
17 There's nothing funny, nothing domestic, nothing flippant
18 about this case. This is real.

19 Now, defense counsel will have you believe, or I think
20 kind of out throw out there, there was a relationship.
21 They had a relationship. Okay. There's no question about
22 that. What's that got to do with the burglary on April 9th
23 of 2016? Nothing. It's a smokescreen. I lose sight of
24 the forest all the time for the trees. I really do, and
25 I'm thinking this morning look at the forest. Look what

1 this case is about: a burglary in the first degree on April
2 9th in her house and when Artemis Bryant, down visiting,
3 got assaulted and beaten up. That's the forest. Don't get
4 lost in the trees, which respectfully I think defense
5 attorneys are trying to do.

6 What are some of the trees they want you to get lost
7 in? Because they had a prior relationship, that somehow
8 justifies this? No, ma'am. No, sir. What if when that
9 gun was at the temple of Artemis, when he felt that .38 on
10 his head, what if it went off on his head? What if
11 Tiffany, who had the gun pointed at her head, if that gun
12 went off? Well, you know what? That's okay. They used to
13 date. If they'd gotten killed, that's okay. It's a
14 classic putting the victim on trial. She used to date.
15 They had an on and off relationship. This isn't a
16 burglary. No, sir. No, no, ma'am. Please see through
17 that. Stick to what's important on the date.

18 What do we know about their relationship? He broke it
19 off; Latique Bracey broke it off after she was in that
20 terrible accident. She said she thought he broke if off
21 because she might have to get her leg amputated, and he
22 didn't want to be with her, but he broke it off.

23 Then what do we know? Of course the clothes, the few
24 that were there, were taken to his mother's house. Weren't
25 many but took them there. Then we know Monique went to go

1 see him, her sister. What did Monique say? He said, well,
2 I don't have the keys. He was at his mother's house
3 staying there. That's in February, and then we know that
4 Dad ---

5 Raise your hand, Dad.

6 --- Dad shortly after that went to see him. Said give
7 me the keys after he'd already told Monique didn't have
8 them. Give me the keys. He gave him the keys. That's in
9 February. That's February.

10 Broken relationship, stuff back, keys taken, and he
11 wasn't there this night. That relationship was over. He
12 did not have a right to be there, didn't have a key to be
13 there. That's a smokescreen; that's a tree. Don't get
14 lost into it.

15 He's charged with -- they're charged with burglary
16 first degree. Burglary means entering a dwelling --
17 there's no question it's a dwelling -- without consent with
18 the intent to commit a crime. It doesn't have to be
19 stealing something. People think about going to somebody's
20 home to steal their jewelry, their TV. That's not what the
21 law says. Enter a dwelling without consent with the intent
22 to commit a crime.

23 What was their intent? To beat his butt, Artemis, to
24 beat him up, and they tried. They got to Artemis and he
25 blocked them, but they came in and that was their intent,

1 and that's enough for a burglary. That is a burglary.
2 Went into somebody else's house at 12:30 in the morning
3 they don't know and they start beating him up. Enter
4 dwelling with the intent to commit a crime.

5 Well, how do we get burglary first? This is real,
6 folks. It's real. Guarantee if was real to them. I'm
7 going to get to that in a minute. There are several ways
8 that you can prove a burglary first. You have to have one
9 of them. We got them all. Don't have to. Got every one
10 of them, every one of them. Enter dwelling while you're
11 armed with a weapon, in this case a gun. No question about
12 that. Enter the dwelling and you threaten to use --
13 threat, threat or use of harm on somebody else. No
14 question we got that. Enter dwelling and somebody gets
15 injured who's not a part of the crime. Got that one. That
16 would be Artemis. When you're exiting the dwelling, you
17 display or have a firearm. Got that one. There's a shot
18 fired. And then the next one, you enter the dwelling
19 without consent during the nighttime hours. It's 12:30.
20 We got that one. If this isn't burglary first, get it off
21 the books. We only need one of them. There are all five.
22 All five make this a burglary first degree.

23 Now, what does the defense try to say? I'm not sure.
24 I think they're trying to say they had consent to come in.
25 First of all, Tiffany said they're asleep. They'd been

1 watching TV, eating pizzas. Artemis gets up. Says you
2 hear that? Artemis hears I'm going to shoot the door down.
3 What's their intent? Who the hell's in there? One of them
4 mentioned it might be somebody from *Continental* something.
5 I don't know. They want to find out who's in there. Their
6 purpose is to get in and show them the boss is, show them
7 who's in charge. Then he hears I might break the door.
8 I'm going to break the door down, she hears, and Tiffany
9 says check it out. Artemis starts to open the door and
10 bam, they come in and the first thing he sees is a gun.

11 What's their intent? What's their intent? They
12 showed you their intent. Their intent is straight to
13 Artemis, straight to her with the gun, then straight to
14 Artemis with the gun. The door could have been open. You
15 don't have to have a break in to have a burglary. The door
16 could have an open right there and they just come in and
17 out consent. If they tried to argue there was consent to
18 come in, see through that. That's a tree. Trying to make
19 you miss the forest respectfully. Is there any question
20 about that?

21 Let's talk about intent. You can't open up our minds
22 and see what intent is, but the law says we can infer it
23 from the circumstances. Not only words but our actions,
24 our inactions sometimes. Well, let's look at what -- let's
25 look and see what old Artemis's intent was.

1 The man takes his shoes off when he goes into
2 somebody's house. That kind of tells you what kind of
3 person he is. Tells you about his character and what type
4 of person he is. What's he over there doing tonight? He
5 went and got some movies to be with an old friend who'd
6 worked at Color-Fi, hadn't talked to in a while. Was
7 coming to Sumter to see his niece. Said I'll come by and
8 visit you. I've been down on my luck sometime, too. Let
9 me come by. I'll get some movies and a pizza.

10 That was their intent. That's his intent. They said
11 it. You evaluate it. You look at these CDs. Even got
12 *Star Wars* on here that they played. Y'all saw that. It's
13 back there.

14 What's their intent? We don't always, always have
15 this. Here's the front of the house. They come around to
16 the side of the house. Isn't a light there. Why are they
17 doing that? Less likely to see, go around to the side of
18 the house. What's their intent? Why didn't he just open
19 the door? Why didn't he just call or hey, who's that out
20 there? Or why didn't, why didn't he just give her a chance
21 to explain? No. Didn't give her a trial, did they. Made
22 that decision right there. Yes, sir, you're, you're
23 convicted. I'm coming in; I'm taking control. You're not
24 getting a chance to explain anything.

25 What's their intent? This is pure, folks. Knocking

1 that door open. I'm going to shoot it down. He thought
2 they were going to shoot it down, Artemis did. Got two
3 kids in the house. He thinks they're going to shoot it.
4 Check out on it. Bang, the door's open. Appear like
5 fresh? Yeah. Corporal McFadden, yeah, that looks like
6 fresh. That's fresh. Look at it. Door busted. That's
7 intent of what they went there for: to break in and beat
8 whoever was in there. And they didn't even know who it
9 was.

10 What about the door? Well, there's the handle. The
11 handle, they pulled so hard, it's off the door. Missing
12 handle, that's intent.

13 Here's Artemis's shoe. Took his shoes off. Didn't
14 have time, didn't have time to pick it up when he left.
15 You know why? What did they tell him? I'm going to kill
16 you if you don't leave. I'm going to kill you if you come
17 back. Is that real? Did Artemis think that? He ain't
18 been back. He left. That's real.

19 Now they come busting in, and I say they and I mean
20 they. Go back and write a T-H-E-Y, they: Bracey, McFadden,
21 and Ross. Bracey's got the gun, but no, he's got two other
22 weapons. He's got McFadden and Ross with him, too. Help
23 him with the courage. They're weapons, too, and they are
24 at the door.

25 Assault and battery by mob in the third degree --

1 thank God he wasn't hurt worse -- an agreement between two
2 or more people with the designed purpose to go in and cause
3 harm. If this ain't it, I don't know where it is. I don't
4 know what it is. And they come in when Artemis looks out
5 the door to check the door. They come in and they go to
6 work. Both of them go to work.

7 I thought about this somewhere. It may have been
8 talking to my friend Tyler last night. There's no
9 legitimate reason at all that Latique Bracey did what he
10 did. Was almost like I ain't going to have you. No, no,
11 no, I don't want you because of your leg, but ain't nobody
12 else going to have you either. You're my property. Nobody
13 can even go visit you. I don't want you but nobody else is
14 going to have you. I know I don't live there anymore. I
15 know you took my key, but I see somebody over there. No,
16 I'm going in. I don't care what you want. I don't care
17 who's in there, and he got his buddies to help him.

18 And it couldn't have happened without Marcus McFadden.
19 It couldn't have. He had to have help, and when they all
20 went in, they did that, though, and let's talk about real.
21 Marcus goes and starts speaking.

22 You know, I started to say earlier. My mind slipped a
23 little bit. It's not a, it's not a legal reason, a real
24 reason, a good reason. It's a reason Latique had and he
25 shouldn't have had. It's not legal. We submitted

1 evidence. Y'all are going to find him guilty, but you know
2 what else? Marcus McFadden didn't even know anybody there.
3 Never been to that house. Didn't know anybody. Had known
4 him for a few years earlier but hadn't been to that house.
5 Had never been to that house. He didn't have a beef with
6 anybody. Hadn't seen Tiffany in a while. Certainly
7 doesn't even know who's in there. Doesn't know Artemis,
8 and he's leading the parade. That's almost worse. He
9 doesn't care who's in there. Oh, I'm going to go help
10 fight. Oh, I'm going to show them who's in charge. I'm
11 here with you.

12 Listen to the judge's the hand of one is the hand of
13 all. It's a beautiful piece of our law: the act of one,
14 the hand of one is the hand of all. Where they're all
15 working in concert together, they're all guilty together.
16 They literally go through that door together. It's classic
17 hand of one, hand of all. I submit to you Latique wouldn't
18 have gone if Marcus hadn't been there with him, if Ross
19 hadn't been there with him.

20 I don't know if they'll try anything about Ross. I
21 told you in the beginning he may be called, he may not be
22 called. That was my decision. I submit to you that the
23 evidence that came up, he's the least culpable. There was
24 some evidence from Tiffany that Marcus had started to beat
25 Artemis and kind of looked over there, and it was after

1 that Dominique came. Dominique is going to have his day in
2 court. No deal has been cut with Dominique at all. He
3 will have his day in court; he will be in this courtroom I
4 assure you. That's not an issue today. Don't let them try
5 to make it a smokescreen. You heard the evidence. His day
6 will come.

7 What happened? Do you think, do you think Artemis ---
8 Artemis, stand up, please.

9 Do you think Artemis Bryant thought this was real when
10 he was getting hit all over the head by people he didn't
11 know? First inside the house, balling up, then, then going
12 and coming back ---

13 Sit down. I'm sorry.

14 --- coming back and he's in the bathroom and they're
15 beating on him. They're beating on him while Latique
16 Bracey -- they being Marcus and Ross, hand of one, hand of
17 all, are beating on him -- and Latique's got a gun on him?
18 He said the gun actually touched his head. Is that R-E-A-L
19 real? Was that -- no, that's okay because they used to
20 have a relationship. That's incredible. It doesn't get
21 any realer than that as he's being beaten by people he
22 doesn't even know. He's over there to see a friend.

23 Drives himself to the hospital. Drives himself to the
24 hospital. Assault and battery by mob third degree: if
25 there are injuries, could have been injuries, or were

1 injuries. Don't even have to be. Clearly there are
2 injuries here. Go back and look at the pictures taken at
3 the hospital of Artemis Bryant.

4 Well, okay, but they used to date each other,
5 Solicitor. They used to date each other. Let me tell you
6 if Tiffany thought this was real. Tiffany, bitch, I'm
7 going to kill you. Tiffany, who had a gun pointed at her
8 head. Tiffany, who the hell is that over here? She's
9 still got this on from her accident. Her two kids are
10 sleeping in the bed. What does she do? She gets out and
11 starts running with this, this hitting her, the metal
12 hitting her other leg and she's bleeding as she goes, and
13 she runs to the neighbor, leaving her kids. You think
14 that's not real? You think she wasn't scared? Her body,
15 with that leg, got up and started running and she was
16 injuring herself as she ran. It doesn't get any realer
17 than that. No, they used to date. No, that, that, that --
18 no, it's, it's just fun.

19 And finally I want to talk about a couple of other
20 things. The Time-Warner Cable bill, Tiffany said back in
21 December there was something about an Xbox, and he may have
22 ordered cable then. May have his name on a bill. They'd
23 been broken up since February. That's the only evidence
24 you have in here from this stand about that. That's it.
25 That means nothing. They broke up in February. This

1 happened in April. He's not paying bills there. There's a
2 bill supposedly. Hadn't seen it. Hadn't seen it in this
3 courtroom that he ordered Time-Warner Cable for some kind
4 of Xbox, and that's it. Oh, let him go on in. Let him
5 burglarize. Let him put a gun there.

6 If you find him guilty of assault and battery mob
7 third, then you got to find him guilty of burglary first.
8 They go together. That's why they were there. I almost
9 say if you don't do that, let them go because you can't
10 have one without the other. That was their purpose of
11 being there, to beat who -- they didn't even know who it
12 was. They didn't care who it was, and their actions just
13 took over as they came in the room. Their bodies showed
14 what their intent was. Their fists showed what their
15 intent was on Artemis, slapping around Tiffany together.
16 It wouldn't happen if they weren't together.

17 Credibility, believability, every case boils down to
18 it. Every case boils down to credibility, believability,
19 and y'all determine what's credible and what's believable.
20 Artemis, that's pure testimony.

21 Tiffany told you about the relationship. Told you how
22 it ended. We heard about how the key came back. I don't
23 think Mr. Jordan or Mr. Bridges would do this, but I don't
24 know. If -- when she said wait a minute, that's a lie,
25 that's like saying stop it. Strike that. That's her way

1 of saying wait a minute. I was confused right there.
2 Doesn't mean she's lying. I don't think he'd argue that.
3 That's the way she speaks, the way she talks. Everybody
4 has a certain way. Said wait a minute. Let me correct
5 that. Almost didn't argue it. It is -- that's a
6 smokescreen, we would respectfully submit. Did you watch
7 her demeanor, her body, her talk? Anyway, y'all decide
8 what's credible.

9 Is there any way this didn't happen? I don't know if
10 somehow they're trying to say this happened before. That's
11 not what the officers heard. That's not what Artemis, who
12 doesn't know anybody, anybody, said. Broke in and put a
13 gun to his -- is he making it up?

14 Afterwards, afterwards police are called. They leave.
15 It's not an ID case; this isn't an ID case. It's not a
16 forensic case. I don't think they'll argue this, but some
17 swabs were taken. There wasn't an issue of who had the
18 gun, who didn't have the gun. Wasn't at issue in the case.
19 None of that's relevant. I don't think they'd argue that.
20 If they do, that's a smokescreen. Clearly Latique had the
21 gun; clearly the rest of them went in there.

22 But after the police come, McFadden -- police get a
23 hard time. Police get there pretty dadgummed quick. Gets
24 a description. They know who they are. It's a tan car
25 with Floyd paper tags. He goes back, starts his report.

1 Some while later -- I'm not sure when -- they come
2 back to the scene of the crime, and they come in to Daddy,
3 Mr. Kinlaw, and Mr. Kinlaw's there. Said hold on. He'd
4 heard what'd happened. His daughter's next door at the
5 neighbor. What you doing back here? You can't come around
6 here. You can't back around after all this. I'm coming
7 back over here. I'll show you who's in charge; I'm coming
8 back in to get my stuff. You can't come back in here, but
9 then he notices the gun. Did you see a gun? Yeah. He
10 told Mr. Jordan or Mr. Bridges I know what a gun looks
11 like. All right, go on and get your stuff. There wasn't
12 no stuff. He's coming back to look for her and talk to
13 her, yell at her some more.

14 He comes in. Does he get stuff? There's no stuff to
15 get. He gets some change. There's none of his stuff
16 there. He wasn't living there. It wasn't his house; he
17 didn't have a right to come in and break in, and he leaves
18 with some change. He leaves with some change.

19 Flight. I can argue this, flight. All three of them
20 leaving is evidence of guilt. It's like children. We do
21 something wrong, we flee. Wait a minute. This is my
22 house. I had a right to be here. I didn't need to go
23 anywhere. No, y'all come on. No, it's not his house.
24 That's why -- another reason he left.

25 Beg the court's indulgence.

1 THE COURT: Yes, sir.

2 MR. MEADORS: May be the shortest closing I've ever
3 given. Y'all may be saying thank goodness, but when I read
4 this burglary, what it takes to get burglary first and we
5 meet all five, there wasn't an exception in there except if
6 you had a prior relationship. I mean, if that was it, you
7 could never uninvite anybody. That would be a defense to
8 every crime.

9 Ladies and gentlemen, this is a burglary in the first
10 degree. Three men came into Tiffany's house without
11 consent, forcibly came in with guns drawn, fists firing,
12 beat up Artemis, pointed a gun to his head. Thank God,
13 y'all, thank God these two are alive with a gun to their
14 head. If that gun had gone off -- and he's saying the
15 words I'm going to kill you if you come back. I'm going to
16 kill you, bitch. Does that show the intent? Is this real?
17 Don't put the victim on trial.

18 They didn't have a right to be there. They forcibly
19 entered, and they committed an assault and battery by mob
20 third degree, and it wouldn't have happened unless Marcus
21 McFadden and Dominique Ross were there to help him.
22 They're all guilty or they're not guilty. The hand of one
23 hand is the hand of all. I'll tell you that. That's what
24 the state says the evidence shows. They're all guilty or
25 not guilty. They had no right to enter that -- look at

1 this evidence -- enter that house without consent forcibly
2 at 12:30 at night. Is that intent, 12:30 at night?

3 Back to choosing, and I'm fixing to close. Your
4 greatest power is your power to choose. They chose.
5 Latique chose to go in, to break that door down. Not to
6 try to call. Marcus chose. I'm with you. Come on. I'm
7 ready. I'm ready. I'm coming in. I'm going after
8 whoever's in there. I don't care who it is.

9 One of my favorite, favorite legal concepts is
10 presumption of innocence. I believe in it as much or more
11 than anybody. Presumption of innocence, robe of
12 righteousness. His Honor is going to tell you.

13 By the way, go back there and everybody touch that.
14 Pass it around. See if that's real. There's a spent shell
15 casing in there, but the way, that was shot up in the air
16 as Artemis was leaving. Is that real? Is that real?

17 Presumption of innocence, they both have it. It stays
18 with them until they go back in that jury room, and it
19 stays with them as y'all start deliberating, but as you
20 start going over the evidence we submitted, start looking
21 at those doors. Start evaluating the believability, that
22 he wasn't supposed to be there, didn't have a key, he broke
23 in, assaulted Artemis, put a gun to her. You start taking
24 that robe of righteousness off. You literally take it off,
25 figuratively take it off, but don't throw it away. Don't

1 throw it away. Tear it in half. Well, you got two of
2 them. Bring both of them back in here with your verdict,
3 your verdict of guilty, and you bring that cloak, that
4 warmth, you bring it back in here with your guilty verdict
5 and give it to Artemis and give it to Tiffany symbolically
6 because they are the innocent ones in this case.

7 Mr. Jordan said in his opening something about, you
8 know, we all leave here and we come back for justice. I
9 don't know what he meant by all that, but I do know this.
10 She's going back to East Charlotte. Artemis is going back.
11 It's time for justice for sure, justice for them, but it's
12 also justice for the victims. This is their day in court
13 as well as the defendants.

14 Respectfully, thank you again. We respectfully
15 believe that after you've evaluated the evidence, that if
16 you follow the law, that your verdict will be guilty of
17 burglary in the first degree, guilty of assault and battery
18 by mob in the third degree, guilty of pointing and
19 presenting a firearm by Mr. Bracey, and guilty of
20 possession of a weapon during a violent crime on Mr.
21 Bracey. Thank you.

22 THE COURT: Mr. Jordan. Oh, Mr. Bridges.

23 MR. BRIDGES: May it please the court?

24 Ladies and gentlemen of the jury, first of all, I
25 would also like to thank you for your time and your

1 patience over these last two days. I know it's, it's not
2 easy paying attention, sitting through these long days, but
3 we appreciate all your efforts.

4 And I'd just like to start with a brief reminder that
5 the burden is on the state in this case to prove each
6 element of each crime beyond a reasonable doubt. Now as to
7 the crime of first-degree burglary, an element of the crime
8 is entry into a dwelling without consent, and consent
9 either is something you expressly do where you say come in
10 the house, or can be implied by the -- by ownership of the
11 house. In this case I'd argue, and not as a smokescreen,
12 that there is serious issues around the state being able to
13 prove beyond a reasonable doubt that Latique Bracey did not
14 have consent to be at 515 Charlotte on that night.

15 My first contention of that is that Latique Bracey was
16 an occupant of the house as well as, as well as Tiffany.
17 They, they both were, were still living together on
18 Tuesday. Tiffany testified that their relationship had
19 many ons and offs, but there was deep love and affection
20 between both of them, and that there was times that they
21 broke up, but they also got back together. She also
22 testified that after the supposed break up in February,
23 that, that Latique was at the house with her on, on
24 multiple occasions, and I would like to submit to you that
25 this creates an issue about it. Did he actually move out

1 or they actually break up? And I would contend that the
2 nature of their relationship was such that they, they often
3 broke up and got back together, but they maintained a
4 close, personal friendship.

5 Ms. Calvin testified to the fact that Latique has
6 known her for five years. He was with her during the car
7 accident she was in in January. He had a close
8 relationship with, with her children. He had, he had his
9 name on a bill in the house, and I know the state's saying
10 to disregard that. That that's a minor thing, but he, he
11 did accept responsibility for the house.

12 Additionally, the issue of keys, there was only one.
13 Ms. Calvin's father testified to the fact that there was
14 only one key, and at least at one point in time Latique had
15 that key, and he -- and what else would show co-occupancy
16 than, than mutual possession of the one key to your house?

17 Now, I'd like to place more emphasis on what happened
18 that night on April 9th. After the first incident -- after
19 the first incident occurred, Latique returned to the house.
20 The state mentioned that there was flight. There was an
21 element of flight, and I contend it's the exact opposite.
22 Would Latique -- why would he return to a house that he
23 burglarized, that he broke into that was not his, a place
24 he had not -- that he had no place being? He returned for
25 two reasons: to retrieve stuff that he had in there, and

1 the continue his argument with Ms. Calvin. What -- who
2 would do that after burglarizing a house that wasn't
3 theirs? And, and Mr. Kinlaw says that he was there for at
4 least thirty minutes continuing his argument with Ms.
5 Calvin.

6 I think that shows there is a real issue with, with
7 his, his occupancy of the house. If he had no reason to be
8 there, if he was not allowed in that house, why, why did he
9 return when law enforcement is on the way, and Mr. Kinlaw
10 testified he basically had to beg him to leave because law
11 enforcement was on the way. If he, if he just broke in, if
12 he broke into a house he had no business being, why would
13 he return and stay because the state's characterizing this
14 case as a first-degree burglary, and I would submit to you
15 that this was a domestic dispute.

16 Now, this doesn't trivialize that. I'm not trying to
17 trivialize what happened for, for Artemis. I have the
18 utmost sympathy for what happened to him. He was totally
19 in the wrong place at the wrong time, and I'm not trying to
20 excuse or condone what occurred in the house. But to
21 actually convict Mr. Bracey of first-degree burglary, you
22 have to prove that he did not have -- the state has to
23 prove beyond a reasonable doubt that he did not have
24 consent to be there.

25 In addition to his consent through his occupancy of

1 the house with Ms. Calvin, Mr. Artemis also testified that,
2 that Ms. Calvin once, once she heard that he was outside
3 the door, said let them come in so we can, we can talk them
4 down. That was -- and this goes to the issue that this was
5 a domestic dispute. She heard Mr. Bracey was outside the
6 door. She saw he was clearly upset because he, he saw that
7 there was a strange man in his house and, and, you know,
8 and, and she wanted to resolve it. So, she allowed them to
9 come inside the house.

10 Now, the state went into extreme detail about what
11 happened in the house, and I'm not here to, to rationalize
12 what happened in the house or say that Mr. Bracey acted
13 appropriately or acted within any kind of social warrants,
14 but the fact was to prove that he burglarized the house, he
15 had to enter without consent, and there are -- and, and
16 because of my aforementioned two issues that he was a
17 co-occupant and that he had Ms. Calvin's consent to enter
18 that night, I submit to you that the state has not met
19 their burden of proving first-degree burglary beyond
20 reasonable doubt.

21 And because Mr. Bracey is also charged with possession
22 of a firearm during a violent crime, the -- if, if he's
23 found not guilty on the first-degree burglary charge, he
24 cannot be charged with that because of the crimes he's
25 charged with, first-degree burglary is the only violent

1 crime statutorily.

2 And I thank you very much again for your time and your
3 patience, and I want to say -- commend you, the importance
4 of the role that jurors serve, and I was honored to be
5 practicing in front of you these last two days. Thank you.

6 THE COURT: Mr. Jordan.

7 MR. JORDAN: Please the court?

8 I'm lying. Words Tiffany Calvin from this stand
9 twice. I'm lying. Minutes after she put her hand on the
10 Bible and took the oath. There are two types of people in
11 this world. There are the people that tell the truth, the
12 whole truth, and nothing but the truth and let you, others,
13 decide what the facts are. And then there's that second
14 type of person who manipulates and tells you what they want
15 you to hear and use phrases like I'm lying.

16 What does that do? It suggests that you don't have
17 decision-making authority of everything else she said
18 because only when she tells you she's lying is she lying.
19 We know she's lying.

20 Artemis Bryant does not lie. He told you he had a
21 testicle injury that ended his Marine career. Nobody else
22 would have said that. He told you he had Gummy Bears in
23 his pocket, and from that stand under oath he told you she
24 told me to let them in because she knew them and she could
25 talk to them. The truth was right there.

1 Now, the state wants you to believe, oh, that's,
2 that's smoke and don't look at the forest. That's how
3 people, that's how people talk. There are two types of
4 people in this world: on again, off again relationship
5 people and people who mean what they say. And are you
6 ready to put these two men in prison from somebody who said
7 I'm lying twice? Ladies and gentlemen ---

8 MR. MEADORS: Your Honor, I'm going to object to that,
9 too. Sentencing is up to Your Honor.

10 THE COURT: Sentencing is up to me, but he can refer
11 to -- this is a criminal in general sessions.

12 MR. JORDAN: I want to thank you again for your
13 attention during this trial. Practiced law here twenty-two
14 years. Enjoy coming over here because again you and only
15 you -- not law enforcement, not Michael Jordan, not John
16 Meadors, not the police department, not Mr. Bridges -- just
17 you and only you are the voice and the conscience of Sumter
18 County. If a man's done something wrong, charge him but
19 don't charge him with three or four other things. Don't do
20 that. Don't try to manipulate. Don't try to add it up.
21 Just say what it is. Let the jury decide.

22 So, you have your collective experiences, life
23 experiences. We come from different -- y'all come from
24 different places. We all come from different places at the
25 end of the day, but here and now you are the voice. You

1 are Sumter County, and I submit to you that the evidence
2 you heard from that stand over these two days, you can
3 assign a reason to doubt.

4 Did Tiffany Calvin tell Artemis Bryant to open the
5 door because she knew them and she could talk to them?
6 Those were his words; that's exactly what he said. I said
7 that in opening. Why would he walk right into it in his
8 testimony except it's the truth?

9 And what did she say? She wants to play word games as
10 to whether open and check on, they're the same thing.
11 That's that on again, off again mentality. That's that
12 that on again, off again. They did that for five years.

13 Burglary is a crime against habitation. This is my
14 home, and leave me alone in it. Don't come in here. The
15 man had clothes there. He had been in and out, and they
16 had done this for five years. What does on and off means?
17 It means that when Tiffany Calvin wants it to be on, it's
18 on and when law enforcement tells her otherwise, it's off
19 because it makes the burglary case better. That's what on
20 and off means in this instance, and don't fall for it. Two
21 types of people in this world. Y'all decide. Don't be
22 manipulated. Law enforcement is encouraging this, the
23 testimony.

24 You heard the officer's testimony. He doesn't know if
25 the door was broken then and there. He wasn't there, but

1 he's got to say that. What did Artemis tell you about did
2 the door splinter? Didn't say a word about the door
3 splinter, not a word. Again told you Gummy Bears. He told
4 you a twisted testicle took him out of the Marines. He
5 tells the truth, the whole truth, and nothing but the
6 truth, and part of that was she told me to let him in. But
7 don't find him guilty of anything else and don't, don't let
8 him go on this burglary.

9 So, why does it matter if he had the right to be there
10 or was given consent? There is no burglary. You have to
11 enter without consent. Five years on again, off again, in
12 and out. I'll tell you what it means. On and off again
13 means you're not going to be on this lease, but you're
14 going to be on this power bill, or you're going to be on
15 this cable bill. That's what that means. I'm going to
16 juggle you around a little bit until something better comes
17 along. That's where I want to be. That's what on and off
18 means: no commitment.

19 Beyond reasonable doubt, hesitation to act. If she
20 gave consent for them to come in, it's not burglary. State
21 would have you believe that, oh, don't do that. You can't
22 do that, but you're the jury. It's your decision. You're
23 the conscience and the voice for Sumter County today in
24 this trial for these two gentlemen.

25 And is it possible to convict when the witness says

1 twice I'm lying? Maybe you believe that was the way she
2 expresses herself, but maybe, just maybe you put that
3 together with the on again, off again and the fact that
4 they were -- and the Time-Warner Cable bill that he was
5 paying on and you say, you know, that's a little bit
6 doubtful.

7 Summation is when you go over the case, and this was a
8 shorter case, but I want to talk to you a little bit about,
9 about the testimony of the witnesses. You know, what I
10 tell you, that's not evidence; it's just argument. You,
11 you heard for yourself what the witnesses said. You decide
12 for yourself. I'm not -- I can't replace that. All I can
13 do is tell you -- all I can do is argue to you what I
14 believe the evidence shows, and I believe the evidence
15 shows that Marcus McFadden is not guilty of burglary. He
16 didn't enter anybody's place without consent. She said she
17 knew them. She could talk to them. Artemis's words.

18 So, he testified. He came -- she called him out of
19 the blue. He came. He said that she was down because she
20 wasn't getting any support. I guess she was down about her
21 relationship with Latique Bracey, and he came like any
22 friend would do. He came. Brought some pizza, brought
23 some movies, and he said I woke her up. I heard noises and
24 I woke her up.

25 Well, we didn't hear any testimony about the door

1 coming off the hinges. We didn't hear any testimony about
2 kicking it in. He said I woke her up. I heard noises. I
3 said is this, is this normal? Does this happen around
4 here? And then he says I was worried, so I tucked my
5 wallet into the couch. You've heard no testimony of
6 anything for money or profit or physical gain or material
7 gain. So, if we're talking about forest, trees and
8 smokescreens, what was that all about? Well, they would
9 have stolen something if they could have. That's what
10 that's about. Look over here. You didn't hear anything
11 about the wallet or any money being taken. Burglary is a
12 crime against habitation and sometimes profit, and nothing
13 was taken.

14 He came back later and said my change is in here on
15 the second time. This they, all I heard -- the only person
16 I heard testify about the second time was Johnny Kinlaw,
17 and he said only person I dealt with was Latique Bracey.
18 He didn't say anything about Marcus McFadden. He said they
19 were in the car, I think. Didn't see them. So, again
20 you've got to separate out exactly who did what.

21 And that leads us to the magic man. Got his ticket,
22 Dominique Ross. Wonder why he didn't sit at that table.
23 Wonder why. Because they made that decision. You don't
24 get to take part in that decision. They made that
25 decision. He's not any part of this. Safe, and you must

1 decide if that's justice in these walls in this courthouse.
2 Safe. He didn't have to sit over there and have anxiety
3 and worry and fret and wonder what's going to happen here
4 today.

5 So, has law enforcement acted evenhandedly? Have
6 they? Did they charge too much? Twenty-two years I've
7 been practicing law here, and I love this county. I love
8 this courthouse. I love this place, but you've got to
9 decide if that was overcharging. You've got to decide if
10 there's there something more to this and what is Dominique
11 Ross's role. I submit if there's smokescreens and forests
12 and trees, there's one and we didn't create it. So, let's
13 all play by the same rules and the same facts like Artemis
14 does. He tells you everything he knows and then lets you
15 decide. Not every witness does, does that. They want to,
16 want to tell you what they want you to hear.

17 So, he told y'all that. He says, you know, I was a
18 Marine. I took my shoes off. They came in, and she told
19 me to open the door. She told me she knew them. She could
20 talk to them. I opened the door. They came in. Hit me.
21 I, I went down. I ran out. Shoes, couldn't even get my
22 shoes. He told you the truth; we don't dispute that.

23 Then Tiffany takes the stand, and of course she tells
24 you that they were off and on, on and off for five years.
25 That was her -- that was the nature of her relationship

1 with, with Latique Bracey. And I told you in opening that
2 beneath all of this was some kind of love story, but it's
3 about a man and a woman who treat their relationship
4 without any boundaries, without any commitments of who's
5 living where, who's staying where. Her sister, I think it
6 was Monique Francis, still was taking him to work even
7 after they say he moved out. 2010, 2011, 2012, 2013, 2014,
8 2015 on and off, on and off, on and off, on and off.

9 Is that a big deal? I don't know, but what hangs in
10 the balance is this man's future right here. That's
11 serious. Mr. Meadors used to word real. I use the word --
12 I'll use the word serious. This is serious. This verdict,
13 this process is serious to that man right there.

14 Stand up, Marcus. It's serious to him.

15 You'll have the pictures, and you can see for yourself
16 whether that's new damage or old damage. You can look at
17 it. Officer McFadden wanted to tell you that it was new,
18 but I don't really know what he bases that on, and you'll
19 be able to...

20 (A PAUSE.)

21 MR. JORDAN: Court's indulgence. I'm having a little
22 problem opening the packet.

23 Y'all will have this picture to look at in the back.
24 You'll determine if that happened right then and there, and
25 how does that square up with, okay, I told him to open the

1 door. I know who they are. But you decide. You decide if
2 it was kicked in, pushed down. You heard it was still on
3 the hinges. We've heard the lock was still functional or
4 they didn't know. Again, it's a crime against habitation.
5 If, if Latique Bracey had any habitation rights there,
6 occupation rights there, there is no burglary, and that's
7 up for you to decide. It's a question.

8 We heard from her sister. She tried to tell us what
9 on again, off again meant. We hear from Johnny Kinlaw. We
10 heard from Officer McFadden. They do -- what they do is
11 great. I don't have any issue with that, but in here it's
12 serious. It's serious.

13 Prosecutor once told me one time. It scared me to
14 death. I'd been practicing law maybe three or four years.
15 Man, why you -- I said why you got to be, why you got to be
16 so hard on, on this? He looked at me and said, well, when
17 it's done to you, I'll take it easy on him. That send it
18 straight for me. I understood then and there how real it
19 is, and I understand now.

20 Y'all've got a, y'all've got a hard job. I respect
21 that; I understand that. We appreciate it. On behalf of
22 myself, on behalf of Marcus McFadden, we thank you for your
23 attention. We thank you for your participation, and in a
24 just a minute we're going to put this and His Honor is
25 going to put this in your hands.

1 I'm not going to be talking anymore. I apologize if
2 sometimes I get -- I'm getting old, get a little beside
3 myself because it's meaningful to me. I want to represent
4 my client the same way as I would anyone else. That's all
5 it's about.

6 So, ask yourself. Is there reason to doubt? Reason
7 one: consent was given. Reason number two: they were on
8 and off and he had stuff in that house. There's no
9 burglary and that, that right there is reason to doubt.

10 You know, there's no testimony that Marcus ever
11 touched a weapon, not at all. He -- there's no testimony
12 at all that he, that he carried this weapon. You saw him
13 stand up. My goodness, he's 120 pounds soaking wet. Of
14 course, he was categorized as a weapon. I say he's
15 anything but a weapon. He's a little kid, not a weapon.
16 Thank you.

17 THE COURT: Thank you. Anyone who needs to leave
18 needs to leave now because the courtroom is going to be
19 secured.

20 (A PAUSE.)

21 THE COURT: All right, ladies and gentlemen, all of
22 the testimony and other evidence to be presented in this
23 trial has now been presented to you, and now is the time
24 during this trial where I will charge you the law that is
25 to be applied in this particular case.

1 I remind you that during this trial, you and I have
2 certain responsibilities to perform. As the trial judge,
3 it is my responsibility to preside over the trial of this
4 case; I also have the duty to rule on the admissibility of
5 evidence that has been offered during this trial. You are
6 to consider only the competent evidence before you. If
7 there was any testimony ordered stricken from the record in
8 this case during this trial, you must disregard that
9 testimony because you are to consider only the testimony
10 that has been presented from the witness stand, and any
11 exhibits which have been made a part of the record in this
12 case, or any stipulations of counsel.

13 Now, ladies and gentlemen, I have the additional duty
14 to charge you the law that is to be applied in this case
15 and as the presiding judge, I am the sole judge of the law
16 in this case. It is your duty as jurors to accept and
17 apply the law exactly as I now state it to you. If you
18 already have some idea as to what the law is or what the
19 law ought to be and it does not agree with what I now tell
20 you the law is, you must abandon that idea because, ladies
21 and gentlemen, you are sworn to accept and apply the law
22 exactly as I now state it to you.

23 In every case tried before a jury, the jury becomes
24 the sole and exclusive judges of the facts. As a trial
25 judge, I cannot intimate, state, comment, or make any

1 statement to a trial jury about the facts in a case. You,
2 as the jury, are the sole judges of the facts and you are
3 not to infer by anything that I have said during the
4 progress of this trial in ruling upon the admissibility of
5 evidence or otherwise or anything that I now say during the
6 course of these instructions that I have an opinion about
7 the facts in the case. The law simply does not allow me to
8 have an opinion about the facts in the case. This is a
9 matter solely for you as jurors to determine the effect,
10 the value, weight, and the truth of the evidence that has
11 been presented during this trial.

12 Now, ladies and gentlemen, the indictment in this
13 case, indictment number 2016-GS-43-880, alleges four
14 different offenses against one defendant and two against
15 the other. Under count one, burglary in the first degree,
16 that would be for Mr. Bracey and Mr. McFadden. Assault and
17 battery by mob, which would be count two, against Mr.
18 McFadden and Mr. Bracey. Pointing and presenting a firearm
19 against Mr. Bracey, and possession of weapon during the
20 commission of a violent crime against Mr. Bracey.

21 And again, ladies and gentlemen, I remind you that
22 each defendant may be convicted or acquitted on any or all
23 of the offenses that have been charged. And I remind you
24 the fact that the defendants were arrested, charged, and
25 indicted is not evidence in this case and cannot be

1 considered by you as evidence of guilt, nor does it create
2 any presumption or inference of guilt. The indictment is
3 simply the formal written instrument which contains the
4 charges made against the defendants, and it is the formal
5 document which this case is brought into court.

6 Now, ladies and gentlemen, the defendants have pled
7 not guilty to the charges in the indictment, and that plea
8 puts the burden on the state to prove the defendants
9 guilty. A person charged with committing a criminal
10 offense in South Carolina is never required to prove
11 himself innocent. And I charge you that this is an
12 important rule of law that the defendant in a criminal
13 trial, no matter what the seriousness of the charge may be,
14 will always be presumed to be innocent of the crime for
15 which the indictment was issued unless guilt has been
16 proven by evidence satisfying you of that guilt beyond a
17 reasonable doubt. And this presumption of innocence does
18 not end when you begin your deliberations, but it
19 accompanies each defendant throughout the trial until
20 you've reached a verdict of guilt based upon the evidence
21 satisfying you of that guilt beyond a reasonable doubt.

22 The presumption of innocence is like a robe of
23 righteousness that is placed about the shoulders of the
24 defendants which remain with the defendant until it has
25 been stripped from the defendants by evidence satisfying

1 you of the defendants' guilt beyond a reasonable doubt.
2 The presumption of innocence is not a mere legal theory
3 that we use. It's not just a legal phrase, but it is a
4 substantial right to which every defendant is entitled
5 unless you, the jury, are satisfied from the evidence
6 presented of the defendants' guilt beyond a reasonable
7 doubt. And the state, as I said, the state has the burden
8 of proving the defendants' guilt beyond a reasonable doubt.

9 Some of you may have served as jurors in civil cases
10 where it was only necessary that -- for one side to prove a
11 fact more likely true than not true, such as by the greater
12 weight or the preponderance of the evidence. In criminal
13 cases, however, the state's proof must be more powerful
14 than that. It must be beyond a reasonable doubt, and proof
15 beyond a reasonable doubt is proof that leaves you firmly
16 convinced of the defendants' guilt. It is the kind of
17 doubt that would cause a reasonable person to hesitate to
18 act.

19 Ladies and gentlemen, there are very few things in
20 this world that we know with absolute certainty and in
21 criminal cases, the law does not require proof that
22 overcomes every possible doubt. If, based upon your
23 consideration of the evidence, you are firmly convinced
24 that the defendants are guilty of the crimes charged, you
25 must find the defendants guilty. If, on the other hand,

1 you think there's a real possibility that the defendants
2 are not guilty, then you must give the defendants the
3 benefit of the doubt and find the defendants not guilty.

4 Now, ladies and gentlemen, there are two types of
5 evidence that are generally presented during a trial.
6 There's direct evidence and there's circumstantial
7 evidence. Direct evidence is the testimony of a person who
8 claims to be -- have actual knowledge, such as an
9 eyewitness. It is evidence which immediately establishes
10 the main fact to be proved. Circumstantial evidence is a
11 proof of chain of facts and circumstances indicating the
12 existence of a fact, and crimes may be proven by
13 circumstantial evidence.

14 And the law makes no distinction whatsoever between
15 the effect, the value to be given to either direct or
16 circumstantial evidence. However, to the extent that the
17 state relies on circumstantial evidence, all of the
18 circumstances must be consistent with each other and when
19 taken together point conclusively to the guilt of the
20 accused beyond a reasonable doubt. And if these
21 circumstances merely portray the defendant's behavior as
22 suspicious, the proof has failed, and the state has the
23 burden of proving the defendant guilty beyond a reasonable
24 doubt. And the burden rests with the state regardless of
25 whether the state relies on direct evidence, circumstantial

1 evidence, or some combination of the two.

2 Now, ladies and gentlemen, I instruct you and I
3 emphasize the fact that the defendants did not testify is
4 not a factor for you to consider in this case and in any
5 way in your deliberations and in your consideration on the
6 question of guilt or innocence of the defendants. It must
7 not be considered by you in any manner whatsoever. The
8 defendants have a constitutional right to remain silent,
9 and the assertion of this right must not be considered by
10 you in your deliberations, and I repeat. Under the oath
11 that you took, you are to draw no conclusion whatsoever to
12 the fact that the defendants in this case did not testify,
13 and the fact that the defendants did not testify should not
14 even be discussed in the jury room.

15 The burden of proof, as I have stated, is on the
16 state, and the defendant is not required to prove his
17 innocence. The burden of proof remains on the state to
18 prove guilt beyond a reasonable doubt.

19 Now necessarily, ladies and gentlemen, you must
20 determine the credibility of witnesses who have testified
21 in this case. Credibility simply means believability, and
22 it becomes your duty as jurors to analyze and to evaluate
23 the evidence and determine which evidence convinces you of
24 its truth.

25 In determining the believability of witnesses who have

1 testified in this case, you may believe one witness over
2 several witnesses, several witnesses over one witness. You
3 may believe a part of the testimony of a witness and reject
4 the remaining parts of the testimony of that same witness.
5 Ladies and gentlemen, you may believe the testimony of a
6 witness in its entirety or reject the testimony of a
7 witness in its entirety.

8 Ladies and gentlemen, please stand up for just a
9 moment. Some of you are getting drowsy. Stretch for a
10 minute. Seventh inning stretch. We don't have much
11 further to go. All right, please sit down.

12 You may consider whether any witness has exhibited to
13 you any interest, bias, prejudice, or other motive in this
14 case. You may also consider the appearance and the manner
15 of a witness while on the witness stand.

16 Now, ladies and gentlemen, the defendants are charged
17 with first-degree burglary. The state must first prove
18 beyond a reasonable doubt that the defendants entered a
19 dwelling without consent. A dwelling is any building or
20 portion of a building in which a person ordinarily sleeps.
21 A building constructed as a dwelling that has never been
22 occupied cannot be considered a dwelling for purposes of
23 burglary, but a building is a dwelling even if the
24 residents are temporarily absent from the building.

25 In order to prove that defendants entered the

1 building, the state does not have to show that the
2 defendant's entire body entered the dwelling. The smallest
3 entry is sufficient, and it may be any part of the body
4 such as a hand or a foot or even an instrument such as a
5 hook or other instrument. In addition, the state does not
6 have to prove that force was used to gain entry. If a
7 person enters a building by using deception, artifice,
8 trick, or misrepresentation to get consent to enter, this
9 is entry without consent.

10 Next the state to prove beyond a reasonable doubt that
11 the defendants intended to commit a crime therein, therein,
12 either a felony or a misdemeanor, at the time of the entry.
13 The mere entry into a building without consent is not
14 burglary. If the intent to commit a crime is formed after
15 the entry, it is not burglary. On the other hand, if the
16 defendants intended to commit a crime at the time of the
17 entry, it is burglary even if the intent was, intent was
18 abandoned after the entry. It does not matter that the
19 intended crime was not completed. Intent may be shown by
20 acts and conduct of the defendant and other circumstances
21 from which you may naturally and reasonably infer intent.

22 Finally, the state must prove beyond a reasonable
23 doubt that, one, when entering -- and, and these are
24 possibilities -- when entering the, while in the dwelling,
25 or when fleeing the defendant or an accomplice was armed

1 with a deadly weapon or explosive. And a deadly weapon is
2 any artifice -- any article, instrument, or substance which
3 is likely to cause death or great bodily harm, and whether
4 an instrument has used -- been used as a deadly weapon
5 depends on the facts and circumstances of each case. Or
6 when entering, while in the dwelling, or when fleeing the
7 defendants or accomplice caused physical injury to anyone
8 not participating in the crime. Or when entering, while in
9 the dwelling, or when fleeing the defendants or and
10 accomplice used or threatened to use a dangerous object.
11 Or when entering, while in the dwelling, or when fleeing
12 the defendants or an accomplice displayed what was or
13 appeared to be a knife, pistol, revolver, rifle, shotgun,
14 machine-gun, or firearm, firearm. Or the defendants
15 entered or remained in the dwelling in the nighttime, and
16 nighttime is the period between sunset and sunrise during
17 which there is not enough daylight to recognize a person's
18 face except by artificial light or moonlight.

19 Ladies and gentlemen, the defendants, Bracey and
20 McFadden, are also charged with assault and battery by mob
21 third degree. In order to prove assault and battery by mob
22 in the third degree, the state must prove beyond a
23 reasonable doubt that an act of violence was committed by a
24 mob on the body of a person which results in bodily injury
25 to the person. A mob is gathering of two or more persons

1 without color of authority for the premeditated purpose and
2 with the premeditated intent of committing an act of
3 violence on another person.

4 Ladies and gentlemen, the defendant Bracey is charged
5 with pointing or presenting a firearm. The state must
6 prove beyond a reasonable doubt that the defendant
7 presented or pointed at another person a loaded or unloaded
8 firearm.

9 And then finally the defendant Bracey was charged with
10 possession of a weapon during the commission of or attempt
11 to commit a violent crime. The state must prove beyond a
12 reasonable doubt that the defendant was in possession of a
13 firearm or visibly displayed what appeared to be a firearm
14 or visibly displayed a knife during the commission of a
15 violent crime. And a firearm means any machine-gun,
16 automatic rifle, revolver, pistol, or any other weapon
17 which will and is designed to or may be readily converted
18 to expel a projectile. A knife means an instrument or tool
19 with a sharp, cutting blade, whether or not fastened to a
20 handle which can be used to inflict a cut, slash, or wound.

21 In order to find the defendant guilty of possession of
22 a weapon during the commission of a violent crime, you must
23 first find the defendant guilty of either committing a
24 violent crime or attempting to commit a violent crime.
25 Burglary in the first offense -- first degree is a violent

1 crime. Now, ladies and gentlemen, the state must prove
2 beyond a reasonable doubt that the weapon furthered,
3 advanced, or helped in the commission of the crime.

4 Now, ladies and gentlemen, if a crime is committed by
5 two or more people who are acting together in committing a
6 crime, the act of one is the act of all. A person who
7 joins with another to commit an unlawful act is criminally
8 responsible for everything done by the other person which
9 happens as a probable and natural consequence of the acts
10 done in carrying out the common plan and purpose. For
11 example, two people can be guilty of harming another person
12 when only one of the two inflicted the injury that caused
13 the harm. If two or more people are acting together, are
14 together, acting together, assisting each other in
15 committing the offense, the act of one is the act of all
16 and is sometimes said the hand of one is the hand of all.

17 And the prior knowledge that a crime is going to be
18 committed without more is not sufficient to make a person
19 guilty of that crime. Mere knowledge by another person
20 that another person is going to commit a crime, even if the
21 defendant is present when the crime is committed, is not
22 sufficient to convict the defendant as a principal. Guilt
23 as a principal is shown by actual or constructive presence
24 at the scene as a result of prior arrangement. Therefore,
25 a finding of a prior-arranged plan or common scheme is

1 necessary for a finding of guilt as a principal, and the
2 state must prove beyond a reasonable doubt by competent
3 evidence that the theory of the hand of one is the hand of
4 all.

5 And a principal in a crime is one who either actually
6 commits the crime or is present aiding, abetting, or
7 assisting in committing the crime. And when a person does
8 an act in the presence of and with the assistance of
9 another, the act is done by both. Where two or more are
10 acting in a common plan or intent, are present at the
11 commission of a crime, it does not matter who actually
12 commits the crime. All are guilty. The hand of one is the
13 hand of all, and presence at the commission of the crime
14 needs to be sufficiently near to aid and abet in the
15 assistance of the commission of the crime. However, mere
16 presence at the scene of a crime is not sufficient to
17 convict one as a principal on the theory of aiding,
18 abetting. And intent is also a necessary element, for
19 there must have been a common design or intent to commit
20 the crime, and the crime must have been committed pursuant
21 thereto with the person aiding and abetting by some overt
22 act.

23 And intent means intending the result for -- which
24 actually occurs, not accidentally or voluntarily. An
25 intent may be shown by acts and conduct of the defendant

1 and other circumstances from which you may naturally and
2 reasonably infer intent, and the state must prove these
3 elements beyond a reasonable doubt.

4 Now, ladies and gentlemen, I charge you there, there
5 are two defendants in this case: Latique K. Bracey, who is
6 charged with burglary first degree, assault and battery by
7 mob third degree, pointing or presenting a firearm, or
8 possession with a weapon during the commission of a violent
9 crime; and Marcus C. McFadden is also charged with burglary
10 first degree, and assault and battery by mob third degree.
11 And the case of each defendant and the evidence and the law
12 concerning the defendant should be considered separately
13 and individually, and your verdicts do not have to be the
14 same for each defendant. The fact that you may find one
15 defendant guilty or not guilty should not control your
16 verdict as to the other defendant. Where more than one
17 person is charged with a crime, if evidence warrants, you
18 may convict one and convict -- and acquit the other, or you
19 may acquit both, or you may convict both, and it will
20 depend upon your view of the testimony and evidence. And
21 you must take each defendant and consider the evidence as
22 to that defendant and my instructions to you on the law.
23 You will then write a separate verdict for each defendant.

24 And ladies and gentlemen, there are two possible
25 verdicts on each charge, and I'll go down the verdict form.

1 You will be given these verdict forms, and they will read
2 as follows. For Latique K. Brace: We, the jury, by
3 unanimous agreement find the defendant, Latique Brace, on
4 the charge of count one, burglary first degree, not guilty
5 or guilty. However, if you find he is not guilty on count
6 one, you cannot consider count four, which is the
7 possession of a weapon during the commission of a violent
8 crime. The next count would be count two, assault and
9 battery by mob third degree, not guilty or guilty. Then
10 count three, pointing or presenting a firearm, not guilty
11 or guilty. And then if you do find the defendant guilty of
12 count one, you may consider count four, which is the
13 possession of a weapon during the commission of a violent
14 crime.

15 As to Marcus C. McFadden, there are two particular
16 charges. Count one, burglary in the first degree, you may
17 find the defendant not guilty or guilty. And for count two
18 for assault and battery by a mob third degree, not guilty
19 or guilty. Now, ladies and gentlemen, there is no
20 significance whatsoever in the order in which I state the
21 possible verdict. It's just that one has to be stated
22 first.

23 Now, ladies and gentlemen, your verdicts must be
24 unanimous. All twelve of you must agree on the verdict,
25 and your decision must not be based on sympathy, passion,

1 prejudice, emotion, or any other consideration that is not
2 in evidence in this case.

3 Madame Forelady, when the jury agrees on the verdict,
4 you will check the appropriate boxes. Then knock on the
5 jury room door, inform the bailiff that you have reached a
6 verdict, and you will then be brought back into the court
7 for the publication of your verdict.

8 Now I ask you to return to your jury room, but please
9 do not begin your deliberations. I, I still have some
10 matters to take up with the attorneys. Thank you, ladies
11 and gentlemen.

12 Separate the alternates, please.

13 (THE JURY EXITS AT 3:34 P.M.)

14 THE COURT: All right, are there any objections to the
15 charges that I've made ---

16 MR. MEADORS: No, sir.

17 THE COURT: --- from the state?

18 MR. JORDAN: None from Defendant McFadden, Your Honor.

19 MR. BRIDGES: None from Defendant Bracey, Your Honor.

20 THE COURT: Okay. All right. Anybody have any
21 objection to my sending a copy of the charge back? I can
22 do it without your consent, but I'm going to ask first.

23 MR. BRIDGES: That -- what we just read?

24 THE COURT: Yeah. What I just read verbatim.

25 MR. BRIDGES: No ---

1 THE COURT: It's kind of convoluted to hear it and not
2 be able to refer back to it. It may cut out some
3 questions.

4 MR. BRIDGES: No ---

5 THE COURT: Does anybody have any objections?

6 MR. BRIDGES: No objection.

7 MR. MEADORS: Your Honor, I've always respectfully
8 told you I just didn't like that, and so I ---

9 THE COURT: I know, but in this case ---

10 MR. MEADORS: --- I would respectfully object for the
11 record, sir.

12 THE COURT: All right. Thank you.

13 MR. MEADORS: So, Your Honor doesn't need consent from
14 everybody.

15 THE COURT: Okay. All right. Thank you.

16 Please gather the evidence, get that worked out.
17 Check it, make sure the right things go back, and then you
18 may ---

19 MR. MEADORS: And, Judge, just to follow up on that, I
20 am going request you to wait for them to ask for it, but as
21 we've done in the past ---

22 THE COURT: I'll wait and if there's any question --
23 well, I'm going to try to get ahead of that.

24 MR. MEADORS: All right.

25 THE COURT: So I'm going to send it back. All right,

1 thank you. Court's in recess pending the call of the
2 court.

3 (OFF THE RECORD. ALTERNATES ARE DISMISSED, AND
4 COUNSELORS REVIEW EVIDENCE WITH COURT REPORTER. JURY
5 DELIBERATIONS BEGIN AT 3:38 P.M.)

6 (THE JURY ENTERS AT 5:10 P.M.)

7 THE COURT: All right, ladies and gentlemen, I
8 received your question: Is breaking the screen door a part
9 of burglary?

10 I can't give you a direct answer. All I can do -- and
11 you -- I sent a copy of this back there with you, but I'm
12 going to read a portion of the charge, and then I'm going
13 to send you back to continue your deliberations.

14 The defendants, the defendants are charged with
15 first-degree burglary. The state must first prove beyond a
16 reasonable doubt that the defendant entered a dwelling
17 without consent. A dwelling is any building or portion of
18 a building in which a person ordinarily sleeps. A building
19 constructed as a dwelling that has never been occupied
20 cannot be considered a dwelling for purposes of burglary,
21 but a building is a dwelling even if the residents are
22 temporarily absent from the building.

23 In order to prove the defendants entered the building,
24 the state does not have to show that the defendant's entire
25 body entered the dwelling. The smallest entry is

1 sufficient. It may be a part of the body, such as a hand
2 or foot, or even an instrument such as a hook or other
3 instrument.

4 In addition, the state does not have to prove that
5 force was used to gain entry. If a person enters a
6 building by using deception, artifice, trick, or
7 misrepresentation to get consent to enter, this is an entry
8 without consent.

9 And that's really, based on your question, all I'm
10 going to do, but you've got the whole charge back there.
11 You may need to read it.

12 All right, thank you, ladies and gentlemen. Continue
13 with your deliberations. Thank you for working so long.

14 (THE JURY EXITS AT 5:13 P.M.)

15 THE COURT: Court is at ease depending on the call of
16 the court.

17 MR. MEADORS: Thank you, sir.

18 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
19 NUMBER 1.)

20 (OFF THE RECORD.)

21 THE COURT: All right, the jury has a verdict. Let's
22 bring them in and find out what it is.

23 (THE JURY ENTERS AT 5:34 P.M.)

24 THE COURT: Madame Forelady, has the jury reached a
25 verdict?

1 FOREPERSON: Yes, Your Honor, it has.

2 THE COURT: Is it unanimous?

3 FOREPERSON: Yes, sir.

4 THE COURT: All right. Please pass it to the bailiff,
5 who will then pass it to me. Thank you.

6 (A PAUSE.)

7 THE COURT: All right, the verdict form is in order.
8 Please publish the verdict.

9 Defendants will stand.

10 VERDICT

11 BAILIFF: The State of South Carolina, County of
12 Sumter. *State vs. Curtis* -- excuse me, *Marcus McFadden*,
13 defendant in court of general sessions, indictment number
14 2016-GS-43-0880, we, the jury, by unanimous agree find the
15 defendant, Marcus C. McFadden, on charges of count one,
16 burglary first degree, guilty. We, the jury, by unanimous
17 agree found the defendant, Marcus C. McFadden, on charge of
18 count two, assault and battery by mob third degree, guilty.
19 Signed by Foreperson Deborah Williams. Date, 21st of
20 September 2016.

21 By raising your hand, this is your verdict?

22 (JURY INDICATES EN MASSE.)

23 THE COURT: All right. Got another one.

24 BAILIFF: *State of South Carolina, South Carolina,*
25 *State, plaintiff, vs. Latique K. Bracey, defendant, in*

1 court of general sessions, indictment number
2 2016-GS-43-0880, we, the jury, by unanimous agree find the
3 defendant, Latique K. Bracey, on charge of count one,
4 burglary first degree, guilty. If found guilty on one
5 count, then do not consider count four. Consider count two
6 and count three only. We, the jury, by unanimous agree,
7 find the defendant, Latique K. Bracey, on charge of count
8 two, assault and battery by mob three degree, guilty. We,
9 the jury, by unanimous agree find the defendant, Latique K.
10 Bracey, on charge of count three, pointing and presenting a
11 firearm, guilty. We, the jury, by unanimous -- unanimous
12 agree, found the defendant, Latique K. Bracey, on charge of
13 count four, possession of a weapon during commission of a
14 violent crime, guilty. Foreperson Deborah Williams, 21
15 September 2016.

16 Is this your verdict by raising your hand?

17 (JURY INDICATES *EN MASSE*.)

18 THE COURT: Thank you. You may be seated.

19 Does the defense request polling of the jury?

20 MR. JORDAN: Yes, Your Honor.

21 THE COURT: All right. Poll the jury.

22 You may be seated at this time.

23 *POLLING OF THE JURY*

24 BAILIFF: Juror number 185, Deborah Williams, is this
25 still your verdict?

1 JUROR: Yes.

2 THE COURT: Is this your verdict and is still your
3 verdict. Okay.

4 BAILIFF: Kenneth C. Peak, juror number 134, is this
5 still your verdict?

6 JUROR: It is.

7 BAILIFF: Juror number 62, Carlton A. Greene, is this
8 still your verdict?

9 JUROR: Yes.

10 BAILIFF: Juror number 190, Blanche Wright, is this
11 still your verdict?

12 JUROR: Yes.

13 BAILIFF: Juror number 186, James Wright [sic], this
14 still your verdict?

15 JUROR: James Wilson. Yes.

16 BAILIFF: Sorry about that. Wilson.

17 JUROR: Yes.

18 BAILIFF: Juror number 191, Ceonte Washington, still
19 your verdict?

20 JUROR: Yes.

21 BAILIFF: Juror number 88, Samuel Jennings, is this
22 still your verdict?

23 JUROR: Yes.

24 BAILIFF: Juror number 3, Michael Adamson, is this
25 still your verdict?

1 JUROR: Yes.

2 BAILIFF: Juror number 157, Travis Scarborough, this
3 still your verdict?

4 JUROR: Yes.

5 BAILIFF: Juror number 159, Donald Shuler, still your
6 verdict?

7 JUROR: Yes.

8 BAILIFF: Juror number 117, Tara McDonald.

9 JUROR: Yes.

10 BAILIFF: Still your verdict?

11 JUROR: Yes.

12 BAILIFF: Juror number 26, Janie Champion, this still
13 your verdict?

14 JUROR: Yes.

15 BAILIFF: Juror number 33.

16 THE COURT: No, those are alternates.

17 BAILIFF: Oh, I'm sorry. They've been polled, Your
18 Honor.

19 THE COURT: All right. Then the verdict stands.

20 Ladies and gentlemen, let me first to take this
21 opportunity to thank you for taking the time to be a part
22 of your judicial system and taking the time to deliberate
23 in this case. You know, it's very hard for even two people
24 to agree on something. I've been married to my wife for
25 twenty-four years, and we still disagree on a lot of

1 things. But to take twelve people who didn't know each
2 other before Monday and put them in a room and, and get you
3 to come up with a verdict is a tough thing and it's a heavy
4 burden, and, and you -- but you took on the challenge and
5 the task assigned to you for these days, and you did reach
6 a verdict. I'd tell you the same thing if your verdict had
7 been the other way. So, I'm -- want to thank you for that.

8 I want to tell you that because this was your jury
9 service, you don't have to serve again as jurors. For the
10 next year you can't, and for the next three years you don't
11 have to after this week. So, there's still a possibility
12 we may be striking a jury tomorrow, but we'll find that
13 out, and I'll just give you instructions to call back after
14 a certain time tonight.

15 Ladies and gentlemen, the, the amount of money that
16 they're going to pay you -- what do they pay? \$15 a day is
17 nothing compared to what you have done for our state by,
18 again, coming together, listening to this evidence, and
19 reaching a verdict. There are a lot of important things
20 going on in Sumter, but nothing is more important than
21 listening to the evidence and making sure that justice is
22 done. And we all try to figure out what, what makes
23 America great. Well, one of the things that makes America
24 great. It's not the judges. It's not the politicians.
25 It's not the police. It's not the defense attorneys. It's

1 people like y'all who took time out of your day and, and
2 week to come here to serve as jurors, and I, and I tell
3 people I have the greatest job in the world because I get
4 to sit between these two flags each and every day. And
5 these flags, although they are just pieces of cloth,
6 they're much more than that. They are symbols of freedom
7 and in a free country, it's not the judge. It's not the
8 prosecutors. It's not to the police that say another
9 citizen is guilty, but it's only other free people. And as
10 I said, this flag is so much greater than all of us put
11 together because this is 200 and some years of people dying
12 and suffering to make sure that each citizen's rights are
13 protected. And, ladies and gentlemen, as you leave out of
14 here, I want you to think of yourselves as the very threads
15 that make up this flag.

16 So, ladies and gentlemen, thank you so much for being
17 a part of our judicial system. It would be my honor to
18 shake your hands as you leave out of here and if you could,
19 call back after 6:00 and see if you are needed. Thank you.

20 Now I'm, in about a half hour, I'm going to sentence
21 the defendants based upon your verdicts. If you would like
22 to come back in here and sit and, and watch, you're welcome
23 to do so. You can go home if you want to.

24 (A PAUSE AS THE JURY EXITS.)

25 THE COURT: All right, are there any post-trial

1 motions?

2 MR. JORDAN: Your Honor, I'd ask for ten days.

3 THE COURT: Any objection to that?

4 MR. MEADORS: No, sir.

5 THE COURT: All right. All right, what we'll do now
6 is we will take about a thirty-minute recess while the
7 defendants are placed in proper form for sentencing, and
8 then we'll readjourn in thirty minutes and I will pass
9 sentence. We'll give each side an opportunity to plead
10 their cases.

11 MR. MEADORS: Thank you, Your Honor.

12 MR. JORDAN: Yes, sir.

13 THE COURT: Thank you.

14 MR. BRIDGES: Yes, Your Honor.

15 THE COURT: Court's at ease for thirty minutes.

16 (OFF THE RECORD.)

17 THE COURT: Mr. Meadors.

18 MR. MEADORS: May it please the court?

19 THE COURT: Or the victims.

20 MR. MEADORS: Your Honor, first before I get to that,
21 just as far as prior records, Mr. McFadden looks like he
22 has five pending charges in our office: four drugs and one
23 unlawful weapon. I will be dismissing those after today.

24 THE COURT: All right.

25 MR. MEADORS: Other than that, he has two public

1 disorderly conducts, I believe, in 2015. Mr. Bracey has
2 two pending charges in our office and other than that, a --
3 looks like some driving offenses in magistrate's court.

4 Judge, on behalf of the Sumter Police Department,
5 Tiffany Calvin, Artemis Bryant, and their families, we want
6 to publicly thank the jury for their verdicts. I want to
7 thank the city police department for their work. I've told
8 Tiffany and Artemis they had a right to speak. They've
9 chosen not to, and basically I think just want the facts to
10 speak for themselves for Your Honor.

11 Judge, I just say it was senseless and thank God they
12 weren't killed. That's all we have. Thank you.

13 THE COURT: All right. Thank you.

14 Mr. Jordan.

15 MR. JORDAN: Please the court, Your Honor?

16 THE COURT: Yes, sir.

17 MR. JORDAN: Your Honor, you've heard, of course, all
18 the facts of the trial. Marcus is a young man. He was
19 born [REDACTED] '88. He's got a birthday coming up. He's
20 twenty-seven now; he'll be twenty-eight next month. He's
21 got two young children. Their mother's here, Tea; his mom,
22 Carol, is here, Carol Cokeley; Warren Cokeley; and Troy
23 Cokeley, his, his brother. Your Honor, he's got family
24 support. They've been here each and every day this week
25 and have been supportive. So, I just ask that, that if,

1 if, if any of them would like to speak, that the court --
2 to give them an opportunity to tell you a little bit about,
3 I guess, the other side of, of Marcus McFadden, this young
4 man.

5 THE COURT: All right.

6 MR. JORDAN: Your Honor, we would ask that the court
7 consider the minimum sentence. Obviously that's fifteen
8 years. Can't be suspended. So, we would just ask that
9 under these circumstances that the court consider the
10 minimum sentence because of the young age, because of the
11 minimal record. My view of the NCIC shows a marijuana
12 charge in magistrate's court and two public disorderlies.
13 So, Your Honor, obviously Marc, Marcus is not a repeat
14 offender. He's not a hardened criminal, and I believe that
15 he can be a productive member of society after he serves
16 the sentence that you impose here.

17 So, Your Honor, be happy to answer any questions that
18 you have, but I would just ask that you consider the
19 minimum fifteen-year sentence, and that you allow him, him
20 to address the court, and that you also -- if any of the
21 family members -- they're seated back here -- who've been
22 here throughout the trial, that you allow each of them to,
23 to speak, to just tell you that, you know, that the -- this
24 is his family and these are folks that give him reason to
25 do the -- try to do the right thing. Thank you, Your

1 Honor, and ---

2 THE COURT: Anyone like to speak on his behalf?

3 MR. JORDAN: Your Honor, you want her just to come
4 right here? You want ---

5 THE COURT: Right there's fine. Just state your name
6 for the record.

7 MR. JORDAN: Your Honor, this is Tea.

8 MS. BENNETT: Tequalla Bennett. How you doing, Your
9 Honor? I just want to ---

10 THE COURT: What's your name?

11 MS. BENNETT: Tequalla Bennett.

12 THE COURT: You need to spell that for the court
13 reporter.

14 MS. BENNETT: T-E-Q-U-A-L-L-I Bennett, B-E-N-N-E-T-T.

15 THE COURT: All right. Thank you.

16 MS. BENNETT: I just want to ask that you have mercy
17 on Marcus. I know his actions that night weren't called
18 for, and I know he's probably regretting it right now. I
19 have two small kids. My son will be three Sunday, and
20 he'll be celebrating his birthday without his father. He's
21 a great dad, and I know he's so sorry. We all are sorry.
22 I just ask that you have mercy on him. That's all that I
23 ask, Your Honor.

24 THE COURT: Thank you.

25 MR. JORDAN: Your Honor, this is Latroy Cokeley, his

1 brother.

2 MR. COKELEY: How you doing, Your Honor?

3 THE COURT: Yes, sir.

4 MR. COKELEY: My name is Mr. ---

5 THE COURT: State your name for the record, please.

6 MR. COKELEY: Latroy Cokeley.

7 THE COURT: Okay.

8 MR. COKELEY: This is my youngest brother and, you
9 know, basically he was wrong for what he did. I don't know
10 if he apologized to the family, but I want to apologize to
11 the family for what happened because alcohol is a powerful
12 drug, you know, and, you know, they basically was out, you
13 know, doing something that they shouldn't have did, and I
14 just ask that you have mercy on him, on, on the sake of his
15 kids and my mom.

16 THE COURT: All right. Thank you.

17 MS. URP: My name is Raytina. Last name is Urp, and
18 Your Honor, as Mr. Jordan stated, Mr. Marcus is
19 twenty-seven years old. He has two children. As he said,
20 he doesn't have no -- a long criminal history. He's not a
21 hardened criminal, criminal, as he said, and we're just
22 asking that you be as lenient as possible. We apologize to
23 the family. We're very sorry, and please have leniency as
24 much as possible.

25 THE COURT: Okay. Thank you.

1 MS. URP: Thank you.

2 MR. JORDAN: Judge, we only have one more, Marc's mom,
3 and she says she can't.

4 Your Honor, the only other thing I'd ask you to
5 consider is that when this happened and they were arrested,
6 it wasn't brought out at trial, but Marcus gave a full
7 statement to law enforcement that evening, and Mr. Meadors
8 may want to address that. He didn't say they went inside,
9 but he did give a statement when they were, when they were
10 arrested.

11 MR. MEADORS: He did, Your Honor. He denied that he
12 went inside.

13 MR. JORDAN: That's correct. Thank you, Your Honor.
14 Well, I...

15 THE COURT: Would your client like to say anything?

16 MR. JORDAN: Yes, sir.

17 DEFENDANT McFADDEN: I just really stand up to say
18 that I'm sorry to -- I mean, it shouldn't have happened.
19 We was kind of intoxicated. It went the wrong way, I know.
20 I'm just sorry. That's all I have to say. I'm sorry.

21 MR. JORDAN: Thank you, Your Honor.

22 THE COURT: All right. Thank you.

23 Yes, sir.

24 MR. BRIDGES: Your Honor, I forgot to mention. I'd
25 like to join in with Mr. Jordan's ten-day motion.

1 THE COURT: Okay.

2 MR. BRIDGES: I just wanted to put that on the record.

3 THE COURT: Yes, sir.

4 MR. BRIDGES: For Mr. Bracey, he's only twenty years
5 old, and his record prior to this was only misdemeanor and
6 traffic offenses. He has no ---

7 THE COURT: He is way ahead of his peers in crimes
8 committed.

9 MR. BRIDGES: He has no -- his parents were here to
10 support him but they, they left after the verdict.

11 But he has 165 days time served even before this.
12 We'd like you to consider adding that as time-served credit
13 to his sentence and ---

14 THE COURT: I certainly will.

15 MR. BRIDGES: --- to consider imposing the minimum
16 fifteen years. Because of his age, he's got plenty of time
17 to get turned around in life and the, the minimum, minimum
18 would give him a chance to, to restart and still have a
19 good bit of his life left to, to change, and he, he will
20 address you at the appropriate time.

21 THE COURT: Would anybody else like to speak on his
22 behalf? I think parents, you said, left.

23 MR. BRIDGES: Yes, sir, yeah.

24 THE COURT: Okay. Would Mr. Bracey like to say
25 anything?

1 DEFENDANT BRACEY: I just want to apologize,
2 everything I did before, you know, everything we did and
3 just wish the best for the victims. Hope they find it in
4 their heart to forgive me, and I apologize.

5 MR. BRIDGES: Your, Your Honor, I'm sorry. One other
6 thing I didn't ask for. That the court consider imposing
7 concurrent instead of consecutive sentencing. I've
8 discussed that with my client. We just make that request.
9 Thank you.

10 THE COURT: Yes, sir.

11 MR. JORDAN: I join in that request as well, Your
12 Honor.

13 THE COURT: Let me see the attorneys for just one
14 second.

15 (OFF-THE-RECORD BENCH CONFERENCE.)

16 (A PAUSE.)

17 *SENTENCE OF THE COURT*

18 THE COURT: All right, over the last day and a half, I
19 have -- two days, I've listened to the testimony in this
20 case, and this was a terrible crime. This was a terrible
21 crime. These people were sitting there minding their own
22 business, being nice citizens, and all of a sudden three
23 thugs come in, and it's the stupidest thing I've ever seen.
24 I mean, to go into a house where everybody knows you is
25 just beyond my comprehension on that. Thank God no one was

1 injured, but that's not really their fault because they,
2 again, they fired a shot as they were leaving. They were
3 using a weapon to intimidate and it's -- again, they just
4 wanted to be the big dogs. They wanted to make sure that
5 this poor victim, these poor victims knew they were the
6 tough guys.

7 I'm not going to give them a maximum sentence, which
8 would be life in prison, but it's going to be significant
9 to the point that they'll have lower testosterone when they
10 get out. They'll need low T drugs.

11 As to Mr. Marcus McFadden, I think he's the lesser
12 culpable. He was a tool of Mr. Bracey, but he was still a
13 very useful tool for Mr. Bracey. The sentence is on the
14 charge of burglary that he can be committed to the state
15 Department of Corrections for a period of twenty years. As
16 to the charge of assault and battery by mob third degree,
17 sentenced to one year, but that will run concurrent with
18 the charges.

19 Mr. Bracey, he did -- the worst part was he was the
20 one who put all this together, and he was the one who had
21 the weapon. Sentence for Mr. Bracey on the charge of
22 burglary in the first degree is that he be committed to the
23 state Department of Corrections for a period of twenty-two
24 years. In addition, he will be sentenced on the mob third
25 degree to one year, which will run concurrent to the

1 burglary. On the charge of pointing and presenting a
2 firearm, he is sentenced to five years, which will run
3 concurrent to the charge in count one. And on the
4 possession of weapon during a violent crime, he is
5 sentenced to five years, which would -- which will run
6 consecutive to the burglary charges.

7 That is the sentence. You have ten days to file an
8 appeal and file your motions.

9 MR. JORDAN: Thank you, Your Honor.

10 MR. BRIDGES: Thank you, Your Honor.

11 MR. MEADORS: Thank you, Your Honor.

12 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE PROVIDED TO ME BY MARYANN S. NEVERS AND INTRODUCED IN THE TRIAL OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON THE 20TH AND 21ST DAYS OF SEPTEMBER, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

DECEMBER 27TH, 2016

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF SUMTER)

STATE OF SOUTH CAROLINA)

STATE,)

TRANSCRIPT OF RECORD
16-GS-43-0880

v.)

MARCUS MCFADDEN,)

DEFENDANT.)

October 11, 2017
Sumter, South Carolina

B E F O R E :

THE HONORABLE GEORGE M. MCFADDIN, JR., JUDGE

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

JOHN P. MEADORS, ESQ.
Assistant Solicitor

MICHAEL M. JORDAN, ESQ.
Attorney for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

I N D E X

	Page
Factual background	3
Remarks by Mr. Jordan	3
Remarks by Mr. Meadors	5
Reply remarks by Mr. Jordan	6
Reply remarks by Mr. Meadors	7
Ruling of the Court	7

(There were no exhibits submitted.)

1 MR. MEADORS: May it please the Court,
2 Your Honor, before you is Marcus C. McFadden with
3 his attorney Mr. Michael Jordan, Sumter County true
4 bill indictment 2016-GS-43-880. A very brief
5 factual background, Your Honor. Mr. McFadden and
6 Mr. Latique Bracey were in this courtroom a little
7 over a year ago, trial on September 29th [sic]
8 through September 23rd, 2017. They were convicted
9 of burglary first and assault and battery by mob in
10 the third degree. His Honor Judge Young sentenced
11 Mr. McFadden to 20 years on the burglary and I
12 believe one year on the assault and battery third,
13 run concurrent. Judge, at that time Mr. Jordan
14 asked Judge Young if he could have some time to file
15 written motions. Mr. Jordan did timely file his
16 motions on September 30th of 2016. And the trial
17 was 2016, if I said '17 I apologize. To nobody's
18 fault, Judge, those motions were never heard;
19 obviously Judge Young retired. And with that, I
20 believe I'll turn it over to Mr. Jordan.

21 MR. JORDAN: Thank you, Your Honor.
22 That's a correct recitation, Your Honor, of the
23 facts. And so since Judge Young retired and went to
24 the Attorney General Office's I went ahead and filed
25 the appeal, and in the appeal we abandoned the

1 grounds for the motion for reconsideration of
2 sentencing and motion for new trial, however -- and
3 I passed that off to Appellate Defense. However,
4 Your Honor, the Court of Appeals issued an order and
5 remittitur, it looks like, July of this year,
6 July 7th, 2017; and the Court of Appeals ruled that
7 there was no jurisdiction until the motion for new
8 trial had been resolved one way or the other so
9 apparently I'm not able to abandon our motion to
10 reconsider so. Your Honor, I was in touch with
11 Appellate Defense and advised to, you know, try to
12 get some disposition on the motion so I wrote Your
13 Honor a letter, and that's what brings us here
14 before the Court today.

15 Judge, my experience and understanding is
16 it's very difficult, if not impossible, for a judge
17 to go behind another trial judge in terms of
18 reconsideration of sentence and also for motion for
19 a new trial that would beg the question as to, you
20 know, whether actually participated, heard all the
21 facts. The basis for motion for new trial was that
22 Mr. McFadden was tried jointly with one
23 co-defendant, Latique Bracey, but not all three
24 co-defendants, and the evidence was that Mr. Latique
25 Bracey had a firearm or pistol in his possession.

1 We moved for a severance at beginning of trial,
2 renewed that throughout, it was denied. And the
3 basis for the motion for new trial is largely the
4 fact that the severance was denied.

5 So Your Honor, we're just here to, so that
6 Mr. McFadden can have full appeal rights and
7 prosecution of his appeal we've got to have a trial
8 court disposition of that motion for new trial,
9 motion for reconsideration, before the Court of
10 Appeals will entertain the merits of the appeal.

11 MR. MEADORS: Your Honor, if I could just
12 briefly add, as far as to the severance, we
13 respectfully ask Your Honor to deny the motion for a
14 new trial. We believe Judge Young correctly ruled
15 that this was not a case where severance was
16 required or even should take place at all in this
17 case. There were no — I think what was most
18 important, there were no codefendants' statements
19 that the State presented at all so there were no
20 Bruton issues. I don't believe there was any
21 statement by any of the co-defendants that was
22 presented.

23 MR. JORDAN: That's right.

24 MR. MEADORS: Judge, one of the victim in
25 this case knew all of the, or at least two of them,

1 but I think all of the participants by name and
2 sight so it really wasn't an identification case and
3 it was one of those for the judicial economy the
4 lack of statements, co-defendant statements being
5 used, and we think His Honor Judge Young correctly
6 ruled that severance was not appropriate.

7 THE COURT: Any reply, Mr. Jordan?

8 MR. JORDAN: Judge, only that in the
9 factual details only that the very strong closing
10 argument and throughout the trial was the use of
11 that weapon it was, it was put into evidence. It
12 was used as demonstrative, for demonstrative
13 purposes during closing argument; and obviously that
14 there was no trial record or no trial evidence that
15 Mr. McFadden ever touched the gun so it was heavily
16 relied on hand of one is, hand of one hand of all
17 and so. And as I recall I believe part of the
18 jury's verdict was that possession of the firearm
19 was a jury verdict of guilty on both so it's just
20 our argument that had Mr. McFadden had a separate
21 trial, the use of the gun and the pistol during
22 trial and during closing arguments would have been
23 minimized since he'd never, he never touched it and
24 that was, in fact, his co-defendant, what Mr.
25 Bracey...

1 MR. MEADORS: Your Honor, could I briefly
2 respond to that for the record please?

3 THE COURT: Yes, sir.

4 MR. MEADORS: That was one of the ways the
5 State showed burglary in the first degree armed with
6 a deadly weapon when they entered; obviously the
7 hand of one hand of all was a, the theory we used on
8 that. In addition, I believe if memory serves me
9 correct -- if it doesn't, I apologize -- I think the
10 evidence that Mr. McFadden was the more aggressive
11 of those two. In addition, it also happened during
12 the night time so there's another element or factor
13 that the jury had to consider to come up with
14 burglary first in addition to the gun so there were
15 several, several ways they could have found burglary
16 first.

17 THE COURT: All right, sir.

18 Mr. Jordan, I, as we well know, did not
19 try this case. I would assume motions were made for
20 severance, so forth, back then. Would that be
21 correct?

22 MR. JORDAN: That's correct, Your Honor.

23 THE COURT: That means that Judge Young
24 considered them. That means they have been
25 considered by the Court and were considered by the

1 Court. It's virtually impossible for me to reach
2 back and stand in his shoes when I didn't hear those
3 motions, nor was I present then. Judge Young had
4 been on the Bench, I would assume then for a good
5 number of years in general sessions. I find it
6 would be simply improper for me to go back now, not
7 even practical, to go back and address those motions
8 so I will respectfully deny your motions, but at the
9 same time, clear this matter to proceed to appeal.

10
11 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 22nd day of March, 2018.

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA

County of SumterMarcus McFadden

Full name and prison number (if any) of Applicant

v.

State of South Carolina

) RECORDED
) IN THE COURT OF COMMON PLEAS

2021 MAY 27 PM 2:26

BETTERED TRUE COPY
 OF ORIGINAL FILE

C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

APPLICATION FOR

POST-CONVICTION RELIEF

2021-CP-43-904

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution
2. Name and location of Court which imposed sentence Court of General Sessions Sumter's Third Judicial Circuit
3. Name(s) of co-defendant(s) (if any) Latique Brace, Dominique Ross
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-65-43-0880
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) September 21, 2016 20 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty Trial
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. State of South Carolina In the Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Date Denied
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Appeal # 2017-002175 (unpublished opinion)
- ii. No. 2020-117-188)
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Subject Matter Jurisdiction, Ineffective Asst.
- (b) of Counsel
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Denied Fifth, Sixth and Fourteenth
- (b) Amendments of U.S. Constitution
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) N/A
 (c) N/A

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A
 (b) your trial, if any? N/A
 (c) your sentencing? N/A
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. N/A
N/A
 ii. N/A
N/A
 iii. N/A
N/A

(b) the proceedings at which each such attorney represented you:

i. N/A
N/A
 ii. N/A
N/A
 iii. N/A
N/A

19. State clearly the relief you seek in filing this application:

N/A

20. Are you now under sentence from any other court that you have not challenged?

N/A

STATE OF SOUTH CAROLINA)
)
County of Greenville)

VERIFICATION

I, Marcus McFadden, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Marcus McFadden

SWORN to and subscribed before me this 25
day of May, 2021.
Tamara Conwell (L.S.)
Notary Public

My Commission Expires: September 25, 2023

RECEIVED
MAY 25 2021
CLERK OF COURT

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Marcus McFadden, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

| Marcus McFadden
Applicant

SWORN or affirmed to and subscribed before me this

25 day of May, 2021.

Tamara Conwell
Notary Public

My Commission Expires
September 25, 2023

My Commission Expires: _____

RECEIVED
MAY 25 2021
PCI MAILROOM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	
Marcus McFadden, #369866,	)	Case No.: 2021-CP-43-904
	)	
Applicant,	)	
	)	RETURN AND MOTION FOR A
v.	)	MORE DEFINITE STATEMENT
	)	(Counsel appointed)
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, the State of South Carolina, making its Return to the Application for Post-Conviction Relief (PCR) filed by Marcus McFadden (Applicant) on May 27, 2021, and received by Respondent on June 3, 2021, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant and two codefendants, Latique Kareem Bracey and Dominique A. Ross, were indicted at the September 2016 term of the grand jury for Sumter County for first-degree burglary and third-degree assault and battery by a mob (2018-GS-43-880). Applicant was represented by Michael M. Jordan, Esquire. Assistant Solicitor John P. Meadors of the Third Circuit Solicitor's Office prosecuted the case. On September 20-21, 2016, Applicant and Bracey proceeded to a joint jury trial before the Honorable W. Jeffrey Young, and they were convicted as indicted. Judge Young sentenced Applicant to twenty years' imprisonment for first-degree burglary and one year's imprisonment for third-degree assault and battery by a mob, to be served concurrently.

Applicant then timely served and filed a motion for a new trial and reconsideration of sentence with the trial court; however, on June 29, 2017, also he served a notice of intent to appeal his conviction and sentence before the pending post-trial motion was heard. In an order filed July

7, 2017, the Court of Appeals dismissed the initial appeal without prejudice because Applicant's motion for a new trial was still pending. The remittitur issued on August 8, 2017.

On October 11, 2017, the matter of the pending post-trial motion was reconvened before the circuit court, with the Honorable George M. McFaddin, Jr., presiding because Judge Young had retired from the judiciary and was no longer available. Judge McFaddin orally denied the motion for a new trial and the motion to reconsider the sentence.

Applicant then timely filed a notice of intent to appeal his conviction, sentence, and denial of his post-trial motions. After briefing, the Court of Appeals affirmed Applicant's conviction and sentence. State v. McFadden, 2020-UP-188 (S.C. Ct. App. filed June 17, 2020). The remittitur returned to the circuit court on July 14, 2020.

II. SUMMARY OF FACTS

On the evening of April 8, 2016, Artemis Bryant and Tiffany Calvin were eating pizza and watching movies at Calvin's residence. In the early morning hours of April 9, 2016, at around 12:30 a.m., they suddenly heard someone at the door yelling that he was going to shoot the door down. When Bryant and Calvin got up to see what was going on, Applicant, who was Calvin's ex-boyfriend, and Applicant's codefendants Latique Kareem Bracey and Dominique Ross, forced their way into the residence and started hitting Bryant about his face and body. Bracey pointed a gun at Bryant and threatened to kill him if he didn't leave. He also slapped at Calvin and told her "bitch, you better leave." During the tussle, Bryant made it outside to a car and ultimately drove himself to the hospital to get treatment for his injuries. A gunshot was fired as the intruders were fleeing the house. Applicant, Bracey, and Ross were later identified as the burglars and were charged. Tr. pp. 49-59.

III. ALLEGATIONS

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Subject matter jurisdiction ineffective assistance of counsel"
 - a. "Denied Fifth, Sixth, and Fourteenth Amendments of U.S. Constitution"

In response to question 19 regarding the relief Applicant seeks by filing the application, Applicant wrote, "N/A."

Attached to this Return and incorporated by reference are the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial and post-trial motion hearing transcripts, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL AND MOTION FOR MORE DEFINITE STATEMENT

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its

“reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Although Applicant clearly raises an allegation of ineffective assistance in his application, the facts or grounds to support that allegation are not sufficiently clear to allow Respondent to fully and properly respond to the allegation. Therefore, Respondent hereby moves for a more definite statement. Applicant has failed to set forth sufficient facts to “support each ground” or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to “*specifically set forth the grounds upon which the application is based.*” S.C. Code Ann. § 17-27-50 (emphasis added).

Accordingly, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based prior to any evidentiary hearing being held in this case. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

V. FURTHER AMENDMENTS AND DISCOVERY PROCESS

Additionally, Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. Rule 11(a), SCRPC. *Pro se* filings will not be considered at the PCR hearing. State v. Devore, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing a nullity where person was represented by counsel); Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent, or in the alternative continue the matter to permit adequate time to investigate and address the claims. See Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases... we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); see also Rules 15(a)-(b), SCRPC (explaining how to amend a pleading).

Pursuant to section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials

unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent, pursuant to Love as discussed above.

VI. DENIAL OF ALL OTHER ALLEGATIONS

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. REQUEST FOR RELIEF

WHEREFORE, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based prior to any evidentiary hearing being held in this case.

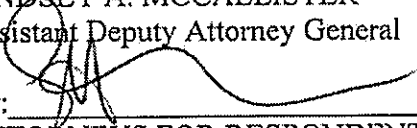
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

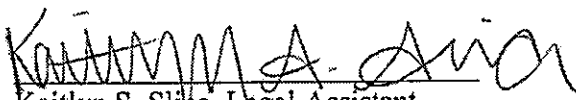
September 1, 2021

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	2021-CP-43-904
	)	
MARCUS MCFADDEN, #369866,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion for a More Definite Statement in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Timothy L. Griffith, Esquire
Timothy L. Griffith, Attorney at Law
2338 Mount Vernon Drive
Sumter, South Carolina 29154

DATED this the 1st day of September, 2021.


Kaitlyn S. Slice, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	2021-CP-43-904
Marcus McFadden 3369866	)	
Applicant,	)	
	)	AMENDED APPLICATION
v.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

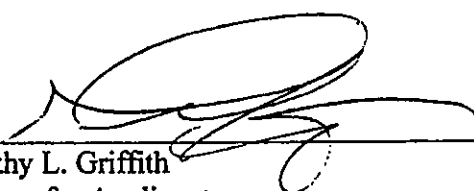
Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended TO INCLUDE as follows:

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(AS TO HIS PLEA AND PLEA ATTORNEY #1-4)

1. His attorney did not inform the Court or him that he had a right to remain silent when he was arrested and questioned and Law Enforcement did not Mirandize him prior to questioning. He signed the waiver after the questioning.

Had he understood that, he would have had cause to have statements kept out of the trial. His Fifth Amendment right not to incriminate himself was violated.



 Timothy L. Griffith
 Attorney for Applicant
 2338 Mount Vernon Drive
 Sumter SC 29154
 803 499-2012
 tlgriffith@tlgriffith.com

Sumter, South Carolina
 This 9th day of November 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	2021-CP-43-904
Marcus McFadden 3369866	)	
Applicant,	)	
	)	CERTIFICATE OF SERVICE
v.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

I Lora Singleton, an employee for Timothy L. Griffith, Attorney at Law, Attorney for the Plaintiff in the above captioned case, do swear and affirm that I did cause the Amended Application for PCR to be served upon the State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549 AND BY email to Ms. Schill of the AG office, this ~~24~~²⁷th day of November, 2021.


 Lora Singleton, Paralegal
 Notary for the State of SC

My commission expires April 9, 2023

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	2021-CP-43-00904
	)	
	)	
	)	
	)	
Marcus Cordell McFadden	)	TRANSCRIPT OF RECORD
vs.	)	
State of South Carolina	)	
	)	Via WebEx
	)	February 14, 2022
	)	

DEFENDANT)

B E F O R E:

THE HONORABLE L. CASEY MANNING.

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

TIMOTHY L. GRIFFITH, ESQ.
Attorney for the Applicant

MICHAEL J. NEUBAUER, ASSISTANT ATTORNEY GENERAL
Attorney for the Defendant

KESHIA REED
Official Court Reporter

1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Marcus McFadden				
4	Mr. Griffith	12		21	
5	Mr. Neubauer		17		
6					
7	Michael Jordan				
8	Mr. Neubauer	23		29	
9	Mr. Griffith		27		
10					
11	Certificate of Reporter	36			
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

1 THE COURT: It's been almost two years since I
2 heard a PCR. As they say in the movies, I been away from
3 the shooting match much too long, but it's nice to be back
4 again on PCRs. So let's start with, Mr. McFadden, raise
5 your right hand please. Do you swear to tell the truth,
6 the whole truth, and nothing but the truth so help you
7 God?

8 MR. MCFADDEN: I will.

9 THE COURT: And you consent to the use of this
10 remote technology for the purpose of this PCR hearing, is
11 that correct?

12 MR. MCFADDEN: Yes, sir.

13 THE COURT: Do you waive your -- you can put
14 your hand down, Mr. McFadden. And you waive your physical
15 presence in front of me, is that correct?

16 MR. MCFADDEN: Yes, sir.

17 THE COURT: And Timothy L. Griffith is your
18 attorney for the purposes of this PCR hearing, is that
19 correct?

20 MR. MCFADDEN: Yes, sir.

21 THE COURT: All right. I need to ask you,
22 Mr. McFadden, to spell -- tell us your full name, your
23 full name and spell both your first name and your last
24 name please, sir.

25 MR. MCFADDEN: Marcus C. McFadden.

1 THE COURT: You're breaking up again.

2 MR. MCFADDEN: Marcus McFadden.

3 THE COURT: Madam court reporter, can you get
4 that?

5 COURT REPORTER: Barely. It's hard to hear him.

6 THE COURT: Okay. Where is your microphone, Mr.
7 McFadden?

8 MR. MCFADDEN: I got to grab the CO because I
9 don't know how to use this. Hold on.

10 (WHEREUPON, a pause in the proceedings.)

11 THE COURT: Mr. Griffith, who's going to explain
12 from Raleigh County, Beckley, West Virginia, do you know?

13 MR. GRIFFITH: Was that Chuck Gaiger?

14 THE COURT: No, Bill Withers. Bill Withers come
15 on Ain't No sunshine.

16 MR. GRIFFITH: We got a little monument for
17 Chuck Geiger right there in St. Albans, West Virginia.

18 THE COURT: Y'all better get something for Bill
19 Withers Ain't No Sunshine. Chief Lake, Morgantown.

20 MR. GRIFFITH: I lived on Chief Lake for a
21 while.

22 THE COURT: Let me finish first please. Then
23 you got Pebble County six miles from the highway
24 Huntington, West Virginia, is that right?

25 MR. GRIFFITH: Oh, yeah, I lived all around West

1 Virginia. I taught high school down in Van, West Virginia
2 way down there in the bottom.

3 THE COURT: You know who Zeke from Cabin Creek
4 is?

5 MR. GRIFFITH: I know where Cabin Creek is.

6 THE COURT: Okay. I can't pass up an
7 opportunity to talk to people from West Virginia.

8 Mr. McFadden, say it one more time?

9 MR. MCFADDEN: Can you hear me now?

10 THE COURT: Yeah, I can year you.

11 MR. MCFADDEN: All right.

12 THE COURT: Back up and tell us your full name
13 and spell your complete name?

14 MR. MCFADDEN: It's Marcus M. McFadden
15 M-A-R-C-U-S M-C-F-A-D-D-E-N.

16 MR. GRIFFITH: Mr. McFadden, I think if you kind
17 of sit back just a little and talk it works a little
18 better.

19 THE COURT: Go ahead and start over.

20 MR. MCFADDEN: It's Marcus McFadden.

21 THE COURT: I thought you said it was Marcus E.
22 McFadden.

23 MR. MCFADDEN: Marcus C. McFadden.

24 THE COURT: What does the C stand for, sir?

25 MR. MCFADDEN: Cordell.

1 THE COURT: Marcus Cordell McFadden is that your
2 full name, sir?

3 MR. MCFADDEN: Yes, sir.

4 THE COURT: Now, spell all three of those for me
5 please?

6 MR. MCFADDEN: M-A-R-C-U-S C-O-R-D-E-L-L
7 M-C-F-A-D-D-E-N.

8 THE COURT: Madam court reporter, did you get
9 all that?

10 COURT REPORTER: Yes, sir.

11 THE COURT: Okay. All right. Mr. Griffith
12 represents the applicant Mr. McFadden. I'll ask you to
13 give us the same information please, sir.

14 MR. GRIFFITH: Your Honor, my name is Attorney
15 Timothy L. Griffith.

16 THE COURT: What does the L stand for, sir, your
17 full name?

18 MR. GRIFFITH: Lee.

19 THE COURT: L-E-E?

20 MR. GRIFFITH: L-E-E.

21 THE COURT: Timothy Lee Griffith. And spell it
22 for me please, Mr. Griffith?

23 MR. GRIFFITH: Timothy T-I-M-O-T-H-Y Lee L-E-E
24 Griffith G-R-I-F-F-I-T-H not to be confused with Griffin.

25 THE COURT: Yes, sir. And Michael J. Neubauer.

1 MR. NEUBAUER: Yes, Your Honor.

2 THE COURT: First, I was going to say where is
3 your tie. I see the bow tie. It's hard to see there. Is
4 that green? I can't tell.

5 MR. NEUBAUER: Yes, your Honor.

6 THE COURT: All right. Please same thing
7 routine your full name, your full name and spell your all
8 three of them please, sir.

9 MR. MCFADDEN: Yes, sir. It's Michael Jacob
10 Neubauer. M-I-C-H-A-E-L J-A-C-O-B N-E-U-B-A-U-E-R.

11 THE COURT: Mr. Neubauer, I don't think I had
12 the pleasure to meeting you before, is that correct? Have
13 I ever met you?

14 MR. NEUBAUER: I do not believe I've had the
15 occasion to meet you.

16 THE COURT: Let me ask you this, I do this
17 routinely where you from, sir?

18 MR. NEUBAUER: Born in Pittsburg, but I grew up
19 in Greenville, South Carolina.

20 THE COURT: So you're born in Allegheny County
21 and raised in Greenville, is that right?

22 MR. NEUBAUER: Yes, sir.

23 THE COURT: All right. Thank you, sir.
24 Mr. Michael M. Jordan.

25 MR. JORDAN: Michael M-I-C-H-A-E-L McKinney

1 M-C-K-I-N-N-E-Y Jordan J-O-R-D-A-N.

2 THE COURT: All right. And who's left is Megan
3 Harrigan Jameson, is that correct?

4 MS. JAMESON: Megan Harrigan Jameson, your
5 Honor, good to see you again.

6 THE COURT: Good to see you. Of course, I'll
7 ask you the same thing please.

8 MS. JAMESON: Megan Harrigan Jameson. Megan
9 M-E-G-A-N Harrigan H-A-R-R-I-G-A-N Jameson J-A-M-E-S-O-N.

10 THE COURT: And, Ms. Jameson, I don't recall
11 where are you from again?

12 MS. JAMESON: Charlotte.

13 THE COURT: Mecklenburg County.

14 MS. JAMESON: Yes.

15 THE COURT: Okay. All right. So is everybody
16 on board. We're ready to proceed.

17 MR. NEUBAUER: Yes, your Honor.

18 THE COURT: All right.

19 MR. NEUBAUER: May it please the Court. This is
20 the case of Marcus McFadden vs. The State of South
21 Carolina case number 2021-CP-43-9040. Applicant is
22 presently incline at a South Carolina department of
23 corrections. Applicant and two defendants Lateek Corine
24 Bracey and Dominique A. Ross were indicted at the
25 September 2016 term of the Sumter grand jury for first

1 degree burglary and third degree assault and battery by a
2 mob. Applicant was represented by Mr. Michael M. Jordan,
3 Esquire and Assistant Solicitor John P. Meadors of the
4 Third Circuit Solicitor's office prosecuted the case.

5 On September 20th and 21st, 2016, applicant and
6 his co-defendant Lateek Bracey proceeded to a joint jury
7 trial before The Honorable W. Jeffrey Young. Applicant
8 and his co-defendant were convicted as indicted. And
9 Judge Young sentenced applicant to 20 years imprisonment
10 for first degree burglary and one years imprisonment for
11 third degree assault and battery by a mob. The sentences
12 were to be served concurrently.

13 Applicant filed a motion for a new trial and
14 reconsideration of sentence. However, on June 29th 2017,
15 applicant also served a notice of appeal of his
16 convictions before the pending post trial motion was
17 heard. An order filed July 7th 2017, the Court of Appeals
18 dismissed the initial appeal without prejudice because of
19 the pending new trial motion. The remittitur was
20 initially issued on August 8th 2017. On October 11th
21 2017, the pending pretrial motion was reviewed before the
22 honorable circuit court and The Honorable George M.
23 McFadden, Jr., presided because Judge Young had retired
24 from the judiciary and was no longer available. Judge
25 McFadden orally denied the motion for a new trial and

1 motion to reconsider sentence.

2 Applicant then filed a notice of intent to
3 appeal his conviction then sentence and the denial of his
4 posttrial motion. After briefing the Court of Appeals
5 affirmed applicant conviction and sentence and then
6 unpublished opinion, McFadden 2020 UP 188, which was filed
7 on June 17, 2020, through remittitur was issued on July
8 14, 2020. The indictment stems from an incident on
9 April 8, 2016, when applicant and his two co-defendants
10 entered the home of Tiffany Calvin and proceeded to
11 assault ---

12 THE COURT: I don't want to interrupt you, but
13 isn't the issue whether or not McFadden -- what was the
14 issue presented in the case, sir? And I'll let you finish
15 whatever you want to, but doesn't it boil down to one
16 narrow issue whether or not McFadden could have or should
17 have heard the motion to reconsider, am I correct in that
18 so far?

19 MR. NEUBAUER: I believe the issue for the
20 post-conviction relief matter is summed up in the amended
21 application file by Mr. Griffith on November 9, 2021 ---

22 THE COURT: Yes, sir.

23 MR. NEUBAUER: --- where Mr. Griffith alleges
24 Mr. McFadden's attorney did not inform the Court or
25 Mr. McFadden that he had a right to remain silent when he

1 was arrested and questioned and law enforcement did not
2 provide Mr. McFadden with his Miranda rights prior to
3 questioning. Mr. McFadden allegedly signed a waiver of
4 his rights after the questioning and claimed had he
5 understood he had the right to remain silent. He would
6 not have give a statement and could have had the statement
7 kept out of trial, if there Mr. Griffith would prefer to
8 clarify the allegation raised by Mr. McFadden to be heard.

9 MR. GRIFFITH: Yes, your Honor. If it please
10 the Court, Mr. McFadden has expressed to me and we had the
11 opportunity to talk several times. Unfortunately, some of
12 it had to be on telephone because of the current
13 situation, but he has express to me that when he was
14 arrested he was not read his Miranda rights before he was
15 questioned. And so I'll let Mr. McFadden testify about
16 that if the Court will allow. I'll call him as a witness.

17 THE COURT: Any objections from anyone?

18 MR. GRIFFITH: Your Honor, then we would call
19 Mr. Marcus McFadden.

20 THE COURT: Mr. McFadden, you already under
21 oath, sir.

22 MR. MCFADDEN: Yes, sir.

23 WHEREUPON,

24 Marcus McFadden,
25 after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GRIFFITH:

Q Mr. McFadden, you already stated your name and where you're at. How long have you been incarcerated?

THE COURT: I don't know that he said that he was at Perry, is that correct?

MR. MCFADDEN: Yes, sir.

THE COURT: I'm sorry, Mr. McFadden. I don't know that you said you were at Perry or not. I didn't quite hear that.

MR. MCFADDEN: Yes, sir, I am at Perry.

THE COURT: You are at Perry Correctional Institution?

MR. MCFADDEN: Yes, sir.

THE COURT: You originally from Sumter, Mr. McFadden?

MR. MCFADDEN: Sumter, South Carolina, yes, sir.

THE COURT: Okay. All right. I'll be happy to hear anything you like to tell me, sir.

BY MR. GRIFFITH:

Q Mr. McFadden, could you please tell the Court why you would say that your attorney did not provide you with adequate advice?

A I guess I was young say what was going on.

THE COURT: That's okay. I'm afraid you're

1 breaking up. Madam court reporter, you're having
2 difficulty understanding what Mr. McFadden is telling us?

3 COURT REPORTER: Yes, he's breaking up, yes,
4 sir.

5 THE COURT: Mr. McFadden, please talk a little
6 bit slower and, you know, just stay where you are. Mr.
7 Griffith indicated and let's see if we can hear you from
8 there, okay.

9 MR. MCFADDEN: Yes, sir.

10 THE COURT: You were saying you were young. You
11 didn't understand what was going on. You never understood
12 what was going on. I'll let you pick up from there, is
13 that correct? You were young and then you started to
14 break up, Mr. McFadden. Go ahead and start over if you
15 like.

16 A I said I was young I didn't know what was going on.
17 If I had know what was going on, I would have did -- you
18 understand what I'm saying.

19 Q Mr. McFadden, did you explain to your attorney that
20 you had not been read your Miranda rights before being
21 questioned?

22 A Yes, sir.

23 Q And what did your attorney have to say about that?

24 A He didn't really say too much. We even really didn't
25 get to even talk like that about two or three times before

1 we went to court.

2 Q Did this issue come up during the trial?

3 A No, sir, I really I take ---

4 THE COURT: All right, stop hold on. We got to
5 do something different. This is not going to be good
6 enough. I'm not a technician, but, obviously, this is not
7 going to be good enough for purposes of making a record.
8 Do we go off and try it again? What do you suggest?
9 Y'all want to try reloading this to see if we can get.

10 MS. JAMESON: Your Honor, I'll call our contact
11 at Perry and see if they can potentially move him to a
12 different location or something else.

13 THE COURT: First of all, Mr. McFadden, I'll be
14 happy to hear this case. If we have to continue it, we
15 have to do it some other way, but we got to have a clear
16 understanding of the questions and the answers for your
17 benefit as well as everybody else. So far this ain't
18 working. We going to reboot it and try to start over,
19 okay.

20 MR. MCFADDEN: Yes, sir.

21 THE COURT: You understand me. Just be patient
22 and we'll take it from there.

23 MR. GRIFFITH: Let me get a CO to come in and
24 reboot the computer and reconnect, Mr. McFadden.

25 MR. MCFADDEN: Okay, hold on.

1 MS. JAMESON: I'll call Perry right now too and
2 see if we can get him some assistance.

3 THE COURT: We'll just be at ease until we can
4 try and straighten out this problem. If we can't, we'll
5 figure out some other way to get him a fair and clear,
6 clear hearing, all right.

7 MS. JAMESON: Thank you.

8 (WHEREUPON, a break was taken.)

9 THE COURT: Can everybody hear me now? Hello.

10 COURT REPORTER: Yes, sir, Judge.

11 THE COURT: All right, Ms. Reed. Mr. McFadden,
12 they moved you to a different room let's see if we can
13 hear you.

14 MR. MCFADDEN: Can you hear me now?

15 COURT REPORTER: Yes.

16 THE COURT: I can hear you but the words don't
17 match the movement of your lips. Say something else?

18 MR. MCFADDEN: Yes, sir.

19 THE COURT: Well, that's loud and clear.

20 MR. GRIFFITH: It is clear.

21 THE COURT: To be on the safe side, Ms. Reed, do
22 we have everything the introductions, the spelling of the
23 names, is all that clear for the record?

24 COURT REPORTER: Yes, sir.

25 THE COURT: You have all that clear?

1 COURT REPORTER: Yes, sir.

2 THE COURT: Is that satisfactory to everybody
3 apparently the spelling of the names what we have to go
4 through. Mr. Griffith, I ask that you start over to be on
5 the safe side, if you don't mind.

6 MR. GRIFFITH: Yes, your Honor.

7 THE COURT: Yes, sir.

8 BY MR. GRIFFITH:

9 Q Mr. McFadden, when you were arrested, were you read
10 your Miranda rights before you were questioned?

11 A No, sir.

12 Q Okay. And did you talk to your attorney about the
13 fact that you were not read your Miranda rights before you
14 were questioned?

15 A Yes, sir, but like I said, we barely even talk. We
16 talk like three times, three or four times before I even
17 went to court. We barely get a chance to talk to each
18 other.

19 Q And did this fact come up during the trial that you
20 had not been read your Miranda rights?

21 A No, sir.

22 Q And if you had known about that, in your opinion, do
23 you think it would have made -- did you -- was your
24 statement allowed to come into the trial -- the statement
25 you gave did that come into the trial?

1 A No, sir.

2 Q You know, what you said to the police before you were
3 read your rights did they use that in the trial against
4 you?

5 A No, sir.

6 MR. GRIFFITH: I have no further questions, your
7 Honor.

8 THE COURT: All right, Mr. Neubauer.

9 MR. NEUBAUER: Thank you, your Honor.

10 CROSS-EXAMINATION

11 BY MR. NEUBAUER:

12 Q Good afternoon, Mr. McFadden.

13 A Yes, sir.

14 THE COURT: It's actually morning, but it's
15 okay.

16 MR. NEUBAUER: Good morning, I apologize.

17 THE COURT: No, that's okay.

18 BY MR. NEUBAUER:

19 Q Do you know how many times you met with your attorney
20 before trial?

21 A I say like three or four times.

22 Q Three or four times. And do you guys remember what
23 you discussed?

24 A Like I said, we barely even talked. Only thing he
25 told me was get ready to go to court and that's all I can

1 remember.

2 Q Did you guys go over any discovery or the evidence
3 the State had against you?

4 A No, sir. I send letters to him while I was locked up
5 asking for discovery. I never receive them. I been
6 locked up almost six years now.

7 Q Okay. And did you guys ever discuss any possible
8 defenses that you could raise or any issues with any
9 evidence?

10 A No, sir.

11 Q All right. And you said you -- did you ever tell
12 Mr. Jordan that you didn't -- that you were not read your
13 Miranda rights?

14 A Yes, sir.

15 Q And did he ever say anything about that?

16 A No, sir. I had wanted to take the stand, but he said
17 it would have hurt me, so they didn't even let me take the
18 stand when we went to court.

19 Q Did he say why it would hurt for you to take the
20 stand?

21 A No, sir.

22 Q Okay. And you said that or you gave a statement to
23 police after being arrested, correct?

24 A Yes, sir.

25 Q And you said that statement was not brought in during

1 the trial, correct?

2 A No, sir.

3 Q So the statement you gave to the police wasn't used
4 at all during the trial?

5 A No, sir. Basically the trial wasn't even about me.
6 It was about my co-defendant, but the joint trial had me
7 tied up into it, so I don't know what was going on. You
8 know, that was my first time ever being in something like
9 this. So to be honest, I didn't know what was going on.

10 Q And so you were convicted after the trial, correct?

11 A Yes, sir.

12 Q And you were convicted due to other evidence the
13 State had outside of the statement you gave to police,
14 correct?

15 A Yeah, the evidence that they had against my
16 co-defendant. Basically, it was nothing against me, so
17 that's how I got convicted.

18 MR. NEUBAUER: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 (WHEREUPON, a pause in the proceedings.)

21 MR. NEUBAUER: I have no further questions at
22 this point.

23 THE COURT: Let me ask you, Mr. Griffith, how
24 old were you then when you were arrested -- how old were
25 you when you were arrested?

1 MR. MCFADDEN: Say it again, sir?

2 MR. GRIFFITH: You said Mr. Griffith. Do you
3 mean, Mr. McFadden?

4 THE COURT: Yes. Okay. I want to ask you
5 whether or not you ever been arrested. I apologize.
6 Mr. McFadden. Mr. McFadden, how old were you when you
7 were arrested, sir?

8 MR. MCFADDEN: I was 26 going on 27.

9 THE COURT: Twenty-six going on 27. And this is
10 the first time you said you'd ever been arrested or been
11 in trouble?

12 MR. MCFADDEN: No, I been trouble, but this the
13 first time I ever been in something serious like this.
14 Other stuff, you know, I got bond for.

15 THE COURT: What was your prior record, Mr.
16 McFadden?

17 MR. MCFADDEN: I had a couple weed charges and a
18 pistol charge.

19 THE COURT: You said a couple of marijuana
20 charges and what else?

21 MR. MCFADDEN: And a pistol, a weapons charge.

22 THE COURT: Unlawful carrying of a pistol and
23 some convictions for possession of marijuana, is that
24 correct?

25 MR. MCFADDEN: Yes, sir. Yes, sir.

1 THE COURT: And how old are you now,
2 Mr. McFadden? How old are you now?

3 MR. MCFADDEN: I'm 33 now.

4 THE COURT: Thirty-three, okay. Okay. And is
5 there anything else you want to tell me at this point and
6 time? I give you a chance to say anything you like to
7 later on, but anything else you want to tell me? I just
8 want to clarify in my mind how old were you then and how
9 old you are now, okay. You been in jail six years you
10 said?

11 MR. MCFADDEN: Yes, sir. Now, I don't have
12 really too much to say.

13 THE COURT: Okay. All right.

14 MR. GRIFFITH: If it please the Court, your
15 Honor ---

16 THE COURT: Go ahead.

17 REDIRECT EXAMINATION

18 BY MR. GRIFFITH:

19 Q Mr. McFadden, you were saying that your statement you
20 didn't go over your statement. Did you talk about your
21 statement to your attorney that you gave to the police?
22 Did you talk about that?

23 A No, we basically talk -- we didn't talk about
24 anything basically.

25 Q Discovery did he show that to you?

1 A No, sir.

2 MR. GRIFFITH: No further questions, your Honor.

3 THE COURT: Anything on redirect, Mr. Neubauer?

4 MR. NEUBAUER: No, your Honor.

5 MR. GRIFFITH: No further question or no further
6 witnesses, your Honor.

7 THE COURT: Okay. Mr. Neubauer.

8 MR. NEUBAUER: Thank you, your Honor. The State
9 would call Michael Jordan.

10 THE COURT: Mr. Jordan, would you raise your
11 right hand please, sir? You swear to tell the truth, the
12 whole truth and nothing but the truth so help you God?

13 MR. JORDAN: I do.

14 THE COURT: And you, of course, I don't really
15 have to ask you. You consent to all this remote WebEx
16 PCR, is that correct? You don't have no objections or
17 anything to add or take away from it, do you, sir?

18 MR. JORDAN: No, sir.

19 THE COURT: You may proceed, Mr. Neubauer.

20 MR. NEUBAUER: Thank you, your Honor.

21 WHEREUPON,

22 Michael Jordan,

23 after first having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25

1 BY MR. NEUBAUER:

2 Q Good morning, Mr. Jordan.

3 A Good morning.

4 Q How long have you been practicing law?

5 A This my 28th year. I was admitted to the bar in
6 1994.

7 Q And what percentage of your practice had been
8 criminal law?

9 A I served Sumter County public defender for three
10 years, and since then I would say it's probably a third of
11 25 percent to 33 percent of my practice.

12 Q Okay. And were you ultimately appointed or retained
13 to represent Mr. McFadden?

14 A I was retained.

15 Q And do you recall how long before the trial you were
16 retained?

17 A Looks like I met Mr. McFadden in May -- May 5th of
18 2016. He been denied bond and his brother came to see me
19 about requesting a bond hearing.

20 Q And do you recall how many times you met with Mr.
21 McFadden before the trial?

22 A Not specifically. I know that we met at length on
23 the 5th. We met when I receive the discovery. We met
24 when I received a plea offer from the State. And he's
25 right this was kind of a truncated time frame from usually

1 things take anywhere from 12 months to 24 months to come
2 to trial. And this -- I met him on May 5th 2016 and the
3 trial date was September 20th of 2016. So it was, you
4 know, for whatever reason it was tried pretty quickly.

5 Q Yes, sir. And you said you met with him when you
6 received discovery. Would you guys have discussed the
7 discovery file that you received from the State?

8 A Correct. They had photos and the statement which, of
9 course, the statement was never used. We went over the
10 discovery information.

11 Q And did you guys have any discussions regarding the
12 statement that he gave to police?

13 A As I recall, of course, his statement denies that he
14 ever went inside the building or the home of Ms. Calvin
15 and that was our trial position is that he didn't go in.
16 Of course, their witnesses said otherwise. Ortemus Bryant
17 and Tiffany Calvin said otherwise, but looks to me like
18 the statement we referenced early on that we wanted
19 Jackson Denno hearing on the statement. And the State
20 indicated -- the prosecutor indicated they weren't going
21 to use the statement. And the best I can figure is that
22 that would raise Bruton issues and because in his
23 statement Mr. McFadden mentioned what Lateek Bracey and
24 what Dominique Ross had done. So in that statement, I
25 guess, he becomes their accuser. They're entitled to

1 examine him. So it was my opinion that the prosecutor,
2 Mr. Meadors, just disregarded it because he didn't want to
3 have those issues of redaction and otherwise. He also for
4 whatever reason chose not to bring Dominique to trial
5 together with us. He only called the indictment or the
6 case against Lateek Bracey, who really was the main
7 perpetrator, held the weapon throughout and Marcus
8 McFadden. And I don't know why that is. I don't know if
9 Dominique Bracey had accepted his plea negotiations, but
10 Dominique Ross he was not part of our trial.

11 Q And you made pretrial motions before Mr. McFadden's
12 trial started, correct?

13 A I did. We tried to get it severed from the trial of
14 Lateek Bracey and Judge Young denied that.

15 Q And you also -- draw your attention to page 35 of
16 that trial transcript of line 19 through page 37 line
17 four. You raised an issue with the statement initially,
18 correct?

19 A Correct.

20 Q And you indicated on page 36 line six through ten
21 that they got into the statement given by Mr. McFadden
22 that you need a Jackson v. Denno hearing?

23 A Correct.

24 Q So you were ready to challenge the admissibility of
25 Mr. McFadden's statement?

1 A Yes, if that -- it never came up if they'd ever use
2 it, but they did not use it.

3 Q And ultimately as you said Solicitor Meadors decided
4 not to use the statement, correct?

5 A Correct.

6 Q Before the trial, did you guys have any conversations
7 about the admissibility of the statement that Mr. McFadden
8 gave or whether or not he was advised of his rights before
9 giving the statement?

10 A Well, once when the trial started, once they
11 indicated that they weren't going to use it, then I told
12 him, of course, if he later chose to testify -- and on
13 page 216 of the transcript, Judge Young advises him of his
14 constitutional rights about testifying, but I told him
15 that if he chose to testify that they might bring up that
16 statement as being inconsistent possibly with that for
17 impeachment purposes or whatever if his trial testimony
18 was different. We talked about that.

19 Q So you don't recall or you recall having a discussion
20 with Mr. McFadden before his trial about the admissibility
21 of his statement, correct?

22 A I do, yes.

23 Q And you were prepared to challenge that statement at
24 trial?

25 A If it came up. I mean, the statement didn't really

1 hurt him. In his statement, he never went into the home.
2 And so, you know, just like anything there were benefits
3 if that statement came in, and then there were problems
4 with it also. There's an admission in the statement about
5 some other conduct, but if it had to come in, we could use
6 it. But it also had some problematic things. And my
7 guess though overall if the statement had come in, and he
8 had -- and in his statement he said I never went in the
9 house and both Ortemus Bryant and Tiffany Calvin had said
10 he was in the house, that would have been a trial problem.

11 MR. NEUBAUER: Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 MR. NEUBAUER: I have no further questions at
14 this point.

15 THE COURT: Mr. Griffith.

16 MR. GRIFFITH: May it please the Court, your
17 Honor.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. GRIFFITH:

21 Q Mr. Jordan, just to reiterate, have an opportunity to
22 talk to Mr. McFadden at all about his statement?

23 A We went through the discovery, so I don't have
24 specific notes that we talked about him telling me that it
25 was against his rights. You know, I see that in the

1 discovery I see his statement and the waiver of rights.
2 Looks to me, like the waiver of rights was signed before
3 the statement was given, and the Court would make a
4 decision -- a preliminary decision about it's
5 admissibility.

6 Q Okay. And, Mr. Jordan, you said that you only had
7 about four months to prepare for this trial basically from
8 the time you picked up Mr. McFadden until the trial
9 actually came. And so in that time you mention that you
10 only able to talk to him one or two times, isn't that
11 correct?

12 A We spoke. I conveyed that to Mr. McFadden, that was
13 not an offer that was acceptable. And then in September,
14 yeah, we went to trial. So it was approximately five,
15 four, five months from the interview at the jail until the
16 trial date.

17 Q And to be clear so really you only spoke to him three
18 times before the trial and one of those being at the
19 trial, is that correct?

20 A I don't have that exact number. I have probably 50
21 pages of notes. So I'm sure we went over in detail
22 everything that was applicable, but, yes, there was
23 probably a limited number of meetings. Bond was denied.
24 We made a bond motion. And then I assume that's why the
25 Solicitor's office was trying to call the trial to avoid

1 potential release on bond.

2 MR. GRIFFITH: I have no further questions at
3 this time, your Honor.

4 THE COURT: Anything further, Mr. Neubauer?

5 MR. NEUBAUER: Very briefly, redirect.

6 REDIRECT EXAMINATION

7 BY MR. NEUBAUER:

8 Q In the discovery packet, you said there was a waiver
9 of rights along with Mr. McFadden's statement?

10 A Correct.

11 Q And you indicated that it appeared the waiver of
12 rights was signed before he gave his statement to
13 Investigator Melton, correct?

14 A Correct. The interview statement times says
15 5:44 a.m. on the 9th of April, 2016. And the waiver of
16 rights says 5:26. It was about 20 minutes, about 18, 20
17 minutes ahead. And it's got all -- it's got all initials.
18 He gave at 5:26 he gave Office Melton a two-page or page
19 and a half written statement.

20 Q So it indicated that Mr. McFadden was informed of his
21 rights before he gave Investigator Melton the statement,
22 correct?

23 A Correct.

24 Q And did you have any discussion regarding this with
25 Mr. McFadden when you went over discovery?

1 A We went over it generally. Of course, at that time,
2 you know, the State can choose not to use a statement.
3 You know, since they choose not to use it and it wasn't
4 any place in the trial, I'm not sure how that, you know,
5 would be some detrimental factor in our case. Our defense
6 was -- our defense was we never touched the gun. Our
7 defense was that Lateek Bracey had a relationship with ---

8 THE COURT: The victim.

9 A The victim. And had lived in the house. We had a --
10 we had a phone bill or a cable bill with Lateek Bracey's
11 name on it and the address of Charlotte Avenue address
12 that Tiffany Calvin lived at. So our defense was that
13 Lateek Bracey had, you know, had this altercation with
14 Tiffany Calvin because was Ortemus Bryant was over at the
15 house. And so, you know, we never touched the gun. There
16 was no evidence to that affect, that was our defense. Our
17 defense wasn't, you know, law enforcement took a statement
18 that's been used against us. The statement never came in.

19 MR. NEUBAUER: Thank you. I have no further
20 questions at this point.

21 THE COURT: Anything further, Mr. Griffith?

22 MR. GRIFFITH: Nothing, your Honor.

23 THE COURT: All right. Let me ask this,
24 Mr. Jordan.

25 MR. JORDAN: Yes, sir.

1 THE COURT: Did you file a motion for a
2 continuance. And I know you said you filed a motion to
3 sever in front of him. Did you file a motion for a
4 continuance?

5 MR. JORDAN: No. We just -- we ask for -- we
6 ask for a severance and that was it. You know, the State,
7 I guess, the State still controls the docket
8 notwithstanding and so we asked for the severance. And I
9 did not ask for a continuance. I'd already asked for bond
10 and we tried the case.

11 THE COURT: I understand. I understand.
12 Anything further?

13 MR. NEUBAUER: No further witnesses from the
14 State. If we could have just a brief closing argument?

15 THE COURT: Sure. Mr. Griffith, would you like
16 to?

17 MR. GRIFFITH: Yes, your Honor. Your Honor,
18 Mr. McFadden states that he was -- his statement is that
19 he was not read his Miranda rights prior to being
20 questioned and that he believes that his attorney should
21 have brought that up although he does say that the
22 statement was not used in the trial notwithstanding the
23 dates on the police statement about time and date. Of
24 course, that -- we don't know whether that was true or
25 not, but your Honor here we would ask for the Court to

1 grant his PCR for a new trial based on what he has
2 provided today.

3 THE COURT: All right. Thank you, sir. Mr.
4 Neuhauser.

5 MR. NEUBAUER: Neubauer.

6 THE COURT: You sure.

7 MR. NEUBAUER: Yes. Thank you, your Honor. It
8 would be the State's contention that Mr. McFadden has
9 failed to show how Mr. Jordan was ineffective in this
10 matter. Though Mr. McFadden testified that he does not
11 remember going over the discovery with his attorney and
12 that they never talked about the statement that
13 Mr. McFadden provided to police, he's indicated that the
14 statement was not introduced at his trial. Therefore, it
15 would not have had any prejudicial effect.

16 In additionally, Mr. Jordan testified that he
17 received discovery and reviewed it with Mr. McFadden. He
18 reviewed not only the statement that Mr. McFadden gave to
19 Investigator Melton, but he reviewed the waiver of rights
20 which was signed prior to Mr. McFadden giving a statement.
21 From that, it would indicate that Mr. McFadden was aware
22 of his rights before giving a statement and that he
23 voluntarily gave a statement to Investigator Melton.

24 Further, Mr. Jordan was prepared to challenge
25 the admissibility of the statement through a Jackson v.

1 Denno hearing or at Mr. McFadden's trial. However,
2 Solicitor Meadors indicated that they were not going to
3 use these statements. Therefore, there was no need
4 further need to challenge the admissibility of the
5 statement. It would be the State's argument that
6 Mr. McFadden has failed to show how Mr. Jordan was
7 deficient as he reviewed the statement, reviewed any
8 possible issues with it and was prepared to challenge the
9 admissibility of it, and further he failed to show how he
10 was prejudice as the statement was not introduced at
11 trial. And Mr. McFadden was ultimately convicted through
12 evidence outside of the statement that he gave
13 Investigator Melton.

14 THE COURT: All right. Anything further from
15 anyone? Anything further you like to tell me,
16 Mr. McFadden?

17 MR. MCFADDEN: No, sir.

18 THE COURT: Okay. Well, gentlemen, I will take
19 this matter -- and this is what I'm going to do, Mr.
20 Griffith, were you appointed or retained for this PCR?

21 MR. GRIFFITH: I was appointed, your Honor.

22 THE COURT: All right. So I will give both of
23 you an opportunity to convince me one way or the other.
24 How many days y'all like to submit proposed orders?

25 MR. GRIFFITH: I don't need ten days, your

1 Honor.

2 MR. NEUBAUER: I would -- if it be fine with,
3 your Honor, can we get 30 days to submit proposed orders?

4 THE COURT: Sure, sure, sure. I give everybody
5 a full opportunity to do the best you can on behalf of
6 your clients. I'll give you 30 days. If you have any
7 issue with the 30 days, Mr. Griffith, if you want to get
8 yours in sooner than later, fine, but I give both of you
9 30 days. Take your time. Do the best you can. And I'll
10 do the best I can.

11 And, Mr. McFadden, I wish you the very best of
12 luck going forward. And when I get the proposed orders, I
13 will consider them and say yes or no one or the other.
14 And it's good to see you all. I hope -- you know, I have
15 320 days to go before I retire. And I thought a year or
16 so ago that this pandemic would be over after I retire and
17 it looks that way. But I want to take this opportunity to
18 wish everybody the very best, safety and good health going
19 forward. And, Ms. Jameson, good to see you again. It's
20 been about two years at least, hasn't it or three? I
21 can't remember. I think I was chief judge for civil for a
22 while, so I didn't do any PCRs. So it's been probably
23 three or so years, but anyway. Mr. Jordan, I remember you
24 from years ago. At any rate 30 days, gentlemen. Good
25 luck to everyone. Thank you all so very much for your

1 presentation.

2 MR. GRIFFITH: Thank you, your Honor, always a
3 pleasure.

4 END OF REQUESTED TRANSCRIPT

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

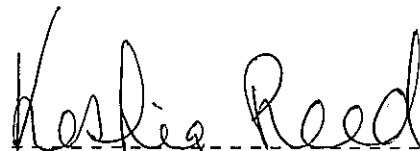
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 36, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Sumter County, South Carolina, on the 14th day of February, 2022.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 10th day of July 2022.



Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) IN THE COURT OF COMMON PLEAS
2022 APR 21 PM 1:55) FOR THE THIRD JUDICIAL CIRCUIT

Marcus McFadden, #369866) Case No.: 2021-CP-43-0904

CLERK OF COURT)
Applicant,)
SUMTER COUNTY, S.C.)

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sherry H. Jones
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

This matter comes before this Court by way of an application for post-conviction relief filed by Applicant Marcus McFadden on May 27, 2021. Respondent made its return on September 1, 2021, requesting in evidentiary hearing. An evidentiary hearing was convened February 14, 2022, before this Court in the WebEx Virtual Courtroom. Applicant was present at the hearing and represented by Timothy L. Griffith, Esquire. Michael J. Neubauer of the South Carolina Attorney General's Office represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Michael M. Jordan, Esquire. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Sumter County Clerk of Court regarding the subject convictions, and the pleadings. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denied and dismissed this application with prejudice. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections. Applicant and two co-defendants, Latique Kareem Bracey and Dominique A. Ross, were indicted at the September 2016 term of the grand jury for Sumter County for first-degree burglary and third-degree assault and battery by a mob (2018-GS-43-880). Applicant was represented by Michael M. Jordan, Esquire. Assistant Solicitor John P. Meadors of the Third Circuit Solicitor's Office prosecuted the case. On September 20-21, 2016, Applicant and Bracey proceeded to a joint jury trial before the Honorable W. Jeffrey Young, after which all three were convicted as indicted. Judge Young sentenced Applicant to twenty years' imprisonment for first-degree burglary and one year's imprisonment for third-degree assault and battery by a mob, to be served concurrently.

Applicant timely filed a motion for a new trial and reconsideration of sentence with the trial court' however, on June 29, 2017, Applicant also served a notice of intent to appeal his conviction and sentence before the pending post-trial motion was heard. By order filed July 7, 2017, the South Carolina Court of Appeals dismissed the initial appeal without prejudice because Applicant's motion for a new trial was still pending. The remittitur was issued on August 8, 2017.

On October 11, 2017, a hearing on Applicant's post-trial motion was reconvened before the circuit court, with the Honorable George M. McFaddin, Jr., presiding.¹ Judge McFaddin orally denied the motion for a new trial and the motion to reconsider Applicant's sentence.

Applicant then timely filed a notice of intent to appeal his conviction, sentence, and denial of his post-trial motions. After briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. *State v. McFadden*, 2020-UP-188 (S.C. Ct. App. filed June 17, 2020). The remittitur returned to the circuit court on July 14, 2020.

¹ Judge Young was unavailable to preside over the post-trial motion, as Judge Young retired before Applicant's post-trial motion was heard.

II. FACTS

On the evening of April 8, 2016, Artemis Bryant and Tiffany Calvin were eating pizza and watching movies at Calvin's residence. In the early morning hours of April 9, 2016, at around 12:30 a.m., they suddenly heard someone at the door yelling that he was going to shoot the door down. When Bryant and Calvin got up to see what was going on, Applicant, and Applicant's codefendants Latique Kareem Bracey, who was Calvin's ex-boyfriend and Applicant's codefendant, and Dominique Ross, forced their way into the residence and started hitting Bryant about his face and body. Bracey pointed a gun at Bryant and threatened to kill him if he didn't leave. Bracey also slapped and choked Calvin. During the tussle, Bryant made it outside to his car and ultimately drove himself to the hospital to get treatment for his injuries. A gunshot was fired as the intruders were fleeing the house. Applicant, Bracey, and Ross were later identified as the burglars and were charged. Tr. p. 49-59.

III. PRESENT APPLICATION

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Subject matter jurisdiction ineffective assistance of counsel"
 - a. Denied Fifth, Sixth, and Fourteenth Amendments of U.S. Constitution."

Applicant did not indicate the relief he is seeking.

On November 9, 2021, Applicant through Counsel, filed an amended application for post-conviction relief alleging Applicant is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "His attorney did not inform the Court or him that he had a right to remain silent when he was arrested and questioned and Law Enforcement did not Mirandize him prior to questioning. He signed the waiver after the questioning. Had he understood that, he would have had cause to have the statements kept out of trial. His Fifth Amendment right not to incriminate himself was violated"

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate

assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

1. Counsel failed to inform Applicant of his right to remain silent

Applicant's allegation of ineffective assistance of counsel due to Counsel failing to inform Applicant of his right to remain silent and his right to move to suppress the statement given to police is without merit.

At Applicant's evidentiary hearing, Applicant testified he was not read his Miranda rights when he was arrested before the police started questioning him. Applicant testified he met with counsel three times. Applicant testified he spoke with counsel about his discovery, and the fact that he was not read his rights when he was arrested. Applicant testified the issue of his Miranda rights was not raised at trial, and his statement to police was not admitted during the trial. On cross-examination, Applicant testified he told Counsel he was not read his rights, and Counsel informed Applicant that he should not take the stand to testify because it would hurt him. Applicant testified he was questioned police following his arrest, and ultimately gave a statement to police during this questioning. Applicant again testified that his statement was not introduced during his trial. Applicant testified he was convicted following a joint trial with his co-defendant, but Applicant did not know what was going on during the trial. Applicant testified that though he spoke with Counsel regarding discovery, Applicant never saw a copy of his statement to police before he went to trial.

At Applicant's evidentiary hearing, Counsel testified he has practiced law for twenty eight years and roughly one third of his practice has been in criminal law. Counsel testified he was retained to represent Applicant and met Applicant for the first time in May of 2016. Counsel testified the first meeting came after Applicant's brother met with Counsel and requested a bond hearing for Applicant. Counsel testified he met with Applicant on May 5, 2016, where Counsel and Applicant discussed discovery and a plea offer from the State. Counsel testified Applicant's discovery included photos from the crime scene and Applicant's statement to police. Counsel testified that Applicant, in his statement to police, denied ever entering the victim's house. Counsel testified Applicant's statement was not used at trial. Counsel testified that prior to the start of Applicant's trial he requested a *Jackson v. Denno*² hearing to determine whether Applicant's statement was voluntarily give. Counsel testified the State decided to not use Applicant's statement, which Counsel believes was due to a possible *Bruton*³ and sixth amendment confrontation issue which may have occurred if the statement was used. Counsel testified Applicant was tried in a joint trial with one of his codefendants, Latique Bracy, and despite Counsel's attempts to have the trials severed Counsel's motion was denied. Counsel testified he was ready to challenge Applicant's statement if the State decided to introduce it, however the State decided to not use Applicant's statement during the trial. Counsel indicated the issues with Applicant's statement was that it talked about other crimes that were committed, and it implicated Applicant's codefendants. Counsel testified a signed waiver of rights was include in Applicant's discovery. Counsel testified that it appeared that Applicant was advised of his rights prior to

² *Jackson v. Denno*, 378, U.S. 368 (1964).

³ *Bruton v. U.S.*, 391 U.S. 123 (1968) (The United States Supreme Court held that admission of codefendant's confession that implicated defendant at joint trial constituted prejudicial error even though trial court gave clear, concise and understandable instruction that confession could only be used against codefendant and must be disregarded with respect to defendant.)

providing police with a statement, and Applicant signed a waiver of his rights approximately twenty minutes before signing his statement to police.

Applicant has failed to establish any evidence to support his assertion that Counsel was ineffective for failing to advise Applicant of his rights to remain silent. First, Applicant has failed to show how Counsel's performance was deficient. Though Applicant testified he was not advised of his rights prior to providing police with a statement, Counsel credibly testified that he discussed Applicant's statement with Applicant, along with the waiver of rights which Applicant signed twenty minutes before providing police with at statement. Further, Applicant cannot establish any prejudice resulting from Counsel's performance. Applicant and Counsel both testified that Applicant's statement was not introduced during Applicant's trial. Counsel further testified he was prepared to challenge Applicant's statement through a *Jackson v. Denno* hearing, however the State elected to not introduce Applicant's statement. Ultimately Applicant was convicted at trial without the use of his statement to police. Applicant has failed to present any evidence to suggest that the results of his trial would have been different if Counsel had further discussed Applicant's right to remain silent, or further pursued suppression of Applicant's statement. Therefore, this allegation is denied and dismissed with prejudice.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

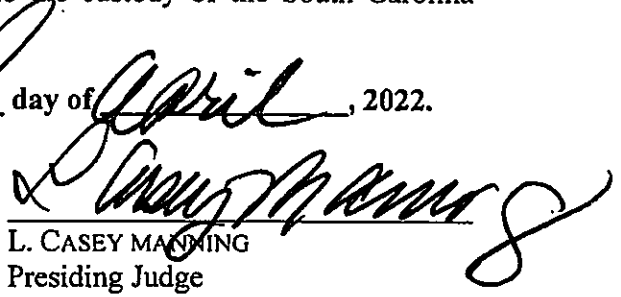
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 18 day of April, 2022.


L. CASEY MANNING
Presiding Judge
Third Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR
 Burglary First degree - 16-11-311
 Assault and Battery by Mob Third Degree
 Pointing and Presenting a Firearm
 Possession of a Firearm during the Commission of a Violent
 Crime

At a Court of General Sessions, convened on September 8, 2016 the Grand Jurors of
 SUMTER County present upon their oath:

COUNT ONE - BURGLARY FIRST DEGREE

That Latique K. Bracey, Dominique A. Ross and Marcus C. McFadden did in Sumter County on or about April 9, 2016, did enter the dwelling of Tiffany Calvin located at 515 East Charlotte Avenue without consent with the intent to commit a crime therein and the said entering occurred during the nighttime hours and/or causes physical injury to any person who is not a participant in the crime, in violation of Section 16-11-311 of the South Carolina Code Of Laws (1976, as amended).

COUNT TWO - ASSAULT AND BATTERY BY MOB 3RD DEGREE

That Latique Kareem Bracey, Dominique A. Ross and Marcus C. McFadden did in Sumter County on or about April 9, 2016, commit an assault and battery by a mob in the third degree upon the victim, Artemas Bryant which resulted or could have resulted in bodily injury to said victim, in violation of Section 16-3-210(D), SC Code of Laws (1976, as amended).

COUNT THREE - POINTING OR PRESENTING A FIREARM

That Latique Kareem Bracey did in Sumter County on or about April 9, 2016, point or present a loaded or unloaded firearm, to wit: a firearm, at one Artemas Bryant, in violation of Section 16-23-0410, S. C. Code of Laws, 1976, as amended.

**COUNT FOUR - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
 CRIME**

That Latique Kareem Bracey did in Sumter County, on or about April 9, 2016, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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

Solicitor

Edward A. F...

WITNESSES

Benjamin Coker Sumter PD

DOCKET NO. 2016-GS-43-0880

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

September TERM 2016

THE STATE

vs.

LATIQUE KAREEM BRACEY

DOMINIQUE A. ROSS

MARCUS C. McFADDEN

ACTION OF GRAND JURY

ARREST WARRANT NUMBER

2016A4310200233	2016A4310200236
2016A4310200239	2016A4310200234
2016A4310200240	2016A4310200235
2016A4310200237	2016A4310200238

Indictment for

Burglary - First degree
 Assault and Battery by Mob 3rd Degree
 Pointing and Presenting a Firearm
 Possession of a Firearm during the Commission of a
 Violent Crime

VERDICT

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury
 Date: