

VOLUME I OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Anderson County

Honorable William P. Keesley, Circuit Court Judge

KYNDRA L. HOWELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001229

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 KYNDRA L. HOWELL,)
)
 DEFENDANT.)
_____)

2012-GS-04-02396, 2397, 2537, 2538

FEBRUARY 23-25, 2015

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH, JUDGE

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

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BRANTLY HAIGLER, ESQUIRE
ATTORNEY FOR THE STATE

SCOTT MCELHANNON, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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JURY VOIR DIRE

Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Def.	
172	Whitfield, Wallace G	W	M			x	
22	Burgess, Leslie F	W	F		x		
151	Tanner, Dominick A	W	M				x
154	Taylor, Zachary L	W	M				x
59	Gerrish, Ronald J	W	M				x
125	Postlewait, James B	W	M			x	
114	Nolan, Rachael J	W	F				x
15	Bracken, Susan W	W	F			x	
17	Brissey, James L	W	M				x
78	Kimbrell, Kelsie D	W	F				x
175	Williamson, Darrah E	W	F			x	
121	Pervin, Suzanne P	W	F			x	
61	Greene, Lynnette B	W	F				x
8	Barton, Jennifer G	W	F				x
87	Lewis, Larry D	W	M			x	
34	Chambers, Ralph O	B	M				x
16	Braswell, Jessica M	W	F			x	
126	Powell, Donna N	W	F			x	
49	Edwards, Patricia O	B	F		x		
39	Cottrell, Christie D	W	F				x
107	Merrill, Deborah H	W	F			x	
102	McDowell, Vanessa L	B	F				x
60	Gilmer, William T	W	M			x	
37	Cobb, Cassandra D	B	F				x
86	Lemon, Wendi E	W	F			x	
43	Davenport, Walter D	W	M			x	

State of South Carolina -vs- Kyndra Leann Howell (2012-GS-04-2396, 2397, 2537, 2538)
Jury Voir Dire

85	Lee, Mae E	B	F				x
96	Martin, Megan L	B	F				x

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FEBRUARY 13, 2015

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

(WHEREUPON, State's Exhibit Numbers 1 through 26
were marked for identification.)

THE COURT: All right. Mr. Campbell, would you
state your case caption on the record for me, please,
sir?

MR. CAMPBELL: May it please the Court. Your
Honor, we're here on the matter of the State versus
Kyndra Leann Howell. She's been charged on indictment
number 2012-2396 for armed robbery; 2397, possession of a
weapon during the commission of a violent crime; 2537 for
kidnapping; and, 2538 for murder. We are today -- she is
scheduled to go to trial February the 23rd before Your
Honor. Today we're just here -- I have been meeting --
Mr. Haigler and I have met with Mr. McElhannon several
times to go over some pre-trial matters. And today we're
just putting those things that we have gone over on the
record, just to clear them up and get them out of the
way. And when the Court's ready, I'll just start the
proceeding and go through them.

THE COURT: All right. Let me ask this. As
far as Brady and discovery is concerned, has there been a
full disclosure to your ---

1 MR. MCELHANNON: Yes, sir.

2 THE COURT: There has?

3 MR. MCELHANNON: Yeah, the only thing that I'm
4 awaiting, and Mr. Campbell's going to give it to me this
5 morning, is the last bit of DNA evidence that was at
6 SLED.

7 THE COURT: Right.

8 MR. MCELHANNON: And he received it this week.
9 So he's going to turn that over to me today.

10 THE COURT: Okay, sir.

11 MR. MCELHANNON: As well as a rap sheet of any
12 witnesses.

13 MR. CAMPBELL: Yes, sir. We sat down this
14 week, actually, twice and went through what he wanted to
15 make sure he had everything. We did get the last batch
16 of -- we had sent three batches of DNA evidence down to
17 SLED.

18 THE COURT: Right.

19 MR. CAMPBELL: The last report came in
20 Wednesday afternoon. And I talked to Scott actually --
21 Mr. McElhannon yesterday. And he already knew what it
22 comprised of but we officially have it in writing. And
23 actually in this trial we don't plan on using the DNA in
24 this case. But ---

25 THE COURT: All right. Well, and Mr.

1 McElhannon, I'm sure -- or let me just inquire. Have you
2 had ample time to review all your discovery materials
3 exclusive of this new DNA that's forthcoming with your
4 client?

5 MR. MCELHANNON: Yes, sir.

6 THE COURT: Do you agree to that, ma'am?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: He has reviewed all of the
9 discovery with you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And he's met with you multiple
12 times to do that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Go ahead.

15 MR. CAMPBELL: Your Honor, just on pretrial
16 matters, we have talked about the chain of custody
17 regarding evidence that will be presented in this case.
18 We'll stipulate to the chain of custody. This case is
19 really, as it directly relates to the homicide portion of
20 it and possession of a weapon, it is a hand of one hand
21 of all case. Four individuals have been charged with
22 this matter. One has already pled. He is actually going
23 to testify for the State against Ms. Howell. The other
24 two are awaiting trial; both have requested trials.

25 THE COURT: Okay.

1 MR. CAMPBELL: On the chain of custody we have
2 looked at the evidence. Mr. McElhannon knows exactly
3 what we're presenting and what we're going to present in
4 this case. We're stipulating to the chain. There is
5 some phone records that Ms. Howell has, the cell phone
6 number she had at 202-9730, we are stipulating to the
7 records that were received pursuant to the search warrant
8 by Detective David Martin.

9 THE COURT: So you're basically not having to
10 authenticate them at trial?

11 MR. MCELHANNON: That's correct, Your Honor. I
12 told Mr. Campbell that as long as they submitted the
13 affidavit of the search warrant itself, along with the
14 records, that would be sufficient.

15 THE COURT: Okay.

16 MR. MCELHANNON: Not have to have a telephone
17 representative come and testify.

18 THE COURT: All right. And you would have that
19 if you needed it; is that correct?

20 MR. CAMPBELL: Yes, sir. I have -- actually, I
21 do have it. I've already made up the trial copy of the
22 search warrant with the return. It was from T-Mobile.
23 In fact, I have actually sat down with Mr. McElhannon.
24 We've gone through the records together. It indicated
25 who's calling who and everything, to help expedite this

1 matter.

2 THE COURT: And as far as the chain of custody
3 is concerned, the stipulation, you've reviewed that to
4 make sure that the evidence has not been tampered with,
5 that it comes in ---

6 MR. MCELHANNON: Yes, Your Honor. And what I
7 told
8 Mr. Campbell was I will stipulate to the -- I guess to
9 the chain -- he doesn't need to bring the internal chain
10 people that maybe just gave something to someone.

11 THE COURT: Right.

12 MR. MCELHANNON: Just the ones who initially
13 took the evidence in will be sufficient. I don't think
14 internal chain would be -- I would stipulate to the
15 internal chain.

16 THE COURT: Okay. And by internal chain, have
17 y'all discussed among yourselves what that, in fact,
18 means?

19 MR. MCELHANNON: Yes, sir. As far as this case
20 goes, there's really not any physical evidence that I
21 know of really.

22 MR. CAMPBELL: We're mainly going to use
23 pictures in this case ---

24 MR. MCELHANNON: Right.

25 MR. CAMPBELL: --- to show the evidence.

1 MR. MCELHANNON: Video, and video evidence from
2 security cameras is the main crux of this case. And I
3 think ---

4 THE COURT: Any authentication issues with the
5 video or ---

6 MR. CAMPBELL: No, sir. The video is actually
7 -- what really got this case going was the house that she
8 was renting, 3304 Jerry Drive, the landlord had video
9 cameras, surveillance cameras up in the neighborhood.
10 Not actually just for the house but for the crime that
11 had been committed around there. Detective Danny Barton,
12 who's the case officer in this case, actually met his
13 maintenance man, retrieved it himself, took it back to
14 his office and downloaded it. He's actually -- we've
15 actually gone -- Mr. McElhannon has met with us at the
16 sheriff's office with Mr. Barton and discussed all those
17 matters and gone through the stuff prior to this. And
18 Detective Barton will be the one that will be
19 authenticating it and putting it into evidence.

20 MR. MCELHANNON: And I'm okay with that because
21 he is actually the one who physically retrieved it.

22 THE COURT: All right. Have you discussed that
23 with Ms. Howell?

24 MR. MCELHANNON: She's aware of those videos,
25 Your Honor.

1 THE COURT: Ms. Howell, is that correct?

2 Ma'am?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. All right.

5 MR. MCELHANNON: We actually looked at them
6 together at the detention center.

7 THE COURT: Okay.

8 MR. CAMPBELL: The other things that we have
9 through -- this trial exhibit, and Mr. McElhannon
10 actually went -- we've gone through this twice. We
11 actually went back through it again yesterday. We are
12 going to get a search warrant showing the return with the
13 phone records. They will be authenticated through the
14 officer who received them. We do have photographs of the
15 house of Mr. Patel, who's the victim in this case, his
16 car, the -- and, also, we do have some photographs that
17 were taken at the scene where the body was found. Dr.
18 Woodard is going to be using those. There's also some
19 autopsy photographs. They initially were printed out in
20 color. However, we had them -- we have seen Dr. Woodard
21 once before and he went through and picked out the ones
22 he wanted to use. And we're also meeting him next week
23 to try to pare them down some more.

24 I have had those photographs, the color photographs
25 changed to black and white. Mr. McElhannon actually has

1 reviewed these. This is what we intend to us in the case
2 to show some of the -- what the witness's, what Dr.
3 Woodard's findings are. We also have two videos of the
4 house that came from 3304 Jerry Drive. I know Mr.
5 McElhannon's looked through them because he actually
6 brought up some times that we missed when we were looking
7 at them yesterday. And about everything else is a sketch
8 that one of the forensics techs did at the actual scene
9 where they found the body regarding where a shell casing
10 was located and the bullet -- not bullet. The shell
11 casing and the body in relation to it being in the woods
12 where they found it.

13 That's really what we're using. We're not using any
14 physical evidence in this case itself. Those are being
15 saved for down the road. And her case, she was not
16 present, and Mr. McElhannon discussed this, is that we're
17 not saying -- alleging that she was present at the time
18 in which this murder was committed, but it is a hand of
19 one hand of all. She is the one that started the ball
20 rolling, so to speak, that ultimately led to the death of
21 C.J. Patel. And that's where we're going are those
22 theories of law regarding her with the murder and being
23 in possession of a weapon. But she was not present at
24 the crime. As such, we are not bringing in a lot of the
25 evidence -- physical evidence that was found.

1 THE COURT: She wasn't present at the murder?

2 MR. CAMPBELL: Sir?

3 THE COURT: She wasn't present at the murder?

4 MR. CAMPBELL: No, sir. Not at the physical
5 scene where he was shot. Like I say, it's the hand of
6 one hand of all. Furthermore, the body when it was
7 located in the woods, approximately eleven days, it was
8 in a bad state of decomposition. A lot of the items that
9 came off the body through autopsy -- the issue is
10 basically smell. One thing, just contamination. I don't
11 think the jury's going to want to sit here and look at
12 bloody nasty clothes. So that's why we're going to
13 submit photographs in this case. Furthermore, in this
14 matter, Ms. Howell did not make any statements to law
15 enforcement regarding this matter. There is no Jackson
16 Denno. She did not give a formal statement. She was not
17 Mirandized. Prior to her being charged, she was spoken
18 to twice by law enforcement. Once was -- initially, this
19 case started as a missing person's. A deputy from one of
20 the shifts went out to the house at 3304 Jerry Drive,
21 spoke to her. She did acknowledge that Mr. Patel had
22 called her requesting sex. She refused. And at that
23 point -- at this point, the deputy didn't have anything
24 to do. He went back and wrote a report regarding his
25 encounter. Detective Danny Martin was also, prior to her

1 being arrested, had met her and one of the co-defendants
2 at a gas station in Belton. He spoke to her regarding
3 this and she did not give any indication that she knew
4 anything was going on. So there is no Jackson Denno.
5 That's the only involvement that law enforcement had.
6 And at that point she had not even been charged with this
7 crime.

8 Let's see. Search warrant. Mr. McElhannon and I
9 and Mr. Haigler have gone through -- we've actually
10 narrowed down our witness list. We're looking at between
11 eight to ten people. Some of the ones that are non-law
12 enforcement, we ran their rap sheets yesterday -- well,
13 the 11th. And I'm going to provide these to Mr.
14 McElhannon. Jamesha Gilliam, Kimberlee Lomax, and
15 Zachary Gantt. That's all their records, their current
16 records as of February the 11th, 2015. Furthermore, SLED
17 did provide to us on February the 11th their last batch
18 of DNA report. And basically this is from the third set
19 of DNA standards we have sent down there to be tested.
20 All it really shows was that the victim in this case,
21 C.J. Patel, they recovered some blood in the trunk and in
22 the back armrest area of his vehicle. But as we stated,
23 we're not saying that she was present when they took him
24 out and he was murdered. We're not saying she was
25 present there. But that's what that shows.

1 Furthermore, regarding if she decides to take the
2 stand, impeachment purposes, we are providing a rap
3 sheet. Now, this is dated July 30th, 2012. She was
4 arrested, I believe, either the 5th or 7th, one or the
5 other, of that year. So this will be current because she
6 hasn't been -- she's been incarcerated since that time.
7 Impeachable, going through it, what she has that are
8 impeachable crimes is a -- and I'm going to give this to
9 Mr. McElhannon also -- assault and battery of a high and
10 aggravated nature back in '09. She was given eight
11 years, suspended to four years probation. Also in
12 September 23rd, '09, she pled guilt to two counts of
13 financial transaction card fraud, less than five hundred
14 dollars. Those crimes actually carry up to five months.
15 I looked it up this morning. It was under statute 16-14-
16 60. It carries up to five years and/or three thousand to
17 five thousand ---

18 THE COURT: Five years; not five months?

19 MR. CAMPBELL: No, sir. Five years.

20 THE COURT: Okay.

21 MR. CAMPBELL: Furthermore, there's also a
22 shoplifting in '09. That is the only -- and there's some
23 other minor, DUS's and that type stuff that does not
24 relate or matter to us regarding impeachment. But I'm
25 going to give these to Mr. McElhannon.

1 In this case, I didn't -- initially, we had actually
2 directed indicted for accessory before the fact. While
3 we were looking at this we started going, well, maybe we
4 ought to start looking in this direction. However, it
5 was indicted last week. She actually did waive
6 presentment regarding that matter. But as Mr. Haigler
7 and I discussed, I think we're just electing to go with
8 the homicide, the murder charge, in this. The case
9 happened in July of '12. And just for the court's
10 record, she was brought up on December 18th of 2014, she
11 came before this court. It was J.C. Nicholson, Jr., was
12 presiding during that term of court. In December, at
13 that point, she indicated to Judge Nicholson that she
14 wished to have a trial in this case. We have extended
15 some offers in this matter. She has refused those. I
16 know Mr. McElhannon spoke to her. At one point, she said
17 she was going to take the offer. We went back out to the
18 sheriff's office on January 21st of this year, '15. And
19 at that point, Mr. McElhannon spoke to her at the
20 detention center. At this point she said she refused to
21 -- she was not going to take the state's offer and wished
22 to proceed to trial, which is why we're basically here
23 today so that we -- in this matter. And that's where we
24 stand. We have had some negotiations. However, she has
25 elected to proceed to trial. So at this point, the State

1 is geared up and ready to go. And we'll be ready on
2 February 23rd.

3 THE COURT: Ms. Howell, would you raise your
4 right hand, please, ma'am?

5 You don't have to stand. But do you swear to tell
6 the truth, whole truth and nothing but the truth?

7 THE DEFENDANT: Yes, sir.

8 (WHEREUPON, the defendant was duly sworn.)

9 THE COURT: Okay. Have a seat.

10 Mr. McElhannon, have you relayed any and all offers
11 from the State to your client?

12 MR. MCELHANNON: I have, Your Honor, actually
13 as recently as this Wednesday, Your Honor.

14 THE COURT: Wednesday? Ms. Howell, do you
15 agree with that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. And it's your choice to
18 decline those offers; is that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And Mr. McElhannon, have you
21 explained to her the top end of her exposure if she's
22 found guilty?

23 MR. MCELHANNON: Your Honor, I have explained
24 to her that if she is found guilty of the murder, she
25 could get life in prison.

1 THE COURT: Has he explained that to you, Ms.
2 Howell?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Ms. Howell, you understand that
5 life means life?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Meaning if you were given life in
8 prison you would serve each and every day of that
9 sentence, essentially, life without the possibility of
10 parole. Do you understand? Not essentially. That would
11 be what it is?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. And you still decline the
14 offers?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You do so knowing the ramifications
17 of your decision?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Has anybody forced, threatened, or
20 promised you anything to get you to refuse these offers?

21 THE DEFENDANT: No, sir.

22 THE COURT: And you're doing so after full
23 consultation with your attorney?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You feel at this juncture your

1 attorney has fully prepared your case, and advised you of
2 all discovery matters in this matter?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have any questions of your
5 attorney?

6 THE DEFENDANT: No, sir.

7 THE COURT: I'll be glad to give you a private
8 consultation with him if you'd like?

9 THE DEFENDANT: No, sir.

10 THE COURT: Do you have any questions of the
11 Court?

12 THE DEFENDANT: No, sir.

13 THE COURT: Okay. Mr. McElhannon, from the
14 Defense perspective, anything that you want to place on
15 the record at this juncture?

16 MR. MCELHANNON: I believe everything has been
17 put on the record, Your Honor. The main thing that I
18 needed to know today, and Mr. Campbell has already told
19 the Court that, is which election they were going to make
20 on which indictment. And they're going forth with the
21 murder indictment rather than accessory before the fact.
22 That's what I needed to know as far as my preparation for
23 trial.

24 THE COURT: Very good. Very good. All right.
25 Gentlemen, anything else we need to discuss or put on the

1 record?

2 MR. HAIGLER: No, Your Honor.

3 THE COURT: All right. Very good. Thank you
4 very much.

5 (WHEREUPON, the court stood at recess for the day at
6 approximately 10:18 a.m.)

7 **February 23, 2015**

8 (WHEREUPON, court convened with all parties present
9 and the following proceedings were had)

10 THE COURT: All right. Ladies and gentlemen,
11 if I may just go over a few of the rules that generally
12 apply to these proceedings. Number one, I'm sure you've
13 got your notice from the clerk's office, but you're not
14 allowed to have cell phones here in the courtroom, no
15 beepers or anything that has a tendency to go off.
16 Several reason for that. One, all over the State we have
17 beepers that go off sometimes at the most inopportune
18 times during a trial. Also, the state law requires that
19 only a court reporter may record court proceedings,
20 unless you're a member of the press and have obtained a
21 court order allowing you to record proceedings. We've
22 had events where people are using their phones to try to
23 record the proceedings. So therefore, they're just not
24 going to be allowed.

25 Also, in Anderson and towns this size where we do

1 everything here in the big courtroom, you have a tendency
2 that you may be able to bump into one of the attorneys
3 involved in one of the cases up here before us or one of
4 the witnesses or one of the parties. And state law
5 doesn't allow there to be any interaction between jurors,
6 potential jurors, attorneys and clients or witnesses.
7 These attorneys know that they're not allowed to speak to
8 you. So if you happen to know them and -- they're not
9 rude because they don't say anything to you. They may
10 nod their head, but they're not going to speak to you.
11 Likewise, if you see somebody that you do know who's
12 participating in the proceedings, if you'll just refrain
13 from having any conversations with them. That way we'll
14 avoid the process of somebody on the other side seeing
15 that and thinking that there's improper ex parte
16 communications going on.

17 Generally, I'll start court around nine o'clock in
18 the morning, nine-thirty, depending on what our day's
19 looking like. I generally go to five or five-thirty. It
20 may be shorter, may be longer, depending on our needs.
21 But if you're selected, you need to kind of plan your day
22 accordingly. It'll be a full day of court. If anyone
23 anticipates that they may have some need, if you could
24 give your information to one of the bailiffs. I don't
25 know what your potential circumstances are. But if you

1 think somebody might be needing to try to get in touch
2 with you, give your information to the bailiff and they
3 will make sure that if anybody tries to call, they can
4 get the word to you if necessary.

5 With that being said, if you are not selected, we
6 have two other trials on the docket this week besides
7 this one. I've been advised that this case will probably
8 take two or three days. But if you would, there'll be a
9 number -- is that on their list that they have in their
10 hands, Mr. Clerk?

11 THE CLERK: No, sir. I'm going to give it to
12 them.

13 THE COURT: I ask you that every week. You'd
14 think I would learn it by now. But before you leave if
15 you're not selected, there'll be a sheet given to you
16 with a call-in number. If you'd call in each day after
17 six o'clock in the evening, there'll be a message as to
18 when you need to report back, if you need to report back
19 or when you just need to call back and check on the
20 status.

21 With that being said, I'm going to take about a
22 fifteen minute break. We're going to come back in. And
23 we'll begin with some voir dire that will be applicable
24 to the first trial. Then we'll go into jury selection at
25 that point in time. If I may see the attorneys in the

1 back room, please. A fifteen minute break. Be back at
2 eleven o'clock, please.

3 (WHEREUPON, the court stood at recess for a short
4 break.)

5 THE COURT: Do we have everybody?

6 MR. MCELHANNON: Yes, Your Honor.

7 THE COURT: Would you let everybody back in?

8 Annie Ruth, does it look like we've got everybody
9 in?

10 THE BAILIFF: Yes, sir.

11 THE COURT: All right. Ladies and gentlemen,
12 we're going to go through some more questions in just a
13 minute. I'm going to ask the State first though to
14 please call its case to order.

15 MR. CAMPBELL: May it please the Court?

16 THE COURT: Yes, sir.

17 MR. CAMPBELL: Your Honor, the State's ready in
18 indictment number 2012-GS-04-2538. It's the case of
19 State versus Kyndra Leann Howell. Count one, she's
20 indicted for murder; 2537, indictment number 2537,
21 kidnapping; indictment number 2012-2396, armed robbery;
22 indictment number 2012-2397, possession of a weapon
23 during the commission of a violent crime. She's
24 represented by Mr. McElhannon. It's my understanding
25 it's to be a trial.

1 THE COURT: All right. Ladies and gentlemen,
2 before we get started, let me point out to you that the
3 fact that this lady was charged, arrested and indicted is
4 not evidence of guilt. Nor does it raise an inference
5 nor presumption -- hang on. Do you have a problem? Do
6 we need something over there? Go ahead.

7 Are we missing somebody out of the panel, officer?

8 OFFICER: I think so, yes, sir.

9 THE COURT: Okay. Well, let's wait and make
10 sure we have everybody here.

11 (WHEREUPON, member of jury panel enters the open
12 court.)

13 THE COURT: All right. Now, do we have
14 everyone?

15 OFFICER: Yes, sir.

16 THE COURT: Okay. That's all right. Ladies
17 and gentlemen, as I was saying the fact that this lady
18 has been arrested, charged and indicated is not evidence
19 of her guilt. It does not raise any inference nor
20 presumption of her guilt. These indictments are simply
21 the charging mechanism by which the State of South
22 Carolina brings the person before the Court for a trial
23 and then a determination of their guilt or innocence.

24 With that being said, I need to go over with you
25 several questions that are directly related to this case.

1 Unlike earlier, unless you have an absolute need, I'm
2 going to ask you to stand up where you are, give me your
3 juror number and give me your response. If you feel,
4 however, that you really need to speak with me in
5 confidence, then I'll allow you to do that. Otherwise,
6 just speak where you are.

7 The first question -- I'll remind each and everyone
8 of you, you are still under oath -- is has any member of
9 the jury panel ever been related by blood or marriage to
10 Chandrakant Patel. I'm sure I'm mispronouncing that.
11 Give me the correct pronunciation

12 MR. HAIGLER: Chandrakant.

13 THE COURT: Chandrakant, C.J. Patel or Kyndra
14 Leann Howell? Did everybody get those names? Has anyone
15 ever been related by blood or marriage to either one of
16 those individuals? If so, would you please stand?

17 (No response)

18 THE COURT: Has any member of the jury panel
19 ever had a close personal or social relationship with
20 Chandrakant, Chandrakant -- I'm sorry -- C.J. Patel or
21 Kyndra Leann Howell? If so, would you please stand.

22 Yes, ma'am. What is your jury number?

23 THE JUROR: 133.

24 THE COURT: And who do you know, please?

25 THE JUROR: Kyndra Howell. And I wouldn't say

1 that we were like close friends or anything, but we
2 definitely know each other.

3 THE COURT: And how do you know her?

4 THE JUROR: I used to hang out with her with
5 one of her best friends, Molly.

6 THE COURT: And how long ago has that been?

7 THE JUROR: Oh, I'd say about seven, eight
8 years.

9 THE COURT: Okay. And would that prior
10 experience with Ms. Howell prevent you from being fair
11 and impartial to both the State and Ms. Howell?

12 THE JUROR: I know a lot of people that know a
13 lot about this case.

14 THE COURT: Okay. Well, I don't want you to
15 say anything about it. My question to you, though, is --
16 and I can see from your response what I think the answer
17 is, but let me ask it again. Would your experience with
18 Ms. Howell prevent you from being fair and impartial to
19 both the State of South Carolina and to Ms. Howell?

20 THE JUROR: Possibly. I wouldn't feel
21 comfortable being on this case.

22 THE COURT: All right. I'm going to strike you
23 for cause from this case. That doesn't excuse you this
24 week. You just don't have to try this case.

25 THE JUROR: Okay.

1 THE COURT: Before you leave -- and don't do it
2 yet. Let's wait until after the jury selection process -
3 - the clerk will give you a number to call in after six
4 o'clock; okay?

5 THE JUROR: Okay.

6 THE COURT: And that's juror -- what number is
7 it, Mr. Clerk?

8 THE CLERK: 133.

9 THE COURT: 133, okay. Everyone get that?

10 All right. Ladies and gentlemen, I'm going to read
11 you a list of possible witnesses who may appear and
12 testify in this case. I'm going to go through the entire
13 list and then ask you questions about those. If anybody
14 doesn't get any of the names, raise your hand and I will
15 try to rephrase it such that you do.

16 The potential witnesses are: Dr. Brett Woodard;
17 Chris Wilson, Anderson County Sheriff's Office; Matthew
18 McCarty, Anderson County Sheriff's Office; Jeff Finley,
19 Anderson County Sheriff's Office; Kimberly Lomax,
20 Anderson County Sheriff's Office; Meet Patel; Zack Gantt;
21 Danny Barton, Anderson County Sheriff's Office.

22 Did everyone get those names?

23 (No response).

24 MR. CAMPBELL: One thing, Kimberly Lomax,
25 actually, that's a typo. She is not with the Anderson

1 County Sheriff's Office. She'll just be a lay witness.

2 THE COURT: She's a lay witness?

3 MR. CAMPBELL: Yes, sir.

4 THE COURT: Okay. Kimberly Lomax is just a
5 layperson. She's not with the Anderson County Sheriff's
6 Office. Okay.

7 Has any member of the jury panel ever been related
8 by blood or marriage to any of the witnesses I've just
9 read to you or potential witnesses? If so, would you
10 please stand?

11 (No response).

12 THE COURT: Has any member of the jury panel
13 ever had a close personal or social relationship with any
14 of the witnesses I've just read to you? If so, would you
15 please stand? Okay.

16 THE JUROR: I work in the laboratory ---

17 THE COURT: Okay. Just one second. Let me get
18 your jury number, please.

19 THE JUROR: 168.

20 THE COURT: 168? Okay. Ms. Waring? Okay. Go
21 ahead.

22 THE JUROR: I work in the laboratory with Dr.
23 Brett Woodard.

24 THE COURT: Okay. And you're an AnMed Lab

1 Tech; is that right?

2 THE JUROR: That is correct.

3 THE COURT: Will that working relationship with
4 Dr. Woodard prevent you from being fair and impartial to
5 both the State and to the Defendant in this matter?

6 THE JUROR: No, it would not.

7 THE COURT: You can listen to the evidence and
8 make your decision based on the evidence and according to
9 the law as I give it to you?

10 THE JUROR: Yes, sir.

11 THE COURT: Okay. And if any one of the
12 attorneys requests any additional voir dire, please let
13 me know; okay?

14 Thank you, ma'am.

15 Yes, sir. Your number?

16 THE JUROR: 60.

17 THE COURT: Mr. Gilmer?

18 THE JUROR: Yes, sir.

19 THE COURT: Okay.

20 THE JUROR: I work at the fire department and I
21 knew Matthew McCarty for a good number of years. And,
22 also, I believe -- did you say Chris Wilson?

23 THE COURT: I did.

24 THE JUROR: Sheriff's office?

25 THE COURT: Yes, sir.

1 THE JUROR: I know Chris through prior law
2 enforcement experience myself.

3 THE COURT: Okay. Well, would that experience
4 or that exposure to either one of those gentlemen make
5 you be unable to be fair and unbiased to both the State
6 and to this Defendant?

7 THE JUROR: Absolutely not.

8 THE COURT: You can listen to the evidence and
9 make your decision based on that, as well as the law as I
10 give it to you?

11 THE JUROR: Absolutely.

12 THE COURT: Thank you, sir.

13 Anyone else?

14 All right. Mr. McElhannon, would you stand up and
15 introduce yourself and your firm, as well as your client,
16 please, sir?

17 MR. MCELHANNON: May it please the Court.
18 Thank you, Your Honor. I'm Scott McElhannon. I practice
19 law here in Anderson as well as the Upstate counties.
20 This is my client that I'm representing in this trial,
21 Kyndra Howell.

22 THE COURT: And who is your partner?

23 MR. MCELHANNON: I don't have a partner, Your
24 Honor. Solo practice.

25 THE COURT: Okay. Thank you, sir.

1 All right. Mr. Campbell, will you do the same for
2 the Solicitor's office?

3 MR. CAMPBELL: My name is Rame Campbell. I'm
4 an Assistant Solicitor here in Anderson County. I'll be
5 one of the assistants trying this case. Also with me is
6 Brantly Haigler. He also works at Anderson County
7 Solicitor's Office. He'll be assisting me. And seated
8 here is our case officer. You heard his named called,
9 Detective Danny Barton with the Anderson County Sheriff's
10 Office.

11 THE COURT: All right. Has any member of the
12 jury panel ever been represented by any of the attorneys
13 here in this courtroom or any members of their respective
14 firms or member of the solicitor's office? If so, would
15 you please stand?

16 Yes, ma'am.

17 THE JUROR: Is Brantly Haigler of Steve
18 Haigler?

19 THE COURT: That's his daddy, but I don't think
20 they've ever practiced law together.

21 Is that correct, Mr. Haigler?

22 MR. HAIGLER: That's correct, Your Honor.

23 THE COURT: Okay. Well, let me ask you this
24 since your stood? What is your number?

25 THE JUROR: 86.

1 THE COURT: 86? Ms. Lemmon?

2 THE JUROR: Uh-huh (affirmative).

3 THE COURT: And I assume by your response
4 you've had some dealings with Mr. Haigler. Not this one,
5 but his father?

6 THE JUROR: Yes.

7 THE COURT: Would that experience cause you to
8 be unable to be fair and impartial to both the State or
9 to the Defendant in this matter?

10 THE JUROR: No.

11 THE COURT: Okay. Thank you, ma'am.

12 Has any member of the jury panel ever been related
13 by blood or marriage or have you ever had a close
14 personal or social relationship with any of the potential
15 witnesses I've just read to you? If so, would you please
16 stand?

17 (No response)

18 THE COURT: Has any member of the jury panel
19 ever been related by blood or marriage or have you ever
20 had a close personal or social relationship with any of
21 these attorneys in the courtroom or any member of the
22 Anderson County Solicitor's Office? If so, would you
23 please stand?

24 (No response)

25 THE COURT: Has any member of the jury panel

1 read or heard anything about the case of the State of
2 South Carolina versus Kyndra Leann Howell prior to coming
3 to court today? If so, please raise your hand.

4 Okay. I will ask you to stand, please? I don't
5 want you to tell us what you read. But your jury number
6 is what, please; in the pink?

7 THE JUROR: 92.

8 THE COURT: 92? Ms. Lunsford.

9 THE JUROR: Yes, sir.

10 THE COURT: Would that exposure to any news
11 about this case prior to today cause you to be unable to
12 be fair and impartial to both the State and to the
13 Defendant in this matter?

14 THE JUROR: I mean, I've read what I read so I
15 have an opinion, so probably.

16 THE COURT: Well, let me ask you -- and don't
17 -- please don't say it out loud. But can you not be fair
18 and impartial and listen to the evidence and make your
19 decision based on that? Or do you have a preconceived
20 notion about what you think is going to happen or what
21 happened?

22 THE JUROR: I mean, like I said, I read what I
23 read so I'm going to believe what I believe.

24 THE COURT: All right. Okay. And your jury
25 number again is what, please?

1 THE JUROR: Number 92.

2 THE COURT: 92. I'm going to strike you from
3 the trial of this matter. But you're not off this week.
4 So you'll need to, before you leave, get the list from
5 our clerk and call back after six o'clock tonight; okay?

6 THE JUROR: Okay.

7 THE COURT: Now, didn't I strike you already?

8 THE JUROR: (Nods head affirmatively)

9 THE COURT: Okay. You don't need to stand any
10 further. But thank you so much.

11 Anyone else? Yes. Right in front of my --

12 THE JUROR: 35.

13 THE COURT: 35? Okay.

14 THE JUROR: I read about it in the paper.

15 THE COURT: Ma'am?

16 THE JUROR: I read about it in the paper.

17 THE COURT: Well, would the fact that you had
18 that exposure in the paper make you have a preconceived
19 notion about this case or can you listen to the
20 testimony, listen to the evidence and make your decision
21 based on that and according to the law as I give it to
22 you?

23 THE JUROR: Yes, I can.

24 THE COURT: You can?

25 THE JUROR: Yes.

1 THE COURT: Thank you so much.

2 Anyone else?

3 (No response)

4 THE COURT: Has any member of the jury panel
5 formed or expressed an opinion about any matter involved
6 in the case of the State of South Carolina versus Kyndra
7 Leann Howell? If so, would you please stand?

8 (No response).

9 THE COURT: Is there any member of the jury
10 panel that is aware of any bias or prejudice they may
11 have towards either the State of South Carolina or
12 towards Kyndra Leann Howell? Is so, would you please
13 stand?

14 (No response).

15 THE COURT: Is there any member of the jury
16 panel that was a member of the Anderson County Grand Jury
17 that issued the indictments in this case? If so, would
18 you please stand?

19 (No response)

20 THE COURT: Is there any member of the jury
21 panel that is a member of or a contributor to any group
22 that has as its primary purpose the promotion of victims'
23 rights or law enforcement? Examples, but certainly not
24 an entire list would be, SADD, MADD, or CAVE. But if you
25 are a member of or a contributor to any group which has

1 as its primary goal the promotion of victims' rights or
2 law enforcement, would you please raise your hand?

3 (No response)

4 THE COURT: Very good. Does any member of the
5 jury panel know of any reason whatsoever why he or she
6 should not be selected to serve in the trial of this
7 matter, with particular emphasis being placed on your
8 ability to be fair and impartial to both the State of
9 South Carolina and to the Defendant in this matter? Does
10 anybody know of any reason why you should not be
11 selected? If so, would you stand?

12 (No response)

13 THE COURT: Very good. Any additional voir
14 dire from the State?

15 MR. CAMPBELL: No, Your Honor.

16 THE COURT: From the Defense?

17 MR. MCELHANNON: No, Your Honor.

18 THE COURT: All right. Ladies and gentlemen,
19 what we're going to do -- used to be before I had gray
20 hair and we started practicing law, we'd have somebody
21 come in who could not read or write and they would pull
22 names out of a cylinder. And we'd have jury selection.
23 Now, we have a computer that does that in this case.
24 We're going to have two alternates. Is that correct;
25 gentlemen?

1 MR. MCELHANNON: That's correct.

2 THE COURT: What will happen, in just a minute
3 there'll be names randomly drawn or selected from the
4 group of you guys. Your name will be called. You need
5 to come through the turn style and stand between the
6 clerk of court and my court reporter, face the State,
7 face the Defense and they'll make a decision as to
8 whether or not you'll be selected to serve. If your name
9 is called and you have some personal belongings like a
10 pocketbook, jacket, or whatever, something along that,
11 please bring it with you in case you are seated.

12 Yes, sir.

13 MR. CAMPBELL: May we speak with you privately?

14 THE COURT: Yes, sir.

15 (WHEREUPON, a bench conference was held off the
16 record.)

17 THE COURT: All right. One additional request
18 for the jury. Has any member of the jury panel or any
19 member of their immediate family ever been the victim of
20 a violent crime? If so, would you please stand?

21 Has any member of the jury panel or any member of
22 their immediate family ever been a victim of a violent
23 crime?

24 Okay. Sir, what's your jury number?

25 THE JUROR: 101.

1 THE COURT: Okay. And was it you or a member
2 of your family?

3 THE JUROR: It was my first cousin.

4 THE COURT: Your first cousin. And how long
5 ago has that been?

6 THE JUROR: Probably about eight or ten years
7 ago.

8 THE COURT: Okay, sir. And would that
9 experience with your family member cause you to be unable
10 to be fair and impartial in this matter?

11 THE JUROR: No, sir.

12 THE COURT: Are you sure?

13 THE JUROR: Yes, sir.

14 THE COURT: Okay. And, again, to the attorneys
15 if y'all have any additional voir dire, let me know.

16 Thank you, sir.

17 Yes, ma'am. On the front?

18 THE JUROR: I was caught in a hotel fire in
19 Greenville.

20 THE COURT: Okay. And what is your juror
21 number?

22 THE JUROR: It's 121?

23 THE COURT: 121. And you were caught in a
24 hotel fire?

25 THE JUROR: Yeah. It was Comfort Inn.

1 THE COURT: Okay. And would that experience
2 cause you to be unable to be fair and impartial to either
3 the State or to this Defendant?

4 THE JUROR: I don't believe so.

5 THE COURT: Okay. Thank you, ma'am.

6 Yes, ma'am. What is your jury number?

7 THE JUROR: 150.

8 THE COURT: 150?

9 THE JUROR: Uh-huh (affirmative).

10 THE COURT: Okay. And what is your experience?

11 THE JUROR: My daughter was charged with a ---

12 THE COURT: You know, I've got gray hair. And
13 I need you to speak up a little bit, please?

14 THE JUROR: My daughter was charged with a
15 crime of supposedly dealing with guns, but she didn't do
16 it?

17 THE COURT: Your daughter was charged with a
18 crime?

19 THE JUROR: Yes.

20 THE COURT: And would that experience cause you
21 to be unable to be fair and unbiased to the State and to
22 this Defendant?

23 THE JUROR: Oh, I don't know.

24 THE COURT: Ma'am?

25 THE JUROR: I don't know.

1 THE COURT: You don't know? Okay. Well, I'm
2 going to excuse you from this jury. You're number 150;
3 is that correct?

4 THE JUROR: Yes.

5 THE COURT: And I'm going to ask you to stick
6 around and we'll give you further instructions in just a
7 little bit; okay?

8 THE JUROR: Okay.

9 THE COURT: Thank you, ma'am.
10 Anyone else?

11 All right. Mr. Clerk, did that change anything?

12 (Off record discussions.)

13 THE COURT: Let me see the attorneys over here.
14 (WHEREUPON, a bench conference was held off the
15 record.)

16 THE COURT: All right. Mr. Clerk.

17 THE CLERK: Ladies and gentlemen, when I call
18 your name, we would ask that you come forward, stand here
19 in front of me and turn and face the attorneys, please.

20 The first potential juror is number 172, Wallace G.
21 Whitfield. What say you for the State?

22 MR. CAMPBELL: Present Mr. Whitfield.

23 THE CLERK: What say you for the Defense?

24 MR. MCELHANNON: Please excuse Mr. Whitfield.

25 THE COURT: Have a seat back in the audience,

1 please, sir.

2 Juror number 22, Leslie F. Burgess. What say you
3 for the State?

4 MR. CAMPBELL: Please excuse Ms. Burgess.

5 THE CLERK: Have a seat back out in the
6 audience, please, ma'am.

7 Juror number 151, Dominick A. Tanner. What say you
8 for the State?

9 MR. CAMPBELL: Present Mr. Tanner.

10 THE CLERK: What say you for the Defense?

11 MR. MCELHANNON: Please swear the juror.

12 THE CLERK: Juror number 154, Zachary L.
13 Taylor. What say you for the State?

14 MR. CAMPBELL: Present Mr. Taylor.

15 THE CLERK: What say you for the Defense?

16 MR. MCELHANNON: Please swear the juror.

17 THE CLERK: Okay. Juror number 59, Ronald J.
18 Gerrish. What say you for the State?

19 MR. CAMPBELL: Present Mr. Gerrish.

20 THE CLERK: What say you for the Defense?

21 MR. MCELHANNON: Please swear the juror.

22 THE CLERK: Juror Number 125, James B.

23 Postlewait. What say you for the State?

24 MR. CAMPBELL: Present Mr. Postlewait.

25 THE CLERK: What say you for the Defense?

1 MR. MCELHANNON: Please excuse this juror.

2 THE CLERK: Have a seat, please, sir.

3 Juror number 114, Rachael J. Nolan. What say you
4 for the State?

5 MR. CAMPBELL: Present Ms. Nolan.

6 THE CLERK: What say you for the Defense?

7 MR. MCELHANNON: Please seat the juror.

8 THE CLERK: Juror number 14, Susan W. Bracken.
9 What say you for the State?

10 MR. CAMPBELL: Present Ms. Bracken.

11 THE CLERK: What say you for the Defense?

12 MR. MCELHANNON: Please excuse this juror.

13 THE CLERK: Juror number 17, James L. Brissey.
14 What say you for the State?

15 MR. CAMPBELL: Present Mr. Brissey.

16 THE CLERK: What say you for the Defense?

17 MR. MCELHANNON: Please swear this juror.

18 THE CLERK: Juror number 78, Kelsie D.

19 Kimbrell. What say you for the State?

20 MR. CAMPBELL: Present Ms. Kimbrell.

21 THE CLERK: What say you for the Defense?

22 MR. MCELHANNON: Please seat the juror.

23 THE CLERK: Juror number 175, Darrah E.

24 Williamson. What say you for the State?

25 MR. CAMPBELL: Please seat Ms. Williamson.

1 THE CLERK: What say you for the Defense?

2 MR. MCELHANNON: Please excuse this juror.

3 THE CLERK: Juror 121, Suzanne P. Pervin. What
4 say you for the State?

5 MR. CAMPBELL: Present Ms. Pervin.

6 THE CLERK: What say you for the Defense?

7 MR. CAMPBELL: Please excuse this juror.

8 THE CLERK: Juror 61, Lynette B. Greene. What
9 say you for the State?

10 MR. CAMPBELL: Present Ms. Greene.

11 THE CLERK: What say you for the Defense?

12 MR. MCELHANNON: Please swear the juror.

13 THE CLERK: Juror number 8, Jennifer G. Barton.
14 What say you for the State?

15 MR. CAMPBELL: Present Ms. Barton.

16 THE CLERK: What say you for the Defense?

17 MR. MCELHANNON: Please swear the juror.

18 THE CLERK: Juror number 87, Larry D. Lewis.

19 MR. MCELHANNON: What number was that?

20 THE CLERK: 87. What say you for the State?

21 MR. CAMPBELL: Present Mr. Lewis.

22 THE CLERK: What say you for the Defense?

23 MR. MCELHANNON: Please excuse this juror.

24 THE CLERK: Juror number 34, Ralph O. Chambers.
25 What say you for the State?

1 MR. CAMPBELL: Present Mr. Chambers.

2 THE CLERK: What say you for the Defense?

3 MR. MCELHANNON: Please swear the juror.

4 THE CLERK: Juror number 16, Jessica M.

5 Braswell. What say you for the State?

6 MR. CAMPBELL: Present Ms. Braswell.

7 THE CLERK: What say you for the Defense?

8 MR. MCELHANNON: Please excuse this juror.

9 THE CLERK: Juror 126, Donna N. Powell. What

10 say you for the State?

11 MR. CAMPBELL: Present Ms. Powell.

12 THE CLERK: What say you for the Defense?

13 MR. MCELHANNON: Please excuse this juror.

14 THE CLERK: Juror number 49, Patricia O.

15 Edwards. What say you for the State?

16 MR. CAMPBELL: Please excuse Ms. Edwards.

17 THE CLERK: Juror number 39, Christie D.

18 Cottrell. What say you for the State?

19 MR. CAMPBELL: Present Ms. Cottrell.

20 THE CLERK: What say you for the Defense?

21 MR. MCELHANNON: Please swear the juror.

22 THE CLERK: Juror number 107, Deborah H.

23 Merrill. What say you for the State?

24 MR. CAMPBELL: Present Ms. Merrill.

25 THE CLERK: What say you for the Defense?

1 MR. MCELHANNON: Please excuse this juror.

2 THE CLERK: I have that as your ninth strike.

3 Juror number 102, Vanessa L. McDowell. What say you
4 for the State?

5 MR. CAMPBELL: Present Ms. McDowell.

6 THE CLERK: What say you for the Defense?

7 MR. MCELHANNON: Please swear the juror.

8 THE CLERK: Juror number 60, William T. Gilmer.
9 What say you for the State?

10 MR. CAMPBELL: Present Mr. Gilmer.

11 THE CLERK: What say you for the Defense?

12 MR. MCELHANNON: Please excuse this juror.

13 THE CLERK: Juror number 37, Cassandra D. Cobb.
14 What say you for the State?

15 MR. CAMPBELL: Present Ms. Cobb.

16 THE CLERK: Any reason, Defense ---

17 MR. MCELHANNON: None.

18 THE CLERK: Your Honor, that's twelve jurors.
19 And we'll move on with the alternates.

20 THE COURT: Okay, sir.

21 THE CLERK: Juror number 86, Wendi E. Lemon.

22 What say you for the State?

23 MR. CAMPBELL: Present Ms. Lemon.

24 THE CLERK: What say you for the Defense?

25 MR. MCELHANNON: Please excuse this juror.

1 THE CLERK: Juror number 43, Walter D.

2 Davenport. What say you for the State?

3 MR. MCELHANNON: Present Mr. Davenport.

4 THE CLERK: What say you for the Defense?

5 MR. MCELHANNON: Please excuse this juror.

6 THE CLERK: Juror number 85, Mae E. Lee. What
7 say you for the State?

8 MR. CAMPBELL: Present Ms. Lee.

9 THE CLERK: Any reason for cause from the
10 Defense?

11 MR. MCELHANNON: None.

12 THE CLERK: That's the first alternate.

13 Juror number 96, Megan L. Martin. What say you for
14 the State?

15 MR. CAMPBELL: Present Ms. Martin.

16 THE CLERK: What say you for the Defense?

17 MR. MCELHANNON: Please swear the juror. I've
18 used my strikes.

19 THE COURT: You have two. He has two strikes
20 remaining.

21 MR. MCELHANNON: Please seat this juror.

22 THE CLERK: Your Honor, I believe that's twelve
23 and two alternates.

24 THE CLERK: Okay. All right. Ladies and
25 gentlemen who've been sworn on this jury, I'm going to

1 ask for you just for you for just a minute, to go back to
2 the jury room and that you select a foreperson who will
3 preside over your deliberations, whom also would be
4 responsible for communicating with the court during the
5 trial if there's a need for communications. Everyone has
6 a right to vote. It does not have to be unanimous.
7 However, our alternates, and that would be number 85 and
8 96, may not serve as the foreperson, but you have a right
9 to vote; okay? Once the foreperson is selected, I'm
10 going to ask that person to turn around and tally their
11 fellow jurors to determine who, if anyone, would like to
12 have pad and pencil to take notes with during the course
13 of this trial. Once you get that figure, write it down,
14 sign your name, knock on the door and we'll receive you
15 back in the courtroom; okay, sir? But if you'll go with
16 Buck now and pick your foreperson, please?

17 (WHEREUPON, the jury exited the open court at
18 approximately 11:43 a.m.)

19 THE COURT: Are there any motions from the
20 State with regard to jury selection?

21 MR. CAMPBELL: No, Your Honor.

22 THE COURT: From the Defense?

23 MR. MCELHANNON: No, Your Honor.

24 THE COURT: Very good.

25 All right. For those of you who weren't selected, I

1 can see the look of dismay on all your faces out there.

2 And I know that just breaks your heart. But we're going

3 to give you another opportunity very likely; okay? So

4 before you go, I'm going to ask that our clerk pass out a

5 number. And I'm going to ask each of you to call in each

6 night after six o'clock. And there'll be a message as to

7 when or whether or not your need to return. But I want

8 to thank each and everyone of you, in case I don't see

9 you again, for being here. Without your willingness to

10 come and serve as jurors and do your civic duty, the

11 system breaks down and there's no rule of law. So we do

12 appreciate it. We appreciate your being here and doing

13 your civic duty. Mr. Clerk?

14 (WHEREUPON, the jury panel exited the open court at

15 approximately 11:46 a.m.)

16 THE COURT: All right. While we're waiting,

17 any matters we need to deal with? From the State?

18 MR. CAMPBELL: I can't think of any, Your

19 Honor.

20 THE COURT: From the Defense?

21 MR. MCELHANNON: No. Your Honor. When we

22 begin trial, I guess, in the morning, I can make a motion

23 or I can do it now. I was just going to ask that the

24 witnesses be sequestered.

25 THE COURT: That'll be granted. Obviously,

1 your investigating officer gets to be here. But if you'd
2 just make sure and excuse everybody.

3 MR. CAMPBELL: Yes, sir. We'll just keep them
4 out. I do know -- well, depending on -- we had two
5 homicides over the weekend. The sheriff's office is
6 planning on sending some officers here that have never
7 been in trial just to watch and observe. I know they're
8 supposed to come in the morning, but they're not involved
9 in this trial whatsoever. Who I put on the witness list
10 is it.

11 THE COURT: That shouldn't be a problem, should
12 it?

13 MR. MCELHANNON: No.

14 THE COURT: Okay. What's the number of our
15 foreperson?

16 THE CLERK: She came out with four names. And
17 she said that he said he wanted four persons. And she
18 said, no, a foreperson.

19 THE COURT: Do we have somebody now? Okay.
20 Well, we have a literal jury over here.

21 THE CLERK: Juror number 14, Ms. Greene.

22 COURT CLERK: Juror number 61.

23 THE CLERK: 61.

24 THE COURT: Juror number 61.

25 Would you bring them in, Buck, please?

1 (WHEREUPON, Court's Exhibit Number 1 was marked for
2 identification.)

3 (WHEREUPON, the jury entered the open court at
4 approximately 11:49 a.m.)

5 THE COURT: Ma'am, you are our forelady; is
6 that correct?

7 MADAM FORELADY: Yes, sir.

8 THE COURT: And these two on the right side are
9 our alternates; is that correct?

10 MADAM FORELADY: No, this lady is and she is.

11 THE COURT: Okay. Well, what I'm going to do,
12 you don't have to do it now, but if you would remain in
13 that seat each time you come in and out of the courtroom
14 and if our alternates would stay in these two seats on
15 the right-hand side each time you come in. Buck will
16 show you where to sit. It helps me keep up with
17 administrative matters; okay? And how many people want
18 pad and pencil, Mr. Clerk?

19 THE CLERK: All of them.

20 THE COURT: Everybody would like to have pad
21 and pencil. Those will be provided. Just to let you
22 know, we have some administrative matters we will take up
23 with that will take the remainder of the day. So we're
24 going to come back in the morning and begin the trial of
25 this case. Anyone have a problem being here at nine-

1 thirty? Okay. And if you will, when I say nine-thirty,
2 be here a couple of minutes ahead of time. I really like
3 to try to start things promptly if I can. I'll make you
4 a pledge that if you're back in the jury room, we're not
5 going to be out here not working. Sometimes we do have
6 to keep you back there while we're taking care of things.
7 But I'll move things along promptly; okay?

8 But before you go, let me remind you or tell you
9 this, you may not read, look or hear anything about this
10 case. It doesn't matter what kind of format it may be
11 in, whether it be in print, whether it be on the
12 television. If it's on the television, whether it be on
13 the radio or any kind of blog, you can't speak amongst
14 yourselves about this case. You can't speak with your
15 significant other, your good friends, and that's directly
16 or by email or by twitter or some other form of
17 communication I'm not smart enough to think about. The
18 reason we want to put this ban out and the reason we do
19 put the ban out is this. We want you to listen to the
20 testimony and the evidence that's elicited here in this
21 courtroom and make your decision based on that,
22 uninfluenced by anything on the outside -- uninfluenced
23 by anything on the outside and according to the law as I
24 give it to you.

25 Also, I am required to instruct all jurors that they

1 are not allowed to engage in what's called independent
2 jury research. And what that simply means is during the
3 course of this trial and until you are dismissed, you
4 can't look up anything about this case on your phones, on
5 your computers, in the papers or anywhere. That includes
6 court personnel, the parties, the witnesses, any issue
7 you hear in the case or any issue you think may be
8 beneficial to help you understand the case. Quite
9 frankly, it's the State and Defense's job to present
10 their case so that you do understand. It's my job to
11 give you the law that you will apply. And, again, the
12 same reason why we don't want you speaking with anyone is
13 that we want you to make your decision uninfluenced by
14 any outside sources and make your decision based on what
15 you hear from this courtroom from the witness stand;
16 okay?

17 With that being said, in the morning we'll bring you
18 back and we'll begin with opening statements and I'll
19 give you a little more instructions at that point in
20 time. Thank you for being here. Leave your pads -- oh,
21 you don't have them yet. We'll see you in the morning at
22 nine-thirty. Thank you very much.

23 THE CLERK: Your Honor, there's a chance of
24 snow tonight. There's a chance.

25 THE COURT: Well, I hope that call-in system

1 does better than it did last time.

2 THE CLERK: Well, I was going to give everybody
3 my telephone number just in the event.

4 THE COURT: Okay.

5 (WHEREUPON, the jury panel was provided instructions
6 by the clerk of court in the event of inclement
7 weather.)

8 THE COURT: All right. Thank you, sir.

9 Madam Forelady, ladies and gentlemen of the jury,
10 I'm going to excuse you for the remainder of the day and
11 we'll see you tomorrow. Thank you very much.

12 (WHEREUPON, the jury exited the open court at
13 approximately 11:55 a.m.)

14 THE COURT: Anything from the State before we
15 break?

16 MR. HAIGLER: No, Your Honor.

17 THE COURT: From the Defense?

18 MR. MCELHANNON: No, Your Honor.

19 THE COURT: Okay. And I assume that Ms. Howell
20 is in the detention center?

21 MR. MCELHANNON: Yes, sir.

22 THE COURT: Okay. She'll remain there. You
23 have adequate clothes for your stay?

24 MR. MCELHANNON: We have at least three days
25 worth, Your Honor.

1 THE COURT: Okay. Very good. All right.

2 Nine-thirty in the morning, gentlemen.

3 (WHEREUPON, court stood at recess for the day at
4 12:30 p.m.)

5 **FEBRUARY 24, 2015**

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

8 THE COURT: All right. Mr. Campbell, anything
9 from the State before we get started?

10 MR. CAMPBELL: No, Your Honor.

11 THE COURT: From the Defense?

12 MR. MCELHANNON: No, Your Honor.

13 THE COURT: Go ahead and bring them in, please,
14 sir.

15 (WHEREUPON, the jury entered the open court at
16 approximately 9:58 a.m.)

17 (WHEREUPON, all jurors were provided notepads and
18 pens.)

19 THE COURT: All right. Good morning, ladies
20 and gentlemen. Thank you for being here in such lovely
21 weather. We'll keep you advised of the status of things
22 as we go. And hopefully, clearly let you know what the
23 plans are.

24 Mr. Clerk, before we get started would you swear the
25 jury, please, sir?

1 THE CLERK: I'd ask that you stand and raise
2 your right hand, please.

3 Do you and each of you solemnly swear or affirm you
4 shall well and truly try and a true deliverance make
5 between the State of South Carolina and the Defendant and
6 you shall have in charge and a true verdict render
7 according to the law and the evidence. If you will, say
8 I do.

9 (WHEREUPON, all jurors answered I do and the jury
10 was duly sworn.)

11 THE COURT: All right. Ms. Foreman, ladies and
12 gentlemen, let me give you a few opening remarks about
13 what you can expect. First, let me just tell you this is
14 not an endurance contest. If at any time I call you back
15 to the courtroom and the jury's not ready, just let us
16 know. Anybody needs to break during the proceedings,
17 just indicate and we'll take a break, okay?

18 With that being said, this is the case of the State
19 versus Kyndra Leann Howell who has been charged as you
20 were advised. I don't know if any of you have ever been
21 involved in a trial before, whether it be criminal or
22 civil. As I told you, this is a criminal court. I would
23 imagine, however, that each and every one of you have
24 watched which purports to be a criminal trial on TV or in
25 the movies. Let me quickly dispel you. This is going to

1 be nothing like you've seen on TV. Trials are very slow.
2 They're very deliberate. They're very methodical.
3 They're not entertainment, but they're a fundamental part
4 of our democracy. They are a search to try to find out
5 the truth and make sure that justice is done. Now, these
6 attorneys, when they are sworn in as attorneys, take an
7 oath that they will zealously represent their clients
8 interests in this case. And we expect them to do no less
9 in this case. With that being said, they are also
10 officers of this court. What that means is you can
11 expect them to be professional, competent and ethical to
12 one another, to witnesses and to me during the course of
13 this trial.

14 Now, you have just taken an oath where you said that
15 you would do your best to reach a verdict based upon the
16 evidence that is presented during this case and according
17 to the law as I charge it to you. What that simply means
18 is that the parties and the court has a right to expect
19 that you will be fair. That you will be impartial. And
20 that you will be ethical in your duties throughout this
21 case. Now, what I tell you is not the substantive law
22 that will apply. I will give that to you at the end of
23 all the evidence. This is basically an overview so you
24 understand what's going on.

25 Now, I think all of you have elected to take notes.

1 Let me remind you that just because something appears in
2 somebody's notepad, at the end of the day, Ms. Forelady,
3 when you begin your deliberations -- and you'll be
4 instructed clearly when that is to begin -- just because
5 something occurs or is written down on somebody's notepad
6 doesn't mean it trumps somebody's memory or somebody's
7 notes that don't reflect that same part of the testimony.
8 Some people are better note takers than others. Some
9 people have better memories than others. With that being
10 said, you'll just have to deliberate any differences that
11 are there.

12 Also, let me warn you that part of your functions,
13 and I'll tell you more about it in a second, is you are
14 finders of the fact or judges of the fact. And part of
15 that function would be to determine the credibility of
16 the witnesses who come before you during this trial. If
17 you're so engrossed in making notes to yourself that you
18 miss somebody's subtle reaction to the question or the
19 testimony, you may miss something that's important that
20 helps you determine the credibility of that particular
21 witness's testimony. I just tell you that so that you'll
22 be careful.

23 I remind you that the fact that this Defendant has
24 been arrested, charged and indicted is not evidence of
25 her guilt. It doesn't raise an inference nor a

1 presumption of her guilt. These indictments, which I
2 have in my hand, are simply the charging mechanisms by
3 which the State of South Carolina brings a person before
4 a jury as yourselves for a trial and a determination of
5 guilt or innocence. In fact, the Defendant in this case
6 says, I'm not guilty to each and everyone of the
7 indictments. Therefore, that places the burden on the
8 State of South Carolina to prove each and every element
9 of all charges against her by proof beyond a reasonable
10 doubt. And Ms. Foreman and ladies and gentlemen, I'll
11 tell you more about this at the end of the case. Each
12 indictment stands on its own and you'll consider those
13 separately when you begin your deliberations. But as I
14 told you, your purpose as jurors are to find the facts.
15 As we say in the law, you are the sole judges of what
16 those facts are; i.e., what verdict you're going to
17 reach. If at anytime during the course of this trial I
18 indicate to you or do something that seems to indicate to
19 you how you're to find facts or what verdict you're to
20 reach, I'm going to ask you and I'm going to instruct you
21 to disregard that. I can assure you I have no feeling
22 one way or the other. My job is to instruct you on the
23 law and to make sure that the process is followed so each
24 side has a fair and impartial opportunity to present
25 their cases.

1 Now, you are to determine what the facts are in this
2 case from the testimony that you hear during the course
3 of this trial. And that testimony will come from right
4 here from the witness stand after somebody has been sworn
5 in. You may not and you shall not be influenced by any
6 outside information or things that you see when the trial
7 is going on.

8 Now, the law that makes you the sole judges of the
9 facts, makes me the sole judge of the law. What that
10 simply means is this, that you must accept the law as I
11 give it to you. You may not and shall not be concerned
12 with what you think it should be, but only what it is and
13 as I give it to you. If I make a mistake, there are
14 plenty of people down in Columbia who'll correct my
15 errors. On the other hand, throughout the course of this
16 trial, you're going to need to pay close attention to all
17 the testimony and the evidence. Normally, if there's an
18 improper finding of fact, that's not correctable on
19 appeal. So it would behoove you and everyone here that
20 you pay close attention throughout the course of this
21 case.

22 Now, ladies and gentlemen, as I told you yesterday,
23 you may not begin your deliberations until the end of
24 this case when I send word to you in no uncertain terms
25 that you may begin. That includes speaking with one

1 another, making comments about the testimony during the
2 course of this trial, engaging in any independent jury
3 research that I've told you about, and also looking up
4 anything about this case.

5 Also, if you happen to hear, see or read anything
6 about this case, I'm going to ask you to immediately
7 stop. Everyday, I'm going to ask you, and I am in just a
8 minute, if anyone has read, seen or heard anything about
9 this case or have they spoken with anyone about this
10 case. And the idea is that we want you to make your
11 decision based on the testimony and the evidence you hear
12 in this courtroom uninfluenced by any outside factors and
13 according to the law as I give it to you.

14 Now, in ever single case there'll be five phases.
15 You'll have the opening statement. You'll have the
16 presentation of the evidence. You'll have closing
17 comments or arguments by the attorneys. I'll charge you
18 on the law and then you'll begin your deliberations. And
19 I tell you that so you'll know generally where you are
20 during the course of this trial.

21 Now, in just a moment the State is going to open up
22 with their opening statements. What the State tells you
23 is their theory of the case. Let me point out to you,
24 however, that the attorneys in this courtroom will not be
25 sworn. They'll not be subjected to cross-examination.

1 So what they tell you is helpful, but it is not evidence.
2 The true evidence within this case is what you'll hear
3 from this witness stand and any exhibits that I allow
4 into evidence for you to consider back in your
5 deliberations. Also, the Defense has a right to make an
6 opening statement. She is not required to in any form or
7 fashion. The burden remains on the State of South
8 Carolina to prove her guilt by proof beyond a reasonable
9 doubt in all respects.

10 So let me tell you what a reasonable doubt is. And
11 I'll tell you more about that in just a minute. A
12 reasonable doubt is the kind of doubt that would cause a
13 reasonable sincere person to hesitate to act in an
14 important matter in their own affairs. Now, proof beyond
15 a reasonable doubt is proof that leaves you firmly
16 convinced of the Defendant's guilt. With that being
17 said, ladies and gentlemen, there are very few things in
18 this world that we know with absolutely certainty. And
19 in criminal cases the law does not require proof that
20 overcomes every possible doubt. If, based on your
21 consideration of the evidence when you're told to
22 deliberate this case, if you're firmly convinced that the
23 Defendant is guilty of the crime or crimes for which she
24 has been charged, then it will be your duty to find her
25 guilty. On the other hand, if you think there's a real

1 possibility that the Defendant is not guilty, you must
2 give her the benefit of the doubt and find her not
3 guilty. And I'll give you more about that at the end of
4 this case. But let me just say this. If any of you have
5 ever been involved in a civil case, the burden in that
6 case is by what we call a preponderance or the simple
7 greater weight of the evidence. The burden of proof in a
8 criminal case is much higher. It's proof beyond a
9 reasonable doubt. And that's the highest standard we
10 recognize in this state and in our country.

11 Now, in every single case there are objections.
12 Lawyers have an ethical duty to object when he or she
13 sees something they think is improper. Now, the fact
14 that an attorney objects during this case or if I let you
15 stay in here and see my ruling on that objection, may not
16 and shall not be considered by you. That is simply the
17 process that is followed in every case.

18 And Madam Forelady, I'll certainly remind you again,
19 but if your jury during deliberations wants to bring up
20 the fact that there was an objection or my ruling on that
21 objection, it will be your duty to make sure that
22 argument and that line of thought is stopped immediately.
23 Okay?

24 With that being said, before we get started with
25 opening statements, I'm going to ask you to break. It'll

1 be a very brief break. I'm going to ask these attorneys
2 if I've omitted to tell you something that I should have
3 or I neglected to tell you something that I should have.
4 Then we'll bring you right back. If you'd go back to
5 your jury room, please.

6 (WHEREUPON, the jury exited the open court at
7 approximately 10:12 a.m.)

8 THE COURT: Any additions or exceptions from
9 the State?

10 MR. CAMPBELL: No, Your Honor.

11 THE COURT: From the Defense?

12 MR. MCELHANNON: No, Your Honor.

13 THE COURT: Would you check around in the
14 courtroom and make sure you have your witnesses
15 sequestered, please, sir?

16 MR. CAMPBELL: They're all outside.

17 THE COURT: Do you need a break right quick
18 before you get started with opening or are you ready to
19 go?

20 MR. MCELHANNON: Maybe five minutes, Your
21 Honor?

22 THE COURT: Okay.

23 MR. CAMPBELL: The only person we have is Dr.
24 Woodard, but he's going to be our first witness.

25 THE COURT: Not a problem. All right. We'll

1 be at ease for five minutes. Just come on back when
2 you're ready.

3 (WHEREUPON, the court stood at recess for a short
4 break.)

5 MR. CAMPBELL: May we approach?

6 (WHEREUPON, a bench conference was held off the
7 record.)

8 THE COURT: All right. Is the State ready?

9 MR. CAMPBELL: The State's ready, Your Honor.

10 THE COURT: Is the Defense -- well, we would be
11 ready if we had her. She's coming.

12 (WHEREUPON, the defendant entered the open court.)

13 THE COURT: All right. Mr. McElhannon, my
14 understanding is you do intend to give a brief opening
15 statement; is that correct?

16 MR. MCELHANNON: Briefly, Your Honor, yes, sir.

17 THE COURT: Are you ready?

18 MR. CAMPBELL: The State's ready. Mr. Haigler
19 will be opening.

20 THE COURT: All right. Are you ready?

21 MR. MCELHANNON: We're ready, Your Honor.

22 (WHEREUPON, the jury entered the open court at
23 approximately 10:26 a.m.)

24 THE COURT: All right. Madam Forelady, ladies
25 and gentlemen of the jury, before we begin with opening

1 statements, let me ask if since we broke yesterday after
2 jury selection if anyone has read, seen or heard anything
3 about this case or spoken with anyone about this case?
4 If so, would you raise your right hand?

5 (No response)

6 THE COURT: Very good. Let the record reflect
7 that no one responded.

8 Is the State ready with opening?

9 MR. HAIGLER: Yes, sir.

10 THE COURT: Is the Defense ready with opening?

11 MR. MCELHANNON: Yes, Your Honor.

12 THE COURT: Mr. Haigler.

13 MR. HAIGLER: May it please the Court, Your
14 Honor.

15 THE COURT: Yes, sir.

16 MR. HAIGLER: Good morning, ladies and
17 gentlemen.

18 THE JURY: Good morning.

19 **OPENING STATEMENT**

20 **BY MR. HAIGLER:**

21 On July 1st, 2012, Chandrakant Patel, who went by
22 C.J., was kidnapped, robbed, tortured, and then taken out
23 to the middle of nowhere and shot to death. The sequence
24 of events that led to the brutal killing of C.J. Patel
25 were all set in motion by the Defendant in this case,

1 Kyndra Howell. On that day C.J. and Kyndra Howell had an
2 agreement where C.J. and Kyndra were going to meet up and
3 they were going to have sex in exchange for money. C.J.
4 left his place of business and went over to Kyndra's
5 residence at 3304 Jerry Drive here in Anderson County.
6 Kyndra came outside, got in his car. They rode around
7 and then they returned to his (verbatim) residence and
8 went inside. At this point, C.J. did not know that
9 Kyndra had other plans for him that day. She was broke,
10 about to be evicted from her home. And at that point,
11 she decided that instead of going through with their
12 original plan, she was going to rob C.J. She knew that
13 he was an owner/operator of a gas station in town and was
14 likely to have a good bit of cash. All she needed was
15 some help in going through with the robbery. She walked
16 outside of her house, got two guys from the neighborhood,
17 Zachary Gantt and Jeremiah Johnson, told them, hey, I've
18 got this guy inside of my house who has a bunch of cash.
19 We should go in there and rob him. Unfortunately, they
20 agreed to help. And they went inside and ambushed C.J.
21 while he stood alone in the bedroom. They went in,
22 attacked C.J., took him to the ground, tied his hands
23 behind his back with phone cords. And when they got his
24 wallet, they weren't satisfied with the amount of cash
25 that he had on him. So they got his ATM cards out. They

1 began to beat him. They wanted the codes, the PIN
2 numbers to his ATM cards so they could get more cash from
3 him.

4 After several attempts to go to the ATM machines did
5 not work, they enlisted the help of another co-defendant
6 named Ezra Williams. When Ezra came over, the beating
7 escalated to what can only be described as torture. Ezra
8 sprayed bug spray in C.J.'s eyes. He cut holes in his
9 legs with a knife. And he put a knife on a hot stove and
10 burned C.J.; all in an attempt to get his ATM codes.

11 When none of this worked, they made the decision to take
12 C.J. away from the home and kill him. That's when they
13 drug him out of the house in his own car, put him in it
14 and drove him out to a wooded area at the corner of
15 Highway 29 South and Big Water Road. They walked him
16 into this dark wooded area through briars and brush, for
17 over a hundred yards. And when they got far enough away
18 where they thought nobody could find him, they shot him
19 in the head. It's there that they left him. His body
20 laid there for ten days until it was finally recovered.

21 Now, each of you have been selected to determine
22 whether there is evidence to prove beyond a reasonable
23 doubt the Defendant in this case, Kyndra Howell is
24 responsible for the murder of C.J. Patel. In order to
25 prove that to you, we're going to present evidence, the

1 majority of which will be in the form of testimony right
2 here from this witness stand. You're going to hear from
3 the victim's son, Meet Patel. He was the first person to
4 call police about this. He was concerned that his father
5 disappeared. You're going to hear from investigators
6 such as Danny Barton who worked this case from its
7 beginning as a missing person's call to its unfortunate
8 ending. You're going to hear from Zachary Gantt, a co-
9 defendant in this case. He gave a complete confession as
10 to his involvement in this crime and ultimately pled
11 guilty to all charges. You're also going to hear from
12 Dr. Brett Woodard who performed the autopsy. And he'll
13 tell you that C.J. Patel died of a single gunshot wound
14 to the head, but before he was beaten and tortured.
15 Along with murder, Kyndra Howell has been charged with
16 kidnaping, armed robbery, and possession of a weapon
17 during the commission of a violent crime. All of the
18 elements of these crimes will be explained to you later
19 in greater detail by the Judge.

20 One thing I would like for you to keep in the back
21 of your mind while you're listening to the evidence and
22 testimony in this case is the rule of the hand of one is
23 the hand of all. This means that when two people act
24 together committing a crime, the hand of one is the hand
25 of all. If someone joins another in committing an

1 unlawful act, they are criminally responsible for
2 everything the other does as long as it is a natural or
3 probable consequence of the acts being taken out in the
4 main purpose or goal of the original crime. That means
5 that two people can be guilty of killing another person
6 when there was only one gun, one bullet, and only one of
7 them fired the shot that caused the death. And that's
8 the case here. We're not alleging that Kyndra Howell
9 fired a shot that caused the death of C.J. Patel. The
10 evidence points to one of her other co-defendants, Ezra
11 Williams. What we are alleging is that Kyndra Howell was
12 involved in this crime from its inception. She was an
13 integral part of the crime from its beginning and the
14 murder of C.J. Patel was a foreseeable consequence to the
15 armed robbery, kidnapping and torture that she herself
16 set up. So she is just as guilty as the other
17 defendants.

18 THE COURT: Mr. McElhannon?

19 MR. MCELHANNON: May it please the Court?

20 THE COURT: Yes, sir.

21 MR. MCELHANNON: Mr. Campbell, Mr. Haigler.

22 **OPENING STATEMENT**

23 **BY MR. MCELHANNON:**

24 As the Judge told you, you are the finders of the
25 facts in this case. I'm going to caution you.

1 Everything is not always as it seems. The State has the
2 burden, as the Judge has already told you, to prove each
3 and every element of each and every crime beyond a
4 reasonable doubt. He's already told you what reasonable
5 doubt is. It's the highest standard of proof that we
6 have in this country. If the State fails to prove each
7 and every element of all four crimes, any of the four
8 crimes, beyond a reasonable doubt, it's your obligation
9 to find Ms. Howell not guilty.

10 As I stated, you're going to see some things in the
11 State's case that go along with what the State is
12 accusing my client of doing. However, again, everything
13 is not always as it seems. So just keep an open mind
14 until you hear the very last witness in this case. The
15 witnesses is where you're going to get the testimony
16 from. It's going to be from the stand, like the Judge
17 said. Credibility is an issue here. You must find out
18 if you can believe what these witnesses are telling you;
19 okay? And just because they're up there on the stand, as
20 the Judge said, their demeanor sometimes actually tells
21 the truth. So I'm going to ask you to please -- this is
22 the most important day or days for Ms. Howell in her
23 life. Please do not make a judgment until the end of
24 this case. And when you bring the verdict back, verdict
25 means to speak the truth. And I feel confident that your

1 verdict in this case will speak the truth. Thank you.

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

4 MR. CAMPBELL: Your Honor, the State calls Dr.
5 Brett Woodard.

6 THE CLERK: Do you solemnly swear or affirm the
7 testimony you'll give the Court today in this case will
8 be the truth, the whole truth and nothing but the truth?

9 THE WITNESS: I do.

10 THE CLERK: Take the witness stand, please,
11 sir, and state your name and spell your last name for the
12 record, please.

13 THE WITNESS: Brett Hooton Woodard, W-O-O-D-A-
14 R-D.

15 **BRETT WOODARD, M.D.,**

16 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

17 **DIRECT EXAMINATION**

18 **BY MR. CAMPBELL:**

19 Q. Now, Dr. Woodard, you're the pathologist who
20 conducted the autopsy of Chandrakant Patel; is that
21 correct?

22 A. That's correct.

23 Q. And what day did you perform this autopsy?

24 A. The autopsy was performed on the 12th of July in
25 2012.

1 Q. Now, everybody kind of knows that an autopsy
2 examination of the human body. We see it all on TV. But
3 as a pathologist and doctor, you performed this autopsy.
4 What exactly do you do? What are you looking for? What
5 is the purpose of an autopsy in a criminal case such as
6 this?

7 A. Well, the autopsy starts with how the deceased is
8 received. The examination of the clothing that may be on
9 him. Any other external findings that we have. Any
10 types of injuries that are on the surface of the body
11 that can be detected. Those are photographed and
12 recorded and documented both in narrative and
13 photographic form. And then any clothing or other
14 objects that are on the surface of the body are placed
15 into evidence bags and given to the law enforcement
16 authority to have secondary testing performed down at the
17 state crime lab. The body is then examined in a layer-
18 wise fashion, from the skin to the soft tissues to the
19 organs under the soft tissues to ultimately the bony
20 structures to see what kind of injuries occurred and what
21 kind of forces or vectors would be necessary to produce
22 those injuries. So that the determination of the cause
23 mechanism and manner of death can be made.

24 Q. And that was done in this case?

25 A. That's correct.

1 Q. Now, at whose requests do you perform an autopsy
2 for?

3 A. In this particular case it was for Deputy Coroner
4 Don McGowan. It's usually a coroner's office or family.

5 Q. Now, before we get into the autopsy procedure and
6 your findings, I need to ask you some questions about
7 your qualifications and your experience. It's implied by
8 your title you're a doctor. Does that mean you're a duly
9 licensed physician?

10 A. Yes. I'm licensed in the State of South Carolina.

11 Q. And how long have you been a licensed doctor?

12 A. I've been licensed since 1975 originally in
13 Louisiana where I did some of my training. Then
14 secondarily in North Carolina where I did more of my
15 training. And then currently I'm licensed in Georgia,
16 South Carolina and North Carolina.

17 Q. And where did you receive your medical training?

18 A. I received my medical degree at Tulane University in
19 New Orleans. I did an internship at the Charity Hospital
20 in New Orleans. I then did my residency training in
21 anatomic and clinical pathology at Duke University
22 Medical Center in Durham, North Carolina. I then
23 subsequently took additional training in forensic
24 pathology at the North Carolina Medical Examiner's
25 Office.

1 Q. Now, the order that you conduct autopsies, is this
2 more specialized training than a regular physician or
3 doctor would have?

4 A. Pathologists in general are trained in how to
5 perform autopsies. But to perform forensic autopsies
6 requires a little different philosophy and detail than
7 performing a medical or hospital autopsy, which is more
8 of a research study of an individual who died.

9 Q. So in order to conduct a forensic criminal autopsy
10 you have to be a pathologist?

11 A. You have to be a pathologist and then you should
12 obtain training in forensic pathology, which is separate
13 board certifications.

14 Q. Now, does your training in pathology, does that
15 include the use of firearms and use of study and use of
16 firearms in order to determine manner of death?

17 A. What we call the terminal nature of firearms as they
18 apply to impacting projectiles against the human body, be
19 they traditional handguns, rifles, military weapons or
20 civilian rifles or even explosive projectiles,
21 ballistics.

22 Q. And does this training also include the effects a
23 gun or a bullet, as you would say, has as it hits a human
24 body, enters the human body?

25 A. Yes, it does.

1 Q. Is part of also this training dealing with firearms,
2 does that also include to some capability you learn about
3 distance as it relates from the gun, being the gun barrel
4 to the body and the effects it would have upon a body?

5 A. Yes, you do.

6 Q. And how many autopsies have you performed in your
7 career?

8 A. I perform around two hundred, two hundred fifty
9 autopsies a year and have done so here in Anderson County
10 since 1982.

11 Q. And these are just not for specifically law
12 enforcement purposes; is that right?

13 A. The majority are for law enforcement purposes.
14 Perhaps thirty are for families or hospitals.

15 Q. Now, in your career have you ever been called and
16 qualified in court as an expert in forensic pathology?

17 A. Yes, I have.

18 Q. How many times approximately do you think is the
19 case?

20 A. Hundreds.

21 MR. CAMPBELL: Your Honor, at this time I'd
22 like to move and declare that Dr. Woodard be declared as
23 an expert in the field of pathology.

24 THE COURT: Any voir dire.

25 MR. MCELHANNON: No objection.

1 THE COURT: Do you stipulate to his expertise?

2 MR. MCELHANNON: I do, Your Honor.

3 THE COURT: All right. Ladies and gentlemen of
4 the jury, normally a witness is limited in their
5 testimony to what they see, they hear, they smell, they
6 touch. However, if a person, because of their education
7 or their experience or a combination of those has
8 developed an expertise which would aid the jury in
9 reaching its findings of facts, they are allowed to give
10 their opinions in the area of their expertise.

11 Now, in this case, it's stipulated that Dr. Woodard
12 is an expert in the field of forensic pathology. He'll
13 be allowed to give his opinions in that area. I'll tell
14 you that expert testimony is like any other testimony
15 you'll hear in this case. You may accept it. You may
16 reject it or give it as much weight as you think it
17 deserves based on the evidence in this case.

18 Okay, sir.

19 MR. CAMPBELL: Thank you, Your Honor.

20 Q. Now, Dr. Woodard, you conducted the autopsy on
21 Chandrakant Patel, I believe you stated on July 12th,
22 2012?

23 A. That's correct.

24 Q. Now, how did you first come in contact with his
25 body?

1 A. I received it in a body bag from the coroner's
2 office, Anderson County Coroner's Office, specifically
3 from Deputy Coroner Don McGowan.

4 Q. Would they have had jurisdiction over the body?

5 A. Yes, they did.

6 Q. Now, in this case were you authorized to conduct a
7 complete unrestricted autopsy?

8 A. Yes, I was.

9 Q. And what exactly does that mean and entail in
10 relation to your field?

11 A. That you can dissect the entire body to look for any
12 signs of injuries that can be proven beyond a reasonable
13 medical doubt and document those injuries. You're not
14 limited to a single organ area.

15 Q. Now, do you do this by yourself or is there other
16 people assisting you when you do it?

17 A. I usually have a physicians assistant and an autopsy
18 assistant who participate.

19 Q. Is law enforcement personnel also present?

20 A. Usually when they suspect a violent death, they are.

21 Q. Now, in this case do you recall if law enforcement
22 was present?

23 A. Yes, sheriff's investigators were present. Chief
24 Deputy Coroner Charles Boseman and Deputy Coroner Don
25 McGowan were present.

1 Q. Now, when you came in contact with Mr. Patel's body,
2 what kind of state was it in?

3 A. It was what we call advanced decomposition.
4 Decomposition is the breakdown of the human body when
5 it's left at non-refrigerated temperatures. And the
6 internal enzymes and bacterial organisms which are in our
7 body begin to cause our body to break down. In this
8 particular case, they were aided by insects and other
9 types of predators.

10 Q. Now, did you go to the crime scene where the body
11 was discovered?

12 A. No, I did not.

13 Q. The first time you saw it was at the morgue?

14 A. That is correct.

15 Q. Now, can you please tell the ladies and gentlemen of
16 the jury when you received this body, as you stated it
17 was in a body bag, what procedures did you follow and how
18 did you document them?

19 A. We opened the body bag and examined him as he was
20 received. We document the clothing that he's received
21 in. In this particular case -- we look for any jewelry.
22 And in this particular case his hands were bound behind
23 his back with a cord. It looked in general like the type
24 of cord that you might plug a telephone into the wall and
25 then a black and white braided synthetic cord. We

1 document those, particularly addressing the knots,
2 etcetera. We separate them and mark the ends, place them
3 in evidence bags so that they can be secondarily examined
4 by the state crime lab.

5 Q. So before you started, you do an overall view of the
6 body, document your findings and proceed then layer by
7 layer?

8 A. That's correct.

9 Q. Now, how tall -- were you able to document how tall
10 Mr. Patel was?

11 A. Yes. Mr. Patel was not a tall man. He was sixty-
12 four inches. He wasn't a big man. He was a hundred and
13 sixty pounds.

14 Q. And how tall is sixty four inches?

15 A. Five foot four.

16 Q. And were you able to confirm at the autopsy or did
17 you have a good idea of who this man's identity was?

18 A. His identity was determined by the coroner's office.
19 We had dental information supplied. And the dental
20 structures match the dental information that was
21 supplied.

22 Q. Now, as you stated, you examined the body completely
23 from head to toe at the beginning. At this initial
24 observation or examination of the body, were you able to
25 determine just by looking at his body before you started

1 any cutting, removing of items, cause of death of Mr.

2 Patel?

3 A. Yes. There was a gunshot wound to his head.

4 Q. Now, how many gunshot wounds did he have?

5 A. He had a single gunshot wound to his head.

6 Q. And where is that point on his head? Would you
7 please just demonstrated in relationship to you where it
8 was?

9 A. It was above his right eye, on the ridge that's
10 slightly above your right eye, about an inch and a half
11 away from the center line. And it went posterior and
12 downward, going through the maxilla, your upper cheek
13 bone. In the process, breaking the maxilla after it
14 entered the brain, it went downward and came out below
15 his jaw and in his neck about an inch over from the
16 center line of his neck.

17 Q. In this case we're not dealing with a natural death?

18 A. That's correct.

19 Q. And this is not a suicide?

20 A. That's correct.

21 Q. Now, you stated before, I believe, that his hands
22 were tied behind his back?

23 A. Yes, they were.

24 Q. And you documented this?

25 A. Yes, I did.

1 Q. And were photographs taken of this?

2 A. Yes, they were.

3 Q. Did you remove the ligatures or the cords that were
4 wrapped behind his hands?

5 A. Yes, we did. We cut them, taped their ends and
6 placed them in evidence bags to go to the state crime
7 lab.

8 Q. And was this the first part of the procedure that
9 you performed?

10 A. Yes, it was.

11 Q. Now, after you examined the body, will you just tell
12 the ladies and gentlemen of the jury what your findings
13 are, what did you observe regarding the condition and
14 state of Mr. Patel's body?

15 A. Well, he was in a state of advanced decomposition.
16 There had been secondary animal predation. And there
17 were maggots on his body, which we collected and placed
18 into evidence. And there were also beetles on his body,
19 which are primary predators to take care of dead
20 materials in an outdoor location.

21 Q. And what do you mean by animals?

22 A. The possums, skunks, raccoons, dogs, coyotes, all
23 these small mammals, even pigs, when they discover a dead
24 carcass will begin to feed on it. We don't have really a
25 significant amount of bears in our area. Obviously if

1 you were in northern Oconee County, a black bear would
2 also fit this.

3 Q. Now, at this point you examined -- as you stated
4 earlier the cause of death was a gunshot?

5 A. That's correct.

6 Q. Were you able to learn these things by observing his
7 body in relationship to this gunshot wound?

8 A. Well, really his hands were tied at the time, but he
9 had a gunshot wound. And in doing a dissection of the
10 head, seeing the nature of the fractures and the
11 separation of where the bony structures normally go
12 together, tells me that there was a significant over
13 pressuring that occurred at the time the bullet went
14 through the head. When a gun's discharged, not only does
15 the bullet come out the end of the gun to strike the
16 target, but as the barrel becomes closer to the
17 individual, the gas that's associated with the explosion
18 that pushes the bullet also goes forward. In order to
19 get these over pressuring injuries, the gas also had to
20 go into the head to produce this massive separation of
21 the bony structures. The bullet alone wouldn't have
22 produced it.

23 Q. And did you observe that in this case?

24 A. Yes, I did.

25 Q. And what were your findings and what could you

1 determine based on the condition of the body when you
2 received it regarding this gunshot wound? Was this a
3 close wound to his head?

4 A. This was a close wound. The end of the gun barrel
5 would have been closer for a usual handgun, less than six
6 inches.

7 Q. And how were you able to determine that?

8 A. Because the gas had to follow or go with the bullet
9 into the brain. For a small part of a second for all of
10 this gas pressure that's pushed that bullet down the
11 barrel at maybe a thousand feet per second or better, it
12 was also inside the wound. And there's no place for it
13 to vent. So it produces massive damage.

14 Q. And would this be visible upon the body?

15 A. Yes, it would.

16 Q. And was it visible in this case?

17 A. Yes.

18 Q. Was there also anything regarding powder burn on his
19 body?

20 A. There was powder inside the wound track. There was
21 no visible powder or what we refer to stippling on the
22 outside skin. The powder may have been removed during
23 weather conditions and insect activity. The stippling
24 would still remain. Stippling is caused by materials
25 going down into the barrel that are bigger than fine

1 powder. And when they strike the skin, they actually
2 produce little tears in the skin. Usually, with a usual
3 gun, the end of the gun is back more than six inches but
4 less than eighteen when we see that feature.

5 Q. And that was observed in this case?

6 A. No. No stippling.

7 Q. No stippling, but gunpowder was observed?

8 A. Right. The gunpowder was observed.

9 Q. Now, did you recover a projectile or a bullet from
10 his body?

11 A. No. It passed through his body, came out in his
12 neck area and went wherever.

13 Q. Did you do an x-ray of the body also?

14 A. Yes, we did.

15 Q. And what do you do that for?

16 A. To look to see if there's any residual projectiles.
17 When a bullet passes, it may have a copper jacket
18 associated with it and the jacket can separate from the
19 lead portion of the bullet. That jacket material is
20 important because it can be matched to the barrel of the
21 gun.

22 Q. Now, Dr. Woodard, based on your observations of this
23 injury and the injury that he died from, would he have
24 been able to walk or move around once he was shot with
25 the gun?

1 A. No. He would have essentially collapsed at the
2 location. He may have had a terminal convulsion. It's
3 not uncommon. But he wouldn't have had any meaningful
4 motion.

5 Q. Now, besides this wound to his head, did you observe
6 anywhere else on his body any types of signs or injuries
7 that he may have ascertained?

8 A. Yeah. He had cut injuries to his legs. He had at
9 least five definite cut injuries on his left thigh
10 portion of his leg. And these measured from four to six
11 inches in length with a sharp edge at each edge but
12 deeper in the center. And then he had two definite cut
13 injuries on the right side of his leg. One was on the
14 upper thigh and one was on the upper portion of his calf.
15 And these were about four inches in length. Then he had
16 a discoloration on his lower abdomen, which was about
17 three by two inches, which appeared to be a burn but a
18 distinction between a second and third degree burn
19 couldn't be made because of decomposition.

20 Q. Now, these cuts that you were referring to, could
21 they have been self-inflicted by him?

22 A. They were in a location it would be possible, yes.

23 Q. And due to your observation did it appear to you
24 that these injuries were self-inflicted or were they
25 inflicted by somebody else?

1 A. No. There was no hesitation. All of these wounds
2 were essentially the same depth and character. When an
3 individual cuts themselves, you'll see a series of depths
4 of cuts. And when individuals cut themselves in order to
5 produce self-harm, this would not be a location that they
6 would choose.

7 Q. Now, all this was documented by photography, taking
8 photographs?

9 A. That's correct.

10 Q. Would photographs also help you to explain to the
11 ladies and gentlemen of the jury what you're trying to
12 tell them or explain to them?

13 A. Certainly.

14 Q. And Dr. Woodard, first I'm going to show you -- I'm
15 going to hand you these. This has been marked State's
16 Exhibit 22, 23, 24, 25, and 26. What I first want you --
17 I'm going to hand them to you. If you'll just please
18 identify what they are, if they fairly and accurately
19 represent the photographs you took on the day in question
20 January (verbatim) 12, 2012. Then I'm going to ask you
21 to step off the stand and we'll explain them to the jury
22 on the overhead. First, I'm going to hand you these. If
23 you can please take a look through those and let me know
24 if these are the photographs that were taken at your
25 direction at the autopsy.

1 A. Yes, these were. They bear our case number with a
2 ruler associated with it in all but one, and represent
3 black and white copies of the photographs that I took.

4 MR. CAMPBELL: Your Honor, at this time, may I
5 have Dr. Woodard come off the stand and I'd like to put
6 them on the overhead and let him explain to them?

7 THE COURT: Any objection to the admissibility
8 of these exhibits?

9 MR. MCELHANNON: No, Your Honor.

10 THE COURT: Okay. Admitted without objection.
11 Yes, sir.

12 (WHEREUPON, State's Exhibit Numbers 22, 23, 24, 25,
13 and 26 were admitted into evidence.)

14 A. (Witness steps down.)

15 Q. Dr. Woodard, I'm going to give you the pointer here.
16 And we'll call it out by number. This is going to be
17 State's Exhibit Number 22. If you could just please
18 identify what this is depicting.

19 A. We've rolled him over so his stomach is against the
20 table. And you can see this electrical cord, much like
21 the electrical cord that you might utilize to connect
22 your telephone to the wall, wrapped around his hand. And
23 then appears a secondary cord that was a black and white
24 cord that had his hands bound behind his back.

25 Q. I'm going to show you -- this is a color photograph,

1 State's Exhibit Number 23. What is this depicting?

2 A. We've now removed the cords and we're photographing
3 the cords to show what they look like removed. Here you
4 see the braided cord and here you see the electrical wire
5 with the little plastic plug-in, that you might plug into
6 the back of your phone or a phone jack into the wall.

7 Q. And the little white card that's by the ruler?

8 A. This is my autopsy number. We placed it on the
9 ruler so that other people could gain perspective on the
10 various lengths of those cords.

11 Q. And does this show the case number that is your --
12 that goes with Mr. Patel's case autopsy?

13 A. Yes. This is his autopsy number as we assign them.

14 Q. State's Exhibit Number 24. And if I've turned this
15 the wrong way, let me know.

16 A. This is his chest and abdomen and leg. This is his
17 lower abdomen. We see this large discolored area of skin
18 represents a burn that was either a second or third
19 degree burn.

20 Q. And which way would his head be facing in this ---

21 A. His head would be over here toward the left side of
22 the screen. And his feet would be to the right.

23 Q. I show you what's marked State's Exhibit Number 25.

24 Would you please identify what this is, sir?

25 A. Again, this is his right lower leg. Again, you see

1 our case number with our ruler. Obviously, this is a
2 black and white photo. Here you see the cut injury to
3 his upper lower leg. You see other cut injuries over
4 here on his thigh.

5 Q. This is State's Exhibit Number 26?

6 A. Again, our case number. Here we see his left leg.
7 Here we see multiple cut injuries across his left thigh
8 that were still intact.

9 Q. Thank you, Dr. Woodard. If you'll please take the
10 stand.

11 A. (Witness takes stand.)

12 Q. Now, based upon when you received the body, it was
13 July in the summertime. Based upon the condition of the
14 body when you received it, were you able to determine or
15 give an approximate time of when you feel that this man
16 may have died or when he died?

17 A. Based on the condition of the body, we know that he
18 died in early July. The exact date we don't know. We
19 did collect insects that can assist in that dating.

20 Q. So you cannot determine the exact date ---

21 A. No.

22 Q. --- based upon your just physical examination of the
23 body?

24 A. That's correct.

25 Q. Now, based upon this autopsy and in a reasonable

1 degree of medical certainty, did you for an expert
2 opinion concerning his cause of death?

3 A. Yes, I did.

4 Q. And what is your opinion?

5 A. A gunshot wound to the head.

6 Q. And would you label this as a homicide?

7 A. Yes, I would.

8 MR. CAMPBELL: The Court's indulgence, please.

9 Q. I have no further questions. Please answer any
10 questions Mr. McElhannon has.

11 THE COURT: Cross-examination.

12 **CROSS-EXAMINATION**

13 **BY MR. MCELHANNON:**

14 Q. Dr. Woodard, you said that the projectile, the
15 bullet went into the right side above the right eye?

16 A. It came in above the right eye, but then went down
17 along the right side and came out along the edge of the
18 right neck below the jaw.

19 Q. So it was a downward trajectory, projectile?

20 A. That's correct.

21 Q. Does that tell you anything about the position of
22 the victim?

23 A. It could be accomplished in a variety of ways. A
24 significantly taller person. Again, he wasn't very tall.

1 Someone shooting a gun in the television gangster style.

2 The end of the barrel had to be above the victim, pointed
3 in somewhat of a downward direction.

4 Q. So it could have been either a taller person with
5 his arm up higher than Mr. Patel's head?

6 A. That's correct.

7 Q. Or could it have possibly been also that Mr. Patel
8 was on his knees?

9 A. Very possible.

10 Q. Okay. So it's probably one or the other?

11 A. Something -- given the location that his body was
12 found, yes.

13 Q. And I've heard your testimony regarding manner of
14 death. None of your examination though told you who was
15 present when Mr. Patel was killed?

16 A. That's correct. None of it.

17 Q. So you don't know if one person was there, two
18 people, three people, four people?

19 A. No, I do not.

20 MR. MCELHANNON: That's all the questions I
21 have.

22 THE COURT: Redirect?

23 MR. CAMPBELL: Court's indulgence. No
24 questions, Your Honor.

25 THE COURT: May this witness be excused?

1 MR. CAMPBELL: Yes, sir.

2 MR. MCELHANNON: Yes, sir.

3 THE COURT: Thank you. You may be excused, Dr.
4 Woodard.

5 Would you call your next witness, please, sir?

6 MR. HAIGLER: The State calls Meet Patel.

7 THE CLERK: I'm going to ask you to raise your
8 right hand.

9 You do solemnly swear or affirm the testimony you
10 give the Court today is the truth, the whole truth and
11 nothing but the truth?

12 THE WITNESS: Yes, sir.

13 THE CLERK: If you would take the witness
14 stand, please, sir, and state your name and spell your
15 last name for the reporter, please.

16

17 THE WITNESS: My name is Meet Patel. Last name
18 is P-A-T-E-L. First name M-E-E-T.

19 **MEET PATEL,**

20 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

21 **DIRECT EXAMINATION**

22 **BY MR. HAIGLER:**

23 Q. Mr. Patel, when you speak would you make sure to
24 talk into the microphone so this jury can hear you?

25 A. Yes. My name is Meet Patel. It is M-E-E-T P-A-T-

- 1 E-L.
- 2 Q. Mr. Patel, where are you from?
- 3 THE COURT: Hold on just one second.
- 4 Q. Mr. Patel, where are you from?
- 5 A. India, yes.
- 6 Q. How long have you lived in South Carolina?
- 7 A. South Carolina, eight years.
- 8 Q. Eight years?
- 9 A. Yes, sir.
- 10 Q. How old are you?
- 11 A. Twenty-three.
- 12 Q. Where were you employed on July 1st, 2012?
- 13 A. Exxon on Clemson Boulevard.
- 14 Q. And was that the Exxon that you worked at because
- 15 you work there with your father?
- 16 A. Yes, sir.
- 17 Q. And we'll go ahead and get into that. What is your
- 18 relationship to the victim in this case?
- 19 A. He was my father.
- 20 Q. And what did everyone call your father? What name
- 21 did he go by?
- 22 A. C.J.
- 23 Q. C.J.? What, if anything, do you remember about July
- 24 1st, 2012?
- 25 A. I was out of town, but I saw him early that morning.

1 And that's the only thing I remember.

2 Q. That's the only thing you remember about seeing him
3 was that morning?

4 A. That morning, yes.

5 Q. How did you come to find out that he didn't come
6 home that day or that he'd ---

7 A. Actually, I came home from out of town at ten. I
8 asked my mom where he was. Nothing heard from his
9 business. I called to search his business. Called and
10 went to the store. He wasn't there. And I wait for one
11 more hour and I called his friends where he was. And no
12 answer from nobody.

13 Q. Was this pretty unusual to not know where ---

14 A. Yes, sir.

15 Q. When you saw him that day, do you remember what he
16 was wearing?

17 A. Green khaki short and a gray shirt. I think green
18 khaki short and gray shirt.

19 Q. At what point did you make the decision to contact
20 the sheriff's office about not knowing where your father
21 was?

22 A. I contacted his friends first. I waited till
23 twelve. No answer from nobody. So I just went ahead and
24 filed a missing report.

25 Q. Okay. And what, if anything, did you do yourself to

1 try to find your father?

2 A. Actually, he has a tracking device on his phone.

3 And I tracked his phone where he was located. And

4 actually he went to -- the location was on Jerry Drive.

5 I personally went there but it was raining that day. So

6 I came back to the sheriff's department and told them,

7 this is the location. This is accurate. And give the

8 police the details about the tracking.

9 Q. Did you look up anything else? Were you able to
10 find anything else regarding his phone?

11 A. I actually looked up his phone data after a couple
12 days and find the specific numbers that he'd been calling
13 the last month.

14 Q. What information did you give the police about how
15 they might be able to find your father?

16 A. Actually first, I find the tracking on his device,
17 the tracking from this phone device where he is located
18 and actually look up his phone record. And I'm actually
19 a computer guy so I found out some more data and give the
20 same number that located in Anderson.

21 Q. Do you know the Defendant in this case, Kyndra
22 Howell?

23 A. No, sir.

24 Q. Mr. Patel, can you give me your full name, first,
25 middle and last? Oh, I'm sorry. The victim's full name.

1 Your father's full name?

2 A. Full name is Chandrakant Patel. It's spelled C-H-A-
3 N-D-R-A-K-A-N-T. That's the first name.

4 Q. Okay. And when you were going through the steps to
5 look through your father's phone information and find
6 where his phone was showing, did you ever talk to anybody
7 other than law enforcement while you were looking for
8 him?

9 A. No.

10 Q. Okay. Please answer any questions Mr. McElhannon
11 has.

12 THE COURT: Cross-examination?

13 MR. MCELHANNON: I have no questions, Your
14 Honor.

15 THE COURT: May this witness be excused?

16 MR. CAMPBELL: Yes, sir.

17 MR. MCELHANNON: Yes, Your Honor.

18 THE COURT: Okay. Thank you, sir. You may be
19 excused.

20 Call your next witness, please.

21 MR. HAIGLER: The State calls Deputy Matthew
22 McCarty.

23 THE CLERK: Raise your right hand.

24 Do you solemnly swear or affirm the testimony you're
25 going to give the Court today in this case will be the

1 truth, the whole truth and nothing but the truth?

2 THE WITNESS: I do.

3 THE CLERK: If you would take the witness stand
4 and state your last name and spell it for the reporter,
5 please.

6 THE WITNESS: My name is McCarty, M-C-C-A-R-T-
7 Y.

8 **MATTHEW MCCARTY,**

9 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

10 **DIRECT EXAMINATION**

11 **BY MR. HAIGLER:**

12 Q. Deputy McCarty, where do you work?

13 A. The Anderson County Sheriff's Office.

14 Q. And how long have you worked there?

15 A. Six years.

16 Q. What's your position at the sheriff's office?

17 A. I'm a corporal in the uniform patrol.

18 Q. All right. How long have you worked in that
19 capacity?

20 A. For three and a half years.

21 Q. What are your general duties and responsibilities?

22 A. Answering calls for service and patrolling various
23 regions of Anderson County.

24 Q. Okay. Were you working in that capacity in the
25 summer of 2012, specifically July 3rd, 2012?

1 A. I was.

2 Q. And did you have the opportunity to get involved in
3 the investigation of the disappearance of C.J. Patel?

4 A. I did to a minor capacity, yes.

5 Q. What was your first involvement in the case?

6 A. I was sent to 3304 Jerry Drive with reference to
7 complete a follow-up in the missing person case of Mr.
8 Patel. There I made contact with a Kyndra Howell in the
9 doorway. I asked her some questions if she had seen him
10 or made contact with him. She said that on the day that
11 he went missing she did talk to him on the telephone a
12 couple of times.

13 Q. All right. Do you see Ms. Howell in the courtroom
14 today that you spoke to at 3304 Jerry Drive?

15 A. Yes, I do.

16 Q. Can you point her out for the Court?

17 A. (Identifies defendant.)

18 Q. So she said -- can you repeat what you learned when
19 you spoke to her?

20 A. I talked to her and she said that he had called her
21 asking if he could have sex with her for thirty dollars
22 initially. And she said that she didn't accept that
23 offer. Said he called again and he offered forty dollars
24 for sex the second time. And she denied that offer
25 again. She said on his last time that she talked to him,

1 that he told her that he would go somewhere else for sex.

2 Q. When you talked to her, did she ever acknowledge
3 that she had seen him?

4 A. She didn't say she'd seen him. She just said she
5 had talked to him. I asked had he been at her residence
6 or had he ever been to her residence. She said that he
7 had never been to her residence, that he didn't know
8 where she lived. And that they always met each other at
9 a 651 Highway 28 Bypass, which is the Walmart.

10 Q. Okay. Thank you. Please answer any questions Mr.
11 McElhannon has.

12 THE COURT: Cross-examination.

13 CROSS-EXAMINATION

14 BY MR. MCELHANNON:

15 Q. What day was this that you went by there?

16 A. July 3rd, 2012.

17 Q. Thank you.

18 MR. MCELHANNON: Nothing further, Your Honor.

19 THE COURT: Redirect?

20 MR. HAIGLER: No, sir, Your Honor.

21 THE COURT: Any reason this witness can't be
22 excused?

23 MR. MCELHANNON: No, Your Honor.

24 THE COURT: All right. Thank you, sir. You
25 may be excused.

1 MR. HAIGLER: The State calls Deputy Jeff
2 Finley.

3 THE CLERK: Raise your right hand.

4 Do you solemnly swear or affirm the testimony you're
5 going to give the Court today in this case will be the
6 truth, the whole truth and nothing but the truth?

7 THE WITNESS: I do.

8 THE CLERK: If you would take the witness stand
9 and state your name and spell your last name for the
10 reporter, please.

11 THE WITNESS: My name is Jeffrey Finley, F-I-N-
12 L-E-Y.

13 **JEFF FINLEY,**

14 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

15 **DIRECT EXAMINATION**

16 **BY MR. HAIGLER:**

17 Q. Detective Finley, where do you work?

18 A. Anderson County Sheriff's Office.

19 Q. How long have you worked there?

20 A. Nine years.

21 Q. What's your position with the sheriff's office?

22 A. Investigator.

23 Q. How long have you worked in that capacity?

24 A. Three and a half years.

25 Q. As an investigator, what are your general duties and

1 responsibilities?

2 A. Investigate violent crimes, armed robberies,
3 burglaries, crimes of violence.

4 Q. And were you working in that capacity on July of
5 2012?

6 A. I was.

7 Q. Did you have the opportunity to get involved in the
8 investigation of the disappearance of C.J. Patel?

9 A. I did. I was assisting Detective Barton.

10 Q. When you first started working the case, was this
11 case being considered a missing persons or was it being
12 considered a homicide?

13 A. Missing persons.

14 Q. What first happened in your involvement that caused
15 the direction of the case to change?

16 A. Well, we located Mr. Patel's vehicle, but we
17 couldn't find him, which typically, that's not a good
18 sign.

19 Q. Where was his car located?

20 A. Wooten Road in Fairplay, which is also in Anderson
21 County.

22 Q. How was it found?

23 A. It was found by an individual, Brandon Glenn, who
24 has family land on that road. He always checks it for
25 deer and turkeys. There's a pull-off on the land that

1 led to an open field. He'd been having problems with
2 trespassers and put a cable across it. He had been
3 traveling on the road and noticed a black car that was
4 sitting about twenty yards outside of the pull-off. He
5 found it odd because the cable was still attached. He
6 called us the next day and we determined it was Mr.
7 Patel's vehicle. The vehicle -- he hadn't touched the
8 vehicle but his son actually placed a pair of sunglasses
9 that he found on the ground on the trunk.

10 Q. Okay. What, if anything, do you remember about the
11 scene where the car was found?

12 A. It was heavily wooded with a small pull-off. The
13 vehicle was about twenty yards inside. And the cable was
14 still attached. If you were traveling on the road and
15 you weren't looking for it, you wouldn't notice the
16 vehicle there. And it appeared that somebody was trying
17 to hide it.

18 Q. Was the car eventually towed back to Anderson?

19 A. It was.

20 Q. Before this happened, was it photographed?

21 A. It was.

22 Q. Okay.

23 MR. HAIGLER: Your Honor, may I approach the
24 witness?

25 THE COURT: Yes, sir.

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1 Q. Detective Finley, I'm going to show you these. Can
2 you identify those?

3 A. Yes. These are photos that were taken during the
4 scene of where the vehicle was found. And also, these
5 last two where the search warrant was done.

6 MR. HAIGLER: Your Honor, may I have the
7 witness step down and go over them for the jury?

8 THE COURT: Before you do, what are those
9 exhibit numbers?

10 MR. HAIGLER: I'll read them out as I put them
11 on there.

12 THE COURT: Okay. Any objection to these
13 photographs?

14 MR. MCELHANNON: No objection, Your Honor.

15 THE COURT: Give me those numbers right quick
16 before you do, please, sir?

17 MR. HAIGLER: Certainly, Your Honor. This is
18 Exhibit 1, Exhibit 2, Exhibit 3, Exhibit 4, Exhibit 5 and
19 Exhibit 6.

20 THE COURT: They will be admitted without
21 objection.

22 (WHEREUPON, State's Exhibit Numbers 1, 2, 3, 4, 5,
23 and 6 were admitted into evidence.)

24 A. (Witness steps down.)

25 Q. Okay. Can you tell the jury what they're looking

1 at?

2 A. This here is the -- Wooten Road would be right here.
3 This is the opening, a little pull-off. And it's heavily
4 wooded right up here and also on this side over here.
5 This is the cable that was strung across. Obviously, a
6 no trespassing sign. Over here is where it's actually
7 hooked on the other side.

8 Q. Okay. Talking about the hook ---

9 A. That right there is actually where it was hooked to
10 the tree.

11 Q. Okay. And now, Exhibit 3?

12 A. Turn it the other way if you could. This is --
13 there's obviously the cable. And you see how far, about
14 twenty yards or so, we estimated, that the vehicle was
15 inside. If you're traveling down the road, you wouldn't
16 be able to see this. Just beyond there's an opening, a
17 clearing or a large field.

18 Q. That just a close up?

19 A. This is just a close up of the back of the vehicle.
20 You'll see the sunglass case right there where Mr.
21 Glenn's son had placed it on the back of the trunk.

22 Q. And then you said the vehicle was ultimately towed
23 back to Anderson?

24 A. It was towed to our armory. We obtained a search
25 warrant for the vehicle. And then we also -- this is our

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1 armory area where we work. The search warrant was
2 executed, photographs, fingerprints and such. I was
3 present during all of this.

4 Q. And why was a search warrant executed on the
5 vehicle?

6 A. Well, we kind of suspected foul play since we
7 couldn't find Mr. Patel and only his vehicle. So we kind
8 of started leaning towards, you know, leaning towards the
9 homicide or something else other than just a missing
10 person.

11 Q. And that's the last picture. That's just another
12 side?

13 A. That's just another side view of the vehicle inside
14 of our armory.

15 Q. Thank you, Detective. You can sit back down.

16 A. (Witness takes stand.)

17 Q. Now, after your involvement with the search warrant
18 on the car, what was your -- what then did you do next in
19 regards to this case?

20 A. I assisted Detective Barton to go into 3304 Jerry
21 Drive. He had gotten information that there was video at
22 that residence. I executed a search warrant, which we
23 obtained a video from the residence.

24 Q. Okay. And when did the case take its next step
25 where you actually learned Mr. Patel was deceased?

1 A. Well, Zachary Gantt was interviewed and he told us
2 where the body was.

3 Q. Okay. And what day was his body found?

4 A. July 11th, 2012.

5 Q. Where was his body found?

6 A. It was off Big Water Road, off Highway 29 South. It
7 was in a heavily wooded area.

8 Q. Was this within Anderson County?

9 A. It was.

10 Q. And did you help in the recovery of the victim's
11 body?

12 A. I did.

13 Q. Did you see where his body was located?

14 A. I did.

15 Q. All right. Can you describe what you observed?

16 A. Like I say, the area was heavily wooded. It was
17 very hot and humid during that time of the year. The
18 body was located approximately a hundred and ten yards
19 from the road, inside the woods. About half-way in there
20 was also a pair of sandals that we found that were just
21 sitting there. A hundred and ten yards in, the body.
22 Mr. Patel was laying on his back. His hands were tied
23 behind him with some kind of cord. And, also, nearby we
24 located a nine millimeter shell casing.

25 Q. Now, was the body located somewhere near the scene

1 where the car was located?

2 A. No. It was approximately about twenty-two miles
3 from where the car was to where we located the body. In
4 my past experience that, you know, shows somebody's
5 trying to cover their tracks.

6 Q. And did you have any other involvement in this case?

7 A. After Mr. Gantt gave another statement, I executed
8 another search warrant at 3304 Jerry Drive, where we
9 sprayed Blue Star, which is a chemical that illuminates
10 and shows protein like blood, different things of that
11 nature.

12 Q. I believe that's all I have for you, Detective.
13 Please answer any questions that Mr. McElhannon may have.

14 THE COURT: Cross-examination.

15 **CROSS-EXAMINATION**

16 **BY MR. MCELHANNON:**

17 Q. Detective Finley, did the scene where the vehicle
18 was located provide any details or any facts about who
19 committed this murder?

20 A. No, sir.

21 Q. And did it -- you said the second search warrant,
22 you went back to 3304 Jerry Drive and sprayed with ---

23 A. Yes, sir.

24 Q. --- Luminol, Bluestar, I believe are different names
25 for it.

1 Q. And did that second search at 3304 Jerry Drive turn
2 up any DNA evidence?

3 A. We did. There was some places did actually
4 illuminate the carpet so we actually tore those places up
5 and took them into evidence.

6 Q. And as far as the vehicle, did you do anything as
7 far as processing the vehicle?

8 A. I was there assisting but the forensics actually did
9 the processing.

10 Q. Did you say you went to the location where the body
11 was found?

12 A. Yes, sir.

13 Q. And, of course, the scene there, I think you've
14 already described how Mr. Patel was. You found one shell
15 casing?

16 A. Yes, sir.

17 Q. And it was a nine millimeter?

18 A. Yes, sir.

19 Q. And no projectile was found?

20 A. No, sir.

21 Q. Around the area?

22 A. Not in the area, no, sir.

23 Q. And that scene you were not able to determine how
24 many people were there or who actually killed Mr. Patel
25 from the scene?

1 A. From the scene, no, sir.

2 MR. MCELHANNON: Nothing further, Your Honor.

3 THE COURT: Redirect.

4 MR. HAIGLER: Nothing further.

5 THE COURT: May this witness be excused?

6 MR. HAIGLER: He can.

7 MR. MCELHANNON: Yes, sir.

8 THE COURT: Thank you, sir.

9 All right. Madam Forelady, I'm going to go ahead
10 and call a break right now for the morning part of this
11 session. We'll be on break for about ten minutes. If
12 you need additional time, let us know. If you need
13 anything, let the bailiff know, please, ma'am; okay?

14 (WHEREUPON, the jury exited the open court at
15 approximately 11:24 a.m.)

16 THE COURT: Let me see the attorneys up here
17 right quick, please.

18 (WHEREUPON, a bench conference was held off the
19 record.)

20 (WHEREUPON, the court stood at recess for a short
21 break.)

22 THE COURT: Please be seated.

23 MR. CAMPBELL: May we approach?

24 THE COURT: Sure.

25 (WHEREUPON, a bench conference was held off the

1 record.)

2 THE COURT: Would you bring the jury in?

3 (WHEREUPON, the jury entered the open court at
4 approximately 11:45 a.m.)

5 THE COURT: All right. Would you call your
6 next witness, please, sir?

7 MR. HAIGLER: The State calls Investigator
8 Chris Wilson.

9 THE CLERK: Raise your right hand.

10 Do you solemnly swear or affirm the testimony you're
11 going to give the Court today in this case will be the
12 truth, the whole truth and nothing but the truth?

13 THE WITNESS: I do.

14 THE CLERK: If you would take the witness stand
15 and state your name and spell your last name for the
16 reporter, please.

17 THE WITNESS: James Christopher Wilson, W-I-L-
18 S-O-N.

19 **CHRIS WILSON,**

20 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

21 **DIRECT EXAMINATION**

22 **BY MR. HAIGLER:**

23 Q. Mr. Wilson, where do you work?

24 A. I work at the Anderson County Sheriff's Office,
25 forensics division.

1 Q. How long have you been employed with the sheriff's
2 office?

3 A. I've been back for five years, back at the sheriff's
4 office.

5 Q. Back at the sheriff's. Where were you employed ---

6 A. Before I started in '96 here at Anderson. I went to
7 Greenville in 2001 and came back in '09 to the sheriff's
8 office in forensics.

9 Q. When you say forensics, what are your general duties
10 and responsibilities?

11 A. We are charged with -- when we get a crime scene, we
12 are charged with processing the crime scene, meaning
13 photographing, collecting evidence, look for evidence and
14 securing that and putting it into our evidence section.

15 Q. Were you working in that capacity in the summer of
16 2012?

17 A. Yes, sir.

18 Q. Did you have an opportunity to get involved in the
19 investigation of the murder of C.J. Patel?

20 A. I did.

21 Q. What was your first involvement in this case?

22 A. First involvement was during the search warrant of
23 Mr. Patel's car at the forensics armory.

24 Q. Okay. Why was this necessary?

25 A. What we wanted to do was see if there was any kind

1 of evidence to show any evidence of foul play or no foul
2 play. To see if he'd been kidnaped or whatever the case
3 may be, to try to help us in our investigation.

4 Q. And did you also have the opportunity to go to the
5 scene where his body was found?

6 A. I did, yes, sir.

7 Q. What, if anything, did you do at the scene?

8 A. Once we got on scene a search warrant was obtained.
9 Photographed the scene after I got there. Walking down
10 through there, I saw several pieces of evidence walking
11 up to the victim. Once we saw the victim, there were
12 other evidence, pieces of evidence that was collected
13 there and photographed.

14 Q. And what evidence did you see and collect?

15 A. As we were walking down, there was a pair of sandals
16 just down inside the wooded area, with a multi-colored
17 rope. There was also a piece of hair fiber. An object
18 -- I don't know what it was. We went ahead and collected
19 it. Once we got to the victim, we secured photographs of
20 the area, collected a shell casing, which was several
21 feet away from the victim, and then took measurements and
22 took samples after the victim was moved.

23 Q. Did you also attend the autopsy?

24 A. I did, yes, sir.

25 Q. And what, if anything, did you observe at the

1 autopsy?

2 A. What we done, we -- there was a mark on his head, a
3 suspected wound. We had no idea what it was. That was
4 on his head. His hands were bound. I collected the
5 ligatures. Observed there was a mark on his leg, on the
6 victim's leg. What it came from, I'm not sure of, but it
7 was observed on one of his legs.

8 Q. And what evidence did you say you collected from the
9 autopsy?

10 A. From the autopsy, I collected his clothing he was
11 wearing at the scene. At the autopsy, he was wearing a
12 grayish shirt, a tank top, a pair of underwear. And we
13 also collected several bugs that was on the victim.

14 Q. And did you have any other involvement in this case?

15 A. No, sir.

16 Q. Going back to when you processed the car, did the
17 search warrant on the car, did you collect any swabs for
18 DNA on that?

19 A. Yes, sir, we collected nine swabs.

20 Q. Okay. And what do you do with those after you
21 collect them?

22 A. What we do is we take them back to our office and we
23 log them into a computer that gives it a bar code for our
24 evidence technician to put up for safekeeping.

25 Q. And do you send those ---

1 A. We'll send them to either Greenville or SLED to be
2 processed to see if we can run it through CODIS.

3 Q. All right. Thank you. Please answer any questions
4 Mr. McElhannon has.

5 THE COURT: Cross-Examination.

6 MR. MCELHANNON: No questions, Your Honor.

7 THE COURT: May this witness be excused?

8 MR. HAIGLER: He may, Your Honor.

9 THE COURT: Mr. McElhannon, any problem?

10 MR. MCELHANNON: No, Your Honor.

11 THE COURT: All right. Thank you, sir.

12 THE WITNESS: Thank you, Judge.

13 THE COURT: Call your next witness, please,
14 sir?

15 MR. HAIGLER: The State calls Kimberly Lomax.

16 THE CLERK: Raise your right hand.

17 Do you solemnly swear or affirm the testimony you're
18 going to give the Court today in this case will be the
19 truth, the whole truth and nothing but the truth?

20 THE WITNESS: I do.

21 THE CLERK: If you would take the witness stand
22 and state your name and spell your last name for the
23 reporter, please.

24 THE WITNESS: My name is Kimberly Lomax. My
25 last name is L-O-M-A-X.

1 **KIMBERLY LOMAX,**

2 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

3 **DIRECT EXAMINATION**

4 **BY MR. HAIGLER:**

5 Q. Ms. Lomax, where are you from?

6 A. I'm from Anderson.

7 Q. How far did you go in school?

8 A. To the eleventh grade.

9 Q. And where did you go to the eleventh grade?

10 A. Westside.

11 Q. Are you currently employed anywhere?

12 A. No, sir.

13 Q. Do you have any children?

14 A. Yes, sir.

15 Q. How many children do you have?

16 A. I have two little boys.

17 Q. How old are they?

18 A. They're two and three.

19 Q. Where did you live in July 2012?

20 A. In Belton Woods Apartments.

21 Q. Did you know the victim in this case, C.J. Patel?

22 A. I did.

23 Q. How did you know C.J.?

24 A. I met him through Kyndra.

25 Q. Have you got a last name?

1 A. I met him through Kyndra and my old boss. His name
2 is Jay, from Subway.

3 Q. How many times did you ---

4 A. I probably come in contact with this man twice in my
5 whole life.

6 Q. And do you know the Defendant in this case, Kyndra
7 Howell?

8 A. I do.

9 Q. Do you see her in the courtroom today?

10 A. I do. She's right there.

11 Q. How long have you known her?

12 A. I've known Kyndra since about 2005, 2006.

13 Q. Would you say y'all were friends?

14 A. Yeah.

15 Q. Do you remember what you were doing on July 1st,
16 2012?

17 A. I was at home or with my mom. I was -- I don't
18 remember exactly what I was doing, but I was with my mom
19 on July 1st, 2012?

20 Q. Okay. Did you have an opportunity to talk to Kyndra
21 Howell on that day?

22 A. Yes, sir.

23 Q. In talking with her was this through -- on the phone
24 or text messages; do you remember? Or both?

25 A. Both.

1 Q. Both. In talking with her, what, if anything did
2 you learn about the whereabouts of C.J. Patel?

3 A. That they had him at her house on Jerry Drive, tied
4 up. It started off with her asking if they could come to
5 my house and I told her no. And I just -- I knew that
6 she was with him.

7 Q. Okay. And that was on July 1st, 2012. Did you ever
8 see Kyndra after speaking with her on the phone after
9 July 1st?

10 A. I seen her the next day, July 2nd.

11 Q. And where did you see her?

12 A. Me and my mom left to go somewhere. And I left my
13 back door unlocked for her. And she come to my house
14 while I was gone. And she was there when I got back.
15 That was probably like four -- three or four o'clock in
16 the afternoon.

17 Q. On July 2nd?

18 A. Yes, sir.

19 Q. And what, if anything, did you remember about the
20 way Kyndra was acting that day?

21 A. Very, very strange. Like very scared of something.
22 She was acting really weird.

23 Q. Are there any specifics you can give us as to she
24 was acting weird?

25 A. Yeah. The Wok and Roll man that was trying to

1 deliver some Chinese food, like he knocked on the wrong
2 door and she went and hid in my utility closet because
3 she thought it was some Indian guy.

4 Q. Did you ask her anything else about what had
5 happened the day before with C.J. Patel?

6 A. I can just remember her saying the stuff the day
7 before. And then that's when I asked her question if
8 they had done anything to anybody. And she shook her
9 head no to one person. When I said something about C.J.,
10 she just didn't say anything, but she shook her head yes.

11 Q. What, if anything, did you do after -- during this
12 time with Kyndra did you do after you learned about what
13 happened?

14 A. I made her leave my house. And then some Indian
15 people come -- or some Indian guys in a van, a bunch of
16 Indian guys asking questions. That's whenever I went to
17 the police.

18 Q. Did Kyndra have a phone with her when she was at
19 your house?

20 A. She had two phones with her.

21 Q. Two phones?

22 A. Yes, sir.

23 Q. Did one of them not appear to be hers?

24 A. Yes, sir.

25 Q. After you say some Indian guys came to your house,
26 after that, did you end up going to the sheriff's

1 department?

2 A. Yeah. I actually rode up to the sheriff's
3 department with an Indian guy. I think his name's Danny.
4 I think that was his name. I ended up riding up there
5 with him to the sheriff's department.

6 Q. And why did you do that?

7 A. Because I wanted to help them find their dad. I
8 wanted that man's family to know -- I didn't want that
9 man -- they needed to be looking for that man. I wanted
10 to do what was right.

11 Q. Did you give a statement to a detective in the case?

12 A. Yes, sir.

13 Q. And what did you tell the detective in the case?

14 A. I told him what I knew. Pretty much what I knew
15 about what happened. Just that I knew that she had been
16 texting me the day before saying stuff to me about the
17 man -- and I never took her serious about what she said
18 that day. I just told them what I knew, that she said
19 that she was driving his car around and they had tied him
20 up.

21 Q. Okay. And she said that when she was texting you,
22 you didn't believe what she said?

23 A. I didn't take her serious. I've known this girl
24 since 2005, 2006 and I've been good friends with her all
25 along, like really good friends with her. And I've never
26 seen a side of her to do anything like that to anybody.

1 So, no, I did not take her serious.

2 Q. When she came up to your house the next day, when
3 she told you more of what happened, did you believe her
4 then?

5 A. Yeah.

6 Q. And did you believe that she felt bad about what
7 happened?

8 A. I don't really think that she felt bad about what
9 happened. I think she was ---

10 MR. MCELHANNON: Objection, Your Honor.

11 A. --- just scared about ---

12 THE COURT: Sustained.

13 A. --- what happened.

14 THE COURT: Hang on. Hang on. I sustain that
15 objection. It calls for speculation.

16 MR. MCELHANNON: Thank you, Your Honor.

17 Q. Thank you, Ms. Lomax. I have no further questions.
18 If you would please answer any questions Mr. McElhannon
19 has.

20 THE COURT: Cross-examination.

21 **CROSS-EXAMINATION**

22 **BY MR. MCELHANNON:**

23 Q. Ms. Lomax, you stated when you saw Kyndra Howell on
24 July the 2nd, 2012, that was at your house?

25 A. Yes, sir.

1 Q. And you left your back door unlocked?

2 A. Yes, sir.

3 Q. And she just came in and was there when you got
4 home?

5 A. Yes, sir.

6 Q. Do you have a habit of leaving your back door
7 unlocked?

8 A. No. I do not have a habit of leaving my back door
9 unlocked. Just whenever I know somebody's coming to my
10 house. I did it for her.

11 Q. So you knew she was coming to your house?

12 A. She asked me if she could come over there. She was
13 having problems with her power at her house and I told
14 her, yes, that was fine.

15 Q. And you said when she was there on July 2nd, it was
16 three or four in the afternoon?

17 A. I'm not really sure what time it was. This has been
18 about two years ago. But, yeah, I would say it would be
19 some time in the afternoon. Three, four, sometime in the
20 afternoon.

21 Q. And you said she was acting very scared?

22 A. Yes. She was acting very strange.

23 Q. Like she was scared of somebody?

24 A. No. Not really like she was scared; just like
25 strange.

1 Q. You said someone knocked on the door and she ran and
2 hid in the closet?

3 A. Yes.

4 Q. Would that not be scared?

5 A. I don't really call it scared. I just -- if you
6 want to call it scared, then, yes, she was acting scared.
7 That's fine.

8 Q. Now, July the 1st, where were you that day?

9 A. I was at home or either with my mama at her house,
10 one.

11 Q. Did Kyndra Howell call you on July the 1st?

12 A. She called. I think I talked to her once or twice
13 on the phone, and those were through texts that day. I
14 talked to Kyndra mostly through texts.

15 Q. And those phone calls were about you getting paid to
16 have sex with C.J. Patel; correct?

17 A. No, sir.

18 Q. And you stated that she could not -- that Kyndra
19 Howell could not bring Mr. Patel over to your house
20 because your mother was there?

21 A. Yes, sir. I told her that she could not bring him
22 to my house because my mama was there. That don't mean
23 that I was going to have sex with man for money.

24 Q. But you were having sex with some of these people;
25 weren't you?

1 A. No, sir. I only met Mr. Patel through Kyndra one
2 time at her house on Jerry Drive. And that was in the
3 year 2011 when I was pregnant with my second son. And I
4 only met him one other time. Maybe not even another time
5 after the first time I met him.

6 Q. So you're denying that you were getting paid for sex
7 by any Jay Patel ---

8 A. Yes.

9 Q. --- or C.J. Patel?

10 A. Yes, sir.

11 Q. When did you have this conversation with Kyndra
12 Howell regarding C.J. Patel?

13 A. What conversation?

14 Q. Where you think that something had happened to him?

15 A. July 2nd.

16 Q. And what day did you go to the sheriff's office?

17 A. I'm not sure. I don't know what date, sir. This
18 has been two years ago. But I went as soon as the Indian
19 guys come asking me if I know anything about what
20 happened to him that they might have heard of him being
21 out there near where I lived at. I went to the sheriff's
22 department as soon as I knew something was wrong. I did
23 what was right.

24 Q. But prior to that, you didn't go to the sheriff's
25 office?

- 1 A. No, because I was scared. I had people coming and
2 knocking on my door and threatening me with guns and
3 stuff.
- 4 Q. Who threatened you?
- 5 A. This guy -- do I have to say his name?
- 6 Q. Yes, ma'am.
- 7 A. His name is William Jeffrey. He threatened me with
8 a gun.
- 9 Q. He came to your house and threatened you with a gun?
- 10 A. Yes. He told me to stop talking to the police, stop
11 talking to the Indians and stuff; yes.
- 12 Q. William Jeffries?
- 13 A. William Jeffrey.
- 14 Q. Have you ever told the police that?
- 15 A. Yes. I told them after I made my statement with
16 them. I told that to Mark Gregory.
- 17 Q. So you told Mark Gregory at the Anderson County
18 Sheriff's Office that William Jeffries came to your house
19 with a gun and threatened you?
- 20 A. Yes. And he didn't do anything about it. Nothing
21 happened about it. But the guy left me alone. I mean,
22 he didn't go to jail for it or nothing, but he left me
23 alone.
- 24 Q. So nothing was ever done to Mr. Jeffries for ---
- 25 A. I guess not. I suppose not.

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1 Q. And he was telling you to be quiet?

2 A. Yes.

3 Q. Not talk with the police or ---

4 A. He was asking me -- he just asked me not to talk to
5 anybody anymore about anything.

6 Q. Do you know what involvement he had in this?

7 A. No.

8 Q. Had you ever seen him before?

9 A. Yes, I had seen him before.

10 Q. William Jeffries before?

11 A. Yeah. Yes, sir.

12 MR. MCELHANNON: That's all the questions I
13 have, Your Honor.

14 THE COURT: Redirect?

15 MR. HAIGLER: Just one question, Your Honor.

16 **REDIRECT EXAMINATION**

17 **BY MR. HAIGLER:**

18 Q. Have you had any -- on the subject of threats, have
19 you had any other contact with any other people regarding
20 threats to you in this case?

21 A. No, sir.

22 Q. None from the Defendant?

23 A. No, sir.

24 Q. Okay.

25 MR. HAIGLER: No further questions.

1 THE COURT: May this witness be excused?

2 MR. HAIGLER: She can.

3 MR. MCELHANNON: Yes, Your Honor.

4 THE COURT: All right. Thank you, ma'am.

5 All right. Madam Forelady, ladies and gentlemen of
6 the jury, in communicating with counsel, I'm advised this
7 is a good time to take a break. I think some of the
8 other witnesses will be a little longer this afternoon.
9 So I'm going to take a lunch break now until one thirty.
10 If you'd be back in your jury room around one twenty-
11 five, we'll resume testimony around one thirty, please.

12 Let me remind you not to speak with anyone about
13 this case, including yourselves, okay? Thank you.

14 (WHEREUPON, the jury exited the open court at
15 approximately 12:03 p.m.)

16 THE COURT: Anything from the State before we
17 go to lunch break?

18 MR. CAMPBELL: No, Your Honor.

19 THE COURT: Anything from the Defense?

20 MR. MCELHANNON: No, Your Honor.

21 THE COURT: All right. Be back at one thirty.

22 (WHEREUPON, the court stood at recess for a lunch
23 break.)

24 (WHEREUPON, State's Exhibit Numbers 27, 28 and 29
25 were marked for identification.)

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1 THE COURT: All right. Is the State ready?

2 MR. CAMPBELL: The State's ready, Your Honor.

3 THE COURT: Is the Defense ready?

4 MR. MCELHANNON: We're ready, Your Honor.

5 THE COURT: Is the Clerk ready?

6 (WHEREUPON, the jury entered the open court at
7 approximately 1:34 p.m.)

8 THE COURT: Would you call your next witness,
9 please, sir?

10 MR. CAMPBELL: Your Honor, the State calls
11 Zachary Gantt to the stand.

12 THE CLERK: Raise your right hand.

13 Do you solemnly swear or affirm the testimony you're
14 going to give the Court today in this case will be the
15 truth, the whole truth and nothing but the truth?

16 THE WITNESS: Yes, I do.

17 THE CLERK: If you would take the witness stand
18 and state your name for the record and spell your last
19 name for the reporter, please.

20 THE WITNESS: My name is Zachary Gantt, G-A-N-
21 T-T.

22 **ZACHARY GANTT,**

23 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

24 **DIRECT EXAMINATION**

25 **BY MR. CAMPBELL:**

1 Q. Mr. Gantt, you're incarcerated at the Anderson
2 County Detention Center?

3 A. Yes, sir.

4 Q. And that's because you pled guilt back in November
5 2014?

6 MR. MCELHANNON: Objection, Your Honor.
7 Leading.

8 THE COURT: Rephrase.

9 Q. Mr. Gantt, why are you in the Anderson County
10 Detention Center?

11 A. Kidnaping and murder.

12 Q. Armed robbery?

13 A. Armed robbery and possession of a weapon.

14 Q. Did you plead guilty of these crimes?

15 A. Yes, sir.

16 Q. And that was back in November of last year?

17 A. Yes, sir.

18 Q. And when you pled guilty were you imposed a sentence
19 upon you or was it deferred?

20 A. Deferred.

21 Q. And the charges you pled to, were they reduced down
22 at all?

23 A. No, sir.

24 Q. And you were part of the robbery and ultimately the
25 murder of C.J. Patel?

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1 A. Yes, sir.

2 Q. You participated?

3 A. Yes, sir.

4 Q. And that's what you pled guilty to?

5 A. Yes, sir.

6 Q. Now, at the time of this, how old were you?

7 THE COURT: Just one second.

8 Madam Forelady, will you go to the jury room,
9 please?

10 (WHEREUPON, the jury exited the open court at
11 approximately 1:38 p.m.)

12 THE COURT: And I'm going to need your
13 assistance. This man in the Clemson University shirt is
14 excluded from the courtroom immediately. The man in the
15 jersey is excluded immediately. And the man in the
16 stripped jacket is excluded right now.

17 And for the record, those gentlemen were making
18 faces at the witness and were trying to intimidate him
19 while in the courtroom.

20 (WHEREUPON, three men were escorted from the
21 courtroom.)

22 THE COURT: All right. We're at ease for a
23 minute. Stay there.

24 Send word back to me when everything's cleared down;
25 okay, sir. Mr. Gantt, you just stay right there.

1 (WHEREUPON, the court stood at recess for a short
2 break.)

3 THE COURT: Please be seated.

4 Before we bring the jury back in, let me say this to
5 anyone in the gallery that any attempts to influence
6 testimony, any attempts to intimidate any witnesses in
7 this courtroom will not be tolerated and will be dealt
8 with with the contempt powers of this court.

9 Officers, those three gentlemen are excluded from
10 the proceedings for the remainder of the proceedings.
11 They cannot come back.

12 And for the record, if I didn't make it clear, they
13 were intimidating this witness, making faces at him,
14 doing things to try and intimidate his testimony and
15 exhibiting aggressive postures in the courtroom towards
16 this witness. And that's not going to be acceptable.

17 Okay. Bring the jury back.

18 (WHEREUPON, the jury entered the open court at
19 approximately 1:43 p.m.)

20 THE COURT: All right. You may continue,
21 please, sir.

22 MR. CAMPBELL: Thank you, Your Honor.

23 **DIRECT EXAMINATION CONTINUED**

24 **BY MR. CAMPBELL:**

25 Q. Now Mr. Gantt, besides yourself, how many other

- 1 people were also charged with you, to your knowledge?
- 2 A. Three.
- 3 Q. And who was that?
- 4 A. Kyndra, Ezra and Jeremiah.
- 5 Q. And at the time, how old were you when you were
- 6 charged?
- 7 A. Seventeen.
- 8 Q. How old are you now?
- 9 A. Twenty.
- 10 Q. And since that time, you've been incarcerated; is
- 11 that right?
- 12 A. Yes, sir.
- 13 Q. Before you caught these charges, had you been
- 14 involved or been arrested prior to this?
- 15 A. No, sir.
- 16 Q. Had you ever been charged as a juvenile?
- 17 A. Yes, sir.
- 18 Q. What were you charged for then?
- 19 A. Truancy and grand larceny, stuff like that.
- 20 Q. But these were your first charges as an adult?
- 21 A. Yes, sir.
- 22 Q. Now, you said that Kyndra was also involved. I want
- 23 to talk to you a little bit about her. How do you know
- 24 Kyndra Howell?
- 25 A. Through a family member.

- 1 Q. I didn't understand you.
- 2 A. Through a family member.
- 3 Q. Through a family member; is that what you said?
- 4 THE COURT: Can the jury hear this witness?
- 5 THE JURY: (Affirmative response.)
- 6 THE COURT: Y'all can? Very good.
- 7 Q. I'm sorry, you said a family member?
- 8 A. Yes, sir.
- 9 Q. And is she in the courtroom today?
- 10 A. Yes, sir.
- 11 Q. Would you please identify her?
- 12 A. Right there.
- 13 Q. Is she wearing the black top?
- 14 A. Yes, sir.
- 15 MR. CAMPBELL: Your Honor, please have the
- 16 record reflect that Mr. Gantt is acknowledging the
- 17 Defendant as the one he's identifying as Ms. Howell.
- 18 THE COURT: The record so reflects.
- 19 Q. Now, how long have you known her?
- 20 A. About a year.
- 21 Q. And in what way or how did you know her?
- 22 A. Used to go over there to her house.
- 23 Q. And where was that located?
- 24 A. On Jerry Drive.
- 25 Q. Now, are you from Anderson?

- 1 A. Yes, sir.
- 2 Q. And her house on Jerry Drive, that's in Anderson
3 County; is that right?
- 4 A. Yes, sir.
- 5 Q. Was that where she was living back in July 2012?
- 6 A. Yes, sir.
- 7 Q. And you said you'd been to her house before. What
8 kind of house was it or is it?
- 9 A. A brick house.
- 10 Q. Is it a large house?
- 11 A. Not really.
- 12 Q. Would you consider it small, medium, large?
- 13 A. Small.
- 14 Q. And have you ever been inside this house?
- 15 A. Yes, sir.
- 16 Q. How many rooms are in there?
- 17 A. It's two rooms really, but it's one that she turned
18 into a room.
- 19 Q. And how many bathrooms were there?
- 20 A. One.
- 21 Q. And at the time that you knew that she was there at
22 3304 Jerry Drive, was she living with anybody else to
23 your knowledge?
- 24 A. No, sir.
- 25 Q. Did she have a car?

- 1 A. No, sir.
- 2 Q. And do you know if she worked anywhere?
- 3 A. No, sir.
- 4 Q. Okay. Now, before July 1st 2012, did you know or
5 had you ever met the victim in this case, C.J. Patel?
- 6 A. No, sir.
- 7 Q. So the night when all this occurred, the robbery
8 that ultimately led to his death, that was the first
9 time you ever laid eyes on this man?
- 10 A. Yes, sir.
- 11 Q. Now, on the day when you participated in the robbery
12 of Mr. Patel, do you know approximately about what time
13 of the day you went over to the house?
- 14 A. Probably like twelve o'clock.
- 15 Q. And what were you doing?
- 16 A. Just playing a video game.
- 17 Q. And did she invite you over to the house or did you
18 go over and knock on the door?
- 19 A. I just showed up.
- 20 Q. And while you were playing the video games, was
21 anybody else there?
- 22 A. Just me and Kyndra.
- 23 Q. And while you were playing these video games what,
24 if anything, did she do?
- 25 A. Say what?

1 Q. What did she do while you were playing the video
2 games inside the house?

3 A. She was in the back room while I was playing the
4 games.

5 Q. Were you out in the living room playing by yourself?

6 A. Yes, sir.

7 Q. At some point did you or her leave the house?

8 A. She left.

9 Q. Do you know why she left?

10 A. No.

11 Q. I'm sorry. I didn't hear you?

12 A. No, sir.

13 Q. Did she tell you where she was going?

14 A. No, sir.

15 Q. Do you know approximately about what time of day
16 this was?

17 A. Probably about thirty minutes after I showed up.

18 Q. And when she left, do you know how she left?

19 A. She walked out the door and that's the last time I
20 seen her for the moment.

21 Q. And you don't know where she went to?

22 A. No, sir.

23 Q. Did you see her leave?

24 A. I seen her go out the door. That was it.

25 Q. Now, at some point did she come back to the house?

- 1 A. Yes, sir.
- 2 Q. And what were you doing at this point in time?
- 3 A. I was outside at that time when she came back to the
4 house.
- 5 Q. Was she by herself?
- 6 A. No, sir.
- 7 Q. Who was she with?
- 8 A. C.J. Patel.
- 9 Q. And was he a white guy, a black guy?
- 10 A. No, he was Indian of some sort.
- 11 Q. When they came back, were they walking or were they
12 driving?
- 13 A. They was in his car.
- 14 Q. What kind of car was it?
- 15 A. A black Honda.
- 16 Q. Do you remember how many doors it had?
- 17 A. Four.
- 18 Q. And when they got back to the house, did you stay
19 there with them or did you go somewhere?
- 20 A. I was on the side of the house when they first got
21 there.
- 22 Q. All right. Then what happened?
- 23 A. And that's when the Cadillac showed up.
- 24 Q. Do you know who was driving the Cadillac?
- 25 A. No. It was a female. I don't know her.

1 Q. And did this Cadillac pull into the yard or to the
2 side of the yard?

3 A. The yard I was standing in?

4 Q. Yes, sir?

5 A. It pulled in front of it.

6 Q. And did you know anybody in the car?

7 A. Yes, sir.

8 Q. Who was that?

9 A. Jeremiah.

10 Q. And at this point did you speak to Jeremiah?

11 A. Yes, sir.

12 Q. And after that, did you do anything with him?

13 A. We walked to Kyndra's house, walked back there to
14 Kyndra's house.

15 Q. And tell the ladies and gentlemen of the jury, when
16 you walked back in the house, what was the purpose or why
17 were you going back in there?

18 A. To rob C.J. Patel, man.

19 Q. Now, how did this idea of robbing him come about?

20 A. Kyndra.

21 Q. And tell us how that came about?

22 A. I mean, when we first got there I had told him --
23 had had to tell this lady that was driving the car that
24 she had to move the car.

25 Q. Is this the lady in the Cadillac?

- 1 A. Yes, sir. So she moved her the car. Me and him
2 walked over there. By that time, she was already up
3 under her carport. So my cousin was calling me but he
4 called me too and she called me. And so I walked right
5 back over there where they was at. And she told us that
6 the man had some money.
- 7 Q. So who called you back over?
- 8 A. It was her. And he called me too, though.
- 9 Q. When you say her, who are you referring to?
- 10 A. Kyndra.
- 11 Q. And she was outside the house at this point in time?
- 12 A. Yes, sir.
- 13 Q. And where at the house was she located?
- 14 A. Where was she at then?
- 15 Q. Yes, sir.
- 16 A. She was outside on the carport.
- 17 Q. And this guy you're saying, what guy are you
18 referring to?
- 19 A. Jeremiah.
- 20 Q. And where was he located?
- 21 A. He had walked up under the carport too.
- 22 Q. And you said they called you over to them?
- 23 A. Yes, sir.
- 24 Q. Now, when they did that, did you speak to them?
- 25 A. Yeah. I spoke to them.

- 1 Q. And what did they ask you or want you to do?
- 2 A. I mean she had done told us that the man had some
- 3 money.
- 4 Q. And what did she want done?
- 5 A. She wanted him robbed too.
- 6 Q. Did she say that?
- 7 A. She just said he has some money.
- 8 Q. Did she ask you to rob him?
- 9 A. No, that came up with Jeremiah.
- 10 Q. And what did she do to help this robbery?
- 11 A. I mean she moved him to another room.
- 12 Q. Now, when you say moved him, he was already inside
- 13 the house at this point in time?
- 14 A. Yes, sir.
- 15 Q. And did y'all ask her to move him to another part of
- 16 the house?
- 17 A. Yes, sir.
- 18 Q. And did she do that?
- 19 A. Yes, sir.
- 20 Q. So when you entered the house; is that right?
- 21 A. Yes, sir.
- 22 Q. Who went in first?
- 23 A. Jeremiah.
- 24 Q. And where was Kyndra Howell at this time?
- 25 A. She had done walked into her kitchen.

- 1 Q. And how close to the room where Mr. Patel was
2 located is the kitchen?
- 3 A. It wasn't far from the kitchen.
- 4 Q. Could you see the room from the kitchen?
- 5 A. Yes, sir.
- 6 Q. If I walk toward you tell me when to stop, how close
7 would it be?
- 8 A. About right there.
- 9 Q. So about maybe ten feet?
- 10 A. Yes, sir.
- 11 Q. Twelve feet? Now, at this point in time did Mr.
12 Patel know that you and Jeremiah had also entered the
13 house?
- 14 A. No, sir.
- 15 Q. When did he learn or realize that both of y'all were
16 there?
- 17 A. He didn't find out until we walked in the room where
18 he was at.
- 19 Q. And when he did, what did y'all do?
- 20 A. When we walked in Jeremiah grabbed him and pulled
21 him to the ground. And after that, they started
22 wrestling and that's when I helped hold him down and
23 stuff like that.
- 24 Q. And was he being hit while down at this point in
25 time?

- 1 A. No, sir.
- 2 Q. When y'all had him on the ground, what did y'all do?
- 3 A. Tied him up.
- 4 Q. What did you tie him up with; do you remember?
- 5 A. A phone cord or something.
- 6 Q. And was he saying anything at this point in time?
- 7 A. No, sir.
- 8 Q. He wasn't making any noises or anything?
- 9 A. No, sir. He was just struggling trying to get
- 10 loose.
- 11 Q. Now, when this took place, y'all grabbed him and
- 12 tied his hands behind his back. While all of this was
- 13 going on at any point did Ms. Howell attempt to stop
- 14 y'all?
- 15 A. No, sir.
- 16 Q. After you and Jeremiah had him subdued, what did
- 17 y'all do to this man?
- 18 A. Say that again?
- 19 Q. What did you do to him after you had him tied up?
- 20 A. Jeremiah went in his pocket and took his wallet out.
- 21 Q. And how much -- what was in his wallet?
- 22 A. Some bank cards and probably seventy dollars.
- 23 Q. And what happened to the contents of his wallet, the
- 24 money and the cards?
- 25 A. Jeremiah laid them out on the little dresser that

1 was in there. And the money, he took and split it with
2 me, but he told me to give it to Kyndra.

3 Q. And did you do that?

4 A. Yes, sir.

5 Q. How much did you give her?

6 A. Like thirty dollars.

7 Q. Is that the amount of money that he gave you?

8 A. Yes, sir.

9 Q. Well, after y'all robbed him of his money at this
10 time, did y'all let him go?

11 A. No, sir.

12 Q. What took place? What did y'all do next to him?

13 A. We seen the man had some Bank of America cards and
14 stuff like that, we started asking him what's his PIN
15 number to his cards and stuff.

16 Q. Who was that? Who was asking him?

17 A. Jeremiah.

18 Q. And did he give y'all some PIN numbers?

19 A. Not right then. He was telling him there wasn't
20 nothing on it.

21 Q. Well, did y'all eventually get any PIN numbers from
22 him?

23 A. Yes, sir.

24 Q. And how did y'all get this information?

25 A. Started beating on him.

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- 1 Q. Did Jeremiah beat on him?
- 2 A. Yes, sir.
- 3 Q. Did you beat on him?
- 4 A. Yes, sir.
- 5 Q. Was he making any sounds or noises while this was
6 going on?
- 7 A. Yes, sir.
- 8 Q. Was he yelling or screaming?
- 9 A. He wasn't really yelling and screaming. He was just
10 saying that he ain't got not money.
- 11 Q. Was he being hurt?
- 12 A. Yes, sir.
- 13 Q. And at this time, where was Ms. Howell?
- 14 A. She was still in her kitchen.
- 15 Q. And while this was going on, did she come in and try
16 to stop y'all?
- 17 A. No, sir.
- 18 Q. Now, at some point, did he give you some ATM PIN
19 numbers?
- 20 A. Yes, sir.
- 21 Q. And once you had that information, what did y'all do
22 with it?
- 23 A. While Jeremiah want to check.
- 24 Q. When you say check, how did he do that?
- 25 A. Got in the man's car and went to a store or

1 something.

2 Q. And did he come back?

3 A. Yes, sir.

4 Q. And from his trip did you learn whether or not he
5 was successful in getting money off of these cards?

6 A. I mean, when he came back he said that the man had
7 given some wrong numbers.

8 Q. So what did y'all do at this point in time?

9 A. When he came back, he just told -- he told the man
10 it was wrong numbers. He started beating on him again.
11 Said he was lying about the numbers.

12 Q. And did he give y'all some numbers?

13 A. The same ones.

14 Q. And what was Kyndra doing at this point in time?
15 How was she acting?

16 A. I mean, she was in her kitchen on her phone just
17 smiling.

18 Q. But she didn't try to stop it?

19 A. No, sir.

20 Q. At some point, did she also attempt to get money off
21 these ATM cards?

22 A. Yes, sir.

23 Q. How do you know that?

24 A. Because when we was in there beating on him he kept
25 saying it's the same number. Jeremiah gave her the

- 1 cards, gave Kyndra the cards.
- 2 Q. And what, if anything, did she do with them?
- 3 A. She went and checked.
- 4 Q. And how did she leave?
- 5 A. I guess in his car. It was the only car there.
- 6 Q. And he's still tied up at this point in time?
- 7 A. Yes, sir.
- 8 Q. How would you describe his physical condition at
- 9 this point in time?
- 10 A. He was swole.
- 11 Q. Where at?
- 12 A. Face area.
- 13 Q. So he'd been beat on pretty hard?
- 14 A. Yeah. He was pretty swole.
- 15 Q. Now, at some point did she come back from her trip
- 16 leaving the house?
- 17 A. Yes, sir.
- 18 Q. And what, if anything, did she tell you about the
- 19 cards?
- 20 A. She said the same thing. She said that the man was
- 21 lying about his PIN numbers and stuff.
- 22 Q. How long was she gone for; do you recall?
- 23 A. Not too long.
- 24 Q. Now, after she got back, what did y'all do to Mr.
- 25 Patel at this point in time?

- 1 A. Beat on him some more.
- 2 Q. And did y'all accomplish anything by doing that?
- 3 A. No, sir.
- 4 Q. How long had this been going on for at this point in
5 time?
- 6 A. It was going on for a while.
- 7 Q. A couple of hours, a couple of minutes?
- 8 A. No. It was going on for some hours.
- 9 Q. At some point y'all are getting nowhere with Mr.
10 Patel regarding his PIN numbers. Did anybody else get
11 involved in this robbery at this point in time?
- 12 A. Didn't nobody else come until like later on in the
13 night.
- 14 Q. And who was that?
- 15 A. That's when Ezra came.
- 16 Q. And do you know his full name?
- 17 A. Now I do.
- 18 Q. What's his name?
- 19 A. Ezra Williams.
- 20 Q. Does he go by a nickname?
- 21 A. Yes, sir.
- 22 Q. What is that?
- 23 A. Quavo.
- 24 Q. Is that how you know him as Quavo?
- 25 A. Yes, sir.

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- 1 Q. Were you friends with Quavo?
- 2 A. I mean, I seen him here and there.
- 3 Q. Were y'all good buddies?
- 4 A. No, I didn't know him like that.
- 5 Q. And do you know how he got over there to the house
- 6 on Jerry Drive?
- 7 A. I guess in his car.
- 8 Q. What kind of car is that; do you know?
- 9 A. Oldsmobile.
- 10 Q. What color is it?
- 11 A. Tan.
- 12 Q. When he got there did y'all talk or discuss what was
- 13 going on?
- 14 A. No.
- 15 Q. Sir?
- 16 A. No, sir.
- 17 Q. Did he already know what was going on?
- 18 A. No, sir.
- 19 Q. So when he got there, what, if anything, did Ezra
- 20 do?
- 21 A. When he got there he didn't even know what was going
- 22 on. So when he walked in the room and seen the man tied
- 23 up, that's when he knew there was like a robbery going
- 24 on. That's when he got involved in it.
- 25 Q. That's when he got involved?

1 A. Yes, sir.

2 Q. And what did he do? When you say he got involved,
3 how did he get involved?

4 A. He started beating on the man too, start asking him
5 like what's his PIN numbers, stuff like that.

6 Q. When you say he was beating on him, with his fists
7 or was he using something, an object?

8 A. He was using his hands.

9 Q. And did he get anywhere using his fists too?

10 A. No. He didn't get nowhere with that.

11 Q. So at this point, just physically beating him,
12 whether it was you, Jeremiah, or Ezra, with y'all's
13 fists, y'all were getting nowhere; getting no information
14 from information; is that right?

15 A. No, we wasn't getting nowhere.

16 Q. So what happened next to try to get information out
17 of him?

18 A. Ezra walked back to like the little -- it's supposed
19 to be the dining room -- and got this little bug spray.
20 And he went back in the room with that. And started
21 saying he wanted to see what this would do to get him to
22 talk. That didn't help him either.

23 Q. So he used bug spray on Mr. Patel?

24 A. Yes, sir.

25 Q. Do you know what he did with?

- 1 A. I don't know where he put it at.
- 2 Q. And that didn't work, so what did he do next?
- 3 A. Put the bug spray back where he got it from. Got a
4 knife and put it on the stove and went back in there and
5 started asking him PIN number. The man still wouldn't
6 talk. So he came back into like the little kitchen area.
7 And the knife, I guess, was already hot, hot enough at
8 the time. Took it in, stuck it to the man's stomach.
- 9 Q. And was he screaming at this point in time?
- 10 A. Yes, sir.
- 11 Q. And after he stuck him with a hot knife on his
12 stomach, did he do anything else with the knife?
- 13 A. He stuck him like two or three times with the knife.
- 14 Q. I'm sorry. I didn't understand what you said.
- 15 A. He stuck him about two or three times with the
16 knife.
- 17 Q. Stuck him with the knife; is that what you said?
- 18 A. Like put it on him.
- 19 Q. Put it on him. And while this was going on where
20 was Ms. Howell located?
- 21 A. Still in her kitchen.
- 22 Q. And how was she acting?
- 23 A. She just was smiling, laughing, that's all it was
24 with her. Like it was a game, really.
- 25 Q. At no point did she go in and try to stop what was

1 going on?

2 A. No, sir.

3 Q. At some point did y'all make a decision or was a
4 decision made what to do with Mr. Patel?

5 A. After Quavo wasn't getting nowhere with that knife,
6 that's when Jeremiah put it in his mind that he wanted to
7 kill the man.

8 Q. Did he say this out loud?

9 A. Yes, sir.

10 Q. And did Ms. Howell hear this?

11 MR. MCELHANNON: Objection, Your Honor.

12 THE COURT: Sustain the objection. Rephrase
13 your question.

14 Q. While this conversation was going on, where was Ms.
15 Howell in the house?

16 A. She was still in her kitchen. She never moved from
17 that kitchen, really.

18 Q. And did she hear the conversation, in your opinion?

19 MR. MCELHANNON: Objection, Your Honor.

20 THE COURT: Rephrase your question, please,
21 sir.

22 Q. Did she know what was going on inside the room?

23 MR. MCELHANNON: Objection, Your Honor. I
24 don't think he can testify ---

25 THE COURT: Come here.

1 (WHEREUPON, a bench conference was held off the
2 record.)

3 Q. So Jeremiah came up with the decision that he needed
4 to be killed?

5 A. Yes, sir.

6 Q. At any point had any of y'all discussed releasing
7 him, freeing him?

8 A. I don't ...

9 Q. Sir?

10 A. No, sir.

11 Q. So that idea was never brought up?

12 A. No, sir.

13 Q. Now, at this point did y'all get Mr. Patel out of
14 the house?

15 A. Yes, sir.

16 Q. And how did y'all do that?

17 A. When we got him out of the room, we was walking him
18 out that side door, but there was a car coming down the
19 street so we stopped, let the car go by and took him out
20 the side door and took him to his car.

21 Q. Was this the front door of the house or was this to
22 the carport or to the back?

23 A. It was through the carport?

24 Q. And where was his car at this time?

25 A. His car was in the back.

1 Q. And do you know how it got there? Did you see how
2 it got there?

3 A. No, I didn't see how it got there, but the last
4 person that was in it was Kyndra, so I'm guessing that's
5 how it got back there.

6 Q. Did Ezra ever drive this car?

7 A. I didn't -- at the moment he wasn't.

8 Q. Sir?

9 A. He wasn't driving it at the moment.

10 Q. When Jeremiah came up with the idea that he needed
11 to be killed, where were you?

12 A. I was right there.

13 Q. And who else was right there?

14 A. It was me, Jeremiah and Ezra.

15 Q. And when this conversation was going on, where was
16 Kyndra in the house?

17 A. In her kitchen.

18 Q. And was the door closed or anything?

19 A. No.

20 Q. Sir?

21 A. No, sir.

22 Q. So y'all took him out and where did y'all take him
23 to? Did y'all take him to the back of the yard or to the
24 front of the yard?

25 A. No. We took him to the back, back there where his

1 car was at.

2 Q. And what did y'all do with him once you got to his
3 car?

4 A. They wanted to put him in the truck, but I wasn't
5 going to let them do him like that.

6 Q. Did they start the process of trying to put him in
7 the trunk?

8 A. Yes, sir.

9 Q. So you said you didn't want that to happen and
10 stopped it. Where did y'all put him?

11 A. Put him in the back seat.

12 Q. And after he was put in the back seat, was his hands
13 still tied up?

14 A. Yes, sir.

15 Q. And at this point, who all got into the car?

16 A. Me, Jeremiah and Ezra.

17 Q. And where was everybody sitting in the car?

18 A. I was sitting in the back seat on the passenger's
19 side. We had Jeremiah on the other side. Quavo was
20 driving.

21 Q. And who was driving?

22 A. Quavo.

23 Q. And that's Ezra?

24 A. Yes, sir.

25 Q. Did Kyndra go with y'all?

- 1 A. No, sir.
- 2 Q. Did she know where y'all were going at this time?
- 3 A. No, sir.
- 4 Q. And where did y'all take and drive him to?
- 5 A. To -- I can't -- I don't remember the name of the
6 road, but we took him to like going toward Hartwell.
- 7 Q. And when he was placed in the car, do you think --
8 well, let me rephrase that. When the decision was made
9 that he needed to be killed, was it done in his presence?
10 Was it said in the presence of Mr. Patel?
- 11 A. Yes, sir.
- 12 Q. And while y'all were riding towards Hartwell, as you
13 say, did he say anything?
- 14 A. No, sir.
- 15 Q. And how would you describe his physical condition at
16 this point in time?
- 17 A. It was pretty bad.
- 18 Q. How long was the ride; do you recall?
- 19 A. No, sir.
- 20 Q. And what time of the day was this; do you remember?
- 21 A. It was night.
- 22 Q. Was it dark?
- 23 A. Yes, sir.
- 24 Q. And when y'all finally got to the place, describe to
25 the ladies and gentlemen of the jury what y'all did once

1 y'all stopped?

2 A. We stopped and took him out of the car, took him in
3 like this wooded area.

4 Q. And who is we?

5 A. It was me, Jeremiah and Ezra.

6 Q. And where did y'all go?

7 A. They took him to a wooded area. I stayed in the car
8 at the moment.

9 Q. And why did you stay in the car?

10 A. Because I was talking on the phone.

11 Q. Now, at some point did you also go into the woods?

12 A. Yes, sir.

13 Q. And how did that come about?

14 A. Jeremiah came back and got me.

15 Q. So he got y'all -- did he walk you back or did the
16 two of y'all walk back to where Mr. Patel was in the
17 woods?

18 A. Yeah. When he came and got me, we walked back there
19 where the man was standing there.

20 Q. Now, did y'all have a flashlight or anything?

21 A. No, sir.

22 Q. Was the moon up?

23 A. Yes, sir.

24 Q. So you had some light to see?

25 A. Yes, sir.

1 Q. Do you recall what he was wearing at this point in
2 time?

3 A. He had a shirt on. I think that was it. And some
4 shoes.

5 Q. Do you remember what kind of shoes?

6 A. Like flip-flops, sandals.

7 Q. Now, once you got to where he was in the woods, was
8 he standing or was he seated on the ground?

9 A. He was standing up.

10 Q. Well, describe when you got there what happened?

11 A. When I got there he was standing up and like it
12 wasn't too long, but Ezra asked him like, are you still
13 not going to tell us the PIN numbers. And the man didn't
14 say nothing so he shot him. And we just walked back.

15 Q. Sir?

16 A. After he shot him we just walked back.

17 Q. The three of you?

18 A. Yes, sir.

19 Q. And you walked back to Mr. Patel's car?

20 A. Yes, sir.

21 Q. And where did y'all go after the shooting?

22 A. We went back to Kyndra's house.

23 Q. Was she there when you got there?

24 A. Yes, sir.

25 Q. Now, when you got back to her house, did any of

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1 y'all discuss the events that took place?

2 A. No, sir.

3 Q. What did y'all do?

4 A. We just sat in the chair and smoked.

5 Q. At any point did she ask where Mr. Patel was?

6 A. No, sir. We kind of figured she already knew.

7 There was only three of us come back. The man didn't
8 come back with us. So, you know ...

9 Q. At any point did she ask where he was?

10 A. No, sir.

11 Q. So Mr. Patel's car that y'all drove back to her
12 house, what did y'all do with it?

13 A. We had got an addict to wipe the car down.

14 Q. What do you mean by addict?

15 A. Somebody that's a friend. Somebody that do drugs.

16 Q. And you got him to wipe it down. Why did y'all do
17 that?

18 A. Not to leave no type of trace, fingerprints, stuff
19 like that.

20 Q. And after the car was cleaned up, what did y'all do
21 with it?

22 A. Took it to this place called Fairplay or something
23 like that and left it there.

24 Q. And how did y'all get there?

25 A. Jeremiah and the addict, they was in that man's car

1 and I followed them.

2 Q. Whose car did you follow in?

3 A. Quavo's.

4 Q. Ezra's?

5 A. Yes, sir.

6 Q. And this addict, do you know his name?

7 A. Not his real name. I just know they called him
8 Buff.

9 Q. What?

10 A. Buff.

11 Q. Buff?

12 A. Yes, sir.

13 Q. So when you took his car up to the Fairplay area,
14 what did y'all do when you dumped it off?

15 A. After they dumped it in the woods, we got in our own
16 individual car and drove off.

17 Q. And where y'all dumped it, where did you dump it at?

18 A. Like this little wooded area that had a cable like
19 going across it.

20 Q. Did y'all -- how did y'all get underneath the cable?

21 A. He held it up while Jeremiah drove up under it.

22 Q. And the car you were driving it, did you also drive
23 up underneath it?

24 A. No, sir.

25 Q. So after the car was dropped off, they all got back

1 in your car and left with you?

2 A. Yes, sir.

3 Q. Where did y'all go at that point in time?

4 A. We went back to Kyndra's house.

5 Q. How long had this been going on for at this time?

6 A. I mean when we dumped the car, the sun was coming up
7 then.

8 Q. And in this how much did you gain or profit from
9 this robbery?

10 A. I didn't gain nothing from it. It was really a
11 waste.

12 Q. And the money that he had on him, the seventy
13 dollars, where did it go; do you know?

14 A. Thirty of it went to Kyndra. I don't know; the
15 other forty, I guess, Jeremiah kept it.

16 Q. Do you know -- do you remember Detective Danny
17 Barton?

18 A. Yes, sir.

19 Q. Were you at Kyndra's house when he came out there?

20 A. Yes, sir.

21 Q. Did you speak to him that one day?

22 A. Yes, sir.

23 Q. When did you learn that a warrant had been taken out
24 for your arrest?

25 A. I learned it at work. It was taken out for my

1 arrest, Q. It was like one day when I went down there
2 to her house, Kyndra's house. She wasn't there. When I
3 was walking back up the street, that's when the sheriff
4 slowed down because I guess they recognized my face. And
5 that day I got away. So I learned probably around July
6 the 6th, July the 7th.

7 Q. And after you found out that your name was being
8 mentioned, involved in this, what did you do?

9 A. I mean, at first, the first day like when I found
10 out, like I just lay low again. And after that, I went
11 to my aunt's house where my mom was at. And I told them,
12 because my mama told me too. She was like, you've got a
13 warrant. My cousin was like I got Homeland Park hot,
14 stuff like that. So I told him, I'll just turn myself in
15 because I ain't did nothing. So I turned myself in.

16 Q. And that was on July 7th?

17 A. Yes, sir.

18 Q. And you've been in jail every since then?

19 A. Yes, sir.

20 Q. And you eventually cooperated with law enforcement?

21 A. Yes, sir.

22 Q. And did you take them to where the body was located?

23 A. Yes, sir.

24 Q. Why did you do that?

25 A. I mean, it was weighing on my conscience. Plus, it

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1 wasn't even supposed to go down like that really, what
2 happened and stuff. Plus the man needed -- like his
3 family needed a proper burial for him.

4 Q. And to your knowledge everyone was charged with
5 murder in this case?

6 A. Yes, sir.

7 Q. Do you feel like all the parties who were charged
8 were equally involved in this murder?

9 MR. MCELHANNON: Objection. Objection, Your
10 Honor. That's a legal conclusion.

11 THE COURT: I agree with that. Rephrase your
12 question, please, sir.

13 Q. Do you acknowledge your part in the murder?

14 A. Yes, sir.

15 Q. And the robbery?

16 A. Yes, sir.

17 Q. Now, did you -- after y'all dumped Mr. Patel's car,
18 did you see Kyndra the next day, day after?

19 A. I mean, after we dumped it, we went back to her
20 house the same day.

21 Q. And how was she acting at that point in time?

22 A. Just how she normally acted, like she didn't care.

23 Q. Mr. Gantt, I have no further questions for you.
24 Please answer any question Mr. McElhannon may have.

25 THE COURT: Cross Examination.

1 **CROSS-EXAMINATION**

2 **BY MR. MCELHANNON:**

3 Q. Mr. Gantt, July 1st, you say you got to Kyndra
4 Howell's house about -- I think you said twelve, or after
5 twelve p.m.?

6 A. Yes, sir.

7 Q. And you just went inside, nobody was there?

8 A. She was there.

9 Q. So you started playing a video game?

10 A. Yes, sir.

11 Q. And she left; correct?

12 A. Yes, sir.

13 Q. Did she not call you or text you and tell you to get
14 out of the house?

15 A. Yes, she did. She text me.

16 Q. And you got out of the house?

17 A. Yes, sir.

18 Q. Did she tell you why?

19 A. When she text she was like she needed me to leave
20 because there was a man there, and didn't want nobody in
21 the house.

22 Q. And did she tell you the reason that Mr. Patel was
23 coming to the house?

24 A. No, she didn't say no reason.

25 Q. She did not tell you to stay outside for a while and

1 then come back, did she?

2 A. She just asked me to leave.

3 Q. Asked you to leave her house?

4 A. Yes, sir.

5 Q. And then a little bit later after she gets back, you
6 see a silver Cadillac pull up that's got Jeremiah Johnson
7 in it; right?

8 A. I mean, before I seen that Cadillac, I seen that
9 black car with her and the man.

10 Q. So Kyndra Howell and Mr. Patel came back to her
11 house; correct?

12 A. Yes, sir.

13 Q. Nobody was there but them?

14 A. Yes, sir.

15 Q. And then you saw a silver Cadillac pull up close to
16 the house. It didn't pull up in the driveway; did it?

17 A. No, sir.

18 Q. It pulled up I think somewhere close to a relative
19 of yours?

20 A. Yes, sir.

21 Q. And you went over there and started talking to
22 Jeremiah Johnson who was a passenger in that Cadillac;
23 right?

24 A. Yes, sir.

25 Q. And at that point you and Jeremiah planned to rob

1 Mr. Patel; didn't you?

2 A. No, sir.

3 Q. Because you didn't know that he was in there for
4 anything other than what Kyndra had told you?

5 A. She just said she needed me to leave her house. She
6 didn't say why he was there.

7 Q. She didn't say after we get in the house you and
8 Jeremiah Johnson come back to the house?

9 A. Say that again?

10 Q. She didn't tell you, when she told you to leave the
11 house, and when she got back with Mr. Patel, for you and
12 Jeremiah Johnson to come back to the house, did she?

13 A. No, she didn't tell me to come back.

14 Q. You just came back on your own freewill, didn't you?

15 A. I mean, I wasn't going to go to her house. I was
16 going to go to my cousin's house.

17 Q. And when Jeremiah got there, though, you and him
18 both went to the house; right?

19 A. I mean, he stopped right there, but I was going to
20 keep going but she called me back and he did too.

21 Q. You told him that there was a man in the house;
22 didn't you?

23 A. I told ---

24 Q. Didn't you tell Jeremiah Johnson that Kyndra was in
25 there with a man?

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- 1 A. No, I didn't tell him.
- 2 Q. You didn't tell him that?
- 3 A. (No verbal response.)
- 4 Q. Now, you stated, I think you stated that Kyndra was
5 in the kitchen the whole time?
- 6 A. Yes, sir.
- 7 Q. You were in this other room?
- 8 A. Yes, sir.
- 9 Q. How do you know she was in the kitchen the whole
10 time if you were in another room beating on Mr. Patel?
- 11 A. Because some of the time the door was open. She was
12 still standing in the same place.
- 13 Q. But you don't know that she stayed there the entire
14 time, do you?
- 15 A. I mean, she never moved.
- 16 Q. She never moved? Did you keep your eyes on her the
17 whole time?
- 18 A. No, sir.
- 19 Q. To make sure she didn't move?
- 20 A. No, sir.
- 21 Q. So she could have left and come back?
- 22 A. She could have.
- 23 Q. Okay. So your testimony that she stayed in the
24 kitchen the entire time is not true; is it?
- 25 A. I mean, yes, sir.

- 1 Q. What was the weather like that night, Mr. Gantt?
- 2 A. The night that he got killed?
- 3 Q. Yeah.
- 4 A. I mean, when we took him to the woods it was
- 5 raining.
- 6 Q. Pouring down, wasn't it?
- 7 A. No.
- 8 Q. I mean, it was a bad thunderstorm pretty much that
- 9 whole night; wasn't there?
- 10 A. No, sir.
- 11 Q. You don't remember lightening and thunder and all
- 12 kind of torrential rain coming down?
- 13 A. No, there wasn't none of that at the time.
- 14 Q. But it was raining?
- 15 A. Yeah. It started raining.
- 16 Q. But the moon was out and you could see by the moon?
- 17 A. Yes, sir.
- 18 Q. So the clouds were not covering the moon?
- 19 A. No, sir.
- 20 Q. But it was raining?
- 21 A. Yes, sir.
- 22 Q. And you say -- whose idea was it to -- or who put
- 23 the idea out there to kill Mr. Patel; Jeremiah Johnson?
- 24 A. Yes, sir.
- 25 Q. And I believe you stated that Kyndra Howell didn't

1 know anything about that; right?

2 A. Say what? Say that again?

3 Q. Kyndra Howell didn't know anything about that, did
4 she?

5 A. About him being killed?

6 Q. Right. About the idea to kill him?

7 A. I mean she heard.

8 Q. How do you know she heard?

9 A. Because the door was open.

10 Q. That doesn't make sense. How do you know she heard,
11 though? Was she on the phone?

12 A. I mean, she was texting on the phone but he said it
13 loud enough to where she could hear it.

14 Q. Even though all this other commotion was going on?

15 A. At the time there wasn't no commotion.

16 Q. Did she ever say anything about killing him?

17 A. No, she didn't say nothing.

18 Q. She didn't? Do you remember two statements you've
19 given to law enforcement?

20 A. Somewhat.

21 Q. One of them was July the 10th, 2012 and one on July
22 the 11th, 2012.

23 A. I remember some of it.

24 Q. You don't remember what you told the police?

25 A. I remember some of it.

1 Q. What do you remember?

2 A. I remember telling them that -- basically the same
3 thing I told them in the second one about the phone. And
4 me playing a game and stuff like that.

5 Q. You don't remember in your first statement that you
6 heard Kyndra say don't kill him?

7 A. No, sir.

8 Q. Can I show you your statement that you signed?

9 MR. MCELHANNON: May I approach, Your Honor.

10 THE COURT: Yes, sir.

11 Q. I'm going to show you what's three pages long; the
12 back page is basically a signature page. Is that your
13 signature?

14 A. Yes, sir.

15 Q. And this -- do you remember giving this statement
16 and signing it back on July 10, 2012?

17 A. Yes, sir.

18 Q. You do? If you can read on page two about middle of
19 the way down, beginning with the word at, right there.
20 And read until the highlight finishes.

21 A. At one point I heard Quavo say I want to kill him.
22 And then I heard Kyndra say don't kill him. Kyndra was
23 going back and forth from the kitchen to where they were
24 in the bedroom.

25 Q. Okay. So is that your testimony, is that what the

1 truth is?

2 A. No, sir.

3 Q. That's not the truth?

4 A. I was under the influence when I first gave that
5 statement.

6 Q. Under the influence of what?

7 A. Marijuana.

8 Q. And did you tell law enforcement that you were under
9 the influence when you were giving a sworn statement?

10 A. No, sir.

11 Q. So you just made this up?

12 A. Yes, sir.

13 Q. And why would you make that up; that Kyndra said
14 don't kill him?

15 A. I was under the influence.

16 Q. Marijuana makes you lie?

17 A. No, I was just basically trying to get out of it
18 myself.

19 Q. Well, do you remember your second statement that you
20 gave just a day later, July the 11th?

21 A. Yes, sir.

22 Q. Do you remember what you told law enforcement then?

23 A. About what part?

24 Q. About that part, about Kyndra saying don't kill him.

25 A. She didn't say it in the second statement.

1 Q. That's what I'm saying. Do you remember what you
2 said in the second statement?

3 A. I mean, no, not really.

4 Q. You don't remember saying that Jeremiah said let's
5 go put him in the car and kill him?

6 A. Oh, yeah. Yes, sir.

7 Q. And Quavo said all right?

8 A. Yeah. I remember saying that.

9 Q. And you say I didn't say anything and neither did
10 Kyndra?

11 A. Yes, sir.

12 Q. So from July 10th to July 11th, you've changed your
13 story about what you've heard and observed, haven't you?

14 A. Yes, sir.

15 Q. And as far as you knowing what Kyndra Howell was
16 thinking about what happened to Mr. Patel, you don't know
17 what she was thinking; do you?

18 A. I don't know what she was thinking.

19 Q. Okay. You just didn't come back with him and you
20 just assumed that she knew that y'all had killed him?

21 A. Yes, sir.

22 Q. You say -- I believe your testimony was that Quavo
23 or Ezra Williams didn't know what was going on when he
24 got to the house?

25 A. He didn't know at first.

1 Q. He was surprised when he walked in and Mr. Patel was
2 tied up?

3 A. I mean, he couldn't see until he walked into the
4 room.

5 Q. But I mean, he didn't know that that was going on is
6 what you testified to; right?

7 A. Yeah. He didn't know what was going on at the
8 moment.

9 Q. Did Kyndra Howell ever strike Mr. Patel, hit him?

10 A. No, sir.

11 Q. Did she ever do any burning with the knife or bug
12 spraying on him?

13 A. No, sir.

14 Q. She didn't go to the -- where y'all eventually
15 killed him?

16 A. No, sir.

17 Q. She didn't help put him in the car?

18 A. No, sir.

19 Q. How did the murder scene -- was Mr. Patel standing
20 up or was he down on his knees?

21 A. He was standing up.

22 Q. Standing up?

23 A. Yes, sir.

24 Q. And you say Ezra had the gun and shot him in the
25 head?

- 1 A. Yes, sir.
- 2 Q. Do you have any idea how tall Ezra is?
- 3 A. He's probably about five eight, five nine.
- 4 Q. Five eight? And what was Jeremiah doing during this
- 5 -- while y'all had him out in the woods?
- 6 A. He was just standing right in front of him.
- 7 Q. Did you ever hear Jeremiah say don't kill him or try
- 8 to get Mr. Patel out of the situation?
- 9 A. No, sir.
- 10 Q. Mr. Gantt, after July the 1st or after July the 2nd,
- 11 did you and Jeremiah Johnson continue to go to Kyndra
- 12 Howell's house?
- 13 A. I went there.
- 14 Q. Pardon?
- 15 A. I went back to her house.
- 16 Q. For several days afterwards, you were kind of going
- 17 in and out of there?
- 18 A. Yeah. I went over there.
- 19 Q. Jeremiah too?
- 20 A. The next day we was both over there.
- 21 Q. Did you let some dogs out, some puppies?
- 22 A. Some dogs?
- 23 Q. Two little dogs running around in the yard?
- 24 A. No, there wasn't over there at that time.
- 25 Q. But y'all were over there more than just once,

1 weren't you, after the murder happened?

2 A. Yes, sir.

3 Q. Kyndra wasn't there, was she?

4 A. No, she had -- she had done left by that time.

5 Q. Pardon me?

6 A. She had done left.

7 Q. She had left by that tie?

8 A. Yeah. She had left the next day.

9 Q. So y'all are just over there basically crashing over
10 at the house?

11 A. No, she wasn't -- she was there but she left.

12 Q. And didn't come back, did she?

13 A. No, and she didn't come back.

14 MR. MCELHANNON: I believe that's all the
15 questions I have.

16 THE COURT: Redirect?

17 MR. CAMPBELL: No, Your Honor.

18 THE COURT: May this witness be excused?

19 MR. CAMPBELL: Yes, sir.

20 MR. MCELHANNON: Yes, sir.

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

22 Call your next witness, please.

23 MR. CAMPBELL: May we approach?

24 THE COURT: Yes, sir.

25 (WHEREUPON, a bench conference was held off the

1 record.)

2 THE COURT: Madam Forelady, the attorneys
3 advise that this is a good time to take a break. So
4 let's go ahead and take a break for the afternoon. If
5 you need anything make sure you let the bailiff know. If
6 you would, take the jury back to the jury room, please,
7 ma'am.

8 (WHEREUPON, the jury exited the open court at
9 approximately 2:38 p.m.)

10 THE COURT: All right. Let's take about a ten
11 or fifteen minute break.

12 (WHEREUPON, the court stood at recess for a short
13 break.

14 THE COURT: Please be seated. Gentlemen, just
15 for your edification, for the record, while we were on
16 break, we had a juror who was concerned about work-
17 related issues because she works at night. She didn't
18 feel like she could do both. So I made a call to her
19 employer for her just to say, you know, she's doing this
20 and I don't think she can do both. She doesn't think she
21 can do both either. But just to let you know. If
22 there's any problem with that, let me know or forever
23 keep your peace. All right?

24 All right. Are you ready to go next?

25 MR. CAMPBELL: Yes, sir.

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1 THE COURT: Mr. McElhannon, you ready?

2 MR. MCELHANNON: Ready, Your Honor.

3 THE COURT: Bring the jury in, please.

4 (WHEREUPON, the jury entered the open court at
5 approximately 3:03 p.m.)

6 THE COURT: All right, sir. Will you call your
7 next witness.

8 MR. CAMPBELL: Your Honor, the State calls
9 Danny Barton to the stand.

10 THE CLERK: Raise your right hand.

11 Do you solemnly swear or affirm the testimony you'll
12 give the court today in this case to be the truth, the
13 whole truth and nothing but the truth?

14 THE WITNESS: Yes, sir.

15 THE COURT: If you would take the stand and
16 state your name and spell your last name for the record,
17 please.

18 THE WITNESS: My name is Danny Barton, B-A-R-T-
19 O-N.

20 DANNY BARTON,

21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MR. CAMPBELL:

24 Q. Detective Barton, you're the Anderson County
25 Sheriff's Office case officer and conducted the

1 investigation in the disappearance and eventually the
2 homicide of Chandrakant Patel, also known as C.J. Patel?

3 A. Yes, sir.

4 Q. Now, are you the detective that took out the
5 warrants on Kyndra Howell?

6 A. I am.

7 Q. For the crimes that she's currently charged with?

8 A. Yes, sir.

9 Q. And how long have you been in law enforcement?

10 A. Fifteen years.

11 Q. And what duties and positions have you held during
12 that time?

13 A. I began in law enforcement in '99, straight out of
14 the military. I was in the Navy for four years;
15 honorably discharged in 1999. I started at the detention
16 center where I was promoted to the rank of lieutenant
17 over one of the shifts there. In 2005, I was transferred
18 to uniform patrol, which is the road patrol division of
19 the sheriff's office. I was a training officer on one of
20 the shifts there of the newly hired officers at the
21 sheriff's office. In 2009, I was promoted to the
22 investigative division of the sheriff's office. That's
23 where I'm currently at. In 2009, I began investigating
24 crimes of property, burglaries, larcenies, those sorts
25 of things. Shortly after that, I began to investigate

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1 white collar crimes, economic type stuff. Now I
2 currently investigate sex crimes, crimes against
3 children, violent crimes and homicides.

4 Q. Do you have any other type of duties currently at
5 the sheriff's office?

6 A. Yes. I'm also a sniper on the SWAT team, as well a
7 training officer for the newly assigned investigators to
8 the unit.

9 Q. Now, when did you first become involved in this
10 case?

11 A. On July 2nd, 2012.

12 Q. And how did that come about?

13 A. On July 1st, 2012, the night of July 1st, the
14 morning of July 2nd, Meet Patel filed a report with the
15 Anderson County Sheriff's Office that his father C.J.
16 Patel had went missing. That he was last seen around
17 five-thirty p.m. in the afternoon on July 1st. When I
18 came into work on July 2nd, that was one of the reports
19 that was assigned to me to work that day.

20 Q. And what day was July 2nd?

21 A. A Monday.

22 Q. Now, when you got this report regarding a missing
23 person, what was your first step or how did you start
24 your investigation?

25 A. Well, first I talked with his son Meet Patel who

1 gave me the financial records for his father. Checked to
2 see if any of his cards had been used at all. Got his
3 phone records to see who had been contacting him just
4 prior to going missing. On his phone records there was
5 one particular number, I believe it was 202-9730, that he
6 had called numerous times just before there was -- his
7 activity on his phone stopped around, I believe, five-
8 thirty to six o'clock, p.m., somewhere around there.

9 Q. And what day was that?

10 A. On Sunday, July 1st.

11 Q. And at this point was this case considered a missing
12 person's investigation?

13 A. Yes, sir.

14 Q. And where exactly did Mr. Patel work?

15 A. He managed the Exxon station on Clemson Boulevard,
16 just before Interstate 85. It's the one right there on
17 the left beside the Hardee's.

18 Q. And did you go up there at all to check on his
19 whereabouts?

20 A. Not at that time. I spoke with Meet Patel on the
21 phone and Meet Patel dropped off records for the cell
22 phone at my office.

23 Q. Now, at this point, what steps did you take in order
24 to try to learn where Mr. Patel was?

25 A. When I looked at his phone records and saw the 202

1 number that he had called numerous times, I ran it
2 through a database that we use for part of our
3 investigation techniques and tried to get an owner of the
4 phone. The phone was registered to a Leann Howell, I
5 believe, at the address of 3304 Jerry Drive. So I went
6 to that address to try to locate Leann Howell. At the
7 time, I didn't know who Kyndra Howell was, or anybody
8 else in this case for that matter. When I arrived at
9 3304 Jerry Drive, I knocked on the door of the carport.
10 When I was first approaching the house, there was a
11 trailer in the carport that looked like somebody may have
12 been moving. There was a bunch of junk on the trailer.
13 When I knocked on the door, a black male came to the door
14 and spoke with me. I didn't know at the time, but that
15 was identified as Zachary Gantt later on in the
16 investigation. I asked him if he knew Leann Howell. He
17 said he did not. And at the time I didn't -- the people
18 I was looking for was a white female. And this was a
19 black male, so I had no reason to suspect anything odd so
20 I left at that point.

21 Q. And Jerry Drive, that's located in Anderson County?

22 A. Yes, sir.

23 Q. In what part of Anderson County would you consider
24 this?

25 A. The Homeland Park area.

1 Q. Now, at this point in time, did you have much to go
2 on in your investigation?

3 A. No. And typically these missing person
4 investigations, I didn't think it was odd that I didn't
5 have anything to go on. Typically, these missing
6 persons, they're filed and just, you know, in a few
7 hours, twenty-four hours later, the person is returned.
8 It's normally somebody that doesn't want to be found, the
9 missing person reports that we get.

10 Q. So what was the next step you took?

11 A. The next day, I spoke with Meet Patel again, who
12 advised me that the phone number that he had given me was
13 not for Leann Howell, that it was actually for Kyndra
14 Howell. And so when I got that information, I started
15 trying to do some digging on Kyndra Howell. But in the
16 process of all of that, I heard a call go out for a black
17 Honda being located at Wooten Road in Townville. And the
18 tag came back to C.J. Patel.

19 Q. Now, and this is on Tuesday, July 3rd?

20 A. Yes, sir.

21 Q. Now, when you were doing your investigation into the
22 name of Kyndra Howell, did that pop up on anything that
23 you were able to see at the sheriff's office?

24 A. At the time the only thing that I had with her name
25 on it was when Meet Patel had given me that name and I

1 started looking back through the report again and found
2 out that Matthew McCarty, one of the deputies at the
3 sheriff's office who you've heard from there, had been
4 out to Kyndra's house that night before. Apparently,
5 Meet Patel had called into the sheriff's department that
6 night and wanted him to check that property. And so Matt
7 McCarty had went out there and spoke with Kyndra.

8 Q. Did you get a copy of that report?

9 A. Yes.

10 Q. Now, at this point you stated that you heard a call
11 go over the radio regarding a black car being found.

12 With that information, did you go to that scene?

13 A. I did.

14 Q. And where exactly was that located?

15 A. It was in the Townville area off of, I believe it
16 was Highway 243 up in Townville. It's way out in the
17 country, almost in Oconee, I believe.

18 Q. And you went to this location?

19 A. I did.

20 Q. Did you speak to the person who found it?

21 A. I did not.

22 Q. To your knowledge, had that car been touched or
23 messed with in any way, shape or form?

24 A. Detective Finley interviewed the person who found
25 the vehicle. And the only thing to my knowledge that was

1 tampered with on the car was there was a pair of
2 eyeglasses that were found on the ground near the car.
3 The person who found the vehicle picked those up and set
4 them on the trunk of the vehicle.

5 Q. Now, while you were at the scene, do you recall what
6 kind of car it was?

7 A. It was a black Honda, four-door.

8 Q. Y'all eventually had that towed back to the
9 sheriff's office?

10 A. Yes, sir.

11 Q. Besides that, did y'all do anything there at the
12 location at Fairplay to try to determine where Mr. Patel
13 was located or anything that may have happened to him?

14 A. Yes, sir. At the time that we found his vehicle
15 this was still a missing person's report, although it was
16 starting to turn in a real bad way. Where the car was
17 pulled off into the drive, it opened up into a large
18 field. We searched that entire field. We searched the
19 entire wooded area around where the car was found. We
20 searched the entire street from one end all the way to
21 the other. Knocked on every door on that street talking
22 to somebody who might have some information, who might
23 have saw this car being dumped, because we didn't --
24 there was still a missing person. We needed to find C.J.
25 Patel.

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1 Q. And the Location of this car where it was found, was
2 it easy to get to?

3 A. No, sir. It was actually -- if the police hadn't
4 been out there when I arrived on the scene, I wouldn't
5 have even seen the car. I mean, it was pulled off the
6 road into the woods. Once I got stopped you could see
7 the tail-end of the car from the road. And there was a
8 cable blocking the road where you couldn't get inside the
9 trail without lifting up the cable or taking down the
10 cable.

11 Q. And at this point through your investigation, did
12 you feel like you were still dealing with a missing
13 person's case?

14 A. Technically, yes, it was a missing person, but like
15 I say, it was starting to look like it was going to be a
16 lot more than a missing person's. I had a bad feeling
17 about it.

18 Q. Now, after y'all found the car and a search warrant
19 was taken out, as the deputy said earlier, and it was
20 processed, at what point did you eventually get a lead
21 that provided some information into the disappearance of
22 C.J. Patel?

23 A. When they did the search warrant on the car there
24 were several things found in the car that were
25 interesting. There was a -- we used a chemical called

1 Blue Star, as we heard earlier, that reacts to blood.
2 There were several places inside the trunk of the car
3 that reacted to it that lit up like there was possibly
4 blood in the trunk. Samples were taken and sent to SLED
5 for analysis. There were also several places in the back
6 seat that was -- that lit up like there was blood in the
7 back seat. But as far as an actual lead, it was that
8 night.

9 Q. And what was that?

10 A. After everything had settled down and we followed up
11 on a couple of leads that didn't go anywhere, I had went
12 back to the sheriff's office and had sat -- we had set up
13 a tip line at the sheriff's office. So I went back and
14 sat by the phone in case a tip come in. And I'd actually
15 -- it's kind of odd. I'd received a phone call from an
16 individual who ran a funeral home in Georgia claiming
17 that he had a C.J. Patel deceased at his funeral home.
18 The same name, Chandrakant Patel, spelled the same way.
19 I sent him a photo of Mr. Patel, and oddly enough, it was
20 not C.J. Patel. It was the same name but a different
21 person. But not long after that, I received a call from
22 Kim Lomax claiming that she had information involving
23 this case.

24 Q. Was that the young lady that testified prior to
25 lunch?

1 A. Yes, it was.

2 Q. So did she call you?

3 A. Yes, sir.

4 Q. And as a result of this conversation what, if
5 anything, did you learn?

6 A. When I spoke to Kim Lomax, as you heard earlier, she
7 indicated that Kyndra had called her a couple of times on
8 the night that C.J. went missing and advised her that
9 they were holding C.J. hostage in her bedroom. They
10 also, another time that Kyndra had called her, Kyndra was
11 driving around in C.J.'s car. And while I was speaking
12 with Kim Lomax, either Kim called Kyndra or Kyndra called
13 Kim, but I was on the phone with Kim when those two
14 spoke. And Kim put Kyndra on speaker phone where I could
15 hear what she was saying. Kyndra asked her where a store
16 in Belton was at that stayed open all night. Because
17 this was about midnight when this conversation was
18 happening. I can't remember if Kim actually told her a
19 store, but I know that there's only one store in Belton
20 that stays open all night long. So based on what I'd
21 heard there, I called Belton Police and had them be on
22 the lookout for Kyndra Howell at the only store that
23 stays open in Belton all night long.

24 Q. And as a result of your phone call to the Belton
25 Police Department was Ms. Howell eventually found at the

1 store?

2 A. Yes, sir. I got a phone call not too long -- just a
3 few minutes later from the Belton Police Department that
4 said they were out with Kyndra Howell. I advised them
5 that, you know, she wasn't under arrest at the time. I
6 just wanted to talk to her regarding the disappearance of
7 C.J. Patel. And they asked Kyndra is she would wait on
8 me to come up there and talk with her. She said she
9 would, so I responded down there.

10 Q. Where exactly is this store located in Belton?

11 A. Right across the street from the police department.

12 Q. So did you go to the store?

13 A. I did.

14 Q. And this is a convenience store?

15 A. It is.

16 Q. When you got there, was Ms. Howell there?

17 A. She was.

18 Q. Was she by herself or did she have anybody with her?

19 A. No, she was in the company of Ezra Williams.

20 Q. Is he another individual that's also been charged in
21 this case?

22 A. He is. But at the time his name had not been
23 brought up in this investigation. We know Ezra, but at
24 the time he hadn't been brought up in this particular
25 investigation.

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1 Q. And did you speak to Ms. Howell at the convenience
2 store in Belton?

3 A. I did.

4 Q. And what, if anything, did she tell you?

5 A. We asked her when's the last time she had seen C.J.
6 And a lot of the things Kyndra and I had talked about
7 while we were there, Kim and I had also talked about.
8 One of the things she said that Kyndra was going to try
9 to do was use Kim as a alibi and say that she was at
10 Kim's house on the night that C.J. disappeared.

11 MR. MCELHANNON: Objection, Your Honor.

12 THE COURT: I sustain that objection.

13 Q. Now, how would you describe her demeanor, Ms.
14 Howell, when you talked to her?

15 A. She was really carefree, smiling the entire time.

16 Q. And did she tell you anything about her knowledge of
17 where Mr. Patel was?

18 A. She said she hadn't seen him in about a month.

19 Q. At that point in time, did you do anything to her or
20 with her?

21 A. No. We talked for just a little while. You know,
22 of course, I asked her where she was at that night. And
23 she said Kim Lomax's house, which I knew wasn't true
24 already. But I played the game with her and I told her,
25 you know, if Kim is your alibi, then let's get in touch

1 with her and call her, but she refused to give me the
2 phone number. I asked her where Kim lived. She told me
3 she lived in Belton Woods but wouldn't give me the
4 address. I told her that I was going to have a deputy
5 ride by Kim's house at Belton Woods and verify her story
6 while I was talking with Kyndra. And at that time Kyndra
7 -- she asked me if she would be arrested if she left.
8 And I told her she would not. And she told me the
9 conversation was over. And she got in her car and left.

10 Q. At this point she's just a person of interest?

11 A. She is.

12 Q. Now, after you spoke with her, and as a result of
13 this conversation, what next step did you take?

14 A. Based on the -- also, I failed to mention when I
15 spoke with Kyndra, I asked her where she lived at and she
16 told me she lived at 3304 Jerry Drive. She told me she
17 was in the process of being evicted from that residence.
18 But she did acknowledge that she was living there. So
19 based on that statement that she'd given me, or not a
20 written statement but just a verbal conversation, based
21 on that and the statement of Kim Lomax, and the fact that
22 C.J.'s phone had been pinging in Homeland Park on the
23 last time his phone was used, I took all of that and
24 spoke with the Judge and obtained a search warrant for
25 3304 Jerry Drive to look for any kind of signs of Mr.

1 Patel or any kind of signs that somebody was held hostage
2 or tied up or anything.

3 Q. And did you get a search warrant for the house?

4 A. I did.

5 Q. And this was for 3304 Jerry Drive in Anderson?

6 A. It was.

7 Q. Did you personally go to the house?

8 A. I did.

9 Q. And can you just tell the ladies and gentlemen of
10 the jury, if you can just describe the house and the
11 location it's in?

12 A. Jerry Drive leads down into a trailer park in
13 Homeland Park. It's off of Roosevelt Drive. I believe
14 there's only one brick house on Jerry Drive, to my
15 knowledge, and that was Kyndra Howell's residence, 3304
16 Jerry Drive. All the other residences on Jerry Drive are
17 trailers. There -- at the time, there was like poles in
18 the road that would try to block someone from going on
19 down into the trailer park, and that's pretty much Jerry
20 Drive.

21 Q. And did you eventually go into this house?

22 A. I did.

23 Q. And can you just describe for the jury what type of
24 house, how big it is?

25 A. It's a small house, maybe a thousand, eleven hundred

1 square feet. It's, like you heard before, it's actually
2 a two-bedroom house but the front bedroom, which I
3 believe was Kyndra's bedroom has an exterior door. And I
4 believe that was either the living room or the dining
5 room at one time, but Kyndra had converted it into a
6 bedroom.

7 Q. Now, while you were at the house, did you observe
8 anything regarding the house that caught your interest?

9 A. Yes, sir. As we were approaching the house, I
10 noticed security cameras on the outside; I believe there
11 were three of them. But when we searched the house, we
12 looked for a DVR and couldn't find one, which is not
13 uncommon. A lot of these drug houses that we go to, they
14 have cameras mounted on the front of the house. And it's
15 not recording anything. It's just showing a live feed
16 where they can see who's pulling up in the driveway. So
17 when we couldn't find a DVR box, we weren't -- it wasn't
18 uncommon.

19 Q. And what, if anything, did you observe when you did
20 the search warrant? Did y'all find any signs of Mr.
21 Patel?

22 A. We didn't find any signs of him. We did see several
23 cables, cords, those type things from the house that
24 could be used to tie someone up. Because, as I said, at
25 this time we didn't know where Mr. Patel was. We were

1 grasping at straws to find something.

2 Q. So you had no idea of what you were looking for when
3 you actually went into the house?

4 A. Not a clue.

5 Q. When you did this, conducted this search warrant
6 here, you didn't find Mr. Patel?

7 A. No, sir.

8 Q. Now, at some point did you actually get in contact
9 with the landlord who owned that residence at 3304 Jerry
10 Drive?

11 A. Yes, sir.

12 Q. And who was that?

13 A. It was Brian Gilmer. I contacted him and just to
14 ask him about the cameras just in case there was -- an
15 off-chance there was a DVR box.

16 Q. And based on your conversation with him, what did
17 you learn?

18 A. That there was, in fact, a DVR connected to those
19 cameras and he actually installed them for crime in the
20 area. It wasn't anything necessarily to do with 3304
21 Jerry Drive, but that was a good place to put the cameras
22 to monitor Jerry Drive. And the DVR box, he told me, was
23 actually located inside the wall in the closet.

24 Q. Now, at this point based upon this information that
25 you received from Mr. Gilmer, what was the next step in

1 your investigation?

2 A. Based upon that we actually obtained a second search
3 warrant for the residence to get the DVR box. And once
4 we got that search warrant we met the maintenance man at
5 3304 Jerry Drive. And when we entered the house, he went
6 inside the closet and actually took a panel off the wall
7 to access the DVR, and we seized it based on that search
8 warrant.

9 Q. And you were present when this was going on?

10 A. I was.

11 Q. And as a result of them accessing the wall, was the
12 DVR system removed?

13 A. It was.

14 Q. And did you take possession of it?

15 A. I did.

16 Q. And what did you do with this system after you got
17 it?

18 A. I took it back to my office and reviewed the
19 footage.

20 Q. And did you also download this footage on some
21 disks?

22 A. I did.

23 Q. Now, as a result of that did you review the videos?

24 A. I did.

25 Q. And what information did you glean from them?

1 A. That the, around the time that C.J. Patel went
2 missing, he was actually pulling into the driveway of
3 Jerry Drive. Kyndra Howell got in the vehicle with him.
4 They came back. C.J. and Kyndra both entered her
5 residence and that was the last time C.J. was ever seen
6 alive.

7 Q. Did you make a copy of these?

8 A. I did.

9 Q. And after you viewed the videos, you obviously said
10 you saw C.J. and Kyndra Howell. Did you see anybody else
11 on the video?

12 A. I did. There were two black males that we needed to
13 identify; one being Zack Gantt, who you heard from
14 earlier, and the co-defendant Jeremiah Johnson.

15 Q. And how did you go about ID'ing these individuals?

16 A. Kyndra Howell, I knew her as soon as I saw her.
17 C.J. Patel, I knew him as soon as I saw him. We spoke to
18 Kim Lomax and several other individuals who were able to
19 identify Zack Gantt and Jeremiah Johnson.

20 Q. And at this point in your investigation was anybody
21 in custody?

22 A. No, sir.

23 Q. Has any arrest warrants been taken out at this point
24 in time?

25 A. Not at that time.

1 Q. So after you watch the video and determine Ms.
2 Howell was the one in -- with Mr. Patel, what was your
3 next step?

4 A. Based on the statement of Kim Lomax, like I said,
5 Mr. Patel's phone pinging right around her residence, the
6 video footage that he was last seen at that residence.
7 We did sign a warrant on Kyndra Howell, Jeremiah Johnson
8 and Zachary Gantt, all for kidnapping.

9 Q. All right. After you got the arrest warrant, how
10 long was it before you were able to locate Ms. Howell and
11 serve her with the warrant?

12 A. I believe it was right then. We kind of knew where
13 she was at. Right after I got the warrants, I advised
14 the other detectives where to go find her at. And they
15 went out there and picked her up and brought her to the
16 sheriff's office.

17 Q. And when you got her, did you serve the warrant on
18 her?

19 A. I can't remember if I actually served it or -- I
20 don't believe I did, because I took the warrant out. I
21 believe, and maybe Sergeant Givens; maybe. I'm not
22 positive on that, though.

23 Q. And did you speak to her after she was arrested?

24 A. I did.

25 Q. And did she say anything to you?

1 A. Initially when we spoke it was the same story that
2 she had given me the night at the store, that it had been
3 a month or so since she had saw him. When I confronted
4 her with the video from her house that she was seen on it
5 with Patel on the night of July 1st, her reaction was a
6 smile and okay. And that was it.

7 Q. And did you speak to her after that?

8 A. We did continue talking. She really wouldn't talk
9 about any involvement in this, except what we already saw
10 on the video. That's all she would say. Other than
11 that, she just -- every, every once in a while she would
12 get emotional in the interview. But most of the time it
13 was just, just smiling.

14 Q. Now, you have her arrested at this point in time.
15 Do your recall what date that was?

16 A. I believe it was on the 5th, I believe. The 5th or
17 the 4th.

18 Q. And she's been -- the first person who's been
19 arrested; is that correct?

20 A. Yes.

21 Q. Now, after her arrest were y'all able to locate
22 Zachary Gantt and Jeremiah Johnson and also serve the
23 arrest warrants on them?

24 A. Yes. Once we got those warrants for those guys we
25 did arrest, I believe, Zack Gantt first. He turned

1 himself in to the sheriff's office on July the 7th.

2 Q. Now, at this point everybody's just charged with
3 kidnapping?

4 A. Yes, sir.

5 Q. And was Jeremiah Johnson eventually arrested?

6 A. He was, after Zack Gantt.

7 Q. Now, at this point in your investigation has the
8 name Ezra Williams come up yet?

9 A. Other than seeing him the night of the incident, no.
10 I'm sorry. I'm sorry. Not the night of the incident but
11 the night I met with Kyndra Howell at the store.

12 Q. Now, you have three people arrested and in jail for
13 kidnapping. Did you, at this point in time, did you
14 still consider this investigation to that you were
15 conducting to be a missing persons or did you think it
16 had already at this point, based on what you knew, had
17 kind of transgressed over into some other area?

18 A. Technically, yes, it was still a missing persons.
19 But based on my experience we were looking for a body.

20 Q. So based upon that, did you take any further steps
21 in order to try to determine the whereabouts or what
22 could have happened to Mr. Patel?

23 A. We interviewed both Zack and Jeremiah Johnson when
24 they were arrested; it was at different times, obviously.
25 I believe they were arrested different days. In Zack

1 Gantt's interview he denied any knowledge of anything at
2 first. And once he was confronted with the video, of
3 course, he acknowledged that was him on the video but
4 that he knew nothing about C.J. Patel. He never saw him,
5 never heard him and knew nothing about the kidnapping nor
6 the possible murder of C.J. Patel. He was put in the
7 detention center and booked. When Jeremiah Johnson was
8 arrested the same thing with him. He denied any kind of
9 knowledge of anything. He did, once he seen the video,
10 acknowledge that he was at the house but claimed that he
11 was there playing video games all night long and doesn't
12 know -- never saw C.J. Patel, doesn't know who he is, or
13 anything like that.

14 Q. So at this point nobody has said anything about the
15 whereabouts of Mr. Patel?

16 A. No, sir.

17 Q. So at what point in your investigation did it
18 finally start -- something break in which you were able
19 to glean some information about his whereabouts?

20 A. I had spoken with Kizzie, Kizzie Roebuck, who is
21 Zack's mother, on the telephone. She was the one that
22 had brought Zack up to the sheriff's office to turn
23 himself in. Kizzie was very emotional. She was crying.
24 These type cases, they involve a lot of emotions, not
25 only for the victim's family but for the defendant's

1 family, as well. Their parents didn't ask to be put them
2 in this situation. So I kind of felt for Kizzie a little
3 bit. So I offered to pull Zachary from the jail and
4 bring him up to my office to let Kizzie visit with him
5 for a few minutes because she hadn't seen him or heard
6 from him since he went to jail. When I brought him to my
7 office, I put in there in our interview room and let them
8 have about ten minutes or so. When I told Kizzie it was
9 time to start wrapping it up, she told me that Zachary
10 wanted to talk to me and give me more information about
11 Mr. Patel. So at that time, Kizzie was walked out and I
12 did interview Zack again. At this time we did take a
13 written statement from him. He did acknowledge to
14 knowing a lot about the situation but still denied any
15 kind of involvement, especially what we call self-serving
16 statement. He gives us a lot of information but just
17 kind of denies his involvement in it. Once we finished
18 the statement, I kind of felt that it was a homicide we
19 were dealing with. And he was taken back to the
20 detention center. But at that time I still had no body.
21 He claimed to not know anything about where the body was
22 at.

23 Q. Now, based upon his statement is that the first time
24 you heard the name Ezra Williams come up as being an
25 individual that was involved in this?

1 A. Yes. He referred to him as Quavo. And I put Ezra
2 Williams in a photo lineup and showed it to Zack and, of
3 course, he gave me that name, as well. And, also, Kizzie
4 Roebuck had -- it may have been that day or the day
5 after, Kizzie Roebuck had come and told me that she had
6 spoken with Ezra Williams and Ezra acknowledged to her
7 that he was there, as well.

8 Q. Now, so Mr. Gantt gave you a statement on July 10th,
9 2012?

10 A. Yes, sir.

11 Q. As you heard in cross-examination of Mr. Gantt, he
12 also gave a second statement on July 11th, 2012. Were
13 you present for that statement also?

14 A. I was.

15 Q. Can you just tell us how that came about?

16 A. Typically -- first I'll touch on the first statement
17 and the second statement he gave. Typically, it's not
18 uncommon for these individuals that we interview to tell
19 a lot of lies in the first self-serving statement. But
20 typically when we go back to interview them, a lot of the
21 things they say we're able to verify and corroborate
22 based on the evidence and other statements that we take.
23 So with that said, on July the 11th, I had been reviewing
24 more of the video footage later on, way after all this
25 had taken place. And there was a couple of individuals

1 on the video. It was dark outside so I couldn't see who
2 it was, but I thought Zack may know. So I went back and
3 picked him up at the jail and brought him to my office to
4 show him the video and try to identify these individuals
5 who were on the video. While we were at my office, I
6 received a phone call from Adelaid Johnson, who is Zack's
7 aunt. I'm guessing she had heard about me letting Zack
8 see Kizzie Roebuck. And she had come from Greenville to
9 see him as well, but had missed the visiting hours, so
10 asked me if I could do the same for her. Normally, I
11 probably wouldn't have done it for her as well. But,
12 since I had Zack in my office, I did let her come visit
13 with him for a few minutes. The same thing for them. I
14 put them in an interview room, let them sit about ten
15 minutes. And when I told them it was time to start
16 wrapping it up, Zack actually told me that he wanted to
17 give me a little more information.

18 Q. And prior to you allowing -- I guess it was with
19 you, did you Mirandize him prior to that?

20 A. Yes. I had actually Mirandized him before we ever
21 started talking, before we looked at the video. I read
22 him his Miranda rights and he understood and he signed a
23 waiver agreeing to talk to me.

24 Q. And did he agree to speak to you again after his
25 aunt come out of the room?

1 A. Yes, sir. When they came out of the interview room,
2 we were standing in the hallway; it was Adelaid Johnson
3 and Zack Gantt and myself, as well as Sergeant Owens in
4 the hallway. And before Zack said anything, I told him
5 you understand you're still under the Miranda advisement
6 that you signed earlier. He acknowledged that he
7 understood. He was ready to take me to where he thought
8 the body may be dumped at.

9 Q. And did he do this?

10 A. Yes, he did.

11 Q. And where was the body found?

12 A. We drove out to Highway 29 South almost to the
13 Georgia -- I mean, it was maybe a mile or two from the
14 Georgia State line; a road called Big Water Road. It's
15 at an intersection on 29 South. As soon as we turned
16 onto Big Water Road, Zack pointed out a little pull-off
17 trail on the right side there. And he told us that's
18 where it was at. And we pulled over on the side of the
19 road. And I had stepped back to speak with Adelaid
20 Johnson for just a moment. And Todd Williams and Zack
21 walked into the woods and emerged just a few minutes
22 later and Todd Williams said that Zack took him to the
23 body and while they were back there acknowledged that he
24 was ---

25 Q. And who is Todd Owens?

1 A. Sergeant Todd Owens ---

2 Q. Who is Todd Owens?

3 A. Sergeant Todd Owens at the sheriff's office. He's
4 my supervisor.

5 Q. So he'd gone in the woods with Zack and found the
6 body?

7 A. Yes, sir.

8 Q. And as a result of you learning this information,
9 did you also go back and view the body?

10 A. I did. Once they emerged from the woods, we didn't
11 want to take Zack back into the woods again so we sat him
12 in a vehicle with another detective who was also there
13 with us. And Todd Owens and I walked into the woods for
14 him to show me where it was. And it was about a hundred
15 to a hundred and ten yards into the woods. And when you
16 walk into the little pull-off there, you walk up forty,
17 fifty yards or so and it zig-zags back into the woods
18 about another fifty, sixty yards to an area where Mr.
19 Patel's body lay.

20 Q. Now the location where the body's discovered, how
21 far away was it from the location where Mr. Patel's car
22 was discovered? Were they in close proximity to one
23 another?

24 A. No. It was I want to say about eleven miles. Oh,
25 where the car was discovered? I believe it was around

1 twenty miles or so. It was a good distance.

2 Q. Were they even in the same part of the county?

3 A. No.

4 Q. Now, you have the body. As you heard Dr. Woodard
5 testify, he conducted the autopsy. Were you also present
6 when the autopsy was conducted?

7 A. I was not.

8 Q. Were you also present at the scene when evidence was
9 discovered by Chris Wilson, forensics detective Chris
10 Wilson?

11 A. At the body scene?

12 Q. Yes, sir?

13 A. I was not. I went out there and saw where the body
14 lay, how C.J. was laying, but I had Zack Gantt with me so
15 me and Todd Owens went back to the sheriff's office to
16 interview -- Todd Owens and my supervisor, Lieutenant
17 Steve Reeves actually arrived on the scene and took over
18 that scene for me.

19 Q. Now, as the case officer, though, all the
20 information that other people that is assisting you with
21 the investigation comes to you; is that correct?

22 A. Yes, sir.

23 Q. What did you learn regarding the type of evidence
24 that was discovered where the body was located?

25 A. First and foremost, a nine millimeter shell casing

1 was found near the body. Mr. Patel was laying on his
2 back in the wooded area. His hands were bound behind his
3 back with a phone cord type material. And it looked like
4 he had a single gunshot wound to the head.

5 Q. So now, if I can understand this. You have the
6 body. You have statements from Zachary Gantt, statements
7 from Jeremiah Johnson, and the video from the house?

8 A. At the time, we don't have the actual statement from
9 Jeremiah Johnson yet. We have the video from the house
10 and Zack Gantt's statement.

11 Q. As a result of this information that you had, did
12 you do any steps trying to verify what was in the
13 information given to you?

14 A. Yes. We -- after we found the body, of course, we
15 took Zack back to the office and interviewed him again.
16 At that time, he did give a full detailed confession of
17 how Kyndra Howell approached him and Jeremiah Johnson and
18 asked them if they wanted to rob ---

19 MR. MCELHANNON: Objection, Your Honor. Mr.
20 Gantt's already testified. We don't need to take it
21 apart and paraphrasing his testimony; that's what he's
22 doing. He was actually a witness.

23 THE COURT: Rephrase the question, please, sir.

24 Q. What steps did you take, you personally, to confirm
25 what information you'd learned from other individuals in

1 this case?

2 A. Based on Zack Gantt's confession we did interview
3 Jeremiah Johnson, who also gave a full detailed
4 confession, which corroborated just about every detail of
5 Zack Gantt's statement. I did locate the, as Zack Gantt
6 referred to him, the addict. His name is actually
7 Jonathan Johnson, I believe. He goes by the name of Bug.
8 He did corroborate sections of Zack Gantt's statement.

9 Q. What did Bug do in the case?

10 A. He cleaned the vehicle up after his body was dumped
11 and they returned to Kyndra Howell's house.

12 Q. And based upon everything else, did you determine
13 whether or not when Mr. Gantt testified from the stand
14 that they left, Jeremiah Johnson had left the house to
15 try to use the ATM cards, did you do anything to try to
16 confirm that?

17 A. Yes, we did try to confirm that. I spoke with
18 individuals at the Spinx Station just up the street from
19 Jerry Drive. Also, Eddie's Minute Mart. I got video
20 from both stores, which did show Jeremiah Johnson come to
21 those stores in C.J. Patel's vehicle and use the ATM
22 machines. And neither time does he get any money out,
23 but you can tell he's uses it a couple of times trying,
24 trying to get a card to work. I believe one video, the
25 Spinx station ATM, we actually have the receipt tape that

1 shows that it was one of C.J. Patel's credit cards that
2 was used.

3 Q. Now, at this point, based upon you finding the body,
4 did you take out more arrest warrants of the individuals?

5 A. Yes. Once we were able to corroborate the things
6 that Zack told me in his statement, we did charge Kyndra
7 Howell, Jeremiah Johnson and Zack Gantt, all additionally
8 with the murder of C.J. Patel, the armed robbery, and the
9 possession of a weapon during the commission of a violent
10 crime. And we also charged Ezra Williams. This was the
11 first charges for him. We charged him with murder, armed
12 robbery, kidnapping and possession of a weapon.

13 Q. Did you ever go back to Jerry Drive after you
14 learned this information?

15 A. I did.

16 Q. And what was the purpose of that?

17 A. Typically in these type cases we're kind of learning
18 new information as we go. So seven search warrants may
19 be conducted on the same place. And that was the case
20 in here. We did one more search warrant on the house
21 based on the information that Zack had given me in his
22 statement on the locations in the house where certain
23 things had happened. We did go back and spray Blue Star
24 into the rooms that Zack told me that these things
25 happened in. And we did -- it did light up like the

1 presence of blood in several spots of the room, so
2 samples were taken.

3 Q. Now, at that point or some point close to that, was
4 Mr. Ezra Williams arrested?

5 A. He was. It wasn't, I don't think, close to that.
6 We had to look a little while to get him.

7 Q. And you know, you stated earlier that when you spoke
8 to Ms. Howell in the Belton convenience store, she was
9 with Mr. Williams. Do you know of any type of
10 relationship they had, between them?

11 A. From what I was hearing ---

12 MR. MCELHANNON: Objection, Your Honor, unless
13 he personally knows what kind of relationship they were
14 having, not just what he was hearing.

15 THE COURT: I sustain that.

16 Q. Now, based upon -- did y'all collect DNA swabs and
17 samples?

18 A. We did.

19 Q. And what, if anything, did you do with those?

20 A. They were all sent to the state lab at SLED for
21 analysis.

22 Q. And as a result of the testing, did you learn
23 anything from them?

24 A. Yes. We learned that the blood samples in the back
25 of C.J.'s vehicle were that of C.J. Patel. Those blood

1 samples were taken from the trunk of the vehicle. And
2 also from the back seat of the vehicle blood samples were
3 taken that were a match for C.J. Patel.

4 Q. Now, after you have learned -- you've already stated
5 Ms. Howell's phone number as being 202-9730, did you take
6 any attempts to try to determine if that phone showed you
7 any type of information that would help you in this
8 investigation?

9 A. Yes, sir, I did. We did a search warrant on Kyndra
10 Howell's cell phone of 202-9730. There were numerous
11 phone calls, numerous phone calls during this time frame
12 to several individuals, but two in particular. On July
13 the 1st 2012 at 7:36 p.m., there was a phone call to
14 Regions Bank, which is one of Mr. Patel's banks that he
15 banks with. There was -- just a minute later there was
16 another phone call to American Express Card Services, who
17 is also another bank that C.J. Patel uses. These calls
18 were made from Kyndra's phone. I did serve search
19 warrants on both of the banks and on the card services,
20 on the American Express, they were able to tell me that
21 on the night of the incident, July 1st, a phone call came
22 to them from Kyndra Howell's cell phone requesting access
23 to C.J. Patel's account information.

24 Q. And was it denied or did they allow it?

25 A. It was denied.

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1 Q. Now, Detective Barton, when you were conducting this
2 investigation, as the lead or case officer in this case,
3 all the steps that had proceeded when you went to the
4 house, when you went out to the body; was located and
5 found, did you or have someone in your department at your
6 direction, document this in any shape, way or form?

7 A. Each of the officers I had do something, I had them
8 do their supplemental to my report.

9 Q. And were photographs taken of the scenes, the areas?

10 A. Both scenes, yeah.

11 Q. Now, you also stated that you had taken the DVR
12 system from 3304 Jerry Drive ---

13 A. Yes, sir.

14 Q. --- pursuant to a search warrant and you viewed what
15 was on that tape?

16 A. Yes, sir.

17 Q. And you also downloaded what was on that tape?

18 A. Yes, sir.

19 Q. And I'm going to show you what's been marked State's
20 Exhibit 27 and 28. If you can please identify what these
21 are, sir?

22 A. These are the recordings made of the DVR box. I
23 believe it was from, I think two p.m. in the afternoon
24 until, I think it was the next morning around eight
25 o'clock, I believe.

1 MR. CAMPBELL: Your Honor, at this time, I'd
2 like to move these into evidence?

3 THE COURT: Any objection?

4 MR. MCELHANNON: No objection, Your Honor.

5 THE COURT: Admitted without objection.

6 (WHEREUPON, State's Exhibit Numbers 27 and 28 were
7 admitted into evidence.)

8 MR. CAMPBELL: And I'd also like to publish
9 them to the jury.

10 THE COURT: Okay, sir.

11 MR. CAMPBELL: Now, Your Honor, may I have the
12 witness step off the stand, please, sir?

13 THE COURT: Yes, sir.

14 A. (Witness steps down)

15 MR. CAMPBELL: And the for sake of shortening
16 it up, there's numerous hours on this. We are just going
17 to show just a quick portion. And we've discussed this
18 with Mr. McElhannon. We're just going to fast forward
19 and just get to the relevant parts, for the Court's
20 information.

21 THE COURT: Do you agree with that, Mr.
22 McElhannon?

23 MR. MCELHANNON: I agree with that, Your Honor.
24 I have viewed those complete disks several times, Your
25 Honor, and I know what's on them. So we've narrowed it

1 down to the important part.

2 THE COURT: Okay, sir.

3 (WHEREUPON, State's Exhibit Number 27 was published
4 in open court.)

5 Q. Now, Detective Barton, I'm going to -- we've already
6 put in State's Exhibit Number 27, which is the disk one
7 at the house.

8 A. Yes, sir.

9 Q. Now, first of all, we have four boxes up here. What
10 do they depict or show. If you explain it to them so
11 they'll understand what you're going to be telling them?

12 A. These three views are the three cameras out on the
13 front of the residence ---

14 MADAM COURT REPORTER: He's going to have to
15 speak up. I can't hear him.

16 Q. You're going to have to speak up. She can't hear
17 you.

18 A. These three cameras are the three cameras mounted on
19 the front of 3304 Jerry Drive. Camera number one is on
20 the front of Kyndra Howell's residence, pointing straight
21 out to Jerry Drive. And that's Kyndra Howell's driveway.
22 Camera two is pointed down Jerry Drive, towards the
23 trailer park. And camera three is pointed up Jerry Drive
24 towards Roosevelt Drive.

25 Q. Go ahead and explain as we start to roll the tape

1 what you're looking for in that?

2 A. This vehicle is C.J.'s vehicle. It's coming down
3 Jerry Drive. You will notice it in camera one here in
4 just a second. It's actually going to pass by 3304 Jerry
5 Drive and then come back and pull into this driveway.
6 And you'll notice it on this camera as well as on that
7 camera.

8 (WHEREUPON, State's Exhibit 27 was playing.)

9 A. When the vehicle comes back, you'll see it right
10 here and right here. When it stops, you'll see Kyndra
11 Howell come out of the carport and get into the vehicle
12 with C.J. Patel and they'll drive off.

13 (WHEREUPON, State's Exhibit 27 was playing.)

14 A. And that's Kyndra Howell coming out of the residence
15 and getting into the vehicle. When they pull out, the
16 vehicle will go back up Jerry Drive towards Roosevelt
17 Drive and leaves the area.

18 (WHEREUPON, State's Exhibit 27 was playing.)

19 A. What you're going to see next here is as soon as he
20 gets -- the green vehicle is not related to this case. I
21 believe that's the neighbor's vehicle. What you're going
22 to see next is C.J. Patel return. And C.J. will get out
23 and walk this way into the house and Kyndra Howell walks
24 from the passenger's side. They both go into the carport
25 and C.J. Patel is never seen again.

1 (WHEREUPON, State's Exhibit 27 was playing.)

2 A. What you're going to see next is the silver Cadillac
3 that we spoke of earlier is going to come down and pull
4 into this driveway right here beside 3304 Jerry Drive.
5 Zack will be standing up here. It's actually beside a
6 trailer beside 3304 Jerry Drive. He's going to walk out
7 and have a conversation with Jeremiah Johnson. He gets
8 out of the passenger side of the vehicle and together
9 they'll walk toward 3304 Jerry Drive. It appears that
10 Jeremiah Johnson is holding a bag in his hand. Through
11 their statements we learned that is a bag of dog food in
12 his hand. He had dog and he had to feed his dogs. The
13 driver of that vehicle is actually Jeremiah Johnson's
14 girlfriend. They're supposed to be going to the
15 mountains that day. Then they get out and start walking
16 over here to the Cadillac. He's going to pull over here
17 to wait on Jeremiah Johnson to come back.

18 (WHEREUPON, State's Exhibit 27 was playing.)

19 A. When they come out of view here behind the carport;
20 it ends at the carport, just a second later you'll see
21 Zack Gantt come this way. As you heard earlier, he was
22 going to a cousin's house who lives in that trailer park.
23 He walks this way in front of the vehicle and stops by
24 someone in the carport. You can tell because of his
25 hand, but whatever he's saying, but he's not staying at

1 the house. He's going this way until someone calls him
2 back.

3 (WHEREUPON, State's Exhibit 27 was playing.)

4 A. The next thing you're going to see is on camera two.
5 You're going to see Kyndra Howell walk outside, over
6 here. That's just showing that she is still at the
7 residence. She never left after that.

8 (WHEREUPON, State's Exhibit 27 was playing.)

9 A. The next thing you're going to see is Jeremiah
10 Johnson is going to come out of the carport and get in
11 the vehicle of C.J. Patel. And he's going to drive away
12 with it after just a few moments of being inside the
13 vehicle.

14 (WHEREUPON, State's Exhibit 27 was playing.)

15 A. The next thing you're going to see at the 18:40
16 time, C.J. Patel's vehicle come back down the roadway and
17 pull into the driveway, and Jeremiah get out and go back
18 inside the house. But as you see, the Cadillac is
19 Jeremiah Johnson's friend. She'd gotten upset at him and
20 left the residence. That's why she was gone for a little
21 while. She returned to pick him up. But she will again
22 leave in just a second.

23 (WHEREUPON, State's Exhibit 27 was playing.)

24 A. And the next thing you're going to see, at 6:58
25 Kyndra Howell will come out and see Mr. Patel's vehicle

1 and move the vehicle behind the house to hide it.

2 (WHEREUPON, State's Exhibit 27 was playing.)

3 A. I think this one stops around 7:00 p.m., somewhere
4 around in there. All right. The next thing is going to
5 be at 9:24 and 21:24, you'll see Kyndra. It'll be dark
6 at that time. You'll see a porch light come on. Kyndra
7 will walk out side under the porch light. Walk into the
8 carport, and then walk back inside. The camera is
9 mounted right there near the door that leads ...

10 (WHEREUPON, State's Exhibit 27 was playing.)

11 A. And this camera here is showing that Kyndra never
12 left the house. The reason why Kyndra comes out of the
13 house is you'll see somebody under the carport right
14 here. And she comes out to see who that is.

15 (WHEREUPON, State's Exhibit 27 was playing.)

16 A. I believe that's all the video.

17 Q. Now, Detective Barton, if you'll please stay down
18 here so we can go through some things. I'm going to show
19 you what's been marked State's Exhibit 29. If you'll
20 please just identify what these are, sir. You have
21 already touched on it, but I just want to go through it
22 and see for the record what these are. And please tell
23 the jury; talk to them.

24 A. This is the search warrant for Kyndra Howell's cell
25 phone records; 202-9730, her T-Mobile cell phone. These

1 are her cell phone records from July 3rd, 2012 through
2 July 4th.

3 Q. And on those records, that's what you had stated
4 earlier showed that there was a call from that phone
5 number, the 202-9730, registered to her, from that number
6 called to Regions Bank and also American Card Services?

7 A. Yes, sir.

8 Q. And also with that were you able to determine
9 whether or not C.J. Patel actually had contacted her by
10 phone?

11 A. Yes, sir. There were numerous phone calls.

12 MR. CAMPBELL: Your Honor, at this time, I move
13 this into evidence.

14 THE COURT: Any objection?

15 MR. MCELHANNON: No objection.

16 THE COURT: Admitted without objection.

17 (WHEREUPON, State's Exhibit Number 29 was admitted
18 into evidence.)

19 Q. Detective Barton, I'm going to go through a few more
20 exhibits that we have. I'm going to show you what's been
21 marked State's Exhibit 1 -- or excuse me -- 7, 8, 9, 10,
22 11, 12 and 13. If you can please first look at these and
23 tell me what these pictures represent?

24 A. These are all photos taken of the inside and outside
25 of 3304 Jerry Drive. Zack was in the silver Cadillac.

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1 Q. Do these pictures -- were they taken in the early
2 part of July 2012?

3 A. Yes, sir.

4 Q. Do they fairly and accurately represent the house in
5 this case, and the Cadillac, located at 3304 Jerry Drive?

6 A. Yes. The Cadillac was not located there. I believe
7 that was at a ---

8 MR. CAMPBELL: Your Honor, at this time, I move
9 these into evidence.

10 THE COURT: Any objection?

11 MR. MCELHANNON: No objection.

12 THE COURT: Admitted without objection.

13 (WHEREUPON, State's Exhibit Numbers 7, 8, 9, 10, 11,
14 12, and 13 were admitted into evidence.)

15 Q. Now, Detective Barton, I'm going to put these on the
16 overhead. If you could just explain to the ladies and
17 gentlemen of the jury what each of them is showing and
18 what they represent?

19 A. This is, of course, is 3304 Jerry Drive. This photo
20 -- those numbers are affixed above the door.

21 Q. And that's State's Exhibit Number 7. So State's
22 Exhibit Number 8, if you can identify what these are,
23 sir?

24 A. This is the front of the residence, 3304 Jerry
25 Drive. You'll notice right there the security cameras.

1 And the other one is over here. There were three
2 cameras. Maybe all three of them are right in that area.

3 Q. And does this also depict the carport?

4 A. Yes.

5 Q. Let me show you State's Exhibit Number 9. What is
6 this depicting?

7 A. It's the same, those two cameras right there. I
8 believe the third one is actually on the end of the
9 house.

10 Q. And is that the front door that you were showing on
11 the video around nine, nine o'clock something a while ago
12 when the light came on?

13 A. Yes. When Kyndra came out of this door and walked
14 down the steps.

15 Q. Now, does this also -- based on these windows that
16 are here, do they show where the room was that Mr. Patel
17 was being held in?

18 A. Yes, sir. I believe this right here is going to be
19 the bathroom window. This room right here is going to be
20 the bedroom where Mr. Patel was held in.

21 Q. State's Exhibit Number 10. What is this depicting?

22 A. It appears the third camera that you didn't see in
23 the other two photos. This is the trailer I spoke of
24 earlier that was inside the carport and had a bunch of
25 junk in it like somebody may have been moving in and

1 cleaning out the place. This is the entrance door to the
2 living room area. This is basically just a walk-through
3 to the back yard of the house. This little area, that
4 little area right inside there.

5 Q. Now, I'm going to show you what's marked State's
6 Exhibit Number 11. What is this depicting?

7 A. This is the room in which we learned that Mr. Patel
8 was held hostage in and also robbed.

9 Q. And also State's Exhibit Number 12?

10 A. This is also the same room.

11 Q. Now, did you yourself actually go into this house?

12 A. I did.

13 Q. And did you actually have an opportunity to see
14 where Mr. Patel was being held when this torture was
15 going on?

16 A. I did.

17 Q. In relation to this bedroom, where was the kitchen
18 located?

19 A. Just a few feet, maybe ten feet away. It was
20 definitely in view of the kitchen, just like a small
21 hallway that lead to that room as well as to another room
22 over here. And it was definitely near the kitchen.

23 Q. And when you were in that house, did you have
24 forensic techs working in that room?

25 A. I did.

1 Q. And were you ever in the kitchen?

2 A. I was.

3 Q. Could you hear the conversation in the bedroom?

4 A. I couldn't hear -- when they had the door closed, I
5 couldn't hear exactly what they were saying, but I could
6 hear them when they were talking. When they had the door
7 open, I could hear everything they were saying.

8 Q. Now, I'm going to show you what's marked State's
9 Exhibit Number 13. If you'll please identify what this
10 is, sir?

11 A. This is the silver Cadillac that Tawanya Edwards was
12 driving that night. Jeremiah Johnson arrived at the
13 scene with her.

14 Q. Is this the same Cadillac that was viewed or
15 depicted in the house DVDs?

16 A. Yes, sir.

17 Q. Now, I'm also going to hand you State's Exhibit 14,
18 15, 16, 17, 18, 19, 20 and 21. If you can please look at
19 these and just tell us briefly what this group of
20 photographs depict?

21 A. The scene and the body of C.J. Patel, as we seen at
22 Highway 29 on Big Water Road.

23 Q. And do these pictures fairly and accurately
24 represent the scene back in July 2012 when his body was
25 discovered?

1 A. Yes, sir.

2 MR. CAMPBELL: Your Honor, at this time I'd
3 like to move these into evidence.

4 THE COURT: Any objection?

5 MR. MCELHANNON: No objection, Your Honor.

6 THE COURT: Admitted without objection.

7 (WHEREUPON, State's Exhibit Numbers 14, 15, 16, 17,
8 18, 19, 20, and 21 were admitted into evidence.)

9 Q. I'm going to show you what's marked State's Exhibit
10 14, if you can identify what this is, sir? It may be
11 hard to tell.

12 A. This is 29 South running right here. And it goes
13 that way. Couple of miles, you'll be in Georgia. This
14 road right here is Big Water Road. At this picture right
15 here is, of course, of the road sign, Big Water Road.

16 Q. This is State's Exhibit Number 15. If you can
17 depict what this shows?

18 A. This right her, this lit area right here is where we
19 all parked at and entered the woods. As I told you
20 before, when you entered those woods, you had to zig-zag
21 back to where the body was laying. So this first picture
22 is we walked until we made the first zig. Then we took a
23 picture back to the open area. And then we continued
24 walking in this direction. And walked until we made
25 another cut, and took another picture.

1 Q. Let me show you what's marked State's Exhibit 16.

2 A. And this is that picture I was just speaking about.

3 We came to the next area and took a picture back. That

4 last picture you saw, I was standing around right in here

5 when I took that photo. And then we walked up in here

6 until we made another cut and took a picture back.

7 Q. 17, State's Exhibit 17?

8 A. That picture was taken right near where the body was

9 located, taking a picture back into the trail as the

10 other were. And right around this area was the place I

11 took the last photo. And it's going back that way.

12 Q. State's Exhibit 18?

13 A. Shortly after we entered the trail we found this

14 flip-flop right here that belonged to C.J. Patel. It

15 was not far off the entrance of the woods.

16 Q. State's Exhibit Number 19?

17 A. This is the nine millimeter shell casing that was

18 found near the body.

19 Q. State's Exhibit Number 20?

20 A. This is the body of C.J. Patel as we found it. He

21 was lying on his back. It appears that his shorts had

22 been removed. He's just got a t-shirt on and underwear.

23 His hands are bound behind his back. As Dr. Woodard said

24 earlier, severe decomposition.

25 Q. And State's Exhibit Number 21?

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1 A. This is another photo of the body as we found it,
2 just from another view.

3 Q. Detective Barton, if you will please take the stand,
4 sir?

5 A. (Witness takes stand).

6 Q. Now, Detective Barton, in your investigation
7 regarding the death of Mr. Patel, were you able to
8 determine who you believed is the shooter or who killed
9 Mr. Patel?

10 A. Ezra Williams.

11 Q. Now, we've heard from Mr. Gantt and he helped take
12 you to the body. Do you think you would have found the
13 body without his help?

14 A. No. It was a quite a ways off the road in a very
15 desolate area. Short of a hunter running across the
16 body, we wouldn't have found it.

17 Q. Now, you also -- you took out warrants on Ms. Howell
18 for armed robbery, kidnapping, possession of a weapon,
19 and murder?

20 A. Yes, sir.

21 Q. Armed robbery and the kidnapping are the events that
22 took place at the house at 3304 Jerry Drive; is that --
23 in your opinion, is that correct?

24 A. Yes, sir.

25 Q. Now, you've already stated that you feel that Ezra

1 Williams is the shooter in this case?

2 A. Yes, sir.

3 Q. And based upon Mr. Gantt's testimony, only three
4 people went out, Mr. Gantt, Jeremiah Johnson and Ezra
5 Williams when he was actually killed?

6 A. Yes, sir.

7 Q. Will you please explain to the ladies and gentlemen
8 of the jury why, if anything, did you charge Ms. Howell
9 also with the same crimes of murder and possession of a
10 weapon if she was not at the scene when he died?

11 A. Well, as we heard earlier this morning in opening
12 statements, in South Carolina, the hand of one is the
13 hand of all.

14 MR. MCELHANNON: Objection, Your Honor. That
15 calls for a legal conclusion, which would be -- I mean, I
16 don't think the detective is ---

17 THE COURT: I hear you. Ladies and gentlemen,
18 I will charge you the law that you must apply to this
19 case. And I'm going to let the officer explain his
20 rationale. But you must accept the law as I give it to
21 you. I'm the only person that's allowed to do that;
22 okay, sir?

23 MR. MCELHANNON: Thank you, Your Honor.

24 Q. Would you explain to them why you took out a warrant
25 upon her for these crimes if she wasn't present when the

1 murder happened?

2 A. Well, as I said, as you heard earlier, based on the
3 testimony you heard, based on the statements that we
4 took, the investigation I did, Kyndra Howell set this
5 crime in motion to begin with by recruiting Jeremiah
6 Johnson and Zachary Gantt to rob and kidnap Mr. Patel.
7 The murder was just a continuation of the events that she
8 set in motion to begin with. There was never any lapse
9 of time frame. No one ever left the residence and came
10 back and then the murder happened at all. It all was
11 just a continuation of the events that she set in motion
12 to begin with. Had it not been for her plan to rob Mr.
13 Patel, I wouldn't be here today, you wouldn't be here to
14 sit here today and C.J. Patel would still be alive.

15 MR. CAMPBELL: Court's indulgence, please.

16 I have no further questions from this witness.

17 THE COURT: All right. Cross-examination.

18 **CROSS-EXAMINATION**

19 **BY MR. MCELHANNON:**

20 Q. Detective Barton, I'm going to kind of go from the
21 back forward, I guess.

22 A. Yes, sir.

23 Q. Talking about the sound in this house. When you
24 were there with the technicians I think you said you were
25 in the other room?

1 A. I was there several times, yes.

2 Q. I mean, when you said you ---

3 A. Yes, sir.

4 Q. --- with the door ---

5 A. Yes.

6 Q. --- closed and you could hear voices, but you
7 couldn't hear what was said. With it open, you could
8 hear what was said?

9 A. Yeah.

10 Q. Are you saying that voices that were being used --
11 that the sound and manner of speaking that were being
12 used by the technicians was the exact same as it was with
13 Jeremiah Johnson and Zack Gantt when they were there?

14 A. No, sir. I never said that.

15 Q. Okay. So they could have been talking a lot more
16 quietly than your technicians were where they couldn't
17 have been heard?

18 A. Sure.

19 Q. That's a possibility?

20 A. That's possible.

21 Q. And you weren't a performing scientific experiment
22 of sound, were you, while you were there?

23 A. No, sir.

24 Q. Matter of fact, you didn't probably think to even
25 think of how well you could hear them while you were

1 standing there, did you?

2 A. No, sir.

3 Q. That didn't occur to you until some of this came out
4 in trial?

5 A. When the forensic technician was there, I had to
6 leave the room and let them shut the door to do the Blue
7 Star because they have to turn the lights out and they
8 have to be in there alone.

9 Q. No, I'm saying but you had no reason to ---

10 A. No.

11 Q. --- try to hear sound coming from that room from
12 them?

13 A. No.

14 Q. When you spoke with Kyndra Howell after she had been
15 served with the arrest warrants ---

16 A. Yes, sir.

17 Q. And I think that was at the sheriff's office, was it
18 not?

19 A. I believe so.

20 Q. Do you remember talking to her that day?

21 A. I do.

22 Q. And do you remember her telling you that there had
23 been death threats made to her and her family?

24 A. Yes, she did mention something about that, yes.

25 Q. And at one point Ms. Howell asked you if you had any

1 kind of witness protection?

2 A. Yes, sir. That was brought up at one point.

3 Q. And a lot's been made of Kyndra smiling, two or
4 three witnesses that y'all got out that she smiles. Have
5 you ever heard of a defensive mechanism when you're
6 nervous you smile?

7 A. Have I ever heard of it? No, sir.

8 Q. You've never heard that somebody could smile when
9 they're nervous?

10 A. No, sir.

11 Q. But you didn't really say several times during that
12 interview she got emotional and started crying; did you?

13 A. Yes, I said that earlier.

14 Q. She didn't always think this was a game and she was
15 just having fun?

16 A. No, the times that she got emotional was when we
17 talked about her family and stuff like that.

18 Q. And that was after she had told you that her family
19 had had death threats?

20 A. It was some point in there.

21 Q. And she actually said that she told you she couldn't
22 say what happened because they would kill her. Do you
23 remember that?

24 A. Yes, she did.

25 Q. Do you know who Will Jeffries is?

1 A. I do.

2 Q. And you heard Kim Lomax on the stand testify that
3 Will Jeffries came to her house with a gun and threatened
4 her ---

5 A. Yes, sir.

6 Q. --- after this?

7 A. Yes, sir.

8 Q. And that was told to a detective, I believe, at the
9 Anderson County Sheriff's Office, was it not?

10 A. Detective Mark Gregory like she said earlier.

11 Q. And you stated in your direct examination that each
12 officer that does something on your case does a
13 supplemental report?

14 A. They're supposed to.

15 Q. Did Mark Gregory do a supplemental report that
16 stated that Kim Lomax was threatened by Will Jeffries?

17 A. I don't believe that part was in it; no.

18 Q. Would that not be a fairly important part of this
19 case?

20 A. Yes, sir.

21 Q. And you've heard Zack Gantt testify today that
22 Kyndra Howell stayed in the kitchen area the entire time
23 of this event; correct?

24 A. Yes, sir.

25 Q. Yet on the video she's seen outside at least twice;

1 correct?

2 A. Yes, sir.

3 Q. Again, just to -- one last thing to go over. You
4 have no evidence and no testimony, as a matter of fact,
5 you have the opposite that Kyndra Howell was present when
6 Mr. Patel was shot and killed?

7 A. Yes, sir. As far as when he was shot and killed.

8 Q. She was not there?

9 A. Yes, sir -- no, sir.

10 Q. She did not help put him in the car?

11 A. No, sir.

12 Q. Do you have any evidence or testimony that Kyndra
13 Howell ever had a gun in her hand that night?

14 A. No, sir.

15 Q. Do you have any evidence that Kyndra Howell knew
16 that Mr. Patel had been shot and killed?

17 A. Any evidence? No, sir.

18 Q. As a matter of fact, during the same interview after
19 she'd been arrested, I believe you asked her if she
20 thought C.J. was dead and she said she hoped not?

21 A. Yes, sir. That's one of the times she smiled at me
22 and said she hoped not.

23 Q. So you have no evidence or proof showing that she
24 knew he was dead or that -- until after the body was
25 found, of course?

1 A. Not any evidence; no.

2 Q. Did anyone ever follow up with Will Jeffries about
3 presenting this gun and threatening Kim Lomax?

4 A. We had dealt with Will Jeffries prior to all this.
5 Will Jeffries had voluntarily come to the sheriff's
6 office to give a statement to Detective Mark Gregory
7 about what he knew about this case. He didn't put
8 himself in there, obviously. And neither of the
9 statements we got puts Will Jeffries at the scene. And
10 no evidence we have shows that Will Jeffries was even
11 there. As far as him pulling a gun on Kim Lomax, that
12 would be a question for Mark Gregory on how that
13 investigation took place.

14 Q. Is Will Jeffries a narcotics snitch?

15 A. That would be a question for narcotics.

16 Q. But you have no reason to doubt the State's own
17 witness, Kim Lomax, that Will Jeffries pulled a gun on
18 her and told her she needed to quit talking?

19 A. I have no reason to doubt that; no.

20 Q. Not to believe that?

21 A. No.

22 Q. Could Will Jeffries would be the same person who has
23 threatened Kyndra Howell and her family?

24 A. Like I said, anything's possible.

25 MR. MCELHANNON: That's all the questions I

1 have, Your Honor.

2 THE COURT: Redirect.

3 REDIRECT EXAMINATION

4 BY MR. CAMPBELL:

5 Q. Now, Detective Barton, when Ms. Howell told you
6 about these threats that she says her and her family were
7 receiving, did you look into it?

8 A. When we offered her the witness protection like
9 she'd asked about and she said she didn't want anything.

10 Q. Were you able to determine if that was just her
11 saying or if they were legitimate threats to begin with?

12 A. We weren't able to determine anything because she
13 wouldn't never say anything about who threatened her or
14 anything like that.

15 Q. And at any point since July of 2012 has any of her
16 family members come forward to say they have been
17 threatened and told you that?

18 A. Not that I know of.

19 Q. Now, regarding Willie Jeffries; he's known by
20 Anderson County Sheriff's Office?

21 A. Some of Anderson County Sheriff's Office, yes.

22 Q. And as Mr. McElhannon alluded to, is he a snitch for
23 narcotics?

24 A. That would be -- like I say, I don't know. Mark
25 Gregory knew him. Mark Gregory does work with the

1 narcotics division so he possibly is. I've personally
2 never met Willie Jeffries; didn't know his name until
3 that day.

4 Q. And has his name appeared at anytime during this
5 investigation?

6 A. Other than, of course, there's been recorded phone
7 calls where Willie Jeffries has spoken with Kyndra, as
8 well as the others, in this case. He's put money on
9 Kyndra's accounts at the jail.

10 Q. So there is some relationship between Mr. Jeffries
11 and Ms. Howell?

12 A. Yes, sir.

13 Q. And has any member of her family since this occurred
14 in July 2012, come forward to say Willie Jeffries has
15 been threatening them or has been involved in this case?

16 A. No, sir.

17 MR. CAMPBELL: I have no further questions.

18 MR. MCELHANNON: Just one on redirect
19 [verbatim].

20 **RECROSS-EXAMINATION**

21 **BY MR. MCELHANNON:**

22 Q. When you offered witness protection to Ms. Howell,
23 did you not tell her, well, you've got to tell me
24 something before I offer that to you?

25 A. I mean, I don't recall that. Rob Givens was the one

1 -- I mean, we were in the interview room together, and
2 Rob Givens told her that we could work something out for
3 her. And she still wouldn't talk to us.

4 Q. But not unless she told you something first?

5 A. I don't recall that, no.

6 MR. CAMPBELL: That's all I have.

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

8 MR. CAMPBELL: Your Honor, may we approach?

9 THE COURT: Yes, sir.

10 (WHEREUPON, a bench conference was held off the
11 record.)

12 THE COURT: Madam Forelady, we've been going
13 for a while. I'm going to let you take a quick break.
14 While you're back there, I don't know if it's going to be
15 necessary or not, but because of the weather
16 considerations, would you check with your jury that if
17 it's necessary if they'd be willing to work a little bit
18 later this evening. If it's not, it's okay; okay? If
19 you'd let us know.

20 (WHEREUPON, the jury exited the open court at
21 approximately 4:30 p.m.)

22 THE COURT: All right. Ms. Howell, would you
23 -- excuse me. I didn't mean to interrupt you.

24 MR. MCELHANNON: I was just telling her what we
25 were going to do, Your Honor.

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1 THE COURT: Okay. Do you need another minute?

2 MR. MCELHANNON: No, sir. We had already
3 discussed it.

4 THE COURT: Ms. Howell, would you raise your
5 right hand?

6 MR. CAMPBELL: Would you like me to officially
7 rest on the record?

8 THE COURT: It doesn't matter before the jury
9 -- I figured you'd do that when the jury comes back in.

10 MR. CAMPBELL: That's fine. I forgot they're
11 out.

12 THE COURT: Okay. Ms. Howell, in just a minute
13 we're going to come to that phase of the trial where you
14 have a right to put up a defense in this case. I need to
15 explain to you certain of your rights that you have at
16 this point. If you don't understand anything I go over
17 with you, please explain to me or raise your hand or let
18 me know. I'll try to explain it such that you do. And I
19 might even elicit the attorneys to make sure that you do
20 understand it; okay?

21 THE DEFENDANT: (No verbal response.)

22 THE COURT: Now, first, you have a right to
23 claim the protections that are given to you by the Fifth
24 Amendment to the United State's Constitution, which in
25 part says this. It says that no person shall be compelled

1 in any criminal case to be a witness against themselves.

2 Has your attorney explained these rights to you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. I need you to speak up a
5 little bit, please?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand them?

8 THE DEFENDANT: I do.

9 THE COURT: That means that no one can compel
10 you to take the stand and testify in this matter. Your
11 attorney can't. The State can't. The Court can't, at
12 all. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, the decision on whether or not
15 to take the stand and testify is a personal right that
16 you have to make of your own free will and accord. Do
17 you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you have to make that decision
20 knowing the ramifications of your decision to testify,
21 knowing your rights under the Fifth Amendment not to
22 testify. You must make the decision freely, voluntarily
23 and of your own accord; okay?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, if you decide that you do want

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1 to testify, you'll be subject to the same rules as other
2 witnesses. You'll be subject to direct examination by
3 your lawyer. You'll also be subject to cross-examination
4 by the State. If you have any convictions of charges
5 that would involve incarceration for more than a year, or
6 a false statement, dishonesty, and I find that the
7 probative value of those prior convictions, including
8 guilty pleas, is more probative than prejudicial to you,
9 then the State will have a right to cross-examine you on
10 your prior record. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, the obvious reason they'd want
13 to do that is to impeach your credibility as a witness.
14 Do you understand?

15 THE DEFENDANT: Yes.

16 THE COURT: I don't know your record. I don't
17 know if you even have a record, but I want to make sure
18 you understand that. Now, if you decide that you do not
19 want to testify, when I instruct the jury on the law, I
20 will include in my charge to the jury a charge that they
21 shall not and cannot consider your failure to testify.
22 That is your right and every citizen's right under the
23 Fifth Amendment to the United State's Constitution. And,
24 further, that the burden remains on the State of South
25 Carolina to prove your guilt by proof beyond a reasonable

1 doubt. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. Now, I will give you ample
4 opportunity to speak with your attorney. I'll give you
5 reasonable opportunity to speak with other family members
6 or friends to make the decision, but ultimately, the
7 decision is yours and you must make that decision freely,
8 voluntarily, and intelligently, knowing both sides of
9 what the equations are. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you have any questions of me at
12 this point?

13 THE DEFENDANT: No, sir.

14 THE COURT: Do you have any questions of your
15 attorney?

16 THE DEFENDANT: No, sir.

17 THE COURT: Okay. Now, I think that from a
18 logistical standpoint what we're going to do is let her
19 sleep on that overnight. Is that correct, Mr.
20 McElhannon?

21 MR. MCELHANNON: That's correct, Your Honor.

22 THE COURT: Okay. And you don't have any
23 objection to that; do you?

24 MR. CAMPBELL: No, sir.

25 THE COURT: All right. What I would propose

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1 then, let's bring the jury in. You announce that you're
2 resting, if you don't mind, in front of the jury. And
3 then --- and then we'll get the jury charges up here,
4 excuse them and bring them back. Do y'all want to start
5 about nine-thirty in the morning? Will that give us
6 sufficient time, you think?

7 MR. MCELHANNON: It will for me, Your Honor.

8 THE COURT: Okay. Do you have clothes for the
9 Defendant through tomorrow?

10 MR. MCELHANNON: We do, yes, sir.

11 THE COURT: Okay; good. Would you signal
12 somebody out there to get them and bring the jury back
13 in?

14 THE CLERK: We'll get the jury.

15 THE COURT: The note from the jury says we need
16 to speak to the Judge about a problem. I assume it's
17 working a little bit later, but I'll ask.

18 Let me ask the attorneys. One of the jurors earlier
19 indicated that she had -- was supposed to go to work
20 tonight. I was going to have my office call. Richard is
21 going to send a letter. Does either side have a problem
22 with me addressing that when they come back in here?

23 MR. CAMPBELL: The State doesn't, Your Honor.

24 MR. MCELHANNON: No, Your Honor.

25 THE COURT: Okay.

1 (WHEREUPON, the jury entered the open court at
2 approximately 4:39 p.m.)

3 THE COURT: Madam Forelady, I have your note
4 and we'll address that very shortly; okay?

5 MADAM FORELADY: Okay. Thank you.

6 THE COURT: Yes, ma'am.

7 Mr. Campbell, would you call your next witness?

8 MR. CAMPBELL: Your Honor, that's the State's
9 case. The State rests.

10 THE COURT: Okay. Now, ladies and gentlemen,
11 the State says that they've rested. That means they have
12 presented their case in chief. My request that you work
13 a little bit longer is moot. I don't need you to work
14 any longer tonight, okay? Does that resolve the problem
15 that you may have on the jury or is there something else
16 I need to consider?

17 MADAM FORELADY: Something else, sir.

18 THE COURT: Okay. There was a person on the
19 jury that I contacted -- my office contacted their
20 employer. They had to work after. Is that the issue?

21 MADAM FORELADY: No, sir.

22 THE COURT: Okay. Would you write that issue
23 down and then pass it forward to me, please.

24 (WHEREUPON, the Forelady of the jury passed a note
25 to the Court.)

1 THE COURT: Okay. If you would, go to your
2 jury room for one second and then we'll bring you back
3 out. And then we'll excuse you for the day. Just to let
4 you know, we will resume tomorrow at nine-thirty. Is
5 there any reason anybody can't start at nine-thirty in
6 the morning? Okay. Good. If you'll go back to your
7 jury room, then we'll bring you right back out; okay?

8 (WHEREUPON, the jury exited the open court at
9 approximately 4:41 p.m.)

10 THE COURT: All right. This is for a member of
11 the gallery. Ma'am, in the middle in the green and the
12 blue, what is your name, please?

13 MRS. HOWELL: Leann Howell.

14 THE COURT: Ma'am?

15 MRS. HOWELL: Leann.

16 THE COURT: So you're the Defendant's mother or
17 relative?

18 MRS. HOWELL: (Affirmative response).

19 THE COURT: I'm sure you're not meaning to.
20 The jury just said that your body movement and the way
21 you were moving your mouth is very distracting; okay.
22 I'm not trying to be rude to you. I'm sure you're not
23 intentionally trying to do that. But I'd ask you to
24 refrain from it; okay?

25 MRS. HOWELL: (Affirmative response).

1 THE COURT: Any exceptions from the State?

2 MR. CAMPBELL: No, sir.

3 THE COURT: From the Defense?

4 MR. MCELHANNON: No, Your Honor.

5 (WHEREUPON, Court's Exhibit Numbers 2 and 3 was
6 marked for identification.)

7 MR. MCELHANNON: Do you want me to go ahead and
8 do my motion for a directed verdict?

9 THE COURT: Sure. And then let's go -- what I
10 was thinking about doing is giving you copies of my
11 charge. You've got my basic charge, both of you. I was
12 just going to do murder, hand of one hand of all.
13 There's some questions I have in there about some
14 accomplice or other things. Armed robbery, kidnapping,
15 weapons. Pretty simple. Okay. Go ahead.

16 MR. MCELHANNON: May it please the Court, Your
17 Honor, at this time, since the State has rested, I would
18 make a motion for a directed verdict on all four
19 indictments. I do not believe the State has proven that
20 Kyndra Howell was responsible for any of this, the armed
21 robbery, kidnapping, certainly not the murder and
22 possession of a weapon during the commission of a violent
23 crime. I do know that the law is that if there are any
24 -- if there's any factual basis to go to the jury, then
25 it goes forward. But that's my motion.

1 verdict form and charges.

2 (WHEREUPON, a bench conference was held off the
3 record.)

4 THE COURT: All right. I've given counsel the
5 verdict form, which will be corrected before in the
6 morning. But also my substantive charge, which would
7 start off with murder. Now, the questions that I would
8 have, and I address this first to Mr. McElhannon, is the
9 inferred malice charge on the use of a weapon during the
10 commission of a violent crime. I mean, the Belcher case
11 seems to indicate if there's any evidence of self-
12 defense, provocation, somewhere along those lines, excuse
13 or if there's anything to justify the assault, then you
14 don't give it. I've heard people say you really probably
15 should never give it. So what's your feeling?

16 MR. MCELHANNON: Well, I think actually Your
17 Honor's well -- if the State is going to request a duress
18 instruction, that may also go to that. I won't know that
19 until tomorrow. Possession of a weapon.

20 THE COURT: Okay. Now, I know -- I'll look at
21 the duress charge, but does a duress charge reduce,
22 mitigate, excuse or anything, the murder? I'm asking
23 right now. You don't have to answer that. Just think in
24 terms ---

25 MR. MCELHANNON: I'll look at it. I don't

1 know, Your Honor.

2 THE COURT: Okay. Anyway, what would be your
3 thoughts on it, Mr. Campbell, as far as whether or not I
4 give the example, the use of a deadly weapon as far as an
5 inference?

6 MR. CAMPBELL: Your Honor, my take, really,
7 when it comes to that inference of malice, it's kind of a
8 muddy area and it causes a lot of issues.

9 THE COURT: Well, here's what -- if you have
10 this in your -- you have this in your charge in front of
11 you that says where evidence is presented that would
12 reduce, mitigate, excuse or justify homicide or assault
13 and battery with intent to kill caused by the use of a
14 deadly weapon, juries should not be charged with inferred
15 or the inference.

16 MR. MCELHANNON: And certainly, Your Honor, for
17 my client I will say that she -- that that should not be
18 charged, the inference.

19 THE COURT: Well, I'm sure. Anyway, be
20 thinking in terms of whether or not the State wants it
21 charged or whether or not you want to keep a cleaner
22 record. I haven't, obviously at this point, gotten any
23 evidence before the Court that would serve to be a
24 reduction, mitigation or excuse potentially, that's
25 duress. I'm not all that familiar. Sir?

1 MR. CAMPBELL: My position is, is at this point
2 in time that we're really going for express malice and
3 not the inferred part of it.

4 THE COURT: Well, I would charge inference
5 anyway.

6 MR. CAMPBELL: Sir?

7 THE COURT: I would charge inference but not
8 give the example.

9 MR. CAMPBELL: Right. That's -- you know,
10 we're going with the theory of express malice in this
11 case.

12 THE COURT: Right.

13 MR. CAMPBELL: And while the inferred can be
14 implied, that area causes some problems on the record
15 down the road, I'd just as soon just not give an example
16 of it ---

17 THE COURT: Okay.

18 MR. CAMPBELL: --- and keep it clean, in my
19 opinion.

20 THE COURT: How about the felony murder
21 inference?

22 MR. CAMPBELL: Where is that located?

23 THE COURT: It's right after the examples of
24 deadly weapons.

25 MR. CAMPBELL: I don't think we need the fists

1 as a deadly weapon.

2 THE COURT: Sir? No, I'm looking at where it
3 says if one intentionally kills another during the
4 commission of a felony, the inference of malice may
5 arise, if facts are proved beyond a reasonable doubt
6 sufficient to raise an inference of malice to your
7 satisfaction. This inference would simply be an
8 evidentiary fact to be taken into consideration by you,
9 along with all the other evidence. You may give it the
10 weight you decide it should receive.

11 MR. CAMPBELL: I don't have a problem with
12 that.

13 MR. MCELHANNON: I do have a problem with it.
14 I would prefer that not be charged.

15 THE COURT: I got you. All right. Kidnapping
16 is kidnapping. It's not -- and, listen, I'm not asking
17 you to make all the comments. I'm going to give you a
18 chance. Armed robbery, weapon, I mean, all three of
19 these charges are violent crimes; correct? Murder,
20 kidnapping, armed robbery?

21 MR. CAMPBELL: Yes, sir.

22 MR. MCELHANNON: Yes, sir.

23 THE COURT: So that would lead me to accomplice
24 liability as to all three. And that seems to be a more
25 complete statement on the hand of one hand of all.

1 MR. MCELHANNON: Yes, sir.

2 THE COURT: And you also have that constructive
3 presence charge in addition to a mere presence charge.
4 Anyway.

5 MR. MCELHANNON: Thank you, Your Honor, I agree
6 with the mere presence charge and disagree with
7 constructive.

8 THE COURT: Look at State versus Zeigler.
9 That's the case I've got. I kept looking it up. I was
10 trying to figure out after y'all asked me to send those
11 charges out, I started looking at it and figuring out
12 where y'all were going. And there's a State versus
13 Zeigler, 364 S.C. 94.

14 MR. MCELHANNON: And that case speaks to what,
15 Your Honor? Constructive ---

16 THE COURT: To prove a charge -- I think it was
17 Judge Williams where they gave a constructive -- they
18 don't give this particular charge per se, but they
19 approve of the charge that uses constructive language.
20 Anyway, I'm not married to anything. I'm glad to charge
21 what the law is. That's what I think it is in this case.
22 And so I'm glad to be corrected if I'm incorrect.

23 All right. Anything further from the State before
24 we break?

25 MR. CAMPBELL: No, Your Honor.

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1 THE COURT: Anything from the Defense?

2 MR. MCELHANNON: No, Your Honor.

3 THE COURT: All right. We'll see you in the
4 morning at nine-thirty. Do we need to get here, say,
5 nine-fifteen, so we can go over the charges right quick?
6 It won't take longer than that, I don't believe. All
7 right. Thank you, guys.

8 (WHEREUPON, court stood at recess for the day at
9 approximately 5:15 p.m.)

10 **February 25, 2015**

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

13 THE COURT: Please be seated. May I see the
14 attorneys up here.

15 (WHEREUPON, a bench conference was held off the
16 record.)

17 THE COURT: All right. Ms. Howell?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Before we left yesterday, I gave --
20 I went over with you your Fifth Amendment rights. Did
21 you understand what I asked you and went over with you
22 yesterday?

23 THE DEFENDANT: Yes, sir, I did.

24 THE COURT: And have you had sufficient time to
25 discuss with your attorney or whomever whether or not you

1 wish to testify or claim the privileges under the Fifth
2 Amendment of the United States Constitution?

3 THE DEFENDANT: Yes, sir, I have.

4 THE COURT: Okay. And what is your decision?

5 THE DEFENDANT: I'm not going to get on the
6 stand.

7 THE COURT: You do not wish to testify?

8 THE DEFENDANT: No, sir.

9 THE COURT: And you've made that decision
10 freely and voluntarily and knowing your right to testify
11 and your right not to testify?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Has anybody forced or coerced you
14 in any way or threatened you to get you not to testify?

15 THE DEFENDANT: No, sir.

16 THE COURT: So you're making the decision
17 freely and voluntarily?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Very good. All right.

20 We had a brief meeting where I was going over with
21 the attorneys the charge. So we will not charge coercion
22 or duress?

23 MR. MCELHANNON: That's correct, Your Honor.

24 THE COURT: The Defense will have last argument
25 since they put up no evidence in this case?

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1 MR. MCELHANNON: That's correct.

2 THE COURT: Anybody disagree with that?

3 MR. CAMPBELL: That's correct.

4 THE COURT: Pull out your charges from
5 yesterday on the substantive law, if you would. Do you
6 have those?

7 MR. CAMPBELL: Yes, sir.

8 THE COURT: Okay. This would be page two of
9 the murder charge. My thought would be that the second
10 paragraph, malice may be inferred from conduct showing a
11 total disregard for human life, period. And no further
12 inference charge in the use of a weapon, under the
13 Belcher case?

14 MR. CAMPBELL: After reading Belcher, it
15 follows along those lines. This isn't -- there's nothing
16 been presented that mitigates or reduces it down. But I
17 think that needs to be taken out just to make it clean.

18 THE COURT: All right. So my concern would be,
19 too, that you have the felony inference as well. My
20 thoughts would be take it out. I don't know how you can
21 extricate one from the other. But I'll be glad to hear
22 you. And that would be -- so if we're going back under
23 the murder charge, we'd go through malice is inferred
24 from conduct showing a total disregard for human life.
25 End the murder charge at that juncture. Anybody disagree

1 with that?

2 MR. MCELHANNON: No, Your Honor.

3 MR. CAMPBELL: No, sir, I don't have a problem
4 with that.

5 THE COURT: Then under felony murder inference,
6 Mr. Campbell, what would be your position with regard to
7 whether or not that should be charged?

8 MR. CAMPBELL: Your Honor, I would just remove
9 that. I can argue that. But as a charge I think it
10 makes things a little messy based upon ---

11 THE COURT: I agree with you. I know you're
12 not going to disagree with that. But I just felt like
13 that if you start having one of the underlying charges
14 being armed robbery and going through the weapons, and
15 then have the felony inference charge, it runs into
16 Belcher too closely, I think. So I will strike that.

17 MR. CAMPBELL: Your Honor, are you also going
18 to use -- do the -- there's three items after the malice
19 charge, possession of a deadly weapon, ordinary objects,
20 point of guns.

21 THE COURT: I was not unless somebody thinks I
22 should.

23 MR. MCELHANNON: I don't believe that's
24 necessary, Your Honor.

25 THE COURT: We had that in the armed robbery

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1 charge. And we're going to go over that in just a
2 second. But my murder charge would effectively stop at
3 the second paragraph, page two, first line.

4 MR. MCELHANNON: After human life?

5 THE COURT: Right.

6 MR. MCELHANNON: Yes, sir.

7 THE COURT: So everybody's in agreement there?

8 MR. CAMPBELL: Yes, sir.

9 THE COURT: Okay. Kidnapping, I don't see
10 anything in the kidnapping that gives me any concerns.

11 Mr. McElhannon, any concerns from the aspect of the
12 defense?

13 MR. MCELHANNON: Kidnapping is fine.

14 THE COURT: From the State, Mr. Campbell?

15 MR. CAMPBELL: It's fine.

16 THE COURT: Armed robbery. My thoughts, and
17 this would be on page two of the armed robbery, second
18 paragraph. The following are examples. My thoughts, and
19 I wanted to hear you on it, my thoughts on the following
20 are a non-exclusive list of examples of instruments. I
21 added the non-exclusive list. I took out pistol, since
22 pistol was the weapon in this case, the cause of death.
23 But, also a knife was also used in this case too. So
24 what would be your thought, Mr. McElhannon?

25 MR. MCELHANNON: Are you saying you took out

1 pistol or took out everything but the pistol?

2 THE COURT: No. I was going to take out
3 pistol. And I was going to potentially take out knife,
4 since the testimony was those were the weapons used. My
5 understanding is when you give examples, you shouldn't
6 use the actual weapon.

7 MR. MCELHANNON: I will agree with that, Your
8 Honor. Knife, pistol.

9 THE COURT: The pistol was really the murder
10 ---

11 MR. MCELHANNON: Yes, sir. I think everything
12 else is fine.

13 THE COURT: So, let me -- when you say
14 everything else is fine?

15 MR. MCELHANNON: All the other examples.

16 THE COURT: So knife you want out as well?

17 MR. MCELHANNON: Yes, sir.

18 THE COURT: So I would excise pistol and knife.
19 Disagree or agree.

20 MR. CAMPBELL: I disagree.

21 THE COURT: Okay.

22 MR. CAMPBELL: And I haven't even read State v.
23 Bailey, but in my experience it's the same pattern, same
24 list of weapons is given every time the charge is given.
25 And this has been litigated before. The fact that these

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1 weapons are used in this crime doesn't mean they should
2 be struck and that's something the jury can consider.

3 THE COURT: And that's State versus Bailey.

4 MR. CAMPBELL: Well, it says where -- well,
5 sorry. A gun may be used as a deadly weapon but not
6 operating it. But these weapon charges here, it just
7 gives a list of example of. They can consider it. It's
8 their decision whether or not they want to rely upon
9 that. I don't think ---

10 THE COURT: So you believe that the entire
11 laundry list should be charged?

12 MR. CAMPBELL: Yes, sir. I think it all should
13 be charged.

14 THE COURT: All right.

15 MR. MCELHANNON: Your Honor, I don't that's
16 prejudicial to my client to be honest, if the pistol and
17 knife are in there. I believe the jury can infer anyway
18 that a pistol and knife could be a deadly weapon. That's
19 fairly common knowledge. So I guess I don't have an
20 objection to leaving those in to that list of examples.

21 THE COURT: All right.

22 MR. MCELHANNON: I would say that the rest of
23 the charge, though, probably does not need to be charged,
24 fists and ---

25 THE COURT: No. Here's where I was going to go

1 with that. I'm going to go down for -- give me two
2 seconds. In just a minute, I'm going to look at the
3 State's position and I'll make a decision. But either
4 I'm going to excise pistol and knife or leave that in. I
5 would stop after a gun may be a deadly weapon even if
6 it's not operating. And then not charge fists as a
7 deadly weapon, unless the State thinks it should be
8 because there was beating in this case. What's your ---

9 MR. CAMPBELL: Your Honor, it can be struck
10 because of striking the other one regarding keep it
11 clean. Let it flow that way. There's no indication that
12 fists were used a deadly weapon. They were used to hurt
13 and rough him up, but that wasn't ultimately what caused
14 his death.

15 THE COURT: All right. Well, but this is on
16 the armed robbery charge. But anyway, I'll go with what
17 you guys want to do. Then I would take out fists as a
18 weapon, ordinary objects, toy gun and BB gun; right?

19 MR. CAMPBELL: Yes, sir. None of that applies
20 in this case.

21 THE COURT: All right. Then possession of a
22 weapon during the commission of a violent crime. You
23 know, obviously, murder, kidnapping, and armed robbery
24 are all violent crimes.

25 Going to aiding and abetting, accomplice liability.

1 My intent was to charge aiding and abetting, accomplice
2 liability, constructive presence, mere presence. And at
3 the last sentence of mere presence, there is a typo. It
4 reads, the law is that proof of at the scene. And I'll
5 just put the law is that proof of mere presence at the
6 scene, just to correct that. Then I'd go into hand of
7 one and hand of -- hand of one hand of all charge.

8 Under hand of one hand of all, the example in that
9 charge on the first page of hand of one hand of all,
10 about the middle of the page, for example, two people can
11 be guilty of killing another when only one had a gun and
12 there's only one bullet. And when one of two fired the
13 shot that caused the death. What would be your position
14 with regard to that, Mr. McElhannon?

15 MR. MCELHANNON: Your Honor, I actually think
16 that that example needs to be struck from the charge
17 because it's too much along the lines of, I guess, what
18 exactly happened here. It's not really an example. I
19 think that goes to what the State's trying to prove. I
20 think the hand of one hand of all speaks for itself. I
21 don't think you need an example, a gun being fired, two
22 people being there, only one bullet, hits the victim. I
23 think that's too specific, I guess, I would say for the
24 jury to hear.

25 THE COURT: Well, I mean, it gets close to

1 commenting on the facts of this case.

2 MR. MCELHANNON: Yes, sir.

3 THE COURT: I wouldn't want to give an example.

4 MR. MCELHANNON: Correct. And I think that is
5 the almost on-point example.

6 MR. CAMPBELL: Are you going to give a
7 different example?

8 THE COURT: I would think about a different
9 example. That's what my thoughts are. And so the
10 question would be, since we have a knife, since we have a
11 gun in play in the facts of this case, I would prefer not
12 to use those examples.

13 MR. CAMPBELL: I don't have a problem with
14 that.

15 THE COURT: Well, do you have an example you
16 would proffer to the court.

17 MR. CAMPBELL: Well, the only example I can
18 come up with is robbery.

19 THE COURT: Sir?

20 MR. CAMPBELL: So, you know, A and B plan a
21 robbery, you know, A assisted B, and B is actually the
22 one that commits the robbery. A is equally involved, you
23 know, because of the fact that it's where the hand of
24 one, hand of all comes in at, even if the person's not
25 present, if they helped do a common scheme or plan, that

1 person is just equally as liable or guilty as the person
2 who actually went in and did a robbery. Just off the top
3 of my head, usually the examples that come in on the hand
4 of one, hand of all are robbery and murder. I'm trying
5 to think off the top of my head.

6 THE COURT: I know. I know. That's why I'm
7 going over it. Because I certainly don't want the charge
8 to be -- what if we look at it from the perspective, for
9 example, two people can be guilty of killing another
10 person when only one person had the instrument causing
11 death and only that person used the instrument that
12 caused the death.

13 MR. CAMPBELL: Well, the problem, I think, with
14 that example is, is that you say the instrument. And an
15 example could be strangulation. It's not using an
16 instrument, you know, specifically put one in this case.
17 That's where a hang-up could possibly ---

18 THE COURT: Well, do you think it would be
19 clear then just to go ahead and do as Mr. McElhannon
20 suggests and excise the example entirely? Under the
21 facts of this case, I'm afraid it comes close to
22 commenting on ---

23 MR. CAMPBELL: It comes close to commenting on
24 the facts. I agree with that point. Just strike it.

25 THE COURT: Sir?

1 MR. MCELHANNON: I was just saying that the
2 charge without the example in it still is self-
3 explanatory of what the hand of one means.

4 THE COURT: I tend to agree with that.

5 MR. CAMPBELL: In my opinion, just strike it.

6 THE COURT: All right.

7 MR. CAMPBELL: I'd rather have a clean record.
8 I can argue it. It doesn't need to come from the bench.

9 THE COURT: I don't disagree with that.

10 All right. I'm going to go down and look at the
11 list issue. My tendency is probably that Mr. Campbell's
12 right, just read the entire list. I'm going to look at
13 that. Y'all go ahead and get yourselves ready and then
14 we'll go; okay?

15 (WHEREUPON, the court stood at recess for a short
16 break.)

17 THE COURT: All right. Mr. McElhannon, on
18 those lists of examples, I think that that's appropriate.
19 I'm going to read those. I've noted your objection for
20 the record.

21 MR. MCELHANNON: Thank you.

22 THE COURT: Okay. Anything further from the
23 State before we bring the jury in?

24 MR. CAMPBELL: No, sir.

25 THE COURT: Anything further from the Defense?

1 MR. MCELHANNON: No, Your Honor.

2 THE COURT: Will you bring the jury in, please,
3 Buck?

4 No one had an objection to the verdict form?

5 MR. CAMPBELL: No, sir, Your Honor.

6 MR. MCELHANNON: No objection.

7 THE COURT: Very good.

8 (WHEREUPON, the jury entered the open court at
9 approximately 10:04 a.m.)

10 **CHARGE**

11 **BY THE COURT:**

12 Good morning, Madam Forelady, ladies and gentlemen
13 of the jury. What we're going to do at this juncture, I
14 will tell you that all of the evidence that is going to
15 be presented in this case and all the testimony has been
16 presented. There'll be no further evidence or testimony
17 at this juncture. So then we'll move to -- normally, the
18 next stage would be the closing arguments of the
19 attorneys. By agreement with the attorneys, I'm going to
20 go ahead and charge you on the law first. We'll take a
21 brief break to see if I made a mistake or I need to
22 correct something that I said. Then we'll come back for
23 closing arguments. Then we'll go over the exhibits and
24 you'll be sent a note to begin your deliberations, just
25 so you'll know where you are; okay?

1 Now, ladies and gentlemen, as I told you at the
2 beginning of this case, the law makes me the judge of the
3 law. And, therefore, it is my duty to charge you with
4 what the applicable law is in this case. These
5 instructions that I'm about to give you will be in three
6 parts. The first part will be the general rules that
7 define and control your duties as jurors. The second
8 will be the rules of law that you must apply in this
9 case; i.e., what the State must prove in order to make
10 out its cases against the Defendant. Next, I will charge
11 you on some ideas about your deliberations. Now,
12 Madam Forelady, ladies and gentlemen, this is not an
13 endurance contest so I'll give you an opportunity to have
14 a break in between each of those sections if you desire;
15 okay? But, if you'll recall, it is your duty as judges
16 of the facts to find what the facts are from the evidence
17 that has been presented at this point in the case. No
18 further evidence will be or shall be allowed at this
19 juncture. To those facts that you find them to be, you
20 must apply the law as I give it to you now. As I told
21 you earlier, you must follow the law as I give it to you
22 and you shall not be concerned with what you think it
23 should be but only what it is as I give it to you. Also,
24 ladies and gentlemen, you must not be influenced by any
25 personal likes, dislikes, opinions, prejudice or undue

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1 sympathy on behalf of one side of the other. That simply
2 means you have no friends to reward and no enemies to
3 punish. That means you also must decide this case solely
4 on the evidence that's been presented in this case and
5 according to the law. And if you'll recall when you took
6 your oath at the beginning of this trial you swore or
7 affirmed that you'd do just that. Now, in following
8 my instructions it is important that you follow all of my
9 instructions. You can't single out some aspect of my
10 charge and follow that that you like and ignore those
11 that you may not like. They're all equally important.
12 Also, let me remind you, ladies and gentlemen, that if I
13 have done anything throughout the course of this trial
14 that seems to indicate to you how you're to find facts;
15 i.e., what verdict you are to bring back in this case,
16 I'm going to ask you and I'm going to instruct you to
17 disregard that. Again, our Constitution of this State
18 does not allow any trial judge to comment on the facts
19 nor to have an opinion on the facts. That is for you and
20 you alone because you are the sole judges of the facts.
21 And you'll decide what those facts are in this case by
22 evaluating and weighing the evidence that you heard
23 during this trial.

24 Now, ladies and gentlemen, there's no way you can
25 weigh evidence in a literal sense. I can't give you a

1 set of scales. It is entirely a mental process and you
2 will evaluate and weigh the evidence by simply using your
3 good common sense and your judgement and your experience
4 in life, and according to the law as I give it to you
5 now.

6 Now, the evidence that you must decide what the
7 facts are consists of the following. Number one, it is
8 the sworn testimony of the witnesses in this case,
9 whether it be on direct examination or cross examination.
10 Also, any exhibits that have been admitted into evidence
11 is considered evidence in this case. That is the only
12 true evidence that you may consider. So that leads me to
13 what things are not truly evidence. Number one, the
14 arguments of the attorneys at the beginning of this
15 trial, any statements they made during the trial or in
16 just a minute when they give you their closing arguments,
17 is not evidence. They're not witnesses. They have not
18 been sworn. They've not been subject to the crucible of
19 cross-examination. Now, what they tell you is intended
20 to help you, but at the end of the day when you begin
21 your deliberations, if you remember facts differently
22 than what either or both the attorneys tell you or any of
23 these attorneys, then your memory will control as to what
24 those facts are.

25 That also leads me, Madam Forelady, as a reminder

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1 about the notes. Just because something appears in
2 somebody's note or notes does not mean it trumps
3 somebody's memory or the fact that it was not in somebody
4 else's notes. That's why they call them deliberations
5 and you'll just have to hash that out.

6 Also, ladies and gentlemen, questions and objections
7 by the attorneys is not evidence. The attorneys, as I've
8 told you at the beginning of this case have a duty to
9 object when they feel like something is improper during
10 the course of the trial. Madam Forelady, the fact that
11 there was an objection or to the extent you stayed in the
12 courtroom while I ruled on it is not and shall not be
13 considered by the jury. It'll be your job to make sure
14 that's not done.

15 Also, ladies and gentlemen, anything you may have
16 heard or seen when court was not in session, whether it
17 be lunch break or overnight, is not consider evidence in
18 this matter.

19 Now, there are two types of evidence that are
20 typically presented during a criminal trial. We have
21 direct evidence and we have circumstantial evidence.
22 Direct evidence is defined as this. It is evidence that
23 directly proves the existence of a fact and does not
24 require deduction or inference. Circumstantial evidence,
25 on the other hand, is proof of a chain of facts in

1 circumstances indicating the existence of a fact. It is
2 by inference. Now, crimes may be proven by
3 circumstantial evidence or direct evidence. The law
4 makes no distinction between the weight or the value to
5 be given either to direct evidence or circumstantial
6 evidence. However, to the extent that the State relies
7 on circumstantial evidence, all of the circumstances must
8 be consistent with each other, and when taken together,
9 point conclusively to the guilt of the accused beyond a
10 reasonable doubt. If these circumstances merely portray
11 the Defendant's behavior as suspicious, then that proof
12 has failed. The State has the burden of proving the
13 Defendant guilty beyond a reasonable doubt. This burden
14 rests with the State regardless of whether the State
15 relies on direct evidence, circumstantial evidence, or
16 some combination between direct or circumstantial
17 evidence.

18 With that being said, let me give you an example of
19 each. If the issue in a case was whether or not someone
20 ran a stop sign and I were to testify that I saw X run
21 the sign, that is direct evidence because it immediately
22 establishes the issue of running the stop sign.
23 Circumstantial evidence, an example would be, if -- and
24 it's appropriate under today's weather -- if you have a
25 fresh sheet of snow in your front yard when you went to

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1 bed at night, if you were to wake up in the morning and
2 see tracks going through that snow, you may reasonably
3 infer that a person or thing walked through the snow,
4 although you did not directly see it. It's by inference.
5 The only difference with circumstantial evidence, your
6 inference can't be speculation or supposition; okay?

7 Now, in deciding what the facts are in this case,
8 you have to consider all the evidence that has been
9 presented. In doing this, you have to decide which
10 testimony you wish to believe and which testimony you
11 wish not to believe. We call that the credibility of the
12 witnesses. You may disbelieve all or any part of any
13 witness's testimony in this case. You may believe all of
14 any witness's testimony. In making this decision of
15 credibility of the witnesses, you can, but you're not
16 required, to take into account the following factors.

17 Number one, was the witness able to see or hear or
18 know the things about which that witness testified?
19 Also, how well was that witness able to recall and
20 describe the things which is the subject of their
21 testimony? What was that witnesses manner while they
22 were testifying? In other words, what was their demeanor
23 while they were here on this stand? Is there some reason
24 that a witness would want to give testimony that would
25 help or hurt one side or the other? Did the witness have

1 an interest in the outcome in this case or any bias or
2 prejudice towards any party or any issue or matter
3 involved in this case? You may ask yourself how
4 reasonable was the witness's testimony, consider it in
5 light of all the evidence in this case and whether that
6 witness's testimony had been contradicted by what that
7 witness had said at another time or by any other
8 witness's testimony or any evidence, other evidence in
9 this case.

10 Now, ladies and gentlemen, those are some factors
11 that you may consider in determining this issue of
12 credibility of the witnesses. And, of course, you don't
13 check your common sense at the door once you're sworn in
14 and you shouldn't do that in this situation. You should
15 use those things in your day-to-day lives that you find
16 indicative of truthfulness and indicative of lack of
17 truthfulness when you go through this exercise of
18 credibility of the witnesses. But one thing you may not
19 do, however, and you shall not do, is to count up the
20 number of witnesses who appeared for one side or the
21 other in making this determination, because it does not
22 matter from you where the truth comes from. But your
23 sole goal is to try to find the truth from the evidence
24 presented in this case.

25 Ladies and gentlemen, you've heard testimony by

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1 people who've been described and qualified as experts.
2 As I've told you, people, because of their education or
3 experience who have become an expert in a particular
4 field, and it would be helpful to you the jury, may give
5 their opinions in that field and state their reasons for
6 their opinions. Expert testimony should be judged just
7 like any other testimony. You may accept it. You may
8 reject it or give it as much weight as you think it
9 deserves considering the witness's education, their
10 experience, their reasons for their opinion, as well as
11 all of the other evidence in this case.

12 Now, I will remind you, ladies and gentlemen, the
13 fact that this Defendant has been arrested, charged and
14 indicted -- and these are the indictments -- is not
15 evidence of guilt. It does not raise any inference of
16 guilt, nor a presumption of guilt. Again, these
17 indictments are simply the charging mechanisms by which
18 the State of South Carolina brings a person before a
19 court and a jury for a trial and a determination of guilt
20 or innocence.

21 Also, ladies and gentlemen, each one of the
22 indictments for murder, kidnapping and armed robbery must
23 be considered independently, unaffected by your decision
24 on the other indictment. In other words, you must
25 consider murder freestanding, kidnapping freestanding,

1 armed robbery freestanding; okay? And I'll give you more
2 about this Madam Forelady at the end. However, the
3 possession of a weapon during the commission of a violent
4 crime may only be considered if you find the Defendant
5 guilty of one or more of the charges of murder,
6 kidnapping or armed robbery. If you do not, you may not
7 consider a weapons charge at all. And I'll tell you that
8 further.

9 Now, in this case the Defendant has pled not guilty
10 to the indictment and that plea puts the burden on the
11 State of South Carolina to prove her guilt. I will tell
12 you that a person charged with committing a criminal
13 offense in South Carolina is never required to prove
14 herself innocent. And I charge you that it is an
15 important rule of law that a defendant in a criminal
16 trial, no matter what the seriousness or the charge or
17 charges, will always be presumed to be innocent of the
18 crime for which the indictment or indictments have been
19 issued unless guilt has been proven by evidence
20 satisfying you of that guilt beyond a reasonable doubt.
21 This presumption of innocence does not end when you begin
22 your deliberations, but it accompanies the Defendant
23 throughout the trial until you, the jury, reach a verdict
24 of guilt based on evidence satisfying you of guilt beyond
25 a reasonable doubt. It is said that the presumption of

1 innocence is like a robe of righteousness that's placed
2 upon the shoulders of the Defendant where it remains
3 until it has been stripped from his shoulders or her
4 shoulders by evidence satisfying you of the defendant's
5 guilt beyond a reasonable doubt.

6 Ladies and gentlemen, the presumption of innocence
7 is not merely a theory. It is not just a simple legal
8 phrase. It is a substantial right to which every
9 defendant is entitled unless you, the jury, are satisfied
10 from the evidence of guilt beyond a reasonable doubt.

11 So that leads me to what is a reasonable doubt.
12 This is the definition. A reasonable doubt is the kind
13 of doubt that would cause a reasonable, sincere, honest,
14 and conscientious person to hesitate to act in an
15 important matter in their own affairs. Proof beyond a
16 reasonable doubt is proof that leaves you firmly
17 convinced of the defendant's guilt. And as I told you at
18 the beginning, there are very things in this world that
19 we know with absolute certainty. And in criminal cases
20 the law does not require proof that overcomes every
21 possible doubt. If, based on your consideration of the
22 evidence, you are firmly convinced that the Defendant is
23 guilty of the crime or crimes charged, you must find the
24 Defendant guilty. On the other hand, if you think there
25 is a real possibility that the Defendant is not guilty,

1 you must give the Defendant the benefit of the doubt and
2 find her not guilty. A reasonable doubt may arise from
3 the evidence or from the lack of evidence. And I'll
4 further instruct you that a Defendant is entitled to
5 every reasonable doubt that may arise in a case. And
6 what that simply means is this. That if upon any issue
7 essential to a conviction and a verdict of guilty of the
8 offense of which she has been charged, if you have any
9 reasonable doubt as to how that issue should be resolved,
10 you should resolve that doubt in the favor of the
11 Defendant.

12 Ladies and gentlemen, in order to establish criminal
13 liability, criminal intent is required. For example, the
14 mental state required to be proven by the State for a
15 particular crime might be purpose, intent, knowledge,
16 recklessness, or criminal negligence. Criminal intent
17 must be proven by the State beyond a reasonable doubt.
18 Criminal intent is always a matter that must be
19 determined by you, the jury, from the circumstances
20 surrounding the situation. Now, there's no way to prove
21 intent to a mathematical certainty. There's no way that
22 medical science can dissect a person's brain to determine
23 what they had in mind. So the law says that criminal
24 intent may be inferred from the circumstances shown to
25 have existed. And this is how you make the determination

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1 of whether or not the element requiring intent was
2 present. It is not necessary to establish intent by
3 direct and positive evidence, but intent may be
4 established by inference in the same way as any other
5 fact; taking into the consideration the acts of the
6 parties and/or the facts and circumstances of the case.

7 Criminal intent is a mental state, a conscious
8 wrongdoing. And it is up to you to determine what the
9 Defendant intended to do based on the circumstances shown
10 to have existed. Criminal intent can arise from an
11 action or a failure to act. It may arise from
12 negligence, recklessness or an indifference to duty or to
13 consequences that is considered by the law to be
14 equivalent to criminal intent.

15 Ladies and gentlemen, I will instruct and emphasize
16 to you that the Defendant did not testify shall not and
17 may not be a consideration or a factor considered by you
18 in your deliberations. And, Madam Forelady, if any juror
19 attempts to discuss the fact that the Defendant did not
20 testify, it'll be up to you to stop that type of
21 deliberation. The fact is, that the burden always
22 remains on the State of South Carolina and she has no
23 obligation whatsoever to prove her innocence; okay?

24 Now, ladies and gentlemen, those are the general
25 rules that define and control your duties as jurors.

1 Madam Forelady, that would lead me next to the
2 substantive law that applies to this case. Would you
3 like a break? Would you like to get up and move around?
4 Or would you like for me to continue? Would you check
5 with your jury, please?

6 MADAM FORELADY: You can continue.

7 THE COURT: I figured. Okay. The first is the
8 law of murder. The Defendant is charge with murder. The
9 State must prove beyond a reasonable doubt that the
10 Defendant killed another person with malice aforethought.
11 Malice is hatred, ill-will or hostility towards another
12 person. It is the intentional doing of wrongful act
13 without just cause or excuse and with an intent to
14 inflict an injury or under circumstances that the law
15 would infer evil intent. Malice aforethought does not
16 require that malice exist for any particular time before
17 the act is committed, but malice must exist in the mind
18 of the Defendant just before and at the time the act is
19 committed. Therefore, there must be a combination of the
20 previous evil intent and the act. Malice aforethought
21 may be expressed or inferred. These terms, expressed and
22 inferred, do not mean different types of malice but
23 merely the manner in which malice may be shown to exist.
24 That is either by direct evidence or by inference from
25 the facts and circumstances which are proved. Expressed

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1 malice is shown when a person speaks words which express
2 hatred or ill-will for another or when the person
3 prepared beforehand to do the act which was later
4 accomplished. For example, laying in wait for a person
5 or any other acts of preparation going to show that the
6 deed was within the Defendant's mind would be expressed
7 malice. Malice may also be inferred from conduct showing
8 a total disregard for human life. That is the law of
9 murder, ladies and gentlemen.

10 Next would be the law of kidnapping. The Defendant
11 is charged with kidnapping. The State must prove beyond
12 a reasonable doubt that the Defendant knowingly and
13 unlawfully seized, confined, inveigled, decoyed,
14 kidnapped, abducted or carried away another person
15 without authority of law. To do a thing unlawfully is to
16 do it willfully, against the law. Knowingly means with
17 knowledge, consciously, not accidentally. Seize means to
18 take hold of suddenly or forcibly. Confine means to
19 limit, restrict or enclose within bound, imprison, or
20 shut or keep in. Inveigle means to lure, entice or lead
21 astray by false representations, promises or other
22 deceitful means. Decoy means to lure by or as if by
23 decoy. A decoy is something to entice a person into a
24 trap. Kidnap is to remove a person against his will by
25 unlawful force or by fraud. Abduct means to carry off

1 secretly or by force for an illegal purpose. Carry away
2 means to remove. The State does not have to prove that
3 the Defendant did all of these things. Instead, if you
4 find beyond a reasonable doubt that the Defendant did any
5 of these things, you may find the Defendant guilty of
6 kidnapping. Something done without authority of law is
7 something which the law does not sanction, permit, allow,
8 condone, or provide justification for. The kidnapping
9 does not have to be for any personal or monetary gain,
10 for an illegal purpose, but may be for any reason
11 whatsoever. That is the law of kidnapping.

12 This is the law of armed robbery. The Defendant is
13 charged with armed robbery. In order to prove this
14 offense the State must first prove beyond a reasonable
15 doubt that the Defendant took personal property from the
16 person or presence of another person. Property is in the
17 presence of a person if it is within the person's reach,
18 inspection, observation or control so that the person
19 could, if not overcome with violence or prevented by
20 fear, keep possession of the property. The State must
21 also prove beyond a reasonable doubt that the Defendant
22 carried away the property intending to permanently
23 deprive the owner of the property and to keep the
24 property from the Defendant's own use. The slightest
25 removal of the property or the complete possession of the

1 property, even for an instant by the Defendant, is
2 sufficient to show a taking and carrying away of the
3 property. The taking and carrying away of the property
4 must have been done with violence or by putting the owner
5 of the property in fear of violence.

6 Finally, the State must prove beyond a reasonable
7 doubt that the Defendant was armed with a deadly weapon
8 during the robbery. A deadly weapon is any article,
9 instrument or substance, which is likely to cause death
10 or great bodily harm. Whether an instrument has been
11 used as a deadly weapon depends on the facts and
12 circumstances of each case.

13 Now, ladies and gentlemen, the following is a non-
14 exclusive list of examples of instruments which may be
15 considered deadly weapons. A piston, a shotgun, a rifle,
16 a dirk, a dagger, a knife, a slingshot, metal knuckles, a
17 razor, gasoline, a fire bomb or Molotov cocktail and
18 lighter fluid. A gun may be a deadly weapon even if it
19 is not operated. All right. Ladies and gentlemen, that
20 is the law of armed robbery.

21 That leads me to the law of possession of a weapon
22 during the commission or attempt to commit a violent
23 crime. The Defendant is charged with possession of a
24 weapon during the commission of or attempt to commit a
25 violent crime. The State must prove beyond a reasonable

1 doubt that the Defendant was in possession of a firearm
2 or visibly displayed what appeared to be a firearm and/or
3 visibly displayed a knife during the commission of a
4 violent crime. A firearm means any machine gun,
5 automatic rifle, revolver, pistol or any weapon which
6 will, is designed to or may be readily converted to expel
7 a projectile. A knife means an instrument or tool with a
8 sharp cutting blade whether or not fastened to a handle,
9 which can be used to inflict a cut, slash or wound. In
10 order to find the Defendant guilty of possession of a
11 weapon during the commission of a violent crime, you must
12 first find the Defendant guilty of either committing a
13 violent crime or attempting to commit a violent crime.
14 I'll charge you that murder, kidnapping, and/or armed
15 robbery are all considered under our law of violent
16 crimes. The State must prove beyond a reasonable doubt
17 that the weapon furthered, advanced, or helped in the
18 commission of the crime. Ladies and gentlemen, that is
19 law of possession of a weapon during the commission of a
20 violent crime.

21 I'm going to charge you under what is called aiding
22 or abetting or accomplice liability or hand of one is the
23 hand of all. A person who is present at the scene of the
24 crime and intentionally or through a common plan, aided,
25 abetted or assisted in the commission of that crime

1 through some overt act, is guilty as an accomplice. To
2 be liable as an accomplice, the Defendant must have
3 knowledge of the principal's criminal conduct. Mere
4 presence at the scene of the crime is not sufficient to
5 establish guilt as an accomplice. Intentionally means
6 willfully, intending the result which actually occurs,
7 not accidentally or involuntarily. A person may be
8 constructively present at the commission of a crime even
9 though the person is some distance away from the actual
10 scene if it is shown beyond a reasonable doubt that the
11 person played a role in the commission of the crime as a
12 result of some prior arrangement. However, mere presence
13 at the scene is not sufficient to prove someone guilty of
14 a crime. A defendant's presence where a crime is being
15 committed or mere association with a person who commits a
16 crime, does not make a defendant an accomplice or an
17 aider or abetter of the person committing the crime. The
18 burden is on the State to prove every element of the
19 crime charged. If you find, after reviewing all of the
20 evidence, that the State has proved that the Defendant
21 was only present at the scene and that they have not
22 proved beyond a reasonable doubt any other participation
23 in the crime, you must find the Defendant not guilty.
24 The law is that proof of mere presence at the scene of
25 the crime is not sufficient to find someone guilty. On

1 the other hand, if a crime is committed by two or more
2 people who are acting together in committing the crime,
3 the act of one is the act of all. A person who joined
4 with another to commit an unlawful act is criminally
5 responsible for everything done by the other person,
6 which happens as a probable or natural consequence of the
7 acts done in carrying out the common scheme and purpose.
8 If two or more people are together, acting together,
9 assisting each other in committing the offense, the act
10 of one is the act of all. Or as it is sometimes said,
11 the hand of one is the hand of all. Prior knowledge that
12 a crime is going to be committed without more is not
13 sufficient to make a person guilty of the crime. Mere
14 knowledge that another person is going to commit a crime,
15 even if the Defendant is present when the crime is
16 committed, is not sufficient to convict the Defendant as
17 a principal. Guilt, as a principal, is shown by actual
18 or constructive presence at the scene as a result of
19 prior arrangement. Therefore, a finding of a prior
20 arranged plan or common scheme is necessary for a finding
21 of guilt as a principal. The State must prove beyond a
22 reasonable doubt by competent evidence the theory of the
23 hand of one is the hand of all. A principal in a crime
24 is one who either actually commits the crime or who is
25 present, aiding, abetting or assisting in committing a

1 crime. When a person does an act in the presence of and
2 with the assistance of another, the act is done by both.
3 Where two or more, acting with common plan or intent or
4 present at the commission of a crime, it does not matter
5 who actually commits the crime. All are guilty. The
6 hand of one is the hand of all. Present at the
7 commission of a crime means to be sufficiently near to
8 aid and abet and assist in the commission of a crime.
9 However, mere presence at the scene of the crime is not
10 sufficient to convict one as a principal on the theory of
11 aiding and abetting. Intent is also a necessary element
12 for there must have been a common design or intent to
13 commit the crime and the crime must have been committed
14 pursuant thereto with the person aiding and abetting by
15 some overt act. Intent means intending the result which
16 actually occurs, not accidentally or involuntarily.
17 Intent may be shown by acts and conduct of the Defendant
18 and other circumstances from which you may naturally and
19 reasonably infer intent. The State must prove these
20 elements beyond a reasonable doubt.

21 Now, ladies and gentlemen, that is the substantive
22 law that you must apply to this case. And I will tell
23 you, Madam Forelady, that I will not send you my charges
24 back for the jury during your deliberation. But if at
25 any time you need for me to recharge you on any or all of

1 the charge, I'll be glad to do it as often as you like;
2 okay? With that being said in just a minute you're going
3 to be given an opportunity and a note to begin your
4 deliberations. Before you do, let me give you some
5 thoughts for your consideration.

6 Number one, you're not picked as jurors to be
7 partisans or advocates for one side or the other. Both
8 sides of this case picked you because you represented you
9 could be fair and impartial to both the State and to this
10 Defendant.

11 Now, when you begin your deliberations remember this
12 definition is this. Deliberation is defined as a careful
13 consideration, weighing up with a view to a decision.
14 Now, regardless of what you may believe about our jury
15 system or our judicial system, I will submit to you that
16 the genius of our system is it allows twelve men and
17 women just like yourselves who come from different
18 backgrounds, who have different life experiences and
19 perspectives, to consider the evidence, to talk about it
20 and ultimately to reach a verdict. And we call them
21 deliberations for a reason. You are to consider all the
22 evidence carefully and courteously and discuss it in a
23 calm, thorough and courteous manner. Remember, you're
24 not partisan or advocates for one side or the other. You
25 are the judges of the facts. And your sole interest in

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1 this case is to find the truth from the evidence you
2 heard here in this courtroom. I'm going to ask you, but
3 I'm also going to charge you, that you are to listen to
4 the views of your fellow jurors, consider their points
5 and their points of view. Talk through and discuss all
6 the evidence thoroughly. Remember, if you're doing
7 something deliberately, you should not be in a big hurry
8 and you should not be in one today. I will point out to
9 you that this is the only day that each of these parties
10 will have in court. They don't get two bites at the
11 apple.

12 Now, when you return to the verdict room in order to
13 stand, your verdict must be unanimous. That being said,
14 each of you must decide this case for yourself, but you
15 should only do so after you have impartially considered
16 all of the evidence, you've discussed it with your fellow
17 jurors, you've discussed with them their points and their
18 points of view. Don't be afraid to change your opinion
19 if the discussion persuades you that's the right thing to
20 do. On the other hand, do not come to a decision just to
21 appease your fellow jurors.

22 Now, Madam Forelady, once the case is placed in the
23 jury's hand and you are given the note to begin your
24 deliberations, if you have any questions, the procedure
25 I'm going to ask you to do is to write down your

1 question, sign it, knock on the door, and the bailiff
2 will give it to us and we'll receive it here in court.
3 One thing you do not do and you should never do is tell
4 anyone, including the Court, where the jury stands
5 numerically. That's absolutely none of our business;
6 okay?

7 Now, that concludes my charge on the law. I'm going
8 to meet with these attorneys to see if I've omitted to
9 tell you something I should have or I've stated something
10 in an incorrect way. After that, we'll have closing
11 arguments. But if you'd go back to your jury room,
12 please.

13 (WHEREUPON, the jury exited the open court at
14 approximately a.m.)

15 THE COURT: Any additions or exceptions from
16 the State?

17 MR. CAMPBELL: No, Your Honor.

18 THE COURT: From the Defense?

19 MR. MCELHANNON: No, Your Honor.

20 THE COURT: I'll go over the verdict form after
21 you do your closing arguments; okay? Y'all want a
22 minute?

23 MR. MCELHANNON: Yes, sir. .

24 THE COURT: Five minutes be good enough?

25 MR. MCELHANNON: Yes, Your Honor.

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1 THE COURT: All right. Let's take a five
2 minute break.

3 Make sure that jury is out of the hallway before she
4 goes back, please?

5 (WHEREUPON, the court stood at recess for a short
6 break.)

7 THE COURT: Thank you. Be seated.
8 Did you have enough time?

9 MR. MCELHANNON: Yes, Your Honor.

10 THE COURT: Does that appear to be everybody,
11 Annie Ruth? There we go. Thank you. If you would not
12 let anybody come in or out during closing, I would
13 appreciate it. Is the State ready?

14 MR. CAMPBELL: The State's ready, Your Honor.

15 THE COURT: The Defense ready?

16 MR. MCELHANNON: We're waiting on Ms. Howell.

17 THE COURT: I guess it would be nice to have
18 the Defendant here; wouldn't it?

19 (WHEREUPON, the Defendant entered the open court.)

20 THE COURT: All right. Defense ready?

21 MR. MCELHANNON: We're ready, Your Honor.

22 THE COURT: All right. Would you bring the
23 jury in, please, sir?

24 (WHEREUPON, the jury entered the open court at
25 approximately 10:49 a.m.)

1 THE COURT: All right. Is the State ready with
2 closing arguments?

3 MR. CAMPBELL: The State's ready, Your Honor.

4 THE COURT: Is the Defense ready?

5 MR. MCELHANNON: We're ready, Your Honor.

6 THE COURT: Mr. Campbell.

7 MR. CAMPBELL: May it please the Court?

8 THE COURT: Yes, sir.

9 MR. CAMPBELL: Mr. McElhannon.

10 **CLOSING STATEMENT**

11 **BY MR. CAMPBELL:**

12 Ladies and gentlemen of the jury, yesterday when you
13 witnessed the video that was played up here, you
14 witnessed the last time that Chandrakant Patel, C.J.
15 Patel, was seen alive by anybody else, except for the
16 people involved and directly responsible for his death.
17 The events that led up to his death were completely and
18 solely responsible by this woman right here. She is the
19 one who set this up, who got the ball rolling, that
20 ultimately led to his death. This evil plan that she
21 laid, that she began, resulted in him being shot in the
22 head in the middle of nowhere, left to rot for ten-
23 something days.

24 Now, before I get into the facts of the case. You
25 heard His Honor instruct you on the law. And I'm just

1 going to briefly touch on it as it applies, as I see it,
2 to the State's case. Now, basically what we're dealing
3 with, armed robbery, kidnapping, possession of weapon and
4 murder. And you can kind of look at it at two different
5 areas, the house and then later on the actual murder.
6 And what took place at the house, we have the armed
7 robbery and the kidnapping. And there was also
8 possession of a weapon dealing with the armed robbery.
9 Now, the State contends that all these indictments, these
10 charges, are linked together, that they all come out of a
11 common plan, a scheme that is initially the robbery. And
12 while they each are freestanding as the Judge instructed
13 you, on their face themselves, they're all a continuation
14 of one another. If you didn't have the armed robbery, we
15 wouldn't have the kidnapping, then we wouldn't end up
16 with a murder. That's what I'm talking about, they all
17 flowed naturally from one another.

18 Now, armed robbery, the taking away the personal
19 property of another with the intent to deprive that
20 person with the use of force, threats, intimidation,
21 basically violence, while armed with a deadly weapon.
22 And in this case, strictly dealing with the armed
23 robbery, you can tell as Dr. Woodard explained to you,
24 that there's a burn mark right there. That, as Zachary
25 Gantt told you, they heated a knife up on the stove and

1 burned him to get information. They also inflicted
2 wounds by cutting him in several spots along his legs.
3 There's your use of a weapon, ladies and gentlemen.
4 There's your use of violence for the armed robbery.

5 Now, the kidnapping happened almost immediately
6 after the plan for the armed robbery took place. And as
7 the Judge stated, it's the unlawful seizure, it's
8 confining, inveigling, decoying, abducting or carrying
9 away of a person by means without the authority of law.
10 In this case what it comes down to, he was not free to
11 leave on his own freewill. Once he entered that house,
12 he never came out. Because the gist of this is, they
13 weren't going to leave any witnesses. They had no
14 intention of releasing him because then he'd go -- what
15 would he do? He would go to the police.

16 Now, possession of a weapon, as I told you, we're
17 dealing with the armed robbery again and the murder. In
18 the murder, we're dealing with a nine millimeter handgun.
19 And the case, what it comes down to -- you know, the
20 State's position is that we have the armed robbery. We
21 have the kidnapping that occurred at the house. Her
22 house. She's there the whole time. She can't say she
23 did not know what went on because she did. She started
24 the plan and put that idea up to rob him.

25 Now, murder is the killing of another person with

1 malice aforethought. And those are legal terms and, you
2 know, we'll start with the aforethought to begin with.
3 There is -- it doesn't have to be with premeditation or
4 deliberation or anything like that. What it deals with
5 is the time frame in a person's mind, and when they act
6 to do this deed, the killing. There's no time limit.
7 You don't have to have a stop watch and say, oh, you've
8 got ten seconds to have it before; no. As long as that
9 thought, the intent to do harm, ill-will, the hatred
10 towards another person, right before the act is
11 committed, that is aforethought. It could occur right
12 when it goes on.

13 Now, aforethought goes directly, as the Judge
14 stated, with malice. And this is the evil intent to do
15 harm. And that's what they intended to do. I mean,
16 after all, they had his hands behind his back the entire
17 time. This man had been tied up for six to eight hours.

18 Now, we all have said that we wish we could
19 understand or you see somebody, I wish I knew what they
20 were thinking. Well, you can't really do that. You
21 can't open their head up and look inside and go, oh,
22 that's what they were meaning to do. You have to look at
23 a person's conduct, the surrounding circumstances and you
24 draw inferences from that. And we prove their state of
25 mind, what they intend to do through circumstantial

1 evidence. As the Judge stated, malice is either
2 expressed or inferred from the facts.

3 Now, in this case, I think there's no question that
4 there was malice. I mean, from the get-go, from the fact
5 that they tortured him for hours to try to elicit
6 information, the fact they took his wallet, they keep
7 beating him, cutting him, burning him, spraying him with
8 bug spray, to elicit information so they could go to an
9 ATM machine and withdraw more money. I don't think
10 there's any more -- I don't think anything else could
11 show this is but malice. The question of what this whole
12 case comes down to, which y'all have been chosen to
13 decide is, is she equally liable for the responsibilities
14 and acts of her co-defendants against Mr. Patel. And
15 it's pretty simple. You know, first of all, you have to
16 decide, does the acts defined in the indictment, the
17 murder, armed robbery, kidnapping, have they been
18 committed to begin with? In this case we know, yes, they
19 have all been committed. The next thing you've got to
20 decide, were they done pursuant to a common plan, a
21 scheme? The State contends, yes, they were. It started
22 right in her carport when she brought up the idea, let's
23 rob him. And then we must decide is this Defendant,
24 dealing strictly with the murder case now, ultimately
25 also responsible, equally responsible for his death? And

1 that's what I said, we don't consider, the State does not
2 consider these acts independent from one another. They
3 flow altogether. What one started, the armed robbery,
4 ended with a murder. It's basically the sum of all
5 parts. Now, the lynchpin of all this is Ms. Howell.
6 But for her idea, we wouldn't be here today. And you
7 ask, you know, what do you mean by that? Well, in the
8 video you saw the silver Cadillac pull up, the individual
9 identified as Jeremiah Johnson gets out. He's carrying a
10 bag of dog food. And you can see in the video, there's
11 some puppies running around. At this point, he has no
12 idea Mr. Howell's [verbatim] inside that house. Then you
13 see Zachary Gantt. As he stated, he was playing video
14 games over there earlier. He was asked to leave. She
15 sent him a text, says, get out of the house. He went
16 next door. You see him walking up to the Cadillac, and
17 then walking over to the house where the black Honda was.
18 They had, at this point, no idea that Mr. Patel was
19 inside her house. The only way they knew is when she
20 told them. She told them he had money. And, you know,
21 basically, what did they get from him, seventy bucks?
22 You know, that's what this man's life was worth?

23 The other day, in preparing for this case, I was
24 driving to the courthouse and I come upon a car that had
25 a bumper sticker. And y'all have all seen it. It's a

1 Biblical phrase; an eye for an eye. But the sticker said
2 an eye for an eye makes the world blind. And I got to
3 thinking about that. And it kind of dawned on me that
4 our society, and just about every society has laws in
5 place that are designed to reach people like Ms. Howell.
6 Laws are there to bring people to justice, who, in this
7 case, in these cases, never get blood on their hands
8 directly. But instead they are the ones who lay the
9 plans that ultimately result into the spilling of blood.
10 She wasn't there when the murder took place. You know,
11 we concede that. The State's position has always been
12 it's Ezra Williams who pulled the trigger. But she is
13 the one that's equally involved with all these other
14 robberies. And she is equally responsible for the
15 outcome of what her co-defendants, Jeremiah Johnson,
16 Zachary Gantt, and Ezra Williams do. As the Judge
17 stated, this is the hand of one, hand of all; it's
18 accomplice liability. It's a joint responsibility rule.
19 You can't just walk away and says, hey, I just committed
20 -- you know, I was just part of the armed robbery and
21 kidnapping and I had nothing to do with that murder. No.
22 It doesn't work that way. But for her getting it started
23 and participating in it, we wouldn't be here.

24 And, you know, the example of hand of one hand of
25 all, two people, they can be guilty of killing of another

1 person when only one of the two had a gun. When only
2 there was one bullet, when only of them fired a shot that
3 caused the death. But if there's a plan together to
4 commit a crime, they're equally responsible whether one
5 person pulled the trigger or not. In this case all four
6 of them are equally liable for Ezra Williams pulling the
7 trigger.

8 Now, we have the burden of proof to prove to you
9 beyond a reasonable doubt. The Judge stated it's a doubt
10 that would cause a reasonable person to hesitate to act.
11 What I contend to you is that you heard the evidence and
12 the facts come from this stand. And what you heard is
13 what you base your decision upon. And if you feel, based
14 upon the evidence, the facts and circumstances of this
15 case that the State has met its burden, and we have
16 proved our case that she is guilty of armed robbery,
17 kidnapping, murder, possession of a weapon, then you find
18 her guilty. Likewise, if you feel that we didn't meet
19 our burden, we didn't prove our case on one or all of
20 these charges, it's your duty to find her not guilty.

21 In this case she can't claim that she saw no evil,
22 spoke no evil, heard no evil in her presence. This case
23 happened at her house. And one of the things we have
24 when we present the facts is we don't choose the
25 witnesses. We don't choose the facts. We deal with what

1 we are given from law enforcement. You know, she chose
2 them. She and her co-defendants chose what we receive
3 and what we present to you, because otherwise, we'd have
4 the preacher up here. We'd have a Boy Scout leader and
5 we'd have somebody -- we'd put the Pope on the stand.
6 Because, you know, they're going to have -- they're
7 credible. But we don't pick who we get to pick and put
8 up, but we put them up anyway for you to hear for you to
9 help decide. In this case what they saw was an easy
10 payday. You have a businessman who owns the Exxon up
11 there going towards I-85. She thought he had a lot more
12 money than he really did on him. That was where the plan
13 started. She's being evicted from her house. She sat in
14 that carport and she called Jeremiah and Zachary Gantt
15 over and then stated this whole scheme. And you think
16 about it, we have the perfect victim in this case. And
17 that's probably what they thought. I mean, how
18 embarrassing would it be -- let's just say they didn't
19 kill him, but they released him. Who's he going to go
20 to? You think he's going to go to law enforcement and
21 say, hey, I was in the process of committing an immoral
22 act. I was going to pay a woman for sex and I got
23 robbed. Do you think he's going to do that? No. He's
24 going to make up a story or something. He's not going to
25 try to say he was in the process of doing that because,

1 yes, he knows it's an immoral act. We can't hide around
2 the facts. He was paying money for sex. And, you know,
3 sometimes you'll hear people, they just pipe off at the
4 mouth, go, hey, he got what he deserved. No, he didn't
5 get what he deserved. I mean, he endured hours upon
6 hours of torture. His hands were tied behind his back,
7 as you can see. From the time he entered that house his
8 hands were behind his back the entire time. As Zachary
9 Gantt told you, he was beat from the time they walked in.
10 You can see where his body was found. His hands were
11 behind his back.

12 Now, the illusion of a quick payday kind of quickly
13 went out the window when they realized all he had was
14 seventy dollars and some credit cards. Yes, he did make
15 a bad judgment call. And this judgment call on his part
16 cost him his life. It shouldn't have, ladies and
17 gentlemen. If she -- if they just their little business
18 agreement and done what they were supposed to do, he'd be
19 alive and walking around.

20 Now, once this case broke through and Zachary Gantt
21 kind of basically spilled the beans, and even prior to
22 that, Ms. Howell had several opportunities to speak to
23 law enforcement. And you think about it and you go back
24 to the facts, once the idea, the plan to commit the
25 robbery started, she told them, they agreed to do the

1 robbery. She went in, she moved him to a place in which
2 he wouldn't suspect them or see them come in the house.
3 They immediately walked in. They started roughing him
4 up, beating him, tied his hands behind his back. At no
5 point did she really leave that house. She stayed there
6 the entire time. This house is the size of a small
7 apartment. And yet they can claim they didn't hear
8 nothing, they didn't see nothing, but do you really think
9 that's logical? This man is being beat and tortured and
10 suffering. He didn't sit in there making no sounds in
11 this house. And yet the entire time she's in the kitchen
12 on her phone. As Kimberly Lomax stated, she was calling
13 me left and right. She was texting. Zack Gantt told
14 you, that's all she was doing was sitting there.
15 Oblivious to everything. No. She knew what was going
16 on. Zachary Gantt gave her thirty bucks that came out of
17 that man's wallet. The same amount she agreed upon to
18 have sex with the guy. She did her part by moving him.
19 At no point did she call for help, she call law
20 enforcement, she call EMS, she call 9-1-1. Did she run
21 out the door and go tell a neighbor? She did none of
22 this. And this went on for hours and she's there the
23 entire time. You see on the video she walks out one time
24 holding a dog and talking on the phone, like nothing in
25 the world is going on. Everything's fine. All the time

1 he's in there tied up being beaten and tortured. She
2 also, based on her telephone, you know, that 202-9730,
3 she made phone calls to Regions Bank, American Discovery
4 Card Services. They're trying to get money off of these
5 cards. Detective Barton told you they were denied.
6 She's actively participating in this. Even if you sit
7 here and go, well, he -- just we'll give her the benefit
8 of the doubt that she didn't know. Let me tell you what
9 really shows in that video is when she moves that car.
10 When she pulls that car to the back of the house, she is
11 deeply entrenched in this on-going plan to rob and
12 kidnapping, that ultimately led to his murder. At that
13 point in time, why would you move a car to the back of
14 the house? Because they have already made a decision to
15 get him out of there. The sad thing is that he knew he
16 was going to die. They didn't want anybody to see it.
17 That's why she moved the car to the back. And as Zack
18 told you, she also left to go to try to use his ATM card.
19 She's trying to get profit from this. She knew he was
20 not going to be released. And she understood and knew
21 that he was going to be killed. You think about it.
22 Four of them leave, three of them come back. If she's as
23 scared as she says she is, as she told -- as Mr.
24 McElhannon was bringing out yesterday in his cross-
25 examination, she's terrified of these people and scared?

1 Then why when she was by herself she didn't do something.
2 When they were all gone there was nobody there. She
3 could have called law enforcement, 9-1-1. She could have
4 called and says, hey, this is what's going on. You need
5 to stop them before it, you know, gets out of hand.
6 Unfortunately, it was already out of hand. She didn't
7 try to render this man aid. She did nothing. Why?
8 Because she's equally involved. She is a principal in
9 these crimes. When she had a chance to do something, she
10 didn't. And why would she call Kimberly Lomax her friend
11 to lie for her about her whereabouts? Why would she need
12 somebody to do that if she's not involved? And they
13 brought out about this Will Jeffries and she being
14 terrified of him. As Detective Barton told you on the
15 stand, he came to us to begin with before anybody was
16 arrested. He knew about some of the facts, but his name
17 never came up in this case as a participant. Yet, she's
18 trying to say that he scared her. But yet in the thirty-
19 two months, nine hundred and sixty-nine days since this
20 crime was committed, no complaints have ever been filed.
21 That's what Detective Barton said on the stand. We never
22 heard about her being scared. The only time she
23 mentioned that she was scared was after they showed her
24 and confronted her with the video, after she'd been
25 lying. You think about. She's already met with law

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1 enforcement three times. When Deputy McCarty went out
2 the regarding Patel's whereabouts when they called in on
3 a missing persons. She told him I ain't seen him in a
4 month. You know, he called me wanting sex, thirty, forty
5 dollars. I normally meet him at Walmart. I ain't seen
6 him. Of course, this also implies that she has pretty
7 frequent contact with him. She knows him. She lied
8 there. She, at that point in time could have told law
9 enforcement, hey, I know something; this man needs help.
10 She didn't.

11 The next time -- the next night she's with one of
12 her co-defendant's Ezra Williams. Detective Barton meets
13 her. At that point in time she doesn't say anything
14 there. She doesn't mention she's scared or afraid.
15 After she was arrested Detective Barton spoke to her
16 again. It was at that point after -- she's still lying
17 about knowing about the whereabouts of Mr. Patel -- does
18 she say -- once he shows her the video, now I'm scared.
19 Do you have a witness protection program. But yet then
20 she doesn't even go into the details and facts that would
21 help them put her in that type of position. The threats
22 were just something she makes up. You know, she's
23 actively involved as a principal in this case.

24 While we agree she was not present when he was
25 murdered, she is guilty by constructive presence. And

1 that is even though she's a distance away, she was
2 involved because she's involved in the common scheme and
3 plan to rob him, which ultimately led to the kidnapping,
4 which ultimately led to the murder. She is a principal
5 because there was an attempt to take money from this man.
6 She is a principal because they had a common goal, the
7 four of them. No matter what time they came in regarding
8 what portion of this robbery, kidnapping, and murder,
9 they're equally all liable. And the fact is, they didn't
10 want to leave a witness. They knew that they were going
11 to kill this man.

12 And as the Judge stated all that's expected of you
13 as reasonable men and women, is to evaluate the evidence
14 in this case. Use your logic and your common sense, your
15 reasoning powers and what the law the Judge has charged
16 you to reach a just and fair verdict in this case. The
17 State feels you shouldn't have a difficult time in
18 rendering a fair verdict that speaks the truth. Because
19 the state feels we have proven beyond a reasonable doubt
20 that she is equally liable and guilty. But for her
21 actions, we wouldn't be here today. But for her greed
22 and wanting more money, we wouldn't be here today.

23 Under our laws of this state, our nation, defendants
24 such as Ms. Howell are entitled to a couple of things.
25 She's entitled to have a fair trial by an impartial jury.

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1 She's gotten that. She's also entitled to have her day
2 in court. She got that also. Ms. Howell and her co-
3 defendants -- in this case, Ms. Howell has been given a
4 trial that she and her co-defendants did not give to Mr.
5 Patel. It's been said that for every evil there is a
6 remedy. A just remedy that is in your hands, a remedy
7 that you can provide; and that is, you return a verdict
8 of guilty for each and every count involved in this case.
9 Thank you.

10 THE COURT: Mr. McElhannon.

11 MR. MCELHANNON: Thank you, Your Honor, may it
12 please the Court.

13 THE COURT: Yes, sir.

14 MR. MCELHANNON: Mr. Campbell, Mr. Haigler.

15 **CLOSING STATEMENT**

16 **BY MR. MCELHANNON:**

17 Ladies and gentlemen, I will be a little bit briefer
18 than the State was. Y'all have heard the witnesses, the
19 State's witnesses. I told you yesterday, I asked you to
20 please keep an open mind in this case until the very end.
21 I trust that you've done that. I've been watching y'all
22 during the testimony from the stand and y'all have been
23 very attentive. Certainly, my client, Ms. Howell
24 appreciates that tremendously. Because as the State
25 said, this is her day in court.

1 Let's just go over a few things that we got from the
2 witness stand from the State's own witnesses. Zachary
3 Gantt, he testified that he has pled guilty but he also
4 testified that his sentence has been deferred. He hasn't
5 been sentenced yet. So if he tells the jury or performs
6 like the State wishes him to perform on the stand, he's
7 trying to get a better deal for himself. You heard he
8 gave two statements, one dated July 10th; one dated July
9 the 11th. Those statements were different. Now, the
10 State would have you believe and Danny Barton, the
11 detective, would have you believe that, well, most of the
12 time in cases like this, the first statement people give
13 is self-serving, they're not telling the truth. But the
14 second statement they're giving is always the truth.
15 That's not true. You know it's not true. There again,
16 use your common sense. Probably part of what he said in
17 his first statement was true. And part of what he said
18 in the second statement was true. And I'm going to
19 submit to you that Zachary Gantt is not a credible
20 witness because, as I stated, if he performs like the way
21 the State wishes him too, then they're going to in his
22 sentencing be able to say, Your Honor, he did well in the
23 trial against Ms. Howell, we would ask that you be
24 lenient on him or give him the minimum, whatever it may
25 be.

1 Now, I'm going to submit to you that this whole case
2 is not the master plan of Kyndra Howell. If you remember
3 on the video that they showed, the silver Cadillac pulls
4 up. Now, remember, Zack Gantt has already been told by
5 Kyndra Howell to leave her house. To leave her house
6 because she's bringing Mr. Patel over there. And there
7 again, it was for sex, if she was trying to set him up
8 with somebody for sex; that's what it was. But Zack
9 Gantt left the house. He had to put his video game down
10 and leave the house. And he wasn't happy about it. And
11 so he walks across the yard and then sees the silver
12 Cadillac, driven by Jeremiah Johnson's girlfriend, pull
13 into the yard, the side yard beside the house. If you'll
14 remember, Zack Gantt goes over to the silver Cadillac and
15 starts talking to Jeremiah Johnson. Now, Mr. Campbell
16 just said that they didn't know that Mr. Patel was in the
17 house, but that's not true. Zack Gantt knew that Mr.
18 Patel was in the house. Kyndra Howell told him that they
19 were coming over to the house. But Zack Gantt went to
20 Jeremiah Johnson and said -- well, actually, it was the
21 other way around. Zack told Jeremiah Johnson that Mr.
22 Patel was in the house. If you'll remember the testimony
23 of Zack Gantt he said Jeremiah asked him do you want a
24 ride. And Zack said, yeah. It was their plan to rob
25 him, not Kyndra Howell's. They're the ones who started

1 this entire ball rolling, not Kyndra Howell.

2 Now, the State's other witness, Kim Lomax, she
3 testified yesterday, which was the first time that I'd
4 heard it, from the stand that she was threatened by man
5 that came to her house with a gun. That man told her,
6 you'd better stop talking to the cops about this case.
7 Now, why was that not in the State's reports that the
8 police usually write? I can't answer that. But
9 normally, as Detective Barton stated, anybody that works
10 under him on a case does a supplemental report and states
11 what they've been told. Kim Lomax said, I told Mark
12 Gregory, who is a detective with the Anderson County
13 Sheriff's Office, I told him this man come to my house
14 with a gun and threatened me. Told me to stop talking to
15 the cops. There's no supplemental report in this case at
16 all. And Detective Barton did not -- he said it should
17 have been. So yesterday Kim Lomax, from the witness
18 stand under oath, tells you that that happened. Why did
19 they not want that to be in there because it backed up
20 Kyndra Howell's story about being threatened and her
21 family being threatened. And that's why she didn't take
22 any action the night that you saw her on the video. She
23 had been threatened and her family had been threatened.

24 Now, after Kyndra Howell was arrested, Detective
25 Barton interviewed her and was asking her certain

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1 questions. She told him at that time that she and her
2 family had received death threats. I guess they just
3 decided, well, that's not important. We're going to blow
4 that off. We're not going to check out what Kim Lomax
5 has already told a detective, another detective. We're
6 just going to forget about that because we think we know
7 what happened here. We think we know what happened here.
8 We know that you're the mastermind of all of this.
9 That's not the case. They rushed to judgment. They
10 thought Kyndra Howell was the one that masterminded this
11 entire series of crimes. Kyndra asked Danny Barton,
12 Detective Barton, about the witness protection program.
13 And when she couldn't provide the information that he
14 wanted then it stopped right there. You can't get
15 witness protection, apparently, if you don't cooperate
16 with them and tell them what they want to know, even if
17 you don't know what they want to know.

18 And I find this very telling and this goes to the
19 actual death of Mr. Patel. It's a far reach to get from
20 what the events that happened in Kyndra Howell's home by
21 Zack Gantt, Jeremiah Johnson, Ezra Williams, all the way
22 to the murder of Mr. Patel one or two miles from the
23 Georgia line. That's where his body was found. There's
24 been no testimony. There's been no evidence. There is
25 no evidence that Kyndra Howell ever had a gun in her

1 hand, ever hit or abused or tortured Mr. Patel. She did
2 not tie up his hands. She certainly did not have a gun
3 and was not at the scene of where he was actually shot
4 and killed. And that was from their own witness who's
5 testified that she was not there. And as far as possibly
6 proximate cause or what may transpire from a kidnapping
7 to armed robbery all the way through to murder, the
8 intent has to be there for her to want Mr. Patel dead.

9 Now, when she was interviewed by Danny Barton, he
10 said he asked her, do you think Mr. Patel is dead, C.J.
11 is dead. What did she say? I hope not. She didn't know
12 that he was dead. She didn't know he was dead until she
13 saw it on the news when they found his body.

14 So, has the State proven to you each element of
15 every crime that she's charged with beyond a reasonable
16 doubt? Even if you say yes on armed robbery and on
17 kidnapping, I'm going to submit to you they are a far
18 stretch from every element of murder beyond a reasonable
19 doubt.

20 I'm going to ask you to go back in the jury room.
21 Again, keep an open mind. The Judge has already
22 instructed you that deliberation is what it is. You're
23 supposed to actively listen to each other but don't let
24 someone else sway your opinion. I'm going to submit to
25 you that the State has not proven their case against Ms.

1 Howell. And I would ask you to bring back the verdict
2 that speaks the truth. Thank you.

3 THE COURT: All right. Madam Forelady, I'm
4 going to go over the verdict form with you. Let me go
5 over a few things first. If you need to review any of
6 the videos, we normally do that here in the courtroom.
7 Just like with the charge, I'll give it to you, all of it
8 or any aspects of it, as often as you need. You may
9 watch any aspects of these videos as often or as many
10 times as you need as well; okay? If you have any
11 questions write it down and we'll receive it.

12 The verdict form is no particular order. I have to
13 put it in some order so that is of no consequence. But
14 as you go through the charges your options will be as
15 follows: Number one, as to the charge of murder under
16 indictment number 2012-GS-04-2338. We, the jury,
17 unanimously find the Defendant not guilty or guilty.
18 Whatever the jury unanimously determines you will check
19 the applicable option, okay.

20 Then separately and independently of the charge of
21 murder, you will consider the charge of kidnapping. Your
22 option there will be as to the charge of kidnapping under
23 indictment 2012-GS-04-2537. We, the jury, unanimously
24 find the Defendant not guilty or guilty. Again, whatever
25 the jury unanimously determines you'll mark that option.

1 Then you'll go the third charge and that is armed
2 robbery under indictment 2012-GS-04-2396. Your options
3 there will be not guilty or guilty. Again, each of those
4 three options must be considered independently of the
5 other.

6 After you determine those three options, if and only
7 if, the jury unanimously finds the Defendant is guilty of
8 any one of the three charges of murder, kidnapping or
9 armed robbery, then you may consider the charges of
10 possession of a weapon during the commission of a violent
11 crime. On the other hand, if you find the Defendant is
12 not guilty of murder, kidnapping and armed robbery, then
13 you shall not and may not consider the weapons charge.
14 But if you do consider it, your options will be as to the
15 charge of possession of a weapon during the commission of
16 a violent crime. We, the jury, unanimously find not
17 guilty or guilty. Once the jury unanimously determines
18 that, you'll mark the appropriate option, you'll sign,
19 you'll knock on the door, you'll give your verdict form
20 that's been folder over and creased to the bailiff and
21 then we will receive your verdict in the jury room -- in
22 the courtroom; okay?

23 Now, before you begin your deliberations, I have to
24 go over a few things with these attorneys. So go back to
25 your jury room now. Do not begin your deliberations.

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Closing Statement by Mr. McElhannon

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1 You'll be given word just shortly to do so; okay?

2 Mr. Bailiff, would you get our alternates and get
3 their personal belongings and escort them to the Grand
4 Jury Room, please, sir?

5 (WHEREUPON, the jury exited the open court at
6 approximately 11:27 a.m.)

7 THE COURT: All right. Any additions from the
8 State?

9 MR. CAMPBELL: No, Your Honor.

10 THE COURT: Any additions or exceptions from
11 the Defense?

12 MR. MCELHANNON: No, Your Honor.

13 THE COURT: All right. I want to thank the
14 attorneys for their preparation and their professionalism
15 in this trial. You did a good job and you represented
16 your respective interests in a very professional way.

17 If you would go over the exhibits, let's get the
18 verdict form, and once that's accounted for, we will send
19 it back to the bailiff, Mr. Clerk, and ask the jury to
20 begin their deliberations. I anticipate going into the
21 jury room around twelve thirty with the Clerk and ask
22 them about lunch. Any problem with that?

23 MR. MCELHANNON: No, Your Honor.

24 MR. CAMPBELL: No, sir, Your Honor.

25 THE COURT: Okay. Thank you, gentlemen. If

1 you would, before you leave make sure you give your
2 numbers so we can get you.

3 (WHEREUPON, the alternate jurors were dismissed.)

4 (WHEREUPON, the verdict forms and exhibits were
5 delivered to the jury at 11:30 a.m.)

6 THE COURT: All right. We're in recess.

7 (WHEREUPON, court stood in recess awaiting the
8 verdict of the jury.)

9 (WHEREUPON, the jury entered the open court at
10 approximately 12:43 p.m.)

11 THE COURT: Okay. Madam Forelady, we're back
12 on the record. It's my understanding the jury has two
13 questions. The first that I have in my hand is that we
14 need the law of possession of a weapon explained. Number
15 two, can we have the testimony of Kimberly Lomax and
16 Zachary Gantt. Everyone in the jury room.

17 Okay. Now, as to the explanation, are you simply
18 asking me to recharge you on that or do you have a
19 question as to that particular charge?

20 MADAM FORELADY: Recharge is all we want.

21 THE COURT: On possession of weapon during the
22 commission ---

23 MADAM FORELADY: (Affirmative response)

24 THE COURT: Okay. I'll be glad to do that.

25 As to Kimberly Lomax and Mr. Gantt, there is no

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1 problem for you to listen to any or all of the testimony
2 as often or as much as you want. I will point out to
3 you, however, that the combination of the two, according
4 to my court reporter, it's going to be about an hour and
5 forty-five minutes, which is not a problem. One of two
6 things. I was going to suggest that maybe we listen to
7 Ms. Lomax after the charge. I think that's shorter. Or
8 if you have any particular aspects of any of the
9 testimony either as to Ms. Lomax or Mr. Gantt, we may
10 narrow it down. So why don't you do this. Go back in
11 with your jury right now. Let me know the answer to
12 those two questions, the one, do you want to narrow down
13 the testimony that you're asking to have played. And,
14 please, understand if you want all of it, that's
15 certainly your right and we'll do that. Number two, if
16 you don't want to narrow it down, is it acceptable to the
17 jury that I charge you on possession of the weapon during
18 the commission of a violent crime. Then listen to Ms.
19 Lomax testimony. Let the jury break for lunch. I'm
20 informed that your lunch will be back here at about one
21 fifteen. And then we'll come back and we'll relisten to
22 the testimony of Mr. Gantt once your lunch is complete;
23 okay? If you would ask your jury that. Go back to your
24 jury room so we're not looking down your necks and then
25 we'll bring you back in here and get your response; okay?

1 If you'd write it down like you have. Thank you, ma'am.

2 (WHEREUPON, the jury exited the open court at

3 approximately 12:46 p.m.)

4 THE COURT: Any additions or exceptions from
5 the State?

6 MR. CAMPBELL: No, Your Honor.

7 THE COURT: Any additions or exceptions from
8 the Defense?

9 MR. MCELHANNON: The only thing I would say,
10 Your Honor, is on the testimony, I guess, if they just
11 want to hear a portion of it, I would hate that they just
12 listen to something on direct exam and then don't hear
13 cross-exam questions on the same issue.

14 THE COURT: I understand. And let me get their
15 response. I'll make sure we try to full answer.
16 Sometimes they're looking for a particular aspect of
17 their testimony, not necessarily what it was. What I
18 normally do is let them play it. And then I'll say does
19 that satisfy the jury's request. And if so, then this
20 satisfies their request. But I'll certainly give you
21 more than ample to make suggestions and to object if I
22 don't agree with you; okay?

23 MR. MCELHANNON: Thank you.

24 THE COURT: Now, let's just be at ease for a
25 minute, please, guys.

1 (WHEREUPON, Court's Exhibit Numbers 4 and 5 were
2 marked for identification.)

3 THE COURT: Let me, while we're here, looking
4 at the charge it looks like in order to fully charge
5 possession of a weapon during the commission, I need to
6 either charge or make a comment on aiding and abetting.
7 The charge -- it says the Defendant is charged with the
8 possession of a weapon during the commission or attempt
9 to commit a violent crime. The State must prove beyond a
10 reasonable doubt that the Defendant was in possession of
11 a firearm and/or visibly displayed what appeared to be a
12 firearm and/or visibly displayed a knife during the
13 commission of a violent crime.

14 MR. MCELHANNON: Well, Your Honor, I would
15 object to anything, other than that being read because
16 they didn't ask for hand of one or accomplice liability
17 or anything like that.

18 THE COURT: I understand. I'm going to clarify
19 the law. I'm going to clarify it. But you must consider
20 that in conjunction with the law on aiding and abetting
21 or accomplice liability. And I'll be glad to read that
22 to you again if you would like. Okay? Otherwise, it's a
23 miss -- the charge is something that is not a correct
24 statement of the law; okay?

25 MR. MCELHANNON: Yes, sir.

1 THE COURT: I note your objection. I will note
2 your objection once you make it.

3 (WHEREUPON, a notification from the jury was
4 delivered to the Clerk of Court.)

5 THE CLERK: We would like the possession of a
6 weapon during the commission of a violent crime. We
7 would like Kimberly's testimony, lunch, and possibly
8 Zack's testimony.

9 THE COURT: Okay. Did y'all hear that?

10 MR. MCELHANNON: I didn't hear the last part.

11 THE COURT: We would like possession of a
12 weapon during the commission of a violent crime. We
13 would like Kimberly's testimony, lunch, and possibly
14 Zack's testimony. Signed the Forelady. Okay.

15 (WHEREUPON, the jury entered the open court at
16 approximately 12:56 p.m.)

17 THE COURT: All right. Madam Forelady, my
18 understanding the jury would like to have the charge of
19 possession of a weapon during the commission of a violent
20 crime charged to them. Then you'd like to listen to
21 Kimberly's testimony, have lunch, and then possibly have
22 Zack's testimony. Is that correct?

23 MADAM FORELADY: Yes, sir.

24 THE COURT: Okay. This is the law of
25 possession of a weapon during the commission of a violent

1 crime. Can everybody hear me okay?

2 MADAM FORELADY: Yes, sir.

3 THE COURT: The Defendant is charged with
4 possession of a weapon during the commission of or
5 attempt to commit a violent crime. The State must prove
6 beyond a reasonable doubt that the Defendant was in
7 possession of a firearm or visibly displayed what
8 appeared to be a firearm and/or was in the possession of
9 a knife or visibly displayed what appeared to be a knife
10 during the commission of a violent crime. A firearm
11 means any machine gun, automatic rifle, revolver, pistol
12 or any weapon which will, is designed to or may be
13 readily converted to expel a projectile. A knife means
14 an instrument or tool with a sharp cutting blade, whether
15 or not fastened to a handle, which can be used to inflict
16 a cut, slash or a wound. In order to find the Defendant
17 guilty of possession of a weapon during the commission of
18 a violent crime, you must first find the Defendant guilty
19 of either committing a violent crime or attempting to
20 commit a violent crime. I'll charge you that murder,
21 kidnapping and armed robbery are all considered violent
22 crimes. The State must prove beyond a reasonable doubt
23 that the weapon furthered, advanced or helped in the
24 commission of the crime.

25 Now, Madam Forelady, that charge also has to be in

1 consideration with the aiding and abetting or the
2 accomplice liability charge I gave to you, which would
3 include constructive presence, mere presence, and hand of
4 one of hand of all. And, also, remember that you may not
5 consider this charge unless and until you first determine
6 the Defendant is guilty of murder or kidnapping or armed
7 robbery or any of those. If you do not -- in other
8 words, you find him [verbatim] not guilty of murder,
9 kidnapping and armed robbery, you shall not and may not
10 consider the possession of a weapon during the commission
11 of a violent crime. Okay?

12 With that being said, I'm going to send you to your
13 room for one second. Then we're going to bring you back
14 out here for the testimony of Kimberly -- I don't have a
15 last name, but ---

16 THE CLERK: Lomax.

17 THE COURT: Lomax. Kimberly Lomax; okay? If
18 you'll go back to your jury room.

19 (WHEREUPON, the jury exited the open court at
20 approximately 12:58 p.m.)

21 (WHEREUPON, Court Exhibit Number 6 was marked for
22 identification.)

23 THE COURT: Any additions or exceptions from
24 the State?

25 MR. CAMPBELL: No, sir.

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1 THE COURT: From the Defense?

2 MR. MCELHANNON: No, Your Honor.

3 THE COURT: All right. Very good. Go ahead
4 and bring them back.

5 (WHEREUPON, the jury entered the open court at
6 approximately 12:59 p.m.)

7 THE COURT: All right. Madam Court Reporter,
8 do you have Ms. Lomax's testimony ready to go?

9 MADAM COURT REPORTER: Yes, sir, I do.

10 THE COURT: If anyone cannot hear it raise your
11 hand and we'll stop it and set it up so that you can.
12 And we will replay it if necessary; okay? Madam Court
13 Reporter.

14 (WHEREUPON, the testimony of Kimberly Lomax was
15 played in open court for the jury.)

16 THE COURT: All right. Madam Forelady, does
17 that respond to the jury's request with regard to Ms.
18 Lomax's testimony?

19 MADAM FORELADY: Yes, sir.

20 THE COURT: Do you feel like over the lunch
21 break you can continue with your deliberations without
22 Mr. Gantt's testimony or do you need that to continue
23 your deliberations?

24 MADAM FORELADY: I think we can continue over
25 lunch.

1 THE COURT: Okay. Very good. If you need
2 anything else, please send out word and we'll be glad to
3 respond.

4 MADAM FORELADY: Yes, sir.

5 THE COURT: My clerk advises that your lunch
6 will be here any minute now; okay?

7 MADAM FORELADY: Okay.

8 THE COURT: If you'll go back to your jury
9 room.

10 (WHEREUPON, the jury exited the open court at
11 approximately 1:43 p.m.)

12 THE COURT: Any additions or exceptions from
13 the State?

14 MR. CAMPBELL: No, Your Honor.

15 THE COURT: From the Defense?

16 MR. MCELHANNON: No, Your Honor.

17 THE COURT: All right. I'm going to send word
18 back for them to resume their deliberations; okay? Thank
19 you, guys.

20 (WHEREUPON, the court stood in recess awaiting the
21 verdict of the jury.)

22 THE COURT: We're back on the record in State
23 versus Kyndra Howell. And we've received a request from
24 the jury and I've shared it with the attorneys, but the
25 request is, we need the charge of murder read to us and

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1 clarification of hand of one hand of all. The second is,
2 also, we need to hear Zachary's testimony, only the part
3 before, during and after about knife.

4 First, as to the charge of murder, that's
5 straightforward. Clarification, if they want me to
6 comment on the charge, I will send them out and ask them
7 to tell me what it is they want me to clarify. And then
8 we'll come across, and make a decision on that. As to
9 Zachary's testimony, number one, our court reporter
10 doesn't have the ability to see what portion of the
11 transcript all of that is on so it's impossible for her
12 to go through and find that testimony that they're
13 requesting. My suggestion to the attorneys, and I'll be
14 glad to hear from you, would be to go ahead and start the
15 testimony of Mr. Gantt, and that's who it is, and to let
16 them indicate when they've had sufficient amount of
17 testimony played back for them. Any objections to that
18 procedure? From the State, Mr. Campbell?

19 MR. CAMPBELL: No, Your Honor.

20 THE COURT: Mr. McElhannon?

21 MR. MCELHANNON: No, Your Honor.

22 (WHEREUPON, an additional note was received from the
23 jury.)

24 THE COURT: We do have another question. Okay.
25 Now, the jury says, no testimony of Zachary needed. So

1 that answers that. So we'll just do the charge for
2 clarification; okay? Any problem with that?

3 MR. CAMPBELL: No, sir.

4 THE COURT: Anybody?

5 MR. MCELHANNON: No, Your Honor.

6 THE COURT: You can bring them in, Buck.

7 (WHEREUPON, Court Exhibit Numbers 7 and 8 were
8 marked for identification.)

9 (WHEREUPON, the jury entered the open court at
10 approximately 2:50 p.m.)

11 THE COURT: Madam Forelady, let me first
12 clarify, you are not requesting any testimony of Mr.
13 Gantt; correct?

14 MADAM FORELADY: Correct.

15 THE COURT: Okay. So that leads me to your
16 first request. The charge of murder is straightforward.
17 But when you say clarification, are you asking me on the
18 hand of one hand of all to just recharge you that as
19 well?

20 MADAM FORELADY: Yes, sir, please.

21 THE COURT: Okay. All right. This will be the
22 charge for murder. And then I will give you the charge
23 of aiding, abetting, accomplice liability, which would
24 include aiding and abetting, constructive presence, mere
25 presence and the hand of one hand of all; okay? Can you

1 hear me okay?

2 MADAM FORELADY: Yes, sir.

3 THE COURT: Okay. If you can't, raise your
4 hand. The Defendant is charged with murder. The
5 state must prove beyond a reasonable doubt that the
6 Defendant killed another person with malice aforethought.
7 Malice is hatred, ill-will or hostility towards another
8 person. It is the intentional doing of a wrongful act
9 without just cause or excuse and with the intent to
10 inflict an injury or under circumstances that the law
11 would infer evil intent. Malice aforethought does not
12 require that malice exists for any particular time before
13 the act is committed, but malice must exist in the mind
14 of the Defendant just before and at the time when the act
15 is committed. Therefore, there must be a combination of
16 the previous evil intent and the act. Malice
17 aforethought may be expressed or inferred. These terms,
18 expressed and inferred do not mean different kinds of
19 malice but merely the manner in which malice may be shown
20 to exist. That is either by direct evidence or by
21 inference from the facts and circumstances which are
22 proved. Expressed malice is shown when a person speaks
23 words which express hatred or ill-will for another or
24 when the person prepared beforehand to do the act which
25 was later accomplished. For example, laying in wait for

1 a person or any other acts of preparation going to show
2 that the deed was within the Defendant's mind would be
3 expressed malice. Malice may also be inferred from
4 conduct showing a total disregard for human life. That
5 is the charge of murder.

6 This is the charge on accomplice liability, which
7 would be aiding and abetting, constructive presence, mere
8 presence and the hand of one and hand of all; okay?
9 First is aiding and abetting, accomplice liability. A
10 person who is present at the scene of the crime and who
11 intentionally or through a common plan aided, abetted or
12 assisted in the commission of that crime through some
13 overt act is guilty as an accomplice. To be liable as an
14 accomplice the Defendant must have knowledge of the
15 principal's criminal conduct. Mere presence at the scene
16 of a crime is not sufficient to establish guilt as an
17 accomplice. Intentionally means willfully, intending the
18 result which actually occurs, not accidentally or
19 involuntarily. A person may be constructively present at
20 the commission of a crime even though the person is some
21 distance away from the actual scene if it is shown beyond
22 a reasonable doubt that the person played a role in the
23 commission of the crime as a result of some prior
24 arrangement. Mere presence at the scene is not
25 sufficient to prove someone guilty of a crime. And

1 Defendant's presence where a crime is being committed or
2 mere association with a person who commits a crime does
3 not make a Defendant an accomplice or an aider and
4 abetter of the person committing the crime. The burden
5 is on the State to prove every element of the crime
6 charged. If you find, after reviewing all of the
7 evidence, that the State has proved that the Defendant
8 was only present at the scene, and that they have not
9 proved beyond a reasonable doubt any other participation
10 in the crime, then you must find the Defendant not
11 guilty. The law is that proof of mere presence at the
12 scene of the crime is not sufficient to find someone
13 guilty.

14 If a crime is committed by two or more people who
15 are acting together in committing the crime, the act of
16 one is the act of all. A person who joins with another
17 to commit an unlawful act is criminally responsible for
18 everything done by the other person which happens as a
19 probable or natural consequence of the acts done in
20 carrying out the common plan and purpose. If two or more
21 people are together, acting together, assisting each
22 other in committing the offense, the act of one is the
23 act of all. Or, as it is sometimes said, the hand of one
24 is the hand of all. Prior knowledge that a crime is
25 going to be committed without more is not sufficient to

1 make a person guilty of that crime. Mere knowledge that
2 another person is going to commit a crime, even if the
3 Defendant is present when the crime is committed, is not
4 sufficient to convict the Defendant as a principal.
5 Guilt as a principal is shown by actual or constructive
6 presence at the scene as a result of a prior arrangement.
7 Therefore, a finding of a prior arranged plan or common
8 scheme is necessary for a finding of guilt as a
9 principal. The State must prove beyond a reasonable
10 doubt by competent evidence the theory of the hand of one
11 is the hand of all. A principal in a crime is one who
12 either actually commits the crime or who is present
13 aiding, abetting or assisting in committing the crime.
14 When a person does an act in the presence of and with the
15 assistance of another, the act is done by both. Where
16 two or more, acting with a common plan or intent, are
17 present at the commission of a crime, it does not matter
18 who actually commits the crime. All are guilty. The
19 hand of one is the hand of all. Present at the
20 commission of a crime means to be sufficiently near to
21 aid and abet and assist in the commission of the crime.
22 However, mere presence at the scene of a crime is not
23 sufficient to convict one as a principal on the theory of
24 aiding and abetting. Intent is also a necessary element
25 for there must have been a common design or an intent to

1 commit the crime and the crime must have been committed
2 pursuant thereto, with the person aiding and abetting by
3 some overt act. Intent means intending the result which
4 actually occurs, not accidentally or involuntarily.
5 Intent may be shown by acts and conduct of the Defendant
6 and other circumstances from which you may naturally and
7 reasonably infer intent. The State must prove these
8 elements beyond a reasonable doubt.

9 Madam Forelady, does that respond to the jury's
10 questions.

11 MADAM FORELADY: Yes, sir.

12 THE COURT: Okay. I'm going to send you back
13 to your jury room. Hold up resuming your deliberations
14 until we send word back to you, which should be coming
15 very shortly, okay?

16 MADAM FORELADY: Okay.

17 (WHEREUPON, the jury exited the open court at
18 approximately 3:01 p.m.)

19 THE COURT: Any additions or exceptions from
20 the State?

21 MR. CAMPBELL: No, sir.

22 THE COURT: From the Defense?

23 MR. MCELHANNON: No, Your Honor.

24 THE COURT: Would you tell them to resume their
25 deliberations. We're at ease again. Thank you,

1 gentlemen.

2 (WHEREUPON, the court stood in recess awaiting the
3 verdict of the jury.)

4 THE COURT: Please be seated. All right.
5 Gentlemen, my understanding is that we have a verdict.
6 Anything from the State before we bring the jury in?

7 MR. CAMPBELL: No, sir.

8 THE COURT: From the Defense?

9 MR. MCELHANNON: No, Your Honor.

10 (WHEREUPON, the jury entered the open court at
11 approximately 3:30 p.m.)

12 THE COURT: All right. Madam Forelady, ladies
13 and gentlemen of the jury, my understanding is the jury
14 has reached a verdict. Is that correct?

15 MADAM FORELADY: Yes, sir.

16 THE COURT: Is it unanimous?

17 MADAM FORELADY: Yes, sir.

18 THE COURT: Would you pass your verdict form
19 forward, please?

20 Would you publish the verdict.

21 THE CLERK: If it pleases the Court?

22 THE COURT: Yes, sir.

23 THE CLERK: This is the State of South

24 Carolina, County of Anderson, in the Court of General

25 Sessions. This is the verdict form in the case of the

1 State of South Carolina, plaintiff versus Kyndra Howell,
2 Defendant. Indictment numbers 2012-GS-04-2396, 2397,
3 indictment number 2012-S-04-2573 and 2538. And
4 indictment 2015-GS-04-81. Question one, as to the charge
5 of murder under indictment number 2012-GS-04-02538, we,
6 the jury, unanimously find the Defendant not guilty.
7 Question two, as to the charge of kidnapping under
8 indictment number 2012-GS-04-02537, we, the jury,
9 unanimously find the Defendant guilty. Question three,
10 as to the charge of armed robbery under indictment number
11 2012-GS-04-2396, we, the jury unanimously find the
12 Defendant guilty. Note, if you find the Defendant guilty
13 of murder or kidnapping or armed robbery, you may
14 consider the charge of possession of weapon during the
15 commission of a violent crime. If you do not find the
16 Defendant guilty of murder or kidnapping or armed
17 robbery, you shall not consider the charge. Therefore,
18 we have considered it. And on question four as to the
19 charge of possession of a weapon during the commission
20 of a violent crime under indictment number 2012-GS-04-
21 02397, we, the jury, unanimously find the Defendant
22 guilty. This is signed by the Foreperson.

23 THE COURT: Okay. Madam Forelady, ladies and
24 gentlemen of the jury, if that was your verdict in the
25 jury room and that is your verdict now, would you raise

1 your right hand?

2 (WHEREUPON, all jurors' right hand was raised.)

3 THE COURT: Let the record reflect that all
4 twelve jurors responded in the affirmative. Okay.

5 All right. Ladies and gentlemen, the Court's never
6 concerned with your verdict but that you followed the
7 process. You followed the testimony. You followed the
8 arguments of the attorneys, you followed the law. Based
9 on your questions to this Court, your attention during
10 the course of this trial, it is obvious that you did just
11 that so we thank you for your service, not for your
12 verdict but for your service to your community. It's
13 never easy to stand in judgment of anyone, but it has to
14 be done in order for the rule of law to stand.

15 With that being said, ladies and gentlemen, I'm
16 going to excuse you. I'm going to, Madam Forelady, ask
17 you to stick around in the jury room and the rest of you
18 jurors for just one minute. I have some documents I need
19 you to sign. And then we'll release you. Does anyone
20 need a statement for their employer?

21 THE CLERK: I'm getting them.

22 THE COURT: You are?

23 THE CLERK: Uh-huh (affirmative).

24 THE COURT: Okay. That will be the end of
25 court this week due to the weather concerns. So we'll be

1 done as far as this week goes. But if you'll go back to
2 your jury room now, I'll be back there in just one
3 moment, please.

4 (WHEREUPON, the jury exited the open court at
5 approximately 3:35 p.m.)

6 THE COURT: All right. Mr. Campbell, would you
7 prepare me sentencing sheets and get me her criminal
8 background as well, please, sir?

9 MR. CAMPBELL: Yes, sir, I'll hand them up.

10 THE COURT: Okay. Just one second. I'll be
11 right back.

12 (WHEREUPON, the court stood at recess for a short
13 break.)

14 THE COURT: Please be seated. All right. Mr.
15 McElhannon, would you bring Ms. Howell around, please.

16 (WHEREUPON, Mr. Campbell, Mr. Haigler, Mr.
17 McElhannon and the Defendant approached the bar.)

18 THE COURT: Do we have any victims, family
19 members, here that want to speak?

20 MR. CAMPBELL: No, sir. They live in Columbia
21 and they just asked us to call them after the fact.

22 THE COURT: They do not wish to be here?

23 MR. CAMPBELL: No, sir. They do not wish to be
24 here.

25 THE COURT: All right. Mr. McElhannon, if you

1 have any representatives from your client's family who
2 would like to speak, I'll be glad to let them ---

3 MR. MCELHANNON: Your Honor, her father and
4 mother are here, but I don't know if they would want to
5 say anything.

6 THE COURT: Okay.

7 MR. MCELHANNON: I haven't checked with them,
8 to be honest with you.

9 THE COURT: All right. Well, I'll give you
10 opportunity. Give me ---

11 MR. MCELHANNON: One of her friends wants to
12 speak.

13 THE COURT: I want Ms. Howell's record, and I
14 want that, including any juvenile charges and give it to
15 me so I can get it down, please, sir.

16 MR. CAMPBELL: Are you ready, Your Honor?

17 THE COURT: Yes, sir.

18 MR. CAMPBELL: In September of '09 she was
19 convicted or pled guilty to assault and battery high and
20 aggravated nature. Given eight years, suspended to four
21 years probation. January of '09, open container,
22 possession of alcohol, beer or wine, by a minor. In
23 September '09, financial transaction card fraud less than
24 five hundred dollars. And there's two counts of those.
25 July of '09, shoplifting. August of '09, leaving the

1 scene of an accident, unattended vehicle, failure to
2 maintain insurance on a vehicle. July of '09, violation
3 of town ordinance, driving under suspension. June of
4 2010, simple assault and battery. And then probation
5 violation on the general sessions charges in 2010. And
6 then these current charges, Your Honor.

7 THE COURT: Mr. McElhannon.

8 MR. MCELHANNON: May it please the Court, Your
9 Honor. Ms. Howell is twenty-five years old. As you
10 heard her record, although there were numerous charges,
11 most of those were misdemeanors. I think the ABHAN
12 charge was the only felony and then the financial
13 transaction card fraud. The rest were traffic violations
14 or minor violations. Your Honor, she does, as I stated -
15 - she's unmarried. She has her family here in the
16 courtroom. At the appropriate time, I'll let whoever
17 speak that wants to. Would you like to just hear about
18 what I feel the sentence should be now, Your Honor, or
19 wait?

20 THE COURT: Whatever you prefer.

21 MR. MCELHANNON: Well, Your Honor, given the
22 fact that the armed robbery and kidnapping charges both
23 carry up to thirty years, I would ask that whatever
24 sentence you give Ms. Howell run concurrent and not
25 consecutive. Your Honor, we have maintained from the

1 beginning, that although the State's position was that
2 she was the mastermind of this, that she got caught up in
3 something that went way, way wrong. Your Honor, I do
4 believe, though, that she is someone who can be
5 rehabilitated while in prison. The minimum amount on the
6 armed robbery is ten years so she's got to do at least
7 ten years and up to thirty on that as well as up to
8 thirty on the kidnapping. And the weapons charge, I
9 think, is a five year sentence. But, Your Honor, I just
10 respectfully ask, and I know, Your Honor, does not do
11 this, but ask that you not punish her for exercising her
12 Constitutional right to a jury trial. She was offered
13 pleas in this case, Your Honor, which she turned down
14 because she wanted to go to trial. And at one point, she
15 was offered a thirty year sentence to plead guilty. And
16 I would ask Your Honor that that be taken into account as
17 well and that the maximum that she be sentenced to would
18 be thirty years and not run anything consecutive, Your
19 Honor. She'll be, whatever that is. She'll be fifty-
20 something years old when she is able to get out.

21 THE COURT: Would any member of Ms. Howell's
22 family or a representative like to speak?

23 MR. BROMELING: Yes, sir.

24 THE COURT: Okay. Would you come around and
25 raise your right hand, please, sir?

1 Do you solemnly swear or affirm the testimony you
2 give the court today in this case be the truth, the whole
3 truth and nothing but the truth?

4 THE WITNESS: Yes, sir.

5 (WHEREUPON, Robert Bromeling was duly sworn.

6 THE COURT: Would you state your name for the
7 record?

8 MR. BROMELING: Robert Bromeling.

9 THE COURT: Bromeling?

10 MR. BROMELING: Yes, sir.

11 THE COURT: Would you spell it for ---

12 MR. BROMELING: B-R-0-M-E-L-I-N-G.

13 THE COURT: Okay. Go ahead, sir.

14 MR. BROMELING: Well, in the year of 2008 my
15 oldest daughter was killed. We think she was murdered.
16 It was foul play, but nobody ever come forward. So it
17 was ruled as an accident. So, I've lost one daughter. I
18 wanted justice for my daughter and I want justice for
19 this one, too. If my daughter did something, I want her
20 to pay for it. But I don't think she was in it as much
21 as they say she was. And I just beg the Court to give me
22 a break.

23 THE COURT: Thank you. I know that's tough. I
24 appreciate it, Mr. Bromeling. Anyone else on behalf of
25 Ms. Howell? Come around. While you're doing that, do

1 you agree the range on kidnapping is up to thirty?

2 MR. CAMPBELL: Kidnapping is up to thirty,
3 armed robbery ten to thirty, and then possession of a
4 weapon is five years. And she has been incarcerated
5 since July 5th, 2012, which is nine hundred sixty-nine
6 days as of today. The State feels like consecutive
7 sentences are in order for this case due to the fact that
8 if she hadn't started this, we wouldn't be here. And she
9 got the ball rolling so to speak. The man paid the
10 ultimate price. And the jury has spoken on the verdict.
11 I think they thought through all the evidence, they
12 picked through it and did the appropriate job that they
13 felt was necessary in this case. We respect that
14 decision, and as such, we are requesting consecutive
15 sentences in this matter.

16 THE COURT: I understand. All right, ma'am,
17 have you been sworn in?

18 MS. ROBERTS: Uh-uh (negative).

19 THE COURT: Would you raise your right hand,
20 please?

21 THE CLERK: Do you solemn swear or affirm the
22 testimony you give the court today in this case will be
23 the truth, the whole truth and nothing but the truth?

24 THE WITNESS: Yes, sir.

25 (WHEREUPON, Crystal Roberts was duly sworn.)

1 THE COURT: Would you state your name for the
2 record, please?

3 MS. ROBERTS: My name is Crystal Roberts.

4 THE COURT: I'm going to ask you to speak up a
5 little louder.

6 MS. ROBERTS: Crystal Roberts.

7 THE COURT: Crystal Roberts?

8 MS. ROBERTS: Yes, sir.

9 THE COURT: Okay. Ms. Roberts.

10 MS. ROBERTS: Prior to all of this, I was
11 living with Kyndra, and she's really a good person. She
12 took me in as her own. I was working at Glen Raven at
13 the time. She didn't charge me any rent or anything.
14 And as far as -- as long as I've known her and been
15 around her, I've never, ever had anybody ... And she's
16 just a really good person. I just pray that you'll have
17 mercy on her. She's really a good person and a good
18 friend. She has a really good heart.

19 THE COURT: Thank you, ma'am. All right. Ms.
20 Howell, do you have anything you would like to add?

21 THE DEFENDANT: I would just like to say I'm
22 truly sorry this happened. My intentions were never for
23 anyone to get hurt.

24 THE COURT: All right. Ms. Howell, you will
25 have ten days to appeal this sentence. Let me just say

1 this. The duration all of this took over ---

2 THE CLERK: I think the mother wants to speak.

3 THE COURT: Oh, does she? Okay. Come around.
4 Okay. Would you raise your right hand?

5 THE CLERK: Do you solemnly swear or affirm the
6 testimony you give the court today in this case will be
7 the truth, the whole truth and nothing but the truth?

8 THE WITNESS: Yes, sir.

9 (WHEREUPON, Leann Howell was duly sworn.)

10 THE COURT: What's your name, please?

11 MS. HOWELL: I'm Leann Howell. I'm Kyndra
12 Howell's mother.

13 THE COURT: Okay.

14 MS. HOWELL: This is my only daughter. I know
15 -- I'm sorry that all of this happened. She got caught
16 up. And we was threatened -- I was threatened and she
17 was threatened and she was scared for my life. That's
18 why she wouldn't talk to these people. And they talked
19 to her like a dog. And she told them if they'd put us in
20 protective custody she would tell them but they had to do
21 that first. I just want to ask mercy on the court for
22 her.

23 THE COURT: All right.

24 MS. HOWELL: Because she was protecting me.
25 She said that she would be better off staying in jail

1 than telling them and risking my life and my mother's.

2 So I just asking mercy on the court for her life.

3 THE COURT: Thank you, Ms. Howell.

4 All right. Are we ready? All right. Again, Ms.
5 Howell, you will have ten days to appeal this sentence.
6 Before I do, I just want to point out that it's clear
7 watching these videos that you were the instrument that
8 got this ball rolling in the first place. What stood out
9 in my mind was just the duration of time that this
10 torture took place over, for hours and hours and hours.
11 And I know that it was insinuated that you were in the
12 kitchen and were not an active participant, but I can't
13 help but believe, based on the size of that house and
14 where you were, that you were, in fact, an active
15 participant, just as much as the people who were doing
16 the cutting and the burning, by your being there and
17 putting this all together. That being said, under
18 indictment 2012-2537, the sentence is thirty years.
19 Under indictment 2012-2396, armed robbery, the sentence
20 is fifteen years consecutive. Under indictment 2012-
21 2397, the sentence is five years, consecutive. Credit
22 for time served. Good luck to you.

23 All right. Let me make sure -- could we have, Mr.
24 Bailiff, our jury escorted out, please, sir?

25

MARCH 31, 2015

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

3 THE COURT: Be glad to hear from you.

4 MR. MCELHANNON: Thank you, Your Honor, may it
5 please the Court. Your Honor was the trial judge in this
6 case, State versus Kyndra Howell. You sentenced Ms.
7 Howell to basically a fifty year sentence, thirty,
8 fifteen and five, all consecutive. She was acquitted on
9 the murder charge. She was convicted of armed robbery
10 and kidnapping and possession of a weapon.

11 Your Honor, since I've actually filed my motion for
12 resentencing, I received, and Mr. Campbell, as well,
13 received a memorandum from the South Carolina Department
14 of Corrections, and I'm not sure, it doesn't have you
15 listed as receiving this.

16 THE COURT: I have not seen it.

17 MR. MCELHANNON: Okay. It actually says that
18 the sentence, the way you imposed it, is a violation of
19 Major versus State. After reading that case, it really
20 goes along with the five year sentence on the possession
21 of a weapons charge. Basically Major versus State states
22 that if you tack on the five year sentence for the
23 possession of a weapon charge onto a paroleable offense,
24 which kidnapping and armed robbery are both paroleable,
25 it turns those offenses into non-paroleable. And that's

1 ---

2 THE COURT: Say that again, now.

3 MR. MCELHANNON: If you tack the five year
4 possession of a weapon conviction, if you give five years
5 on that and run it consecutively, it actually turns the
6 paroleable offenses into non-paroleable offenses, because
7 the person then has to do the entire time of the
8 sentence; not eighty-five percent. The entire time goes
9 to sentences before they get to the five year sentence.

10 THE COURT: Okay.

11 MR. MCELHANNON: And they say that's a
12 violation of state law.

13 Your Honor, what I'm asking today is that in the
14 least that you run the five year weapons charge
15 concurrently. That gets -- backs it down from fifty to
16 forty-five years. But actually, what I'm asking for
17 today is that you vacate the sentence in its entirety and
18 defer it until the other two co-defendants' cases are
19 resolved and then sentence all four co-defendants ---

20 THE COURT: I'm going to -- I refuse to do
21 that.

22 MR. MCELHANNON: Okay. That's -- I have to put
23 that on the record, Your Honor.

24 THE COURT: Sure.

25 MR. MCELHANNON: That's what my motion was.

1 However ---

2 THE COURT: I mean, she had the opportunity to
3 do that before she went to trial and didn't do it.

4 MR. MCELHANNON: Sure. And the only thing I
5 would say is at this -- with all due respect.

6 THE COURT: Sure.

7 MR. MCELHANNON: It would be an injustice if
8 Ms. Howell ends up getting more prison time than the
9 actual shooter in the case. Because as Your Honor may
10 remember, the testimony was she was not present when he
11 was killed. She never had a weapon. And she was
12 acquitted of the murder. So that would be my concern; is
13 that if she, in fact, ends up getting more prison time
14 than the other three co-defendants, in my opinion it
15 would be an injustice on her behalf.

16 THE COURT: Yes, sir.

17 MR. MCELHANNON: But Your Honor, you denied
18 that motion. So what I'm asking for today is that you
19 actually resentence her on the possession of a weapons
20 charge and run it concurrent, Your Honor, based on the
21 Major versus State case.

22 THE COURT: All right. Mr. Campbell?

23 MR. CAMPBELL: Your Honor, I'm going to hand up
24 the law. I already have it out. Regarding the issue,
25 basically I have read this State v. Major, and really it

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1 comes down to this pistol charge. And basically what it
2 says, that mandatory minimum sentence in excess of five
3 years on a violent crime -- now, it's a little confusing,
4 because on one hand it still says you can run it
5 consecutive and the other says you can run it concurrent.
6 Regarding that, the State, on the issue of whether to run
7 it consecutive or concurrent, it doesn't really bother me
8 either way. Forty-five or fifty, it doesn't matter. I'm
9 not going to sit here and fight it, because on that
10 issue, she got convicted of the main substance of the
11 crimes, which is the kidnapping and the armed robbery
12 involving this.

13 MR. MCELHANNON: Your Honor, I forgot. That
14 was the other point that the case makes, that if the
15 underlying charge, the weapons charge, kind of tags along
16 with -- which is the armed robbery or kidnapping, but
17 specifically the armed robbery, the case says that if the
18 underlying charge carries a mandatory minimum of more
19 than five years, then you should run it concurrently.
20 And the armed robbery carried a mandatory minimum of ten.

21 THE COURT: All right. Well, I'll certainly
22 change that to make it concurrent. I'm not going to
23 delay -- I mean, your first motion that I delay until
24 after the others; the defendant is either found guilty or
25 not. The sentence -- I think that's a matter that could

1 have been worked out by your client ahead of time. I
2 know that there's provisions in the law that allows a
3 downward departure if the solicitor finds it is in their
4 interest and if there's significant help to the State.

5 MR. MCELHANNON: I think that's a one-year
6 conviction that the solicitor's office has that right to
7 do that, Your Honor. We can certainly work that out.

8 THE COURT: So I'm going to deny your motion as
9 to delaying sentence and I'm going to grant your motion
10 as to concurrent, as to the weapons charge. Quite
11 frankly, I wasn't aware of that rule.

12 MR. MCELHANNON: I don't think either one of us
13 were either, Your Honor.

14 THE COURT: Do you mind if I keep this case
15 where I can look at it further.

16 MR. CAMPBELL: Yes, sir. That's your copy I
17 made.

18 THE COURT: And I did not receive a copy of
19 this order from the Department of Corrections, which is
20 not terribly unheard of. But do we have a new sentencing
21 sheet or ---

22 MR. CAMPBELL: Your Honor, I didn't think about
23 that.

24 THE COURT: Could you just get me one and I can
25 write Amended on the top of it to provide that it's

1 concurrent.

2 MR. CAMPBELL: Yes, sir. If it's okay, I'll
3 sent it up. You should get it.

4 THE COURT: Okay. And before I sent it out,
5 I'll let you look at it and make sure it comports.

6 MR. MCELHANNON: Well, will you also be doing a
7 written order denying my motion so that then the ten days
8 to appeal begins to run after you sign the order?

9 THE COURT: Would you prefer to do the order so
10 it'll have the information there you want it to have? I
11 can do a Form ---

12 MR. MCELHANNON: You did one in that last
13 motion of mine just a couple of weeks ago and it was
14 fine.

15 THE COURT: Okay.

16 MR. MCELHANNON: So if you just want to use
17 that same order, that'll be fine with me.

18 THE COURT: Okay. Absolutely. All right.
19 Gentlemen, thank you.

20

21 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing
6 is a true, accurate, and complete transcript of record of
7 all the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal,
9 in the Circuit Court for Pickens County, South Carolina,
10 on the 23rd day of February, 2015.

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

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

15 July 22, 2015

16

17

18

19

Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KYNDRA L. HOWELL,

APPELLANT

APPELLATE CASE NO. 2015-000722

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the court err by failing to direct a verdict where the evidence established Appellant was merely present in her house where three men kidnapped, beat, and robbed the decedent in a separate room and was not an active participant since this evidence only raised a mere suspicion of Appellant's guilt that was insufficient to withstand a directed verdict motion?

STATEMENT OF THE CASE

An Anderson County Grand Jury indicted Appellant at the November 27, 2012 term of General Sessions for murder, armed robbery, kidnapping, and possession of a weapon during the commission of a violent crime. R. 347-352. Her case was called to trial on February 23, 2015 before the Honorable R. Lawton McIntosh, and a jury. R. 1. Assistant Solicitors Rame Campbell and Brantly Haigler represented the state, and Scott McElhannon represented Appellant. R. 1.

The jury acquitted Appellant of murder, but found her guilty of armed robbery, kidnapping, and the weapons offense. R. 328, l. 23 – 329, l. 22. Judge McIntosh sentenced Appellant to thirty years imprisonment for kidnapping, fifteen years consecutive for armed robbery, and five years consecutive for possession of a weapon during the commission of a violent crime. R. 339, ll. 17-22. The aggregate sentence handed down by the court was fifty years imprisonment.

On March 31, 2015, a hearing was held on Appellant's Motion for Resentencing. At the conclusion of the hearing, Judge McIntosh ordered Appellant's five year sentence for possession of a weapon during the commission of a violent crime be served concurrently as opposed to consecutively in order to comply with our Supreme Court's holding in Major v. S. Carolina Dep't of Prob., Parole & Pardon Servs., 384 S.C. 457, 682 S.E.2d 795 (2009).¹ R. 340, l. 4 – 344, l. 11. This reduced Appellant's aggregate sentence to forty-five years imprisonment. This appeal follows.

¹ Shortly after Appellant was sentenced, Assistant Solicitor Campbell and Defense Counsel McElhannon received a memorandum from the South Carolina Department of Corrections. The Department of Corrections advised counsel that Appellant's sentence violated state law pursuant to our Supreme Court's holding in Major. As a result, defense counsel requested the court modify Appellant's sentence. R. 340, l. 4 – 341, l. 16.

ARGUMENT

The court erred by failing to direct a verdict where the evidence established Appellant was merely present in her house where three men kidnapped, beat, and robbed the decedent in a separate room and was not an active participant since this evidence only raised a mere suspicion of Appellant's guilt that was insufficient to withstand a directed verdict motion.

Relevant Facts

The state alleged at trial that Appellant, Zachary Gantt, Jeremiah Johnson, and Ezra Williams kidnapped, robbed, and murdered the decedent, Chandrakant ("C.J.") Patel. The state conceded at trial that Appellant was not present at the location where the decedent was shot and killed. It nonetheless proceeded under the hand of one is the hand of all theory of accomplice liability.

The decedent was reported missing by his son around midnight on the morning of July 2, 2012 after he had not been seen or heard from for several hours. R. 95, l. 23 – 96, l. 24. The Anderson County Sheriff's Office initially treated the case as a missing persons investigation. On July 3, 2012, the decedent's car was found on private land in a heavily wooded area in Fair Play, South Carolina. It appeared as if someone had attempted to hide the vehicle. R. 103, l. 10 – 104, l. 17.

Law enforcement obtained the decedent's telephone records from his son and discovered that shortly before the decedent was last seen, he had called Appellant. R. 180, l. 18 – 182, l. 14. Also, his telephone had last "pinged" in the area near Appellant's residence. R. 190, ll. 22-23. Consequently, an officer went to Appellant's house on July 3, 2012 and questioned her. Appellant told the officer that the decedent had called her multiple times on

the afternoon of July 1, 2012 and sought to have sex with her in exchange for money. Appellant said she declined the decedent's multiple offers and did not see him that day. R. 100, l. 5 – 101, l. 9.

Later on July 3, 2012, Kimberly Lomax, Appellant's friend, went to the Anderson County Sheriff's Office. She told investigators that Appellant had called her multiple times on the night of July 1, 2012 and told her "they were holding C.J. [the decedent] hostage in her bedroom." R. 186, l. 21 – 187, l. 11; See R. 118, l. 15 – 119, l. 6.

Based on the information obtained from Lomax and the decedent's telephone records, law enforcement obtained a search warrant for Appellant's residence. The officers did not discover anything of evidentiary value inside the house. However, they did notice that the house had three security cameras mounted to the front. Consequently, law enforcement contacted the landlord who owned the residence and learned that the cameras recorded to a "DVR box" that was stored in a closet inside the home. R. 191, l. 3 – 193, l. 23.

Investigators ultimately obtained a second search warrant for Appellant's residence and seized the DVR box that contained the recorded surveillance footage. R. 193, l. 24 – 194, l. 15. Investigator Danny Barton reviewed the footage in his office and claimed it showed Appellant and the decedent entering Appellant's house on the afternoon of July 1, 2012. R. 194, l. 16 – 195, l. 6. In addition to the decedent and Appellant, two black males were also seen on the footage. They were later identified as Zachary Gantt and Jeremiah Johnson. R. 195, ll. 9-19. Based on this evidence, Appellant, Gantt, and Johnson were all arrested and charged with kidnapping. R. 196, ll. 4-8.

Upon his arrest, Gantt gave two statements to law enforcement confessing to his role in the kidnapping, armed robbery, and murder of the decedent. He also implicated Appellant, Johnson, and Ezra Williams. R. 201, ll. 8-14. As a result of Gantt's statements, Appellant, Gantt, and Johnson were served with additional warrants for armed robbery, murder, and possession of a weapon during the commission of a violent crime. Williams was also arrested and charged with all four offenses. R. 208, ll. 3-12.

Gantt led law enforcement to the decedent's body on July 11, 2012, eight days after his car was found. It was located in a heavily wooded area approximately one hundred yards from the roadway and a few miles from the Georgia border. R. 108, ll. 1-24. The body was severely decomposed. The forensic pathologist testified that the decedent died from a single gunshot wound to the head. The decedent also had several burns on his abdomen and numerous lacerations on his legs. R. 80, l. 1 – 88, l. 6.

Gantt testified against Appellant at trial. He had already pled guilty, but his sentencing was deferred until after he testified against Appellant, Johnson, and Williams. Gantt told the jury that he was incarcerated for murder, armed robbery, kidnapping, and possession of a weapon during the commission of a violent crime. When asked by the solicitor, Gantt claimed that none of his charges had been reduced.² R. 130, ll. 9-23.

On the afternoon of July 1, 2012, Gantt was at Appellant's house playing videogames. At some point, Appellant arrived at the residence with the decedent and, shortly thereafter, Johnson also arrived at the house. Gantt alleged that after the decedent went inside the house, Appellant and Johnson called Gantt over to the carport where they

² In fact, this statement was false. This Court may take judicial notice that Gantt pled guilty to voluntary manslaughter and was sentenced to only twenty-two years imprisonment. For whatever reason, the state failed to correct Gantt's false testimony.

were standing. He claimed Appellant told them “that the man [the decedent] had some money” and that Johnson suggested they rob him. R. 138, l. 2 – 141, l. 9.

After this conversation, the three entered the house and Appellant went into the kitchen while Johnson and Gantt went to the bedroom where the decedent was located. Gantt testified that Johnson “grabbed” the decedent “and pulled him to the ground.” Gantt held the decedent down while Johnson tied his hands behind his back with a telephone cord. According to Gantt, Johnson then took the decedent’s wallet from his pocket and removed about seventy dollars in cash and several bank cards. R. 141, l. 20 – 143, l. 22. For the next several hours, Johnson and Gantt continued to hold the decedent in the bedroom and beat him in effort to obtain the “PIN numbers” for his bank cards. At some point, the decedent told the men his “PIN numbers” and Johnson left the home in the decedent’s car to verify that the numbers were correct. When Johnson returned from the store, he told Gantt “that the man [the decedent] had given some wrong numbers.” The men then resumed beating the decedent, but he continued to state the same numbers. R. 144, l. 9 – 146, l. 13.

Gantt testified that Appellant remained in the kitchen while all this occurred and that she never entered the bedroom. R. 146, ll. 14-16.

Several hours later, Ezra Williams showed up at the house and became involved. Williams began to beat the decedent as well and when “he didn’t get [anywhere] with” his fists, Williams sprayed the decedent with bug spray. Williams later heated a knife on the stove and placed the hot blade on the decedent’s stomach multiple times. Eventually, Johnson decided he wanted to kill the decedent. The three men walked the decedent through the side door of the house, put him in the backseat of his own car, and drove out to a wooded area a few miles from the Georgia border. After the three men took the decedent

into the woods, Williams shot him in the head. R. 1148, l. 9 – 158, l. 14. They allegedly returned to Appellant's house in the decedent's car and hours later, just before daybreak on the morning on July 2, 2012, disposed of the decedent's car in Fair Play, twenty-two miles from where his body was found. R. 158, l. 16 – 160, l. 16.

Gantt maintained that Appellant remained in the kitchen of her house throughout the entire event and never tried to intervene. R. 146, ll. 14-19; R. 151, l. 19 – 152, l. 2; R. 152, ll. 14-17; R. 154, ll. 15-17.

At the conclusion of the state's case, Appellant moved for a directed verdict on all counts. Defense counsel argued that Appellant was not responsible or involved in the kidnapping, armed robbery, or murder of the decedent. R. 244, ll. 16-25. The court denied the motion after finding there was direct and substantial circumstantial evidence of Appellant's guilt sufficient to warrant submitting all four indictments to the jury. R. 245, ll. 1-4.

Discussion

The trial judge erred by denying Appellant's motion for a directed verdict where the evidence presented by the state only raised a mere suspicion of Appellant's guilt. The state's evidence established Appellant was merely present in the home where three others kidnapped, beat, and robbed the decedent and was not an active participant. Moreover, the state failed to present any direct or substantial circumstantial evidence of Appellant's guilt.

A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Pearson, 410 S.C. 392, 764 S.E.2d 706 (Ct. App. 2014) (*cert. granted* March 4, 2015) (citing State v. Lane, 406 S.C. 118, 121, 749 S.E.2d 165, 167 (Ct. App. 2013)); State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001)

(citing State v. Brown, 103 S.C. 437, 88 S.E. 21 (1916)). “If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused,” the trial judge may deny the motion for directed verdict. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001); State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000).

When the prosecution relies exclusively on circumstantial evidence, the trial judge must direct a verdict of acquittal unless there is any substantial circumstantial evidence which reasonably tends to prove the guilt of the defendant or from which his guilt may be fairly and logically deduced. State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Likewise, a directed verdict is proper when the evidence produced “merely raises a suspicion the accused is guilty.” Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Arnold, 361 S.C. 386, 389-390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984). Our courts define suspicion as “a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” Lollis, 343 S.C. at 584, 541 S.E.2d at 256 (citing State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963)). The prosecution must prove the identity of the defendant as the person who committed the charged offense beyond a reasonable doubt. Lane, 406 S.C. at 121, 749 S.E.2d at 167 (citing Gibbs v. State, 403 S.C. 484, 496, 744 S.E.2d 170, 176 (2013)).

In Lollis, the Court directed a verdict of acquittal when the state failed to present any direct or substantial circumstantial evidence that Lollis was involved in setting fire to his home. The Court found the evidence that Lollis’ wife had admitted to the arson, that he had placed valuables in storage prior to the fire, that he possessed a key to the storage unit, and

that he allegedly had financial troubles was insufficient to withstand a directed verdict motion. Lollis, 343 S.C. at 584-585, 541 S.E.2d at 256-257.

In State v. Odems, 395 S.C 582, 720 S.E.2d 48 (2012), the Court held Odems was entitled to a directed verdict based upon a lack of substantial circumstantial evidence that he was involved in the burglary. The Court found that, although Odems was in a car with other individuals who admittedly burglarized a home, the state failed to provide substantial circumstantial evidence that Odems was present during the home invasion. The witness who saw individuals at the burglarized home claimed she saw two, not three as were found in the car. Moreover, fingerprints collected from the stolen goods did not match Odems, but matched the other individuals in the car, and one of the individuals who admitted his involvement claimed Odems was picked up after the burglary at a gas station. Id. at 588, 720 S.E.2d at 51.

In Bostick, the Court held the prosecution failed to present substantial circumstantial evidence of Bostick's guilt finding instead that the state's evidence was capable of producing only a mere suspicion of his guilt. Id. at 141, 708 S.E.2d at 778. Although the police found items belonging to the decedent in a burn pile behind a house belonging to Bostick's mother, the Court held no evidence linked Bostick to the evidence in the burn pile and the prosecution presented no testimony that Bostick had control over the burn pile. Id. at 137-141, 708 S.E.2d at 775-778. In addition to this evidence, the state also presented evidence that gasoline was used to start the fire at the decedent's home and Bostick had a chemical pattern on his shoes that matched gasoline and, DNA from blood on Bostick's jeans excluded ninety-nine percent of the population, but could not be said to match the decedent. Id. at 142, 708 S.E.2d at 778.

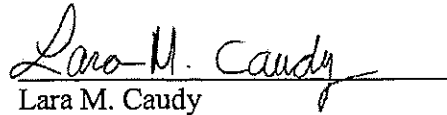
In this case, the state failed to present any direct evidence or substantial circumstantial evidence tending to prove Petitioner's guilt. The evidence presented at trial revealed that Appellant had telephone contact with the decedent on the day of his death regarding exchanging sex for money, was present with the decedent at her house that evening, allegedly told Johnson and Gantt that the decedent had money, and was present in the kitchen while the men kidnapped, beat, and robbed the decedent in a separate bedroom. However, this evidence merely raised a suspicion that Appellant was guilty.

At most, this evidence established that Appellant was merely present in the home where the kidnapping and robbery occurred. There was no evidence that Appellant was an active participant or had knowledge of what occurred in the bedroom. Thus, this evidence was insufficient to survive a directed verdict motion. Consequently, the trial court erred by failing to direct a verdict of acquittal in Appellant's favor.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court direct a verdict of acquittal in her favor for kidnapping, armed robbery, and possession of a weapon during the commission of a violent crime.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of January, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KYNDRA L. HOWELL,

APPELLANT

APPELLATE CASE NO. 2015-000722

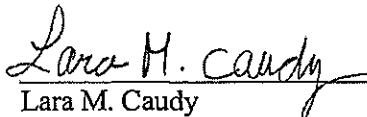
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kyndra L. Howell states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.
2. She has reviewed the record of Appellant’s trial before the Honorable R. Lawton McIntosh that was held on February 23-25, 2015, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Kyndra L. Howell.

Respectfully submitted,


 Lara M. Caudy
 Appellate Defender

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KYNDRA L. HOWELL,

APPELLANT

APPELLATE CASE NO. 2015-000722

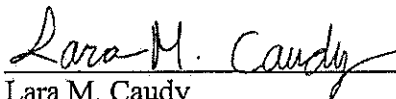
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-Billed Indictments;
- (2) Complete Trial Transcript dated February 23-25, 2015.

I certify that this designation contains no matter which is irrelevant to this appeal.

January 26, 2016



Lara M. Caudy
Appellate Defender

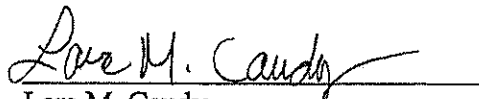
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 26, 2016

A handwritten signature in cursive script, reading "Lara M. Caudy", written over a horizontal line.

Lara M. Caudy
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

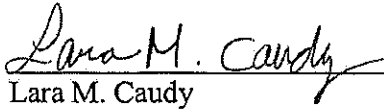
V.

KYNDRA L. HOWELL,

APPELLANT

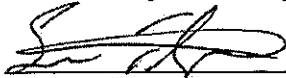
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Kyndra L. Howell, #342120 at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 26th day of January, 2016.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 26th day of January, 2016.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Kyndra Leann Howell, Appellant.

Appellate Case No. 2015-000722

Appeal From Anderson County
R. Lawton McIntosh, Circuit Court Judge

Unpublished Opinion No. 2017-UP-020
Submitted October 1, 2016 – Filed January 11, 2017

APPEAL DISMISSED

Appellate Defender Lara Mary Caudy, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General John Benjamin Aplin,
both of Columbia; and Solicitor Christina Theos Adams,
of Anderson, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

LOCKEMY, C.J., and KONDUROS and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 27, 2017

The Honorable Richard A. Shirley
PO Box 8002
Anderson SC 29622-8002

REMITTITUR

Re: The State v. Kyndra L. Howell
Lower Court Case No. 2012GS0402396, 2012GS0402397,
2012GS0402537, 2012GS0402538
Appellate Case No. 2015-000722

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

Enclosure

cc: Kyndra Leann Howell, 342120
Alan McCrory Wilson, Esquire
Lara Mary Caudy, Esquire
John Benjamin Aplin, Esquire
Christina Theos Adams, Esquire

RECEIVED

JAN 27 2017

APPELLATE DEFENSE

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

KYNDRA HOWELL #342120

vs.

STAT OF SOUTH CAROLINA

FILED-CLERK'S OFFICE
ANDERSON SC

2017 DEC - 5 PM 2:59
Plaintiff(s)

COMMON PLEAS AND
GENERAL SESSIONS

Defendant(s)

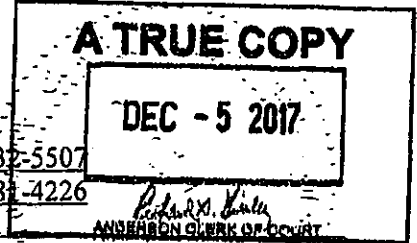
IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017 -CP- 04 - 02505

Submitted By: TOMMY A. THOMAS, ESQ.
Address: 7588 WOODROW STREET, SUITE 1,
IRMO, SC 29063

SC Bar #: 5536
Telephone #: 803-732-5507
Fax #: 803-781-4226
Other:
E-mail: THOMASLAW@ME.COM



NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Fraud/Bad Faith (150) <input type="checkbox"/> Failure to Deliver/Warranty (160) <input type="checkbox"/> Employment Discrim (170) <input type="checkbox"/> Employment (180) <input type="checkbox"/> Other (199) _____ | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20 <u>-NI-</u> <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) _____ | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Assault/Battery (370) <input type="checkbox"/> Slander/Label (380) <input type="checkbox"/> Other (399) _____ | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) _____ |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) _____ | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Drv. License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) _____ | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Other (799) _____ | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) _____ |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) _____ <input type="checkbox"/> Sexual Predator (510) <input type="checkbox"/> Permanent Restraining Order (680) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Pre-Suit Discovery (670) | | | |

Submitting Party Signature: _____

Date: DECEMBER 1, 2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FORM 5
FILED-CLERK'S OFFICE
ANDERSON SC

STATE OF SOUTH CAROLINA

2017 DEC -5 PM 2: 58 IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

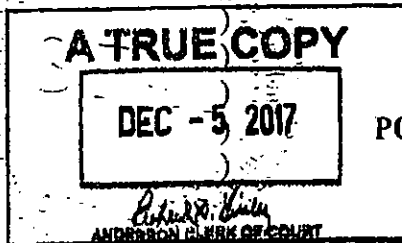
COMMON PLEAS AND
GENERAL SESSIONS

2017CP04 02505

KYNDRA L. HOWELL, #342120
Full name and prison number (if any) of Applicant.

v.

State of South Carolina



APPLICATION FOR

POST-CONVICTION RELIEF

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 Leath Correctional Institution, 2809 Airport Rd., Greenwood, SC 29649
2. Name and location of Court which imposed sentence Anderson County Clerk of Courts Office, 100 S. Main Street, Anderson, SC 29624
3. Name(s) of co-defendant(s) (if any) Ezra Williams, Zachary Gantt, Jeremiah Johnson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-04-2537 - Kidnapping, consecutive
 - (b) 2012-GS-04-2396 - Armed Robbery, consecutive
 - (c) 2012-GS-04-2397 - Possession of a weapon during a violent crime, consecutive
5. The date upon which sentence was imposed and the terms of the sentence:

- (a) February 25, 2015 - Thirty (30) years
- (b) February 25, 2015 - Fifteen (15) years
- (c) February 25, 2015 - Five (5)
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty x
- (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. 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. January 11, 2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2017-UP-020
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See Attached

(b) _____

(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? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

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) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

- (b) your trial, if any? x
- (c) your sentencing? x
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? x
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. Michael Scott McElhannon, Esq., 110 E. Benson Stree, Anderson, SC 29624
 - ii. Lara Caudy, Esq., Appellate Defense, P.O. Box 11589, Columbia, SC 29211
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial, sentencing
 - ii. Direct Appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:

New Trial

20. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA)
)
County of Greenwood)

VERIFICATION

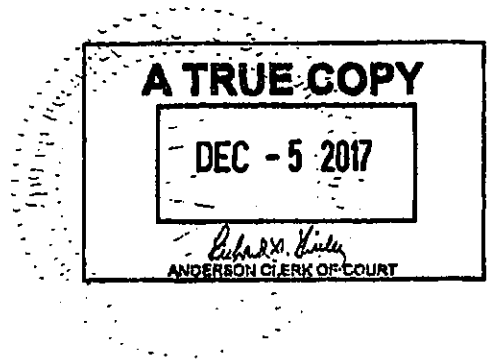
I, Kyndra Howell, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Kyndra Howell
Kyndra Howell

SWORN to and subscribed before me this 6th
day of October, 2017.

Barbara Sherette Hill (L.S.)
Notary Public

My Commission Expires: Jan. 8, 2023



FILED CLERK'S OFFICE
ANDERSON SC
2017 DEC - 5 PM 2: 58
COMMON PLEAS AND
GENERAL SESSIONS

Attachment

Applicant met with Trial Counsel four (4) or five (5) times. This is insufficient for counsel to properly prepare the case for trial.

Trial Counsel failed to discuss his theory of defense with the Applicant. She did not understand the discovery or State's evidence against her. As a result, she was unable to adequately participate in her defense.

Applicant learned after the fact that her Co-Defendants received information in their discovery that she did not receive.

Trial counsel did not present an effective defense. Trial Counsel called no witnesses and Applicant was improperly advised not to take the stand to testify on her own behalf.

Trial Counsel failed to adequately point out inconsistent witness statements.

Applicant learned that one of the witnesses was threatened by law enforcement that they would have DSS take her children if she did not testify against the Applicant.

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
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HARRINGTON BUILDING
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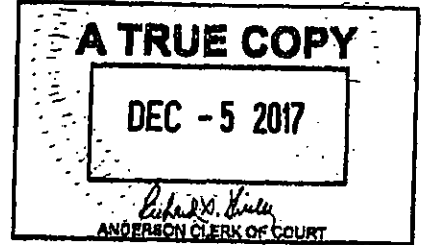
PLEASE REPLY TO:
PO Box 88
IRMO, SC 29063

FACSIMILE:
(803) 781-4226

INMATE LINE
(803) 732-6542

December 1, 2017

Anderson County Clerk of Court
Court of Common Pleas
P.O. Box 8002
Anderson, SC 29622



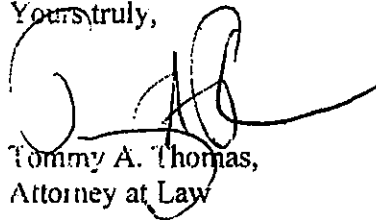
RE: Kyndra L. Howell #342120 v. State

Dear Sir or Madam:

Please find enclosed an original and a copy of an Application for Post-Conviction Relief to be filed in the above referenced matter.

Kindly return a clocked copy to me in the enclosed envelope. Thank you. Should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,


Tommy A. Thomas,
Attorney at Law

FILED-CLERK'S OFFICE
ANDERSON SC
2017 DEC - 5 PM 3:00
COMMON PLEAS AND
GENERAL SESSIONS

TAT/jem

STATE OF SOUTH CAROLINA)
 COUNTY OF ANDERSON)
)
 Kyndra Howell, #342120,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2017-CP-04-02505

RETURN

Respondent, making its Return to the application for post-conviction relief filed on December 5, 2017, would respectfully show this Court:

I.

Kyndra Howell (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. During its November 2012 term, the Anderson County Grand Jury indicted Applicant for armed robbery (2012-GS-04-02396) and possession of a weapon during the commission of a violent crime (2012-GS-04-02397). The Anderson County Grand Jury subsequently indicted Applicant during its December 2012 term for kidnapping (2012-GS-04-02537) and murder (2012-GS-04-02538).

On July 1, 2012, Zachary Gantt was at Applicant’s house playing videogames. Tr. 136, 164. While Gantt was playing videogames, Applicant left her home and returned with Chandrakant “C.J.” Patel (Victim). Tr. 137-38, 165. Thereafter, Jeremiah Johnson arrived. Tr. 138-39, 165. While Victim was inside Applicant’s home, Applicant called Gantt and Johnson over to the carport to tell Gant and Johnson that Victim “had some money.” Tr. 139-41. Based on this, Johnson decided they should rob Victim. Tr. 141. Applicant reentered her home first and had Victim go into a bedroom with her. Tr. 141-42. Then, Gantt and Johnson entered the house, went to the bedroom Victim was

in, and Johnson grabbed Victim and pulled Victim to the ground. Tr. 142. Johnson and Victim began wrestling, and Gantt helped hold Victim down. Tr. 142. Gantt and Johnson tied Victim's hands behind his back with a telephone cord. Tr. 143. Johnson then took Victim's wallet from his pocket and removed approximately seventy dollars in cash and several bank cards. Tr. 143. Johnson gave Gantt approximately thirty dollars, which he then gave to Applicant. Tr. 144, 161. Johnson and Gantt held Victim in the bedroom and began beating him in an effort to obtain the PIN numbers for his bank cards. Tr. 144-45. Meanwhile, Applicant never attempted to stop Gantt and Johnson. Tr. 143, 145. Applicant remained in the kitchen. Tr. 145.

At some point, Victim gave them some PIN numbers, and Johnson went to a store in Victim's car to try to use the cards. Tr. 145-46. Johnson returned unsuccessful. Tr. 146. Gantt and Johnson then resumed beating Victim, but he continued to give them the same numbers. Tr. 146. Applicant remained in the kitchen on her phone, and never attempted to stop Gantt and Johnson. Tr. 146. Later, Johnson gave the cards to Applicant, and she went in Victim's car to see if she could get them to work. Tr. 146-47. When Applicant returned, she informed them the numbers were wrong and Victim was lying. Tr. 147.

Later that night, Ezra Williams arrived at Applicant's home. Tr. 148. Williams also began beating Victim and asking him for his PIN numbers. Tr. 150. Williams then sprayed bug spray on Victim. Tr. 150. When Victim still refused to give them his PIN numbers, Williams put a knife on the stove, let it heat up, then stabbed Victim in his stomach several times. Tr. 151. Applicant was still in the kitchen, smiling and laughing. Tr. 151.

When they were still unable to get the PIN numbers from Victim, Johnson decided they needed to kill Victim. Tr. 152, 153, 168. Gantt, Johnson, and Williams then took Victim out of Applicant's home and put him in his car. Tr. 153-55. Gantt, Johnson, and Williams then took

Victim out to the woods, and Williams shot Victim. Tr. 155-58. After the shooting, they returned to Applicant's home. Tr. 158, 161. Applicant never asked where Victim was. Tr. 159. Law enforcement ultimately arrested and charged Applicant for her involvement in these crimes.

M. Scott McElhannon, Esquire, represented Applicant on these charges. Then-Assistant Solicitor Rame Campbell and then-Assistant Solicitor Brantly Haigler, both of the Tenth Circuit Solicitor's Office, prosecuted the case. On February 23-25, 2015, Applicant proceeded to trial before the Honorable R. Lawton McIntosh and a jury. The jury acquitted Applicant for murder and convicted Applicant for kidnapping, armed robbery, and possession of a weapon during the commission of a violent crime. Judge McIntosh sentenced Applicant to a term of imprisonment of thirty years for kidnapping, fifteen years for armed robbery, and five years for possession of a weapon during the commission of a violent crime. The sentences were to run consecutively.

Thereafter, on February 27, 2015, Applicant filed a Motion to Reconsider the Sentence. A hearing into the matter was convened on March 31, 2015, before Judge McIntosh. At the hearing, Applicant argued the sentence of the trial court should be vacated and deferred until her co-defendants had been tried or sentenced. Tr. 341-42. Applicant further argued her sentence for the possession of a weapon during the commission of a violent crime charge should be a concurrent term, as the sentence was in violation of *Major v. S.C. Dept. of Probation, Parole, & Pardon Services*¹ in that her sentence to a consecutive term of imprisonment for five years essentially turned her two sentences for parole eligible offenses, kidnapping and armed robbery, into non-parole eligible offenses. Tr. 340-41. By written Order signed March 31, 2015, and filed April 1, 2015, Judge McIntosh denied Applicant's motion to vacate and defer sentencing and granted Applicant's motion to treat her conviction of possession of a weapon during the sentence of a violent crime as

concurrent.

Applicant filed a timely notice of appeal, and Appellate Defender Lara M. Caudy, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, perfected an appeal on her behalf. Following the filing of an *Anders*² brief, the South Carolina Court of Appeals dismissed Applicant's appeal and granted counsel's request to withdraw. *State v. Howell*, Op. No. 2017-UP-020 (Ct. App. Filed January 11, 2017). The Remittitur was issued on January 27, 2017.

II.

In her application for post-conviction relief, Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Applicant met with Trial Counsel four (4) or (5) times. This is insufficient for counsel to properly prepare the case for trial;"
 - b. "Trial Counsel failed to discuss his theory of defense with the Applicant. She did not understand the discovery or State's evidence against her. As a result, she was unable to adequately participate in her defense;"
 - c. "Applicant learned after the fact that her Co-Defendants received information in their discovery that she did not receive;"
 - d. "Trial Counsel did not present an effective defense. Trial Counsel called no witnesses and Applicant was improperly advised not to take the stand to testify on her own behalf;"
 - e. "Trial Counsel failed to adequately point out inconsistent witness statements;" [and]
 - f. "Applicant learned that one of the witnesses was threatened by law enforcement that they would have DSS take her children if she did not testify against the Applicant."

Attached to this Return and incorporated by reference are the records of the Anderson County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, the Record on Appeal, and the post-

¹ 384 S.C. 457, 682 S.E.2d 795 (2009).

² 386 U.S. 738 (1967).

conviction relief application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

Additionally, Applicant must specify any claims she intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has retained counsel, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the post-conviction relief hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. *See* Rule 15(a), SCRCP.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief 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*, 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). The 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 the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the *Strickland* test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent interprets Applicant's allegation that she did not receive information in her discovery materials that her co-defendants received in their discovery as one of prosecutorial misconduct, specifically as a *Brady* and Rule 5 violation. Post-conviction relief is not a substitute for an appeal. *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. *Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Because Applicant could have raised this issue on appeal, the failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. *Alabama v. Smith*, 490 U.S. 794, 109

S. Ct. 2201 (1989). Respondent submits the Applicant cannot carry her burden of proving actual prosecutorial misconduct, therefore, this allegation should be summarily dismissed.

Throughout her claims, Applicant alleges *Brady*³ and Rule 5, SCRCPP, violations. *Brady* requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. *Clark v. State*, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A *Brady* claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. *Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. *Clark*, 315 S.C. at 388, 434 S.E.2d at 268 (citing *U.S. v. Bagley*, 473 U.S. 667 (1985)).

The requirements of Rule 5, as opposed to the constitutional dictates of *Brady*, are judicially created discovery mechanisms for use in criminal proceedings. *State v. Gullede*, 326 S.C. 220, 487 S.E.2d 590 (1997). Rule 5(a)(1)(C) requires:

Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

Id. The definition of “material” for purposes of Rule 5 is the same as the definition used in the *Brady* context. See *Fradella v. Town of Mount Pleasant*, 325 S.C. 469, 482 S.E.2d 53 (Ct. App. 1997) (per curiam). In order for Applicant to prevail on a Rule 5 claim, she must show not only an

³ *Brady v. Maryland*, 373 U.S. 83 (1963).

actual violation, but also that he suffered prejudice as a result. *State v. Wilkins*, 310 S.C. 81, 425 S.E.2d 68 (Ct. App. 1992); *State v. Trotter*, 322 S.C. 537, 473 S.E.2d 452 (1996).

Respondent submits this ground for relief is without merit. However, the allegations concerning *Brady* and Rule 5 violations probably raise questions of fact that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this ground for relief. See *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

V.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of counsel.

[signature block to follow]

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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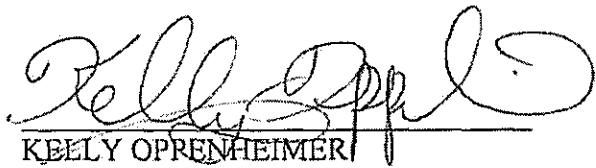
March 15, 2018

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON)	FOR THE TENTH JUDICIAL CIRCUIT
)	
Kyndra Howell, #342120,)	2017-CP-04-02505
)	
Applicant,)	NOTICE OF APPEARANCE
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

To the Clerk of Court and all parties of Record:

The undersigned, Assistant Attorney General Kelly Oppenheimer, hereby enters an appearance in this matter as counsel of record for Respondent "State of South Carolina" in the above-captioned matter. Please forward all future notices and correspondence accordingly.

Respectfully Submitted,



KELLY OPPEHEIMER
 Assistant Attorney General
 South Carolina Bar Number 103245
 Office of the Attorney General
 State of South Carolina
 Post Office Box 11549
 Columbia, South Carolina 29211-1549
 (803) 734-0964
 koppenheimer@scag.gov

Attorney for Respondent

Dated: March 15, 2018

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
 KYNDRA HOWELL, #342120)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent,)
 _____)

IN THE COURT OF COMMON PLEAS
 2017-CP-04-02505

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Notice of Appearance** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Tommy Arthur Thomas
 Post Office Box 88
 Irmo, South Carolina 29063

DATED this the 15th day of March, 2018.

Camille Henry
 Camille Henry, Legal Assistant
 For Respondent

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APPEARANCES

REPRESENTING THE STATE:

Taylor Z. Smith, Esquire
Lillian L. Meadows, Esquire
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211-1549

REPRESENTING THE DEFENDANT:

Tommy A. Thomas, Esquire
11 North Irvine Street, Suite 11
Greenville, South Carolina 29601

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COLLOQUY

1 PROCEEDINGS

2 THE COURT: Do we have everyone that we need on
3 Kyndra Howell versus the State?

4 MR. THOMAS: I'm here, Your Honor.

5 MR. SMITH: Yes, Your Honor.

6 THE COURT: All right. Let's go on the record
7 then. On Kyndra, K-Y-N-D-R-A, L. Howell, Inmate number
8 342120, versus the State of South Carolina. The case number
9 is 2017CP0402505. The matter has been scheduled for a hearing
10 on a post-conviction relief application. The applicant is
11 present and at Leath Correctional Institute, and represented
12 by Tommy Thomas who is also present. The State is represented
13 by Taylor Z. Smith who is present. Is your name Kyndra L.
14 Howell, ma'am?

15 THE APPLICANT: Yes, sir.

16 THE COURT: Raise your right-hand, please.

17 Thereupon,

18 KYNDRA HOWELL

19 was called as a witness, having been first duly sworn,
20 was examined and testified as follows:

21 THE COURT: Mr. Thomas, there is a Leighanne
22 Howell, do I need to bring her in or is she just going to
23 listen?

24 MR. THOMAS: She is just going to listen, Your
25 Honor.

COLLOQUY

1 THE COURT: All right. Ms. Howell, we
2 scheduled this hearing today with you, this WebEx virtual
3 courtroom. And you understand that if we go forward with this
4 hearing, that you will not be present in an actual courtroom
5 and that your lawyer will not be physically present with you.
6 Do you agree to do this by video, or do you want to do it in a
7 regular courtroom setting?

8 THE APPLICANT: I agree to do it by video.

9 THE COURT: Since your lawyer is not there, if
10 you need to talk to him at any time, you just let us know and
11 we will let you set up a private phone line and you can talk
12 to your attorney, okay.

13 THE APPLICANT: Yes, sir.

14 THE COURT: Mr. Thomas, do you consent to do
15 this by video?

16 MR. THOMAS: Yes, sir, I do.

17 THE COURT: Mr. Smith, do you?

18 MR. SMITH: I do.

19 THE COURT: I have reviewed the file last night
20 and I'm ready to proceed. Do either of you wish to make an
21 opening statement, or do you need to modify the application in
22 any you way Mr. Thomas?

23 MR. THOMAS: Your Honor, if it pleases the
24 Court, we will go pretty much straight down. There's an
25 attachment to the PCR application. Those, in essence,

COLLOQUY

1 basically set out an outline as to what our causes of action
2 are going to be. And I just wanted to bring the Court's
3 attention to that, rather than me going through it all again.

4 THE COURT: Do you need to make any kind of
5 opening statement, Mr. Smith?

6 MR. SMITH: No, Your Honor.

7 THE COURT: All right. So, let's go forward
8 then with Kyndra L. Howell versus the State. Mr. Thomas.

9 MR. THOMAS: Yes, Your Honor, if it pleases the
10 Court.

11 THE COURT: Let me just say this. I didn't --
12 I thought I hit the record feature on the Webex before. I
13 didn't. So I just hit it a moment ago. So, Ms. Howell, I
14 probably need to swear you in again. Would you raise your
15 right-hand please?

16 Thereupon,

17 KYNDRA HOWELL

18 was called as a witness, having been first duly sworn,
19 was examined and testified as follows:

20 THE COURT: And any evidence that you present
21 will be the truth, whole truth, and nothing but the truth so
22 help you God?

23 THE APPLICANT: Yes, sir.

24 THE COURT: And I went over the rights related
25 to being in person in a courtroom versus video, and you agreed

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 to that, doing it by video?

2 THE APPLICANT: Yes, sir.

3 THE COURT: And you understand about calling
4 your lawyer if you need to talk private?

5 THE APPLICANT: Yes, sir.

6 THE COURT: All right. Both counsel also
7 consented. Go ahead, Mr. Thomas, I apologize.

8 MR. THOMAS: Oh, no, no problem Your Honor. If
9 it please the Court.

10 DIRECT EXAMINATION

11 BY MR. THOMAS

12 Q. Ms. Howell, you are currently incarcerated?

13 A. Yes, sir.

14 Q. Okay. And you are serving time for what?

15 A. Armed robbery, kidnapping, possession of a
16 weapon during a violent crime.

17 Q. All right. And you were actually indicted for
18 those three charges as well as a murder charge?

19 A. Yes, sir.

20 Q. And you proceeded to a trial?

21 A. Yes, sir.

22 Q. And on the trial you were found not guilty of the
23 murder charge?

24 A. Yes, sir.

25 Q. And what type of sentence are you serving?

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 A. Forty-five years.

2 Q. Forty-five years?

3 A. Yes, sir.

4 Q. And you are -- what is your max-out date?

5 A. 2053, maybe, I'm not real sure to be honest.

6 Q. All right. Do you know how old you will be when
7 you max out?

8 A. No, sir.

9 Q. Okay. How old are you now?

10 A. Thirty-two.

11 Q. Thirty-two, all right. Now, you filed an
12 application for post-conviction relief?

13 A. Yes, sir.

14 Q. And you understand that you are in essence asking
15 for a new trial and for your sentence to be set aside?

16 A. Yes, sir.

17 Q. Now, you understand that you were found not guilty
18 on the murder, so you could not be re-tried on murder?

19 A. Yes, sir.

20 Q. And but you do understand that the solicitor's
21 office could elect to re-try you on all of the other three
22 charges?

23 A. I am aware.

24 Q. Okay. And you understand -- we have spoken about
25 this, that you have certain exposure should the grant --

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 should the Court grant your post-conviction relief?

2 A. Yes, sir.

3 Q. And your understanding -- you are willing to accept
4 that risk and you wish to go forward today?

5 A. Yes, sir.

6 Q. Okay. Ms. Howell, I'm not looking for specific
7 dates, but roughly, when were you arrested?

8 A. July 5th, 2012.

9 Q. Just very briefly, what did they say that you did?

10 A. Allegedly they said that I set up Mr. Patel to
11 be robbed.

12 Q. And Mr. Patel was who?

13 A. I had never met him before. That was the first
14 time I had met him.

15 Q. Okay. But he ran a convenience store in the
16 community?

17 A. I guess so. I didn't know him, to be honest.

18 Q. Okay. So your responsibility in this incident was
19 allegedly what?

20 A. They were saying that I set it up, but that
21 wasn't true.

22 Q. Okay. So he was robbed and then later he was
23 killed?

24 A. Yes, sir.

25 Q. Okay. And -- okay. So did you make bond? You

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 were arrested and you were out on bond, or did you stay in
2 the detention center?

3 A. I stayed in the detention center.

4 Q. And how long were you in the detention center
5 before this case was called for trial?

6 A. I believe 30 months.

7 Q. All right. And during that period of time you were
8 appointed an attorney, or did you retain an attorney?

9 A. I was appointed one.

10 Q. Okay. And who was that attorney that was
11 appointed?

12 A. Scott McElhannon.

13 Q. All right. And did you get an opportunity to talk
14 with him about this case?

15 A. A few times.

16 Q. Okay. And when you say "a few times", how many
17 times did he come see you?

18 A. Maybe four or five.

19 Q. Okay. And that was during the period of 30 months?

20 A. Yes, sir.

21 Q. Now, as far as -- as you got closer to your trial
22 date, did you have an opportunity to sit down with your
23 attorney and talk about the evidence that they had against
24 you?

25 A. Not as much as I would like to.

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 MR. SMITH: Okay. Your Honor, I am sorry, I
2 didn't mean to interrupt, but I just realized that Judge
3 McElhannon is not on here.

4 THE COURT: Oh, he is not?

5 MR. SMITH: I thought that I had seen him on
6 here, so -- but that is why I said that we had everyone here.
7 Can I take a moment to call his office and --

8 THE COURT: Actually this will be good. I'm
9 working from home today and they are remodeling my kitchen and
10 the cabinet guy is here, and it has taken me about two years
11 to get him here. So if y'all will give me about 15 minutes,
12 we will just take a 15-minute break and then I will come back,
13 okay?

14 MR. SMITH: Thank you. Sorry for the
15 interruption.

16 THE COURT: No, I'm glad you did. Because he
17 was going to leave here in a little bit and I needed to talk
18 with him before he leaves.

19 MR. SMITH: All right. Thank you. .

20 (Brief recess.)

21 THE COURT: Mr. Thomas, go ahead, please.

22 BY MR. THOMAS

23 Q. Ms. Howell, can you hear me?

24 A. Yes, sir.

25 Q. Okay. All right. So, we were talking about you

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 being in the county detention center and meeting with your
2 attorney. As far as these meetings, were you able to go over
3 the discovery? Do you understand what that, discovery,
4 means?

5 A. Yes, sir.

6 Q. Okay. So, were you able to go over the discovery
7 with your attorney?

8 A. A little bit. Not as much as I would like.

9 Q. Okay. Did you understand all of that about what
10 they were saying and what evidence they had against you?

11 A. I guess so.

12 Q. Okay. All right. Did you fully understand that?
13 I mean, that is kind of a weak answer.

14 A. Well, can you elaborate on the question?

15 Q. Okay. I am sorry. Yeah, if you don't understand
16 the question, ask me, okay. I don't want you just to answer.
17 As far as going over -- did you go over the video they had
18 from the security camera? Did you go over the statements and
19 that information that he had from the codefendant and
20 witnesses?

21 A. Yes, sir.

22 Q. Okay. In regards to how he was going to defend you
23 or what your defense was, did you understand that?

24 A. No, sir, I never understood that because, as far
25 as I was concerned, I didn't think that we had a defense.

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 I was never made aware of a defense that I thought we were
2 going to use.

3 Q. Okay. Now, this occurred at your home; is that
4 correct?

5 A. Yes, sir.

6 Q. And during this time that this happened, you were
7 not in the room where they had -- were attempting or did rob
8 this individual, this man?

9 A. No, sir.

10 Q. Okay. Where were you during this period of time?

11 A. In the living room.

12 Q. Okay. And also the kitchen? There was some
13 reference to the kitchen.

14 A. There was one point I was in the kitchen, but it
15 was briefly I was standing there. But I was in the living
16 room or either in my bedroom when they were there.

17 Q. Okay. And the codefendants and the victim left
18 your residence and he was taken out, and that is when he was
19 killed?

20 A. I would assume so. But after they left my house
21 I can't tell you what happened from that point.

22 Q. Okay. You were not with them?

23 A. (Gestures in the negative.)

24 Q. Okay. Now, as far as preparing for trial --

25 THE COURT: Did she answer the last question?

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 MR. THOMAS: I don't know, Your Honor. Kyndra,
2 can you hear?

3 THE WITNESS: I don't know once they left my
4 house.

5 BY MR. THOMAS

6 Q. Okay. And you were not present -- you did not go
7 with them?

8 A. No, sir.

9 Q. Okay. All right. Now in regards to preparation
10 for trial, did -- well, let me ask you this first: Did you
11 receive plea offers?

12 A. I believe there was one mentioned for 30 years,
13 and it was a murder charge.

14 Q. Right. And did you acc -- well, obviously you did
15 not accept that plea offer?

16 A. No, sir.

17 Q. Okay. And in regards to going -- so this was
18 always going to be a trial?

19 A. Well, I just could not get over the fact that
20 they were trying to say that I set Mr. Patel up to be
21 robbed, and I didn't do that. And I just could not plea
22 to that.

23 Also in order to take a plea I -- they wanted me
24 to say things that weren't true and I wouldn't do that.

25 Q. Okay. All right. And so how did, in regards to

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 developing a way to defend you, what did your attorney do for
2 you? I mean, what was his plan in regards to your defense?

3 A. Well, the only thing, in my opinion, that he
4 did, he said things aren't always what they seem. And
5 that is it. He didn't explain why they weren't what they
6 seemed. He never, he never gave them a reason. He never
7 gave the jury a reason why they weren't what they seemed.
8 He just said -- there was no facts. He didn't show the
9 facts or state the obvious in my opinion.

10 Q. Okay. And that was actually a part of his opening,
11 his opening before the jury, that statement?

12 A. Yes, sir. Yes, Your Honor.

13 Q. Okay. All right. And there were allegations, I
14 guess, in the trial that you were the mastermind of this?

15 A. Yes, they were allegations.

16 Q. And one of your codefendants, Zachary Gantt, he
17 testified against you?

18 A. Yes, sir.

19 Q. Okay.

20 MR. THOMAS: And Your Honor, just for the
21 Court's information, I've got some of the pages of the
22 transcript referenced, and I'll just give that information to
23 the Court. This information is contained on Page 139, lines
24 15 through 20. But, Ms. Howell, how did Mr. Gantt link you to
25 this crime in his testimony?

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 A. He said that I was there. I suppose that linked
2 me.

3 Q. All right. So they were out -- but he testified
4 that you had called him over in regards to setting up Mr.
5 Patel to be robbed?

6 A. I'm not sure if he said that I called him over.
7 I believe that maybe they might, him and Jeremiah both,
8 might have said, or one of them said, that I called them
9 from the porch. But if you look at the video, on the
10 video it shows that they were both at a distance, and I
11 didn't have a screen on my door. So, I mean, logically if
12 I opened the door and yelled out at them, and if you look
13 at the video, at the time from where they were standing
14 when they start walking towards my house, if I had yelled
15 out at them, that would be very suspicious to Mr. Patel
16 who was in my living room sitting on my couch if I yelled
17 out, Hey, can y'all come over here. That doesn't even
18 make sense.

19 Q. Okay. All right.

20 A. What happened was they came and knocked on my
21 door.

22 Q. Okay. And who was Jeremiah?

23 A. He was just, I thought, a friend of mine.

24 Q. Okay. But he was also one of the codefendants?

25 A. Right, yes, sir.

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 Q. Okay. And the only codefendant that testified at
2 trial was Zach?

3 A. Yes, sir.

4 Q. And what was his last name?

5 A. Gantt.

6 Q. Zachary Gantt. Okay. And Mr. Gantt testified that
7 you had said that this man had some money?

8 A. To be honest, I don't recall his testimony. But
9 he knew that, what we were waiting on, he knew. I told
10 him that I was going to Kim's house.

11 Q. Okay.

12 MR. THOMAS: And, Your Honor, just for the
13 Court's information, this is on Page 140, lines one through
14 ten.

15 BY MR. THOMAS

16 Q. So, did you -- did you anticipate the testimony by
17 Mr. Gantt? In other words, did you sit down with your
18 lawyer -- I mean, there were statements made by Mr. Gantt and
19 you knew that he was going to be called as a State's witness?

20 A. Yes, sir.

21 Q. Okay. Did you have an opportunity to sit down with
22 your attorney and talk about what Mr. Gantt was going to
23 testify and how that was going to potentially harm you?

24 A. A little bit.

25 Q. Okay. Did you -- did you develop any kind of

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 defense to that, as to how you were going to counter those
2 comments that he made about you which implicated you in this
3 crime?

4 A. No, sir.

5 Q. All right. Did you have any idea what he was going
6 to do, your attorney?

7 A. No, sir. I -- to be honest, I -- what I kept
8 getting from my attorney, I just felt like he wanted me to
9 do what the prosecution wanted me to do.

10 Q. Right.

11 A. And maybe that is not true, but that is just the
12 feeling that I kept getting.

13 Q. Right. And when you say to do things, I think that
14 your earlier testimony was that they wanted you to testify to
15 things that you felt like were not true?

16 A. That, and I just felt like he just wanted me to
17 plea out, and I did not want to take a plea and to say
18 that I did something that I did not in fact do, or that
19 anyone else did something that they did not in fact do.

20 Q. Okay. You understand that this, your liability in
21 this was a hand of one, hand of all case?

22 A. Yes, sir.

23 Q. Okay. And you understand that concept?

24 A. Yes, sir.

25 Q. Okay. And so when you went to the next -- the next

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 -- one of the next people that testified was Kimberly Lomax;
2 who is she?

3 A. She was also, I thought, a friend of mine.

4 Q. Okay. And what was her role in all of this?

5 A. She was the reason that the man was coming to my
6 house to begin with. He was -- we were going to her
7 house. And he was going to come and pick me up and we
8 were going to her house.

9 Q. Why were you going to her house?

10 A. Because I guess that he was her sugar daddy, if
11 you will. He was going to have sexual relations with her.

12 MR. SMITH: Objection, lack of personal
13 knowledge, foundation.

14 THE WITNESS: Sorry.

15 THE COURT: Do you want to be heard, Mr.
16 Thomas?

17 MR. THOMAS: Your Honor, I will just rephrase
18 the question.

19 THE COURT: It is hearsay, go ahead.
20 Sustained.

21 MR. THOMAS: All right.

22 BY MR. THOMAS

23 Q. And did you, in fact, take him to her house?

24 A. No, sir. What happened was he came to my house.
25 He did not want to ride over there with her alone, because

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 our mutual friend Jane told him that previously --

2 MR. SMITH: Object to hearsay.

3 MR. THOMAS: Don't say anything that someone
4 else told you, you need to -- just whatever you know of your
5 own personal knowledge.

6 A. Okay. So he came to my house to pick me up. We
7 were on the way over there. We stopped by the convenience
8 store. And I called her when we left and let her know
9 that we were going to her, we were on the way. And she
10 said, Okay, that's fine. So we left. We were probably a
11 couple of miles down the road. And when I got out of the
12 store she had called me back and said that she forgot to
13 tell me her mother was there.

14 MR. SMITH: Objection, hearsay.

15 MR. THOMAS: Okay.

16 BY MR. THOMAS

17 Q. Did you take him to her house?

18 A. No, we never made it over there.

19 Q. And there was a reason as to why you didn't take
20 him?

21 A. Right.

22 Q. Okay. Did you then -- where did you take him after
23 that?

24 A. We were sitting in the Lowe's parking lot
25 waiting for her to call back and tell us her mother was

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 gone.

2 Q. Okay. And did she call you back?

3 A. She did.

4 Q. Okay. And did you understand that her mom was at
5 her house?

6 A. Yes, sir.

7 Q. Okay. And what if anything did you do after that?
8 Where did you go?

9 A. She asked me to please take -- go wait at my
10 house.

11 MR. SMITH: Hearsay.

12 BY MR. THOMAS

13 Q. All right. Did you go to your house?

14 A. Yes, sir.

15 Q. And you went there --

16 THE COURT: Sustained. Go ahead.

17 MR. THOMAS: I am sorry, Your Honor.

18 BY MR. THOMAS

19 Q. Did you go -- you went to your house with Mr.
20 Patel?

21 A. Yes, sir.

22 Q. And what was the purpose of taking him to your
23 house?

24 A. To wait for Kim's mother to leave.

25 Q. Okay. Did you ever take him to your house for the

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 purpose of him being robbed?

2 A. No, sir. In fact, I called on the way back to
3 my house and asked Zach would he please leave my house to
4 make Mr. Patel more comfortable.

5 Q. Okay. And who is Zach? I mean, he was at your
6 house?

7 A. Yes, sir.

8 Q. Did he have -- I mean, did he have a pattern of
9 coming over to your house, or what was up with that?

10 A. He just was kind of like one of the neighborhood
11 kids. He was 17 years old. He was at my house when Mr.
12 Patel showed up actually and he was in there playing video
13 games. And I let him know, I said, you know, we are about
14 to go to Kim's house for, you know, their reason. So like
15 I said, when we were on the way back I called him and
16 asked him did he mind leaving for a few minutes, we were
17 not going to be there long, we were waiting on Kim. And
18 he kind of acted like he didn't really want to. He was
19 aggravated by it, but it is my house, you know, so he had
20 to.

21 Q. Okay. Okay. So, there was a reason as to why you
22 had taken Mr. Patel to your home?

23 A. Absolutely, to wait on Kim.

24 Q. All right. Did you discuss this with your
25 attorney?

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 A. I did.

2 Q. Okay. And you knew that Kimberly Lomax was going
3 to testify and you knew that Zach Gantt was going to testify?

4 A. Yes, sir.

5 Q. Okay. And you knew that there was statements by
6 Kimberly Lomax and there was statements by Mr. Gantt?

7 A. Yes, sir.

8 Q. So you had some idea as to what they were going to
9 say?

10 A. Yes, sir.

11 Q. Okay. Did you discuss this with your attorney as
12 to what he was going to do to repute what their -- their
13 testimony was going to be?

14 A. We discussed their testimony.

15 Q. Okay. And did he explain to you, or did you talk
16 about how you were going to explain why you -- why he was
17 there?

18 A. We didn't really discuss that part.

19 Q. Okay. All right. And --

20 A. I felt like that that was imperative that I
21 just -- that that would be something that I would talk
22 about if I were to take the stand. And I felt like that
23 was my side of the story and that was the only way it
24 would have gotten out.

25 Q. All right. And, I mean, that was -- that was the

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 whole key to the State's case in regards that you brought Mr.
2 Patel there for the purpose of being robbed?

3 A. That is incorrect.

4 Q. That is correct?

5 A. I did not. My intentions were not to rob him.

6 Q. No, but that is what the State was attempting to
7 prove, was that you took him there for that purpose?

8 A. Yes, sir.

9 Q. Okay. And --

10 A. Mr. McElhannon knew my intentions. I just
11 assumed that he would make them known to the Court or
12 either let me take the stand so I could tell my side of
13 the story. But I didn't get the opportunity. But he was
14 a lawyer and I assumed that he knew best. I figured that
15 he knew what was best for me.

16 Q. Right. So the first part of the State's case was
17 basically proving or attempting to prove that you had some
18 sort of reason or motive to take Mr. Patel to your home?

19 A. The only reason I did go back there, I didn't --
20 to be honest I didn't want to. And I told her a few times
21 I didn't want to. As I told you before, I was a people
22 pleaser.

23 Q. I understand. Well, did you -- let me ask you
24 about that. You said that you are a people pleaser; you
25 don't like confrontation?

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 A. No, sir, not at all.

2 Q. All right. And how would you describe yourself in
3 regards to dealing with confrontation?

4 A. I don't deal with it well at all. I do not deal
5 with tension or confrontation well. I clam up. I told
6 you that I have my coping mechanisms.

7 Q. What is that?

8 A. Like when I smile when I'm nervous and mad and
9 sad.

10 Q. All right. Okay. And did you talk to your
11 attorney about that?

12 A. Yes, sir.

13 Q. Okay. So, he was aware of it?

14 A. Yes, sir.

15 Q. All right. And did you ever tell Zach that this
16 man has a bunch of money?

17 A. No, sir. There was no way that I could have
18 possibly known that. I didn't even know him.

19 Q. Okay. The next prong in this is basically the
20 State's allegation that you knew in the home what was going
21 on. Is that true?

22 A. No, sir. There -- there was no way, like he
23 wasn't being -- he wasn't yelling or anything or, you
24 know, there was nothing that I could have heard going on.

25 Q. Okay. And did this happen in the same room that

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 you were in?

2 A. No, sir.

3 Q. And there were allegations that you could hear what
4 was going on?

5 A. I could not.

6 Q. Okay. And did there -- was there any attempt by
7 counsel to show or prove that you were unable to hear what
8 was going on in the other room?

9 A. No, sir.

10 Q. Okay. Was there any kind of expert that was hired?
11 Was there any kind of acoustic tests done, or anything along
12 those lines?

13 A. Not at all.

14 Q. Okay. And -- but there was testimony by one of the
15 detectives that there was -- that he could hear, when he was
16 in the house, what was going on in the other room. Do you
17 remember that?

18 A. Yes, sir, I remember.

19 Q. Okay. And --

20 MR. THOMAS: Your Honor, just for the Court's
21 information, that is Page 222 of the transcript, lines one
22 through seven.

23 BY MR. THOMAS

24 Q. So, do you know if your attorney was able to refute
25 any of that testimony by the detective that you would have

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 been able to hear and i.e. know what was going on in that
2 room?

3 A. I mean, I don't know if he tried to, but I could
4 probably tell you a few ways to do it right now.

5 Q. Okay. All right. And did you know beforehand,
6 going into this trial, that the State was going to try to
7 prove that you had involvement in that way, that you knew
8 what was going on in that room?

9 A. Yes, sir.

10 Q. Okay. And did you make any preparation to refute
11 that with your attorney in preparing for trial?

12 A. No, sir.

13 Q. Okay. Now you decided not to testify; is that
14 correct?

15 A. My attorney told me not to testify.

16 Q. And did you have discussions with him about not
17 testifying?

18 A. Well, the day before my last day of trial, he --
19 when I went back to the county he told me that he would
20 let me know the next morning if I was going to take the
21 stand or not. And so the next morning he told me that he
22 didn't think it was a good idea.

23 Q. Okay. And you did have a prior record; is that
24 correct?

25 A. Yes, sir.

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 Q. And we have talked about that prior record. Is it,
2 for lack of a better word, is it a big record or a little
3 record, or what is it?

4 A. It is very minor.

5 Q. Okay. And you understood that you could -- that
6 your -- any convictions under certain circumstances could be
7 brought to the attention of the jury?

8 A. Uh-huh. (Indicating affirmatively.)

9 Q. Okay. Did you talk with your attorney? I mean,
10 was that the reason as to why he didn't want you to testify?

11 A. No, sir.

12 Q. Do you know what the reason was?

13 A. Yes, sir. Because I had made a phone call and I
14 said I love you on the phone with someone and he said that
15 he didn't think that looked good on me because of who it
16 was.

17 Q. Yeah, but he didn't -- he didn't have -- he was not
18 a codefendant; is that correct?

19 A. No, sir.

20 Q. Okay.

21 A. He had -- I was afraid of someone, my
22 codefendant, Jeremiah, I was threatened by him several
23 times and I told my attorney that numerous times, that I
24 was afraid of him. I was threatened by him. I told the
25 detectives that I was afraid. They knew. And I told my

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 attorney which person it was. But the person that I was
2 on the phone with was William Jeffrey, it was not Jeremiah
3 Johnson. And I said that I love you to him on the phone
4 and he said that he didn't think that I should testify.

5 Q. All right. Just for information for the Court, who
6 was the -- you had three codefendants, who was the third
7 codefendant?

8 A. It was Jeremiah Johnson, Zachary Gantt, and Ezra
9 Williams.

10 Q. Ezra Williams, okay. And Ezra Williams --

11 A. I didn't care about the phone call or the record
12 or anything, I still wanted to testify because, like I
13 said, I felt like that was my only opportunity to get my
14 side of the story out. Because after the prosecution, we
15 rested our case and that was it. He never told my side of
16 the story. But again, like I said, he was a lawyer, I
17 just felt like he knew what was best for me.

18 Q. All right. And you remember the Court asking you,
19 going through questions and asking you as to whether or not
20 you were deciding not to testify of your own freewill, you
21 were voluntarily making that decision?

22 A. Yes, sir.

23 Q. Okay.

24 MR. THOMAS: And, Your Honor, just for the
25 Court's information, that is Pages 251, 252.

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 BY MR. THOMAS

2 Q. So we have spent some time talking about the
3 State's, basically, evidence and how they were -- and their
4 case and what they were trying to do to prove that you had
5 involvement in this case, right?

6 A. Yes, sir.

7 Q. Okay. And it was basically through testimony of
8 witnesses that you had lured this man over there for purposes
9 of the robbery?

10 A. (no audible response.)

11 Q. Kyndra?

12 A. Yes, sir.

13 Q. Okay. And so you and I have spoken about this.
14 You felt like it was important to tell your side of the
15 story?

16 A. Yes, sir.

17 Q. And why did you feel like that was important?

18 A. Because they were trying to paint a picture that
19 I was the mastermind. And at the end the Judge told me
20 that he sentenced me because he felt like I was the
21 mastermind and that I got the ball rolling in this case.
22 And that was never my intention. And I felt like there
23 was so many things logically that pointed to that, to show
24 my intentions, that was obvious, and he never did that.
25 He never -- like, he just let them paint that picture and

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 never gave them a reason to believe anything other than
2 that. He just, you know, things aren't always what they
3 seem. But he never gave them any facts to support that.

4 Q. The person that could refute all of that would have
5 been you?

6 A. Yes, sir.

7 Q. I thought that it was interesting when we were
8 talking yesterday, you said this is the first time that you
9 have ever been able to tell your story?

10 A. Yes, sir.

11 Q. Is that true?

12 A. Yes, sir.

13 Q. Okay.

14 MR. THOMAS: And, Your Honor, in regards to the
15 comments of sentencing, that is pages -- basically Page 339.

16 THE COURT: Hold on a second. Can we take a
17 short break?

18 MR. THOMAS: Oh, yes, sir. Yes, sir.

19 (Brief recess.)

20 THE COURT: All right. Ms. Howell, are you
21 with us?

22 Ms. Howell, are you there?

23 THE APPLICANT: Yes, sorry.

24 THE COURT: Again, I apologize. I haven't had
25 this problem at any other hearings, I have people coming in

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 and people working. I don't know how to explain to y'all. I
2 may have to stop again. My wife is going to Charleston to see
3 a specialist and my daughter is taking her there and she is
4 going to be here until a little before 11. And she has to
5 leave her dog here. So I have to stop and get her dog squared
6 away, so that the dog doesn't destroy what the workers are
7 doing. If I have to stop, I apologize, but a lot of stuff is
8 going on today.

9 Mr. Thomas, I'm sorry, will you please
10 continue?

11 MR. THOMAS: Yes, sir.

12 BY MR. THOMAS

13 Q. Kyndra, I just have a few questions just to kind of
14 finish all of this. You should have taken the stand?

15 A. I think so.

16 Q. Okay. And you think that your attorney misadvised
17 you in regards to deciding not to take the stand?

18 A. Yes, sir.

19 Q. Okay. And did your attorney call any witnesses to
20 testify on your behalf?

21 A. No, sir.

22 Q. Okay. Did he present any evidence on your behalf?

23 A. He didn't put up a defense at all.

24 Q. Okay. All right. And as far as there were some
25 inconsistencies in these witness' statements, as a matter of

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 fact I think Zach had given several different statements to
2 the police?

3 A. Yes, sir.

4 Q. And did your attorney bring any of that information
5 out to the jury that you remember?

6 A. Yes, sir.

7 Q. Okay. All right. But do you think that that
8 adequately represented what your side of the, of this factual
9 situation was?

10 A. Not adequately.

11 Q. Okay. All right. Now, one of the things that I --
12 I know that you told me, and I'm going to ask you this
13 question, you said that some of the other codefendants got
14 some discovery that you didn't get. Are you -- what did they
15 get that you didn't get?

16 A. I'm not --

17 MR. SMITH: Objection, lack of foundation and
18 personal knowledge.

19 THE COURT: It depends on what she says, I
20 don't know. Do you want to try to lay some type --

21 MR. THOMAS: I'll be glad to, Your Honor. I
22 will be glad to, Your Honor.

23 BY MR. THOMAS

24 Q. Kyndra, in preparing your case for trial you had
25 access to the discovery -- you had access to all of the

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 discovery that your attorney had in regards -- and also
2 witness statements?

3 A. Yes, sir.

4 Q. Okay. And did you have any personal knowledge in
5 regards to what the other codefendants were provided with?

6 A. Yes, sir.

7 Q. And how did you have that knowledge?

8 A. One of my codefendants still spoke with my
9 parents.

10 Q. Okay. All right. Did they have anything different
11 than you?

12 A. They had things that I did not have.

13 MR. SMITH: This is double hearsay, Your Honor.

14 MR. THOMAS: Your Honor, that is -- I'll be
15 glad to move on.

16 THE COURT: All right.

17 BY MR. THOMAS

18 Q. One of the things that you also said was that the
19 -- Mrs. Lomax had been threatened by one of the detectives?

20 A. That is what she said but . . .

21 Q. You can't say anything what she said, but do you
22 have personal knowledge of that?

23 A. They didn't, they didn't tell me they was going
24 to do anything to her.

25 Q. Okay. All right. You and I talked about this. We

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 also had a motion for reconsideration; do you remember that?

2 A. Absolutely.

3 Q. Okay. And what happened -- were you present at the
4 motion for reconsideration?

5 A. Yes, sir.

6 Q. All right. And what happened at that motion for
7 reconsideration?

8 A. My lawyer, Mr. McElhannon, asked for my sentence
9 to be revoked (phonetic) until after the other
10 codefendants had been sentenced.

11 Q. Okay. Were you the first person tried?

12 A. Yes, sir.

13 Q. Okay. And he was attempting to have your sentence
14 held in abeyance until after they were sentenced?

15 A. Yes, sir.

16 Q. Okay. Was he successful in that?

17 A. No, sir. And the reason being -- well, his
18 reasoning, what he said at my reconsideration was because
19 he, his concern was that he did not want someone who was
20 found guilty of the actual murder to get less time than
21 me. And the Judge -- he said that would be an injustice.
22 And the Judge agreed. He said that it would. And that
23 actually did happen. Jeremiah got found guilty of murder
24 and got, actually, ten years less than I did.

25 Q. Okay. All right. He was successful in regards to

DIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 the possession of a weapon during the commission of a crime,
2 violent crime?

3 A. Well, it is a state law, so, yes, he was
4 successful.

5 Q. Okay. But he got that five-year sentence run
6 concurrent with your other sentence?

7 A. Yes, sir.

8 Q. Okay. All right. Kyndra, we talked about this as
9 well. I am not saying that I have forgotten anything and
10 that there is not anything that I have failed to present, but
11 you have been waiting a long time for this hearing, and is
12 there anything else that you feel like I may have forgotten
13 to bring to the attention of the Court or anything else that
14 you would like to bring to the attention of the Court?

15 A. No, sir. Just thank you for the opportunity to
16 finally get to tell my side and my intention. My
17 intentions were not to rob Mr. Patel. That, I mean, I
18 thought that it was obvious. But there was never anyone
19 there to point it out. It was only the prosecution and Mr.
20 Rame Campbell to paint a picture of me as this horrible
21 person, this mastermind, you know, and it wasn't like that
22 at all. So, thank you for the opportunity, you know, to
23 show you my real intentions.

24 MR. THOMAS: Thank you, Kyndra. Your Honor, I
25 have no further questions.

CROSS EXAMINATION OF KYNDRA HOWELL BY MR. SMITH

1 THE COURT: Mr. Smith.

2 CROSS EXAMINATION

3 BY MR. SMITH

4 Q. Ms. Howell, you testified earlier that you had
5 access to all of the discovery in this case?

6 A. Yes, sir. Well, I had access to it. I don't
7 know if it was all of it. But what I got.

8 Q. Okay. And didn't you agree with Judge McIntosh in
9 trial that Mr. McElhannon had gone over all of it with you?

10 A. All of what we had, yes, sir.

11 Q. Okay. And you agreed with him that Mr. McElhannon
12 had met you multiple times?

13 A. He did meet me multiple times.

14 Q. Didn't you meet with Mr. McElhannon more than ten
15 times?

16 A. I don't think we met that many times.

17 Q. Okay. And you agreed with Judge McIntosh that you
18 didn't need more time to go over the case with Mr.

19 McElhannon?

20 A. Yes, sir.

21 Q. Okay. So when Mr. McElhannon told you what would
22 happen at trial, what did he say that he planned to do?

23 A. He said if I was acquitted of murder, that I
24 would get no more than 30 years because no judge would run
25 those type of charges consecutive.

CROSS EXAMINATION OF KYNDRA HOWELL BY MR. SMITH

1 Q. Didn't Mr. McElhannon ask you if you had any
2 witnesses or leads that he could follow-up on?

3 A. No, not. not really.

4 Q. You deny that?

5 A. Yes, sir.

6 Q. Okay. Didn't you agree with Judge McIntosh that
7 you were making your decision about whether or not to testify
8 of your own freewill?

9 A. Yes, sir.

10 Q. You mentioned earlier that you had a very minor
11 criminal record. What were your convictions?

12 A. I had used, when I was a teenager I used my
13 grandpa's credit card and he thought that I needed to
14 learn a lesson, so he pressed charges. I'm not sure what
15 the charge is. And then I got into a fight, an
16 altercation with a girl and I was put on probation for it.
17 It was like an assault and battery or something, just like
18 misdemeanor charges I believe.

19 Q. You had mentioned earlier that you had never met
20 the victim before, but you were talking with him on the phone
21 that day, right?

22 A. Yes, sir.

23 Q. Okay. And you were driving him around in your car?

24 A. No, sir.

25 Q. You were riding in his car?

CROSS EXAMINATION OF KYNDRA HOWELL BY MR. SMITH

1 A. Yes, sir.

2 Q. With him. Okay. You said that you had stopped at
3 a convenience store with him; what convenience store was
4 that?

5 A. It was a little store called Luckys, right maybe
6 not even a mile from the house on Luton (phonetic).

7 Q. When you had mister -- you know, you said earlier
8 you had no idea what was happening in the house; what did you
9 think that Mr. Patel and the codefendant were doing in the
10 bedroom in your house?

11 A. I just didn't hear what was going on in there.

12 Q. What did you think they were doing?

13 A. I wasn't sure what they were doing.

14 Q. You didn't think that it was weird that people were
15 -- that a man that you didn't know was in your house in the
16 bedroom with some other people?

17 A. To be honest, sir, I was terrified. Have you
18 seen Jeremiah Johnson?

19 Q. Well, I'm asking you, what did you think that they
20 were doing?

21 A. I didn't know.

22 Q. You thought that was -- do you normally let people
23 come in your house and hang out in your bedrooms?

24 A. Jeremiah and Zach have both come in my house
25 several times, yes. I thought that they were --

REDIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 Q. Mr. Patel was a stranger; do you normally let
2 strangers hang out in your bedrooms?

3 A. No, sir, I did let him hang out for a few
4 minutes. We were waiting on Kim, like I said.

5 Q. Okay.

6 MR. SMITH: No more questions. Thank you.

7 THE COURT: Do you have anything else, Mr.
8 Thomas?

9 MR. THOMAS: Your Honor, just one or two.

10 REDIRECT EXAMINATION

11 BY MR. THOMAS

12 Q. Mr. Smith asked you in regards to meetings with
13 your -- with your attorney and about asking you about
14 witnesses that could have been called. You told him your
15 story, right?

16 A. Yes, sir.

17 Q. Okay. So, he knew the same story that you just
18 told the Court today?

19 A. Yes, sir. Like I told you about my mama
20 having -- my cousin had met the man before with Kim. You
21 know, he knew all of that. He knew just as much as you
22 did and didn't want to call anyone. He called no one.

23 Q. Okay. All right. And you told Judge McIntosh that
24 you had decided not to testify of your own freewill, nobody
25 was making you do that, you and I talked about that.

REDIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 A. Well, because my attorney was who -- he was
2 supposed to advise me, he was my legal representative.
3 So, if you, if you go and you ask a librarian for a book,
4 you know, that is -- my lawyer is telling me, don't do it;
5 why would I do it?

6 Q. Right. Right. And that is your reason?

7 A. Yes, sir. Yes, sir. I thought -- I mean, I
8 wanted to, as bad as I wanted to, I felt like, you know, I
9 was being punched and I wanted to tell my side of the
10 story. But at the same time, my lawyer is telling me, do
11 not do this. So why would I get up there and make that
12 mistake if, you know, he's saying that?

13 Q. Okay. Mr. Smith asked you about knowing what was
14 going on in that room and you responded and said that you
15 were terrified of Jeremiah?

16 A. Yes, sir.

17 Q. And that -- kind of describe why, how were you
18 terrified? How did that affect you?

19 A. Because, you know, he, like I said, he was a
20 friend of mine, I thought. But when he came -- when they
21 knocked on my door and I opened up the door and seen that
22 it was them standing there, I looked at Jeremiah, like he
23 was just different. And when he -- I told him he couldn't
24 come in at first. And when he kind of -- he lifted up his
25 shirt and showed me that he had a gun. And I seen that he

REDIRECT EXAMINATION OF KYNDRA HOWELL BY MR. THOMAS

1 had a gun and he just kind of pushed me over to the side
2 and like I knew that he wasn't playing. He just, he had a
3 different look in his eyes. I don't know if maybe he was
4 on drugs or if he just was going through something, I
5 don't know. But it was just different.

6 Q. I'm going to ask you this question, and I'm not
7 saying that you did -- your testimony was that you didn't
8 know what was going on in the room, and I am not saying that
9 you did, but had you known could you have done anything about
10 this?

11 A. I couldn't have stopped Jeremiah short -- I
12 mean, I did protest them coming in my house, but
13 without -- I thought that I had what was right for me
14 without getting myself hurt.

15 Q. Okay.

16 A. I was trying to get out of a bad situation.

17 Q. Right. And was any of this information, what you
18 are telling us today, telling the Court today, was any of
19 that brought out in your trial?

20 A. No, sir, none.

21 Q. Okay.

22 MR. THOMAS: Your Honor, I have no further
23 questions.

24 THE COURT: Mr. Smith.

25 MR. SMITH: Just a few questions, Your Honor.

RE CROSS EXAMINATION OF KYNDRA HOWELL BY MR. SMITH

1 RE CROSS EXAMINATION

2 BY MR. SMITH

3 Q. Ms. Howell, you are alleging that you were in
4 there, that you were basically -- that Mr. Johnson forced his
5 way into your home with his gun. You had been using your
6 phone that whole day, right?

7 A. Yes, sir.

8 Q. And you had your phone with you?

9 A. (Nods in the affirmative.)

10 Q. Okay.

11 THE COURT: What was the answer?

12 THE WITNESS: Yes, sir.

13 THE COURT: Thank you.

14 BY MR. SMITH

15 Q. And when the officers brought up that they would
16 offer you witness protection, you told them you couldn't help
17 them, right?

18 A. The officers were not -- they were being very --
19 they were not being very serious with me.

20 MR. SMITH: Okay. No more questions. Thank
21 you.

22 THE COURT: Thank you, ma'am.

23 You have another witness, Mr. Thomas?

24 MR. THOMAS: Your Honor, if it pleases the
25 Court, we have no further witnesses.

RE CROSS EXAMINATION OF KYNDRA HOWELL BY MR. SMITH

1 THE COURT: Mr. Smith, you have witnesses?

2 MR. SMITH: Yes, Your Honor. I would call
3 Judge Scott McElhannon.

4 THE COURT: Would you raise your right hand,
5 please? Where is he? You say he is on?

6 MR. SMITH: Lisa Taylor.

7 THE COURT: I think that the volume is on but
8 the video is not.

9 MR. MCELHANNON: I am on here. I can hear
10 everyone.

11 THE COURT: Can you get the camera on?

12 MR. MCELHANNON: It says video is on but --

13 THE COURT: Any objection to going forward, Mr.
14 Thomas, without video?

15 MR. THOMAS: I have no objection, Your Honor.

16 THE COURT: Mr. Smith?

17 MR. SMITH: No objection, Your Honor.

18 THE COURT: You are Scott McElhannon?

19 MR. MCELHANNON: That is correct, Your Honor.

20 THE COURT: Raise your -- well, I can't see
21 your right hand.

22 Thereupon,

23 SCOTT MCELHANNON

24 was called as a witness, having been first duly sworn,

25 was examined and testified as follows.

DIRECT EXAMINATION OF SCOTT MCELHANNON BY MR. SMITH

1 THE COURT: Answer Mr. Taylor's -- Mr. Smith's
2 questions, please.

3 DIRECT EXAMINATION

4 BY MR. SMITH

5 Q. Good morning. Just for the record, if I refer to
6 you as Judge McElhannon, you are currently a family court
7 judge in South Carolina; right?

8 A. Yes, sir.

9 Q. Okay. But you were not at the time that you
10 represented Ms. Howell?

11 A. No, sir.

12 Q. Okay. When were you admitted to practice law in
13 South Carolina?

14 A. 1988.

15 Q. Okay. Can you briefly summarize for me your
16 professional experience since being admitted?

17 A. I was in private practice from 1988 until 2000.
18 In 2000 I went to work for the solicitor's office, the
19 Tenth Circuit Solicitor's Office. In 2000 to 2009.

20 In 2009 I went back into private practice from
21 2009 to 2015, I believe. And then I went to work for the
22 Department of Social Services until March of 2017. And
23 then I went back to work with the Tenth Circuit
24 Solicitor's Office from March of 2017 to February of 2020
25 when I was elected to the family court bench.

DIRECT EXAMINATION OF SCOTT MCELHANNON BY MR. SMITH

1 Q. Okay. How did you come to be involved in Ms.
2 Howell's case?

3 A. I was a 608 contract attorney, indigent defense,
4 and I was appointed.

5 Q. Okay. Can you summarize for me the evidence
6 against Ms. Howell as you remember it?

7 A. Yes, sir. And I guess everyone knows it's been
8 seven years since this trial took place, but the -- the
9 most damning evidence against Ms. Howell were the videos
10 that were taken from a security camera on a home that she
11 was renting. They just show her, you know, coming in,
12 coming to the house with Mr. Patel, getting out, going
13 inside the house one time. Mr. Patel going inside the
14 house one time. And he never was seen again until they
15 found his body near Big Creek Marina.

16 But Mrs. Howell was seen coming in and out of
17 that front door multiple times. Coming out on the front
18 porch talking on the phone and going back in. And it was
19 very damning evidence.

20 Q. Okay. On how many occasions did you meet with Ms.
21 Howell before her trial?

22 A. I looked back at my records this morning, and I
23 noted at least 14 times that I went to the jail to meet
24 with her. Plus there were multiple telephone calls, as
25 well as meeting with her parents. Her mother mainly, but

DIRECT EXAMINATION OF SCOTT MCELHANNON BY MR. SMITH

1 her father as well.

2 Q. Okay. Outside of the meetings, did you communicate
3 with her by mail, phone, or email?

4 A. Yes, sir. As a matter of fact, she sent me I
5 don't know how many letters asking me to come, she had
6 some concerns, come out to the jail to see her. And every
7 time that she sent a letter I would go out there as soon
8 as possible and talk to her about what was going on.

9 Q. Okay. Do you remember how long you represented her
10 before trial? In other words, what was the length of time?

11 A. That, I don't -- basically from the beginning of
12 when it happened up until February of 2015, so -- and I
13 can't remember the actual incident date, but from the very
14 beginning I was appointed to represent her.

15 Q. Would that have been not very long after she was
16 arrested?

17 A. That's correct.

18 Q. Okay. I want to talk about your meetings with Ms.
19 Howell. Did you review with her the discovery in this case
20 and the evidence?

21 A. Absolutely.

22 Q. Okay.

23 A. I even took my computer out to the jail so that
24 she could watch the videos.

25 Q. Okay. Did she give you any reason to believe she

DIRECT EXAMINATION OF SCOTT MCELHANNON BY MR. SMITH

1 didn't understand what the evidence was?

2 A. No, sir. She knows what the evidence was.

3 Q. Okay. Did she give you any names of witnesses or
4 leads she wanted you to look into?

5 A. No, sir.

6 Q. Okay. Did you ask her for some?

7 A. Absolutely. I mean, that is part of defending a
8 person, you want to know if they have any defenses. And
9 she couldn't provide anybody other than the Kim Lomax and
10 -- as being one of the witnesses, but she was going to
11 testify anyway and I cross-examined her. So, you know,
12 she never was forthcoming with me. As a matter of fact, I
13 don't think I have the whole truth about what happened.
14 She always seemed to be hiding something from me as her
15 attorney. She basically would never admit that Ezra
16 Williams had anything to do with this, this case. And she
17 was offered a plea deal and she refused it.

18 Q. Okay.

19 A. I will say she says that a plea deal was -- a
20 plea deal was a plea to murder, but that is not correct.
21 The State offered her to plead guilty to kidnapping and
22 armed robbery. And I had her sign a statement, which I
23 have here, on January 21st of 2015. And I'll just read it
24 for the Court. It says, "I, Kyndra Howell, understand
25 that I have an offer to plea to the kidnapping and armed

DIRECT EXAMINATION OF SCOTT MCELHANNON BY MR. SMITH

1 robbery in exchange for cooperating in any other trials
2 associated with this case. I'm informed that kidnapping
3 and armed robbery each carry up to 30 years. I understand
4 that I'll be tried for kidnapping, armed robbery, and
5 murder, or accessory before the fact of murder, and if
6 convicted could be sentenced to life in prison. I hereby
7 reject the plea offer against the advice of my lawyer."
8 And it is signed, Kyndra Howell.

9 Q. Okay. Did she tell you why she was rejecting the
10 offer?

11 A. No, not really. She, she would never really
12 tell me much about anything, to be honest, when I talked
13 to her. It was like trying to pull teeth.

14 Q. Why did you think she was hiding something from
15 you? Well, what about your conversations with her gave you
16 that impression?

17 A. Well, every time I asked her to tell me what,
18 what participation Ezra Williams had in the case she would
19 say he was never there. And, I mean, she just would not
20 come off of that. She was just not being totally honest
21 with me about what actually happened in the house.

22 Q. Did you, did you have any knowledge of whether she
23 had some sort of personal relationship with Mr. Williams?

24 A. She claims she did. If I remember right, at the
25 very beginning, and I don't think I'm wrong about this,

DIRECT EXAMINATION OF SCOTT MCELHANNON BY MR. SMITH

1 but it sticks out in my mind, I think she claimed to be
2 pregnant by Mr. Williams at one point.

3 Q. Okay. Did Ms. Howell ever tell you whether or not
4 she knew Mr. Patel?

5 A. She said she knew him, yes.

6 Q. Okay. Had -- did you have any -- I know that there
7 was some -- did she admit that he was at her home that day to
8 have sex with her?

9 A. That was the indication that I got, that Kyndra
10 Howell said that she was trying to arrange an encounter
11 with this Kim Lomax and Mr. Patel.

12 Q. Okay. And Ms. Howell had been communicating with
13 the victim by phone?

14 A. Yes.

15 Q. Okay.

16 A. If I remember correctly, that is the way that
17 they were communicating.

18 Q. Okay. Based on your discussions with Ms. Howell,
19 and the fact that she was not able to give you any leads to
20 use, what -- how did you develop a trial defense?

21 A. Well, my main -- my main objective was to first
22 have her found not guilty of the murder, which I was
23 successful in doing. They acquitted her of the murder. I
24 knew that it was going to be tough under the hand of one
25 hand of all theory to defend her against the armed robbery

DIRECT EXAMINATION OF SCOTT MCELHANNON BY MR. SMITH

1 and the kidnapping because of the video, there again,
2 showing her go into the home with Mr. Patel and he never
3 coming back out, out the front door anyway.

4 And the other codefendants, Gantt and Johnson
5 going inside the home as well. I just knew that that was
6 going to be tough to defend. I believe, if I remember
7 right, and I have watched so many hours of video, but if
8 I'm not mistaken, I think Ms. Howell actually also left at
9 one point and went to an ATM machine trying to retrieve
10 money out of that ATM machine from Mr. Patel's ATM card
11 where they had forced him to give them the PIN number.
12 And it did not work. And apparently she come back and
13 told one of the people inside that he gave the wrong
14 numbers.

15 Q. Okay. So there was no indication to you that she
16 was being held hostage inside her own home?

17 A. No, sir. And like I said, she came out on the
18 front porch multiple times during the videos.

19 Q. Okay.

20 A. She had a chance to walk away from the home.
21 She had a chance with her phone in her hand to call the
22 police and tell them what was going on. She did none of
23 that.

24 Q. Okay. Is it also true that she was making phone
25 calls to the victim's banks using her phone?

DIRECT EXAMINATION OF SCOTT MCELHANNON BY MR. SMITH

1 A. If I remember right, I think that she was. She
2 was doing something by way of trying to access Mr. Patel's
3 bank accounts.

4 Q. Okay. When you were discussing with her -- did you
5 talk about what she was doing inside the home while Mr. Patel
6 was being tortured?

7 A. Yes.

8 Q. Okay. What did she tell you about that?

9 A. Well, she tried to tell me that she didn't know
10 what was going on in the bedroom, you know, and that she
11 was just in the kitchen on the phone texting someone.
12 But, I mean, that is hard for me to believe as her
13 attorney that she didn't. Mr. Patel, through the autopsy,
14 it proved he was tortured. And I can't imagine not
15 hearing something come from that other room if you are sit
16 -- standing in the kitchen of the house.

17 Q. Okay. So what -- you mentioned his being tortured,
18 do you remember what sort of torture was indicated by the
19 physical evidence?

20 A. If I remember right, he had bug spray sprayed in
21 his eyes. He had a heated knife on the stove in the
22 kitchen where it was heated, so someone came out of that
23 bedroom and heated up, heated up a knife on the stove.
24 And he had that either pressed to his stomach or actually
25 making cuts into his stomach with that hot knife. I think

DIRECT EXAMINATION OF SCOTT MCELHANNON BY MR. SMITH

1 they had -- I believe they had a phone cord or something
2 wrapped around -- I know that he was tied up with a phone
3 cord, I believe. And I can't remember, to be honest, if
4 they had anything around his neck or not. It was, it was
5 pretty gruesome torture.

6 Q. Okay. Not the sorts of things that you would think
7 would be silent?

8 A. No, sir.

9 Q. Okay. And you mentioned that she told you she was
10 in the -- or that she had been texting in the home. One of
11 the people that she texted was her codefendant Ezra Williams,
12 right?

13 A. I can't really remember that. I'm not going to
14 dispute you if you say that was part of the testimony. I
15 can't remember that.

16 Q. Okay. Did she ever tell you that Jeremiah Johnson
17 forced his way in with a gun?

18 A. Not forced his way in. She never told me that.

19 Q. Okay. Did she say she told him to leave and then
20 he showed her a gun and then came in and pushed her out of
21 the way?

22 A. No.

23 Q. Okay. Okay. So you go -- did you discuss with Ms.
24 Howell what you planned to do with her trial?

25 A. I discussed everything with Ms. Howell,

DIRECT EXAMINATION OF SCOTT MCELHANNON BY MR. SMITH

1 extensively.

2 Q. Okay. Did she give you any reason to think that
3 she did not understand what you were going to try to do at
4 her trial?

5 A. No.

6 Q. Okay. How many of the codefendants gave statements
7 to the police implicating Ms. Howell in the crimes?

8 A. I know Zachary Gantt gave two different
9 statements. And at this point, without looking back all
10 the way through this file, which is huge, I can't remember
11 if Jeremiah Johnson ever gave a statement or not to be
12 honest.

13 Q. Okay. So, in these discussions with Ms. Howell,
14 did you talk about whether or not she would testify at trial?

15 A. Yes, sir.

16 Q. Okay. Can you tell me about those discussions?

17 A. Well, I told her what the drawbacks of
18 testifying were. And I will state, for the record, she
19 just, I think, testified under oath that she had one
20 misdemeanor assault and battery charge, but that is not
21 exactly true. She apparently had a -- multiple charges,
22 but she had an assault and battery high and aggravated
23 nature charge where she was convicted and got eight years
24 suspended to four years probation. And she also had some
25 financial transaction card stuff, shoplifting, leaving the

DIRECT EXAMINATION OF SCOTT MCELHANNON BY MR. SMITH

1 scene of a vehicle after an accident.

2 She had a -- I think that the only one that she
3 was talking about was the assault and battery charge,
4 another one that she was convicted of that was a 30-day,
5 that was the misdemeanor. She had a probation violation.
6 So she had numerous prior criminal convictions, and I told
7 her about that.

8 But I disagree with her, me telling her not to
9 testify. That was totally up to her. She -- we stopped
10 the trial late in the afternoon or evening of whatever day
11 that was. Judge McIntosh gave her overnight to think
12 about whether she wanted to testify. We came back to
13 court that next morning and I asked her, Do you want to
14 testify, and she looked at me and said, No. And I
15 didn't -- I never told her that she did not need to
16 testify. And that was what happened there.

17 And Judge McIntosh questioned her extensively
18 about her right to testify and she went through all of the
19 questions and answered them in the negative, that she knew
20 what she was doing, had enough time to talk to me and her
21 family, that she did not intend to testify.

22 Q. Okay. You mentioned earlier that you discussed
23 with her the advantages and disadvantages of having her take
24 the stand; can you tell me what those were?

25 A. Well, I mean, the advantage, I guess, would have

DIRECT EXAMINATION OF SCOTT MCELHANNON BY MR. SMITH

1 been for her to tell her side of the story. However, that
2 is subject to cross examination, which then leads to,
3 basically, the evidence coming back up about what all she
4 had been seen doing on the videos and those type things.
5 And it was going to basically refute her testimony. You
6 know, that -- to me there was no real pro consequences of
7 her testifying. The only thing that I could see were
8 going to be negative consequences to her testifying. But,
9 there again, the decision was up to her. I never told her
10 you don't -- you know, do not testify. That was totally
11 her decision.

12 Q. Okay. What was her demeanor throughout the trial?

13 A. Happy-go-lucky, smiling, you know, just grinning
14 at the witnesses who would testify, she would just kind of
15 look at me and grin. I don't know. It was very bizarre.

16 Q. Was that, the things that you just described, were
17 those things that the jury would have been able to see from
18 the jury box?

19 A. Absolutely.

20 Q. Okay.

21 MR. SMITH: And, Judge Keesley, I would just
22 like to take a moment to ask something. I have not pulled Ms.
23 Howell's rap sheet, and based on her testimony earlier and
24 Judge McElhannon's testimony, that is something that I'm
25 interested in doing. So if I were to do that and send those

DIRECT EXAMINATION OF SCOTT MCELHANNON BY MR. SMITH

1 to Your Honor, any convictions we find, send those to Your
2 Honor later; is that something that I would be interested in
3 knowing if Mr. Thomas would object to the admission of those
4 sort of as a supplement to the record?

5 THE COURT: Mr. Thomas?

6 MR. THOMAS: Your Honor, I don't understand
7 what the relevance of the actual rap sheet would have for this
8 hearing. I mean, she's testified as to what she understood.
9 And defense counsel, of course, has testified as to the
10 concerns that he had with what her prior records were. I
11 don't know what the rap sheet would do.

12 THE COURT: Unless you are prepared to do it
13 now, I think that I have got enough.

14 MR. SMITH: Okay.

15 THE COURT: Or I will before the hearing is
16 finished.

17 MR. SMITH: Okay. Thank you, Your Honor. I
18 will go on with my questions.

19 BY MR. SMITH

20 Q. Judge McElhannon, do you remember how many of the
21 State's witnesses you cross-examined?

22 A. I don't. I probably cross-examined every one of
23 them. I'm not sure how many it was, but I'm sure I
24 cross-examined -- I can't think of why I would not have
25 cross-examined every one of them.

DIRECT EXAMINATION OF SCOTT MCELHANNON BY MR. SMITH

1 Q. Okay.

2 A. As a matter of fact, I think that one of Mrs.
3 Howell's complaints was that I didn't bring out the
4 inconsistencies in statements. But I believe if the Judge
5 would look at pages of the transcript, I think that it is
6 like 171, 172, somewhere around in there, I cross-examined
7 Zach Gantt extensively about why he lied in his
8 statements. So I don't know where Ms. Howell is coming
9 from on that, to be honest.

10 THE APPLICANT: That was actually not one of my
11 complaints.

12 MR. SMITH: Objection, Your Honor.

13 THE COURT: Ms. Howell, you don't get to
14 comment about the other witness' testimony.

15 THE APPLICANT: Sorry.

16 THE COURT: All right. Go ahead please, Mr.
17 Smith.

18 BY MR. SMITH

19 Q. Judge McElhannon, when you were doing that, you
20 actually got Mr. Gantt to agree that he had changed the story
21 to the police officers; right?

22 A. Yes, sir.

23 Q. Okay. When you cross-examined the lead detective,
24 Danny Barton, didn't you cross-examine him about whether
25 someone in that home would have been able to hear from the

DIRECT EXAMINATION OF SCOTT MCELHANNON BY MR. SMITH

1 bedroom?

2 A. Yes, sir, if I remember correctly I did.

3 Q. Did you ever go out to the home?

4 A. No, not that I recall.

5 Q. Do you have any idea about the size of it?

6 A. No, but from the, from the video surveillance it
7 looked like it was just a small brick house.

8 Q. Okay. Did either you or the State ever ask Ms.
9 Howell to make false statements in order to get a plea deal?

10 A. I certainly did not, no. And she never talked
11 to the State other than the officers. I mean, they wanted
12 her to give testimony against her codefendants and she
13 refused.

14 Q. Okay. Did Ms. Howell ever tell you that William
15 Jefferies threatened her?

16 A. She said that someone -- I can't remember names
17 back from seven, eight years ago, but anyway, she said
18 that someone had threatened her, yes.

19 Q. Okay.

20 A. And that was brought out, I think, in testimony
21 I think of Ms. Clark.

22 MR. SMITH: Okay. Thank you. No more
23 questions now.

24 THE COURT: Mr. Thomas, do you want to ask the
25 witness any questions?

CROSS EXAMINATION OF SCOTT MCELHANNON BY MR. THOMAS

1 MR. THOMAS: Your Honor, if it please the
2 Court, I would. Good morning.

3 THE WITNESS: Morning.

4 CROSS EXAMINATION

5 BY MR. THOMAS

6 Q. I just wanted to ask a few questions. In your
7 preparation for the trial, you, I guess, basically, or in
8 essence, knew through the statements and stuff what the
9 State's case was going to be against Ms. Howell?

10 A. Yes, sir.

11 Q. All right. And you knew that Zach Grant (SIC) was
12 going to be, basically, their kind of star witness?

13 A. Zach Gantt, yes, sir.

14 Q. Gantt, yes, Zach Gantt. And so did you have an
15 opportunity to discuss, basically, what the State's case was,
16 what they were going to say about her prior to the trial?

17 A. Yes, sir. Like I said, I met with her at least
18 14 times, and all the way up to close to the day of trial.
19 And she knew every bit of evidence and what they were
20 going to present against her.

21 Q. Right.

22 A. We went over everything.

23 Q. So it would have been important to be able to try
24 to refute what they were saying against her?

25 A. It would be important to do that, yes, sir.

CROSS EXAMINATION OF SCOTT MCELHANNON BY MR. THOMAS

1 Q. Okay. And in talking about her making the decision
2 not to testify, what kind of -- what kind of analysis or how
3 was that handled in regards to your conversations with her
4 about her testifying?

5 A. There again, that was seven years ago. I don't
6 remember the conversation. I just know that I always,
7 when I defend a person in trial, would go over what may
8 happen if she test -- if that person testifies, and what
9 could happen and how they could be brought out to look
10 unbelievable or basically a liar on the stand. And I did
11 that with every defendant that I ever defended, I would go
12 over that with them. And I did that with Ms. Howell.

13 Q. Would it be safe to say that you went through some
14 sort of risk benefit analysis with her?

15 A. Absolutely.

16 Q. Okay. So were -- did you ever make a determination
17 or did you talk with her about what the benefit would be of
18 her telling her story versus the risk of having her prior
19 conviction brought out in Court?

20 A. There again, seven years ago, like I said, I
21 just know what I always did as a standard thing in trial,
22 and I would have done that no differently with Ms. Howell.

23 Q. Right. Right. But you did -- but you did have
24 some concern about her testifying?

25 A. Yes, sir.

CROSS EXAMINATION OF SCOTT MCELHANNON BY MR. THOMAS

1 Q. Okay. And you conveyed that concern to Ms. Howell?

2 A. Yes, sir.

3 Q. Did you have any reason to believe that she
4 perceived that concern as you advising her not to testify?

5 A. Did I have any concern?

6 Q. No, that you advising her of your concern about her
7 testifying, that she could have perceived that as you telling
8 her not to testify?

9 A. That would be speculation on my part. I don't
10 know what she believed, but I felt it my obligation as her
11 attorney to tell her what could happen if she did testify.
12 But I never told her not to testify. That was totally
13 her.

14 Q. All right. Okay. Now, you talked about the video
15 and you heard Kyndra's testimony this morning about Mr. Patel
16 and coming to the house. The video in fact shows her coming
17 to the house and also going into the house with Mr. Patel?

18 A. Yes, sir.

19 Q. And you said that you felt like that that was very
20 damaging?

21 A. Yes, sir.

22 Q. But wouldn't it have been if she had testified that
23 she could have explained that? I mean, she explained it this
24 morning.

25 A. There again, that was I guess trial strategy. I

CROSS EXAMINATION OF SCOTT MCELHANNON BY MR. THOMAS

1 saw the entire video. I saw her go in and I saw her come
2 out multiple times on her phone. And Mr. Patel never was
3 seen coming out of that home again until they found his
4 body at Big Water Marina.

5 Q. Right. Did she talk to you about her fear of
6 Jeremiah?

7 A. Not that I recall. To be honest I don't recall
8 her ever saying that she was afraid of Jeremiah Johnson.

9 Q. Okay.

10 A. And there again, she was seen coming in and out
11 of the house on the porch. She could have walked straight
12 to the road, walked down the road, gone to a neighbor's
13 house. She had her phone in her hand, you know, she could
14 have called the police and said, Hey, this is going on.
15 And if she had taken the stand, that was what was going to
16 -- you know, as I was speculating what the prosecutor
17 would have done, those were questions that he would have
18 cross examined her with, and I thought that that would be
19 extremely damning.

20 And I thought that we had a good shot at getting
21 acquitted on the murder charge.

22 Q. Right.

23 A. And things could only turn worse if she were to
24 take the stand. But there again, I never told her not to
25 take the stand.

CROSS EXAMINATION OF SCOTT MCELHANNON BY MR. THOMAS

1 Q. Okay. But the fact that on the video that she
2 comes in and out or goes on the porch or whatever, all of
3 that came in any way, didn't it?

4 A. Yes.

5 Q. Okay. All right. But there never was really any
6 explanation from her as to why she was doing that or anything
7 about any fear that she had from at least one of the
8 codefendants?

9 A. No, because she would have had to testify for
10 that to come out. I couldn't testify for her.

11 Q. Okay. All right.

12 MR. THOMAS: Your Honor, if I could beg the
13 Court's indulgence just for a second.

14 (Pause.)

15 BY MR. THOMAS

16 Q. How about Kimberly Lomax. Did you talk with her,
17 with Kyndra, about these allegations that she had been
18 threatened by one of the detectives and had been threatened
19 that her children, Lomax's children, were going to be taken
20 by DSS?

21 A. If I remember right, I did question her. I
22 think that's part of the transcript. But we didn't know
23 about that until it came up at trial.

24 Q. Okay.

25 A. And I ques -- and I questioned Danny Barton as

CROSS EXAMINATION OF SCOTT MCELHANNON BY MR. THOMAS

1 to why there wasn't a supplemental report in the
2 discovery, and he had no explanation for that.

3 Q. Okay. And I think that he tried to kind of pass
4 the buck to one of the other investigators or detectives?

5 A. If I remember right, that is correct.

6 Q. Right. And unfortunately you didn't have any prior
7 knowledge of that, so you were unable to have that other
8 detective there?

9 A. That is correct.

10 Q. Okay. All right. Could that have been part of
11 your motion for reconsideration?

12 A. I guess it could have been, but it wasn't.

13 Q. Okay. All right. Now, you said that she was
14 offered a plea. Was there any -- any amount of time
15 recommendation as to what the State had in regards to
16 sentencing?

17 A. I don't know -- I don't. On the one that she
18 signed off on on January 21st, 2015, there was no time
19 specified on that. It was just that she would not be
20 pleading to murder, she would be pleading to kidnapping
21 and armed robbery.

22 Q. Okay.

23 A. And I can't remember if there was a -- if there
24 was a specific time offered, but it wasn't written down on
25 that.

CROSS EXAMINATION OF SCOTT MCELHANNON BY MR. THOMAS

1 Q. Do you know if it was a straight-up -- a
2 straight-up plea, or you just don't remember?

3 A. I don't recall.

4 Q. Okay. All right. And in regards to that plea
5 offer, was it a requirement that she testify?

6 A. Yes.

7 Q. Okay. And did you discuss with her, I guess, her
8 -- which may have been before you got involved, her
9 conversations with -- when she was arrested with the police
10 officers?

11 A. I'm sure. I probably -- I mean, I would
12 routinely have asked questions from the date of the arrest
13 all the way to the, you know, the date of the incident. I
14 don't know, I can't remember exactly when I got appointed,
15 but I'm sure that I asked her, you know, what happened
16 when they arrested you.

17 Q. All right. And so did you know what they wanted
18 her to testify to as part of the plea offer?

19 A. They wanted her to be honest about what happened
20 at the house and who was there and who was involved, I
21 know that.

22 Q. Okay. So to the best of your knowledge, there
23 wasn't a story that they, basically, wanted her to
24 corroborate?

25 A. No. One thing that I think they were pursuing

CROSS EXAMINATION OF SCOTT MCELHANNON BY MR. THOMAS

1 is that they wanted her to admit that Ezra Williams had
2 some involvement in the case, and she flat out refused to
3 do that.

4 Q. Did you ever talk to Kyndra about what Mr.
5 Williams' involvement was, do you know?

6 A. She would not -- she just kept telling me Ezra
7 Williams had nothing to do with this, he was never there.
8 She would never be honest with me about that.

9 Q. Okay. All right.

10 MR. THOMAS: Your Honor, if I could beg the
11 Court's indulgence.

12 THE COURT: Yes, sir.

13 (Pause.)

14 BY MR. THOMAS

15 Q. Mr. Smith had asked you about evidence that she
16 could have gone to an ATM machine while she was -- while this
17 was going on. Was that brought out in court?

18 A. Yes, sir, I believe that was part of the State's
19 case was that she had attempted to access Mr. Patel's
20 funds.

21 Q. Okay. And also I think there was testimony that
22 her cell phone was used to contact either two banks or
23 something in regards to credit cards?

24 A. Yes, sir.

25 Q. All right. But there was never any link from the

CROSS EXAMINATION OF SCOTT MCELHANNON BY MR. THOMAS

1 phone to her? In other words, all they could show is that it
2 had -- those calls had originated from her phone?

3 A. Yeah, I can't remember that detail, but that I
4 guess could be possible that someone else had her phone,
5 I'm not sure.

6 Q. Okay. And if she had testified, would she have
7 been able to explain why -- these allegations, that she had
8 gone to the ATM machine?

9 A. I guess she could have tried to explain, yeah,
10 if she had testified, yes, sir.

11 Q. Okay. Well, without her testimony, those really
12 went unchallenged?

13 A. Except for any cross examination of any of the
14 witnesses, yes, sir.

15 Q. All right. In reading the transcript, it kind
16 of -- one question that I had was that, you know, there were
17 these, basically, allegations by the detective that, you
18 know, he was standing in the -- in the kitchen and, you know,
19 they -- the team was in the bedroom gathering evidence and
20 the door was shut and he could hear what was going on. Was
21 there any way to prevent that? Was there any way to object
22 to that to kind of -- I mean, he is not an expert?

23 A. I don't think he was trying to give an expert
24 opinion, I think he was -- those are his personal
25 observations when he was in the house, was that he could

CROSS EXAMINATION OF SCOTT MCELHANNON BY MR. THOMAS

1 hear the forensics team in the bedroom.

2 Q. Right.

3 A. Which was very close to the kitchen.

4 Q. Did you know that that was going to be an issue,
5 about what she could hear and what she knew?

6 A. I knew she claimed that she could not hear and
7 didn't know what was going on the whole time. And just as
8 doing these type of cases for years and years and knowing
9 what I know, I found that hard to believe, that she was in
10 the house that long and didn't have a clue as to what was
11 taking place.

12 Q. Right. Would it have been beneficial to have hired
13 an acoustic expert? I mean, did you ever think about that?

14 A. No. And I don't think that that would have been
15 beneficial, to be honest. I think that would have been a
16 waste of money but . . .

17 Q. Okay. Okay. And but there are no allegations that
18 she participated personally or actively in the robbery of Mr.
19 Patel or any physical violence to him?

20 A. No, it was hand of one, hand of all. Unless you
21 want to say if that was her attempting to access funds
22 from Mr. Patel being a part of the armed robbery. But the
23 State's theory was hand of one, hand of all.

24 Q. Okay. And you were aware that she had made
25 allegations that she had been threatened to the police when

CROSS EXAMINATION OF SCOTT MCELHANNON BY MR. THOMAS

1 she was arrested by someone else?

2 A. Yes, sir. Yes, sir.

3 Q. All right. Were you able to follow through with
4 that, in regards to whether she had been threatened by
5 anyone? I guess, in particular, Jeremiah Johnson that
6 evening?

7 A. Well, I -- there was no way to follow through
8 other than to question Mr. Johnson himself.

9 Q. Okay.

10 MR. THOMAS: Your Honor, if I beg the Court's
11 indulgence just for a second.

12 (Pause.)

13 BY MR. THOMAS

14 Q. You stated that when you would speak with her that
15 she would be smiling, or that she was kind of easy going or
16 lackadaisical. Did she ever tell you about, you know, her
17 being basically someone that kind of went with the flow and
18 that she didn't deal with stress very well and whatever
19 coping mechanisms she may have had.

20 A. I don't ever remember her telling me that, no.

21 Q. Okay. All right. Did you ever ask her about any
22 concern about her facial expressions?

23 A. Well, I think I probably did during the trial
24 tell her she needed to quit grinning and smiling so much.
25 I think there was even a picture, if I remember right, in

CROSS EXAMINATION OF SCOTT MCELHANNON BY MR. THOMAS

1 the paper, the local newspaper during the trial, and we
2 are sitting at the defense table and I think that it
3 showed her looking at me smiling if I remember correctly.

4 Q. Okay. All right. But you never were able to
5 determine from her that there was some reason for that type
6 of behavior?

7 A. No, sir.

8 Q. All right. Just one final question. And I know
9 that we talked about this balancing of the pro part and the
10 negative part of her taking the stand to testify. I mean,
11 really, her story was not told at all.

12 A. Not by her, that is correct.

13 Q. Okay. All right. And given the fact that there
14 was really no explanation for any of these allegations in
15 making that determination by balancing those factors,
16 wouldn't it have balanced out that it would have been better
17 for her to testify?

18 A. There again, that was a decision that we
19 discussed and I asked her that next morning if she was
20 going to testify and she looked at me and said, No. I
21 can't make her get on the stand. And she told me, No.
22 She never said -- she never indicated to me, Well, you are
23 telling me not to testify. That never came up until this
24 PCR application was filed.

25 Q. Right. Right. And you didn't have any indication

REDIRECT EXAMINATION OF SCOTT MCELHANNON BY MR.
SMITH

1 that she was struggling with this issue?

2 A. No.

3 Q. Okay. All right.

4 MR. THOMAS: Your Honor, I have no further
5 questions.

6 THE COURT: Thank you. Anything else for this
7 witness?

8 MR. SMITH: Yes, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. SMITH

11 Q. Judge McElhannon, do you have a copy of the
12 transcript there with you? Okay, you were questioned by Mr.
13 Thomas about a threat against Ms. Lomax. Can I direct you to
14 her testimony at trial?

15 A. All right.

16 THE COURT: Taylor, what pages are those? I'm
17 sorry.

18 MR. SMITH: That would be, if we are looking at
19 the trial transcript, it would be Page 117.

20 THE COURT: All right. Thank you.

21 BY MR. SMITH

22 Q. Okay. And that is where her testimony begins. And
23 I will direct you to -- okay, Page 126. Will you confirm
24 that this is where Ms. Lomax testifies about being
25 threatened?

REDIRECT EXAMINATION OF SCOTT MCELHANNON BY MR.
SMITH

1 A. Yes, sir.

2 Q. Okay. Who did she say threatened her?

3 A. William Jeffrey.

4 Q. Okay. Is there any indication here that he is a
5 law enforcement officer?

6 A. No.

7 Q. Okay. When she's discussing the threat from him,
8 does it say anything about DSS and her kid?

9 A. No.

10 Q. Okay. So when you mentioned -- are you aware of
11 any threats against Ms. Lomax from a law enforcement officer
12 about DSS?

13 A. Nope.

14 Q. Okay. So I would like to ask you too, you know,
15 you mentioned earlier that Ms. Howell always denied that Mr.
16 Williams was present at the scene. His -- a car tied to him
17 was caught on film at the house, right?

18 A. Yes, sir, if I remember right it was seen coming
19 to the back of the house. It didn't pull in the driveway.

20 Q. Okay. And both Mr. Gantt and Mr. Johnson told
21 officers that Mr. Williams had been at the house?

22 A. Yes, sir.

23 Q. Okay. Did Ms. Howell ever tell you that someone
24 else had her phone during that period while the victim was
25 being tortured in her house?

REDIRECT EXAMINATION OF SCOTT MCELHANNON BY MR.
SMITH

1 A. No.

2 Q. Okay. Did she give you any explanation -- what was
3 her explanation to you about what she was doing during that
4 period?

5 A. She didn't really have an explanation, just that
6 she was in the kitchen texting on her phone and coming
7 outside and going back in. She really never had an
8 explanation as to, you know, that she could not have known
9 what was going on. She had no explanation for that.

10 Q. Did she suppress anything to you about being
11 curious about what Mr. Patel and three other men were doing
12 in one of her bedrooms?

13 A. No.

14 Q. Okay. And all of this happened, this was late at
15 night, right?

16 A. If I remember right, it started, it was daylight
17 when she got there with Mr. Patel. And it went through
18 the night. He was never -- that is what I was saying, on
19 the videos he's never seen coming back out the front door,
20 even at night. So I think the testimony was they took him
21 out a side door or out the back door and put him in a car
22 and took him off about, a couple of miles from the Georgia
23 line at Big Water Marina and shot him in the head.

24 Q. During this period of time, with Ms. Howell
25 testifying today that she was scared and was threatened by

RE CROSS EXAMINATION OF SCOTT MCELHANNON BY MR.
THOMAS

1 the other codefendants, what was she doing on the video when
2 she was captured on the video?

3 A. Acting normal. She was on her phone. Wasn't --
4 didn't look distraught, wasn't crying, wasn't shaking.
5 And then, and then what was telling was, she went and --
6 like I said, she had an opportunity to walk down to the
7 road, go somewhere and get help, and she just continued to
8 go back inside every time.

9 Q. Did Ms. Howell give you any evidence from a
10 statement or any kind of supporting evidence that you could
11 have used to explain that she was not involved in these -- in
12 the armed robbery and kidnapping?

13 A. No, other than saying she was in the kitchen and
14 they were in the other room.

15 Q. Okay. And that is something that you brought out
16 on cross examination, right?

17 A. Yes, sir.

18 Q. Okay. Thank you.

19 MR. SMITH: No more questions.

20 THE COURT: Mr. Thomas.

21 MR. THOMAS: Yes, Your Honor, may it please the
22 Court.

23 RE CROSS EXAMINATION

24 BY MR. THOMAS

25 Q. So counsel, I'm sorry, and maybe I just

RECROSS EXAMINATION OF SCOTT MCELHANNON BY MR.
THOMAS

1 misunderstood. You did not have any knowledge that Kimberly,
2 there were allegations that Kimberly Lomax had been
3 threatened by one of the officers?

4 A. Not I think until that -- like I said, I think
5 the day of the trial when she was testifying is when she
6 brought that up. And then I questioned Detective Barton
7 as to why there was not a supplemental report detailing
8 that. Mark Gregory apparently was the one who, allegedly,
9 threatened her. And there was no supplemental report ever
10 filed, so I didn't have that prior to the trial.

11 Q. Right. Right. And she did have two little boys
12 that she testified to?

13 A. I can't remember that. She probably -- if it's
14 in the transcript then I don't doubt it.

15 Q. It is. And just for the Court's reference, Your
16 Honor, it is 117, lines 15 through 16. And you talked about
17 that she had an opportunity to leave, but in relationship to
18 her statements today about her being afraid, certainly afraid
19 of Jeremiah, I mean, that could have factored in as well that
20 they -- I mean, these guys were dangerous, obviously -- that
21 there could be retribution to her had she left.

22 A. It could be. But common sense, in my mind,
23 would say if you have an opportunity to leave a situation
24 where you know there's danger and someone else is in the
25 house being tortured, you go get the help that you can and

RE CROSS EXAMINATION OF SCOTT MCELHANNON BY MR.
THOMAS

1 deal with repercussions later and don't just turn your
2 back and do nothing.

3 Q. Right. But she had already been to the police one
4 time before when she was arrested and they -- I think her
5 testimony was that they didn't really offer her anything as
6 far as protection?

7 A. Well, that was after the fact. That was after
8 she was arrested.

9 Q. Right. Right.

10 A. Well, she wouldn't have known that the day that
11 Mr. Patel was murdered.

12 Q. Okay. All right.

13 MR. THOMAS: Your Honor, I have no further
14 questions.

15 THE COURT: All right. Thank you, sir.

16 THE WITNESS: Thank you.

17 THE COURT: You have another witness, Mr.
18 Smith?

19 MR. SMITH: I do, Your Honor. I call Mr. Rame
20 Campbell. And I would say, Your Honor, that I understand at
21 this point that I have questioned Mr. McElhannon twice, but
22 based on some questions from Mr. Thomas, I would like to know
23 if I can ask him another question first just to clear
24 something up.

25 THE COURT: Do you want to be heard Mr. Thomas?

PROFFERED DIRECT EXAMINATION OF SCOTT MCELHANNON BY
MR. SMITH

1 MR. THOMAS: Your Honor, I know that he could
2 recall in reference to something that was said by another
3 witness, but I don't know if he would be entitled to recall
4 that witness at this point in time.

5 THE COURT: Are you still with us, Mr.
6 McElhannon?

7 MR. MCELHANNON: Yes, sir.

8 THE COURT: I'm going to sustain the objection,
9 but I have to let you make a proffer, if you wish to Mr.
10 Smith. So the Court can't consider it, but an appeals court
11 could.

12 MR. SMITH: Well. Okay. Your Honor, I would
13 also -- I would move to strike Mr. Thomas' questions about,
14 from the record about a DSS threat, because that is not
15 something that is reflected in the record. I believe that is
16 a mischaracterization of the record.

17 THE COURT: I'm not going to strike anything
18 from the record. What else do you want? Do you want to make
19 your proffer with this witness?

20 MR. SMITH: Yes, Your Honor.

21 Thereupon,

22 SCOTT MCELHANNON
23 was called as a witness, having been first duly sworn,
24 was examined and gave proffered testimony as follows:

25 PROFFERED DIRECT EXAMINATION

PROFFERED DIRECT EXAMINATION OF SCOTT MCELHANNON BY
MR. SMITH

1 BY MR. SMITH

2 Q. Mr. McElhannon, Mr. Thomas has asked you about Ms.
3 Lomax and a DSS investigation. Is that something that was
4 reflected at trial about Ms. Lomax?

5 A. Yes, it had nothing to do with Ms. Howell. That
6 was a threat against Ms. Lomax, as far as I remember.

7 Q. Okay. Can you tell me at what part of the trial
8 transcript that occurs, or that is discussed?

9 A. Not off of the top of my head I can't. I mean,
10 it would have been in her, in Ms. Lomax's testimony if
11 it's in the trial transcript.

12 THE COURT: Earlier they said 117.

13 BY MR. SMITH

14 Q. Mr. McElhannon, will you review and tell me, what
15 portion of the trial transcript, beginning at 117, that Ms.
16 Lomax talks about being threatened about a DSS case?

17 THE COURT: I'm not sure that that is right.
18 I'm just telling you what I wrote down.

19 MR. SMITH: Yes, sir, that is Ms. Lomax's
20 testimony starts with that page.

21 (Pause.)

22 A. All right. I have reviewed Ms. Lomax's
23 testimony and the only threats that she mentions in it on
24 her cross examination were threats by William Jeffrey. I
25 do not see anything regarding DSS threats or threats of

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MR. SMITH

1 DSS involvement by Detective Gregory.

2 Q. You testified earlier that when Mr. Thomas asked
3 you about DSS threats from an officer, an allegation of
4 threats against Ms. Lomax, you agreed with the premise. What
5 information do you have that Ms. Lomax claimed to have been
6 threatened, again, by law enforcement officers with the DSS
7 case?

8 A. I don't know if that was something that I have
9 heard since the trial took place, that Ms. Howell was
10 alleging, I'm not sure where that came from to be honest,
11 because it is not in the transcript.

12 Q. Okay. Do you know if you have anything about that
13 in your file?

14 A. From looking at her statement to the
15 detective -- not her statement, the incident report, the
16 police report where they interviewed her, I don't see
17 anything regarding DSS in that either. I just know that
18 there was some mention of someone threatened DSS
19 involvement, but I don't see where that came from to be
20 honest.

21 Q. Does the name -- are you familiar with someone
22 named Martha Everett?

23 A. Martha Everett?

24 Q. Right.

25 A. That name sounds familiar, but I don't -- I

PROFFERED DIRECT EXAMINATION OF SCOTT MCELHANNON BY
MR. SMITH

1 don't know. I think that the reason that it sounds
2 familiar to be honest is I had a family court case with
3 someone by that name in the last couple of weeks, to be
4 honest.

5 Q. So you are -- you mentioned you -- that it might
6 sound familiar to you. Are you sure what you had heard was
7 an allegation that Ms. Lomax was threatened by a law
8 enforcement officer with a DSS investigation?

9 A. There again, I could be wrong that it was her,
10 it just was someone who was claiming that they had been
11 threatened or whoever the officer was told them that DSS
12 was going to get involved with their children. I just
13 remember that.

14 Q. Okay. Do you know if that person was a witness at
15 trial, in Ms. Howell's trial?

16 A. I do not know. I thought that it would have
17 been Kim Lomax if anyone, and I don't see it in her
18 testimony.

19 Q. Okay. So -- and the reason I'm asking that is
20 because you agreed with Mr. Thomas that you had heard that,
21 and I just want to confirm, you know, because you agree with
22 me that that is something that is not in the record?

23 A. It is not in the record and I just know that
24 there was, at some point, someone made that allegation.

25 Q. About Ms. Lomax specifically?

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. SMITH

1 A. There again, I think that it was her, but I
2 can't be one hundred percent positive.

3 Q. Okay. Thank you.

4 MR. SMITH: Well, Your Honor, I finished my
5 proffer, and that is all that I can ask him about that at this
6 point. Thank you.

7 THE COURT: Mr. Thomas, do you need to put
8 anything on the record regarding the proffer?

9 MR. THOMAS: No, Your Honor.

10 THE COURT: Thank you. All right. Mr.
11 McElhannon, thank you.

12 THE WITNESS: Thank you.

13 MR. SMITH: Thank you, Judge.

14 THE COURT: Mr. Campbell is up next?

15 MR. SMITH: Yes, sir.

16 Thereupon,

17 RAME CAMPBELL

18 was called as a witness, having been first duly sworn,
19 was examined and testified as follows:

20 THE COURT: Your first name is spelled R-A-M-E?

21 THE WITNESS: Yes, sir.

22 THE COURT: Thank you.

23 DIRECT EXAMINATION

24 BY MR. SMITH

25 Q. Mr. Campbell, where were you admitted to practice

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. SMITH

1 law in South Carolina?

2 A. 1997.

3 Q. Okay. Can you give me a summary of your legal
4 career?

5 A. When I came out of law school I worked three
6 years for the 14th Judicial Circuit Solicitor's Office,
7 and then I was in Anderson around the beginning of 2000 to
8 2000-, I believe, '05 I was in private practice. From
9 2005 to 2016 I was with the solicitor's office in
10 Anderson. And then after, since then, I have been in
11 private practice.

12 Q. Okay. How did you come to be involved in Ms.
13 Howell's case?

14 A. This case was assigned to myself to prosecute
15 along with Mr. Haigler.

16 Q. Okay. Were you also involved in the prosecution of
17 her codefendants?

18 A. Yes, sir.

19 Q. And they were Ezra Williams, Zachary Gantt, and
20 Jeremiah Johnson?

21 A. That's correct.

22 Q. Okay. What different roles did you and Mr. Haigler
23 take in working in Ms. Howell's case?

24 A. In each of the individual cases we would divide
25 up, you know, witnesses, openings, closings, that sort of

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. SMITH

1 stuff.

2 Q. Okay.

3 A. There was a lot of material in this case and it
4 took two people to keep it straight.

5 Q. Okay. Okay. I want to ask you, do you remember
6 Ms. Howell's demeanor during trial?

7 A. I do.

8 Q. Okay. And what do you remember about that?

9 A. She smiled a lot. It was like she was not
10 concerned or worried or took the seriousness of the nature
11 of why we were there.

12 Q. Did she do those things in the presence of the
13 jury?

14 A. She did.

15 Q. Okay.

16 A. It was noticeable.

17 Q. Okay. Did you have any evidence that Ms. Howell
18 knew the victim?

19 A. Yes.

20 Q. Okay. Can you tell me what that was?

21 A. The way this case got started was, the victim's,
22 son, a man by the name of Mead (phonetic) Patel came home,
23 was looking for his father, they couldn't get him on the
24 phone. And they had a phone app where you could locate
25 the phone. They were on the same account. And he went to

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. SMITH

1 the location of near Terry (phonetic) Drive where she was
2 living. He wasn't able to exactly pinpoint it, but then
3 he was able to get the records from the phone and he went
4 to law enforcement, to the Sheriff's Office, and went to
5 the desk clerk, the desk deputy, and explained what was
6 going on. That deputy actually went out to the house
7 where Ms. Howell was living, I believe it was 3304 Terry
8 Drive in Anderson, and he spoke to her that night. She
9 denied anything knowing about him.

10 I can't remember if it was him or when she
11 talked to Detective Barton the next night or two. She had
12 stated that Mr. Patel had called her for sex. Her number
13 was on the phone records. I believe it was a 202 record.
14 I can't remember the last four digits of her phone.
15 Afterwards, when Detective Barton was off that week and
16 this occurred over the weekend.

17 And when he came in on Monday morning he started
18 doing an investigation and met with Patel, again, met with
19 him or called him and he got to looking at the records and
20 ran the phone number and it came back to Leighanne Howell,
21 who was Ms. Howell's mother. And then I don't remember
22 how he made the leap to Kyndra Howell, but he was able to
23 determine that it was her. And once he went back and
24 started doing reviews, the weekend report, that is when he
25 saw that the deputy had gotten out with -- had spoken with

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. SMITH

1 Ms. Howell the night when the victim's son made a
2 complaint about a missing person.

3 Shortly thereafter, it was at night, Ms. Lomax
4 had called Mr. Barton. They had actually set up a hotline
5 tip, because there was no evidence of what was going on,
6 and right now this case was being worked as a missing
7 persons, not as a homicide. At that point Ms. Lomax
8 called and basically informed Mr. Barton that Ms. Howell
9 was trying to use her as an alibi and that Ms. Howell had
10 called her while she was driving around in the victim's
11 car trying to figure out what to do and saying that he was
12 tied up, the victim, CJ Patel, was tied up at her house.

13 And Ms. Lomax really wanted nothing to do with
14 it. And at first she thought that she was kidding and not
15 telling the truth. And Ms. Howell actually spent the
16 night at her house. I don't know which night it was. But
17 she said a take-out delivery guy had come by and knocked
18 on the door and that freaked Ms. Howell out, and she went
19 and hid in the closet. Which she start -- Ms. Lomax
20 thought that action was strange.

21 And when Mister -- and then she called law
22 enforcement on her own, because law enforcement hadn't
23 made any connections with her. And while she was talking
24 to Detective Barton on the phone, Ms. Howell had called in
25 and Ms. Lomax put her on speaker phone, and Ms. Howell was

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. SMITH

1 looking for an all-night convenience store or a
2 convenience store that was open in Belton. And Mister --
3 Detective Barton hearing this called the Belton Police
4 Department to find out which one was open, and it was
5 actually the convenience store right across the street
6 from the Belton PD.

7 So he had sent an officer from the Belton PD
8 over there, and when that car pulled in they had held
9 them, held Ms. Howell there until he could get there to
10 speak to her. Because right now they are working a
11 missing persons report and they are trying to find Mr.
12 Patel.

13 He spoke with Ms. Howell and she -- you know,
14 she acknowledged that she knew him, but stated that she
15 hadn't seen him in a month, but that he had called her
16 asking for sex. And they argued over price and she told
17 him to take his business elsewhere. And also at the time,
18 which she didn't know it at that point, she was in the
19 company of the codefendant, who we alleged to be the
20 shooter, was Ezra Williams.

21 She wasn't under arrest at that point. Like I
22 say, we are working a missing persons report, so they
23 left. And then because the information was coming from
24 that house where she was living, they got a search
25 warrant. And they really didn't know what they were

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1 looking for, because they, like I said, they were working
2 a missing persons report.

3 And while they were doing the first search
4 warrant, they noticed cameras. Which the location of this
5 house is in Homeland Park, it was an area known for drug
6 activity, so it wasn't uncommon to see cameras out for
7 people, if they are dealing drugs, they can see who shows
8 up. And that is what the officers thought when they saw
9 it, because they didn't find any video equipment inside
10 the house.

11 And this house, and there has been talk about
12 hearing, I went out there, and I didn't go inside because
13 it was already rented to someone else. This house is like
14 900 square feet, it is tiny. And the pictures showed
15 that. I mean, it was like a small house, like a very
16 small apartment. The officers didn't notice any kind of
17 DVR recording equipment, and so they, they found out who
18 the owner was and they spoke to the owner and he was like
19 -- he told them that he had video equipment that monitored
20 everything and recorded because of the high activity of
21 criminal activity in that area.

22 So they got a second search warrant and went
23 back, and when they did that they found the recording
24 equipment hidden in a closet that had been -- behind a
25 panel that had been screwed shut. And so they removed it

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1 and removed the equipment and it recorded for like 90
2 days.

3 And when they went back to the video it showed
4 that Mr. Patel in his black little four-door Honda showed
5 up at her house, it was daylight hours, he was clearly on
6 the video. She came out of the house, got in the car with
7 him. They left. They came back. And you can also see in
8 other angles, I mean, you saw him and her go into the
9 house. You could see other camera angles showed that
10 Jeremiah Johnson and Zachary Gantt came over and came
11 inside.

12 And also during this point Ms. Howell was being
13 evicted from this property, or her mother was. And there
14 was a trailer with a bunch of stuff in the carport that
15 indicated that that was the case. Then you have Mr.
16 Johnson leaving in his car, going to the Spinx station,
17 they use Minute Mart on video trying to use the PIN number
18 with his cards.

19 They also looked at her phone records and showed
20 that I think it was a Bank of America or another bank or
21 another financial -- or maybe an American Express trying
22 to use that number. It came from her telephone number.
23 Can't say that she was the one that called it, but it was
24 on her phone number. There is -- and she was shown also
25 to be leaving and driving his car.

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1 Like I say, Ms. Lomax stated that she was
2 driving around in the victim's car and trying to figure
3 out what to do next. When she came back she drove the
4 black Honda behind the house so it couldn't be seen from
5 the road. And that -- the last time that anybody saw Mr.
6 Patel was when he and her entered her home alive. The
7 statements of the codefendants Jeremiah Johnson and
8 Zachary Gantt.

9 Zachary Gantt gave, initially, I believe, three
10 statements. First one denying all involvement. The
11 second one, I am somewhat involved. And the third one he
12 came clean. In fact, if it wasn't for him we would have
13 never found the body. He was the one that took them to
14 the body.

15 They, Zachary Gantt and Jeremiah in this house
16 both stated they tied him up. They were physically
17 assaulting him, hitting him, beating him in the face
18 trying to get him to give the PIN numbers. Their
19 statements indicate that they knew -- that Kyndra knew
20 what was going on. She stayed on her phone. The door was
21 open while this was happening according to one of the
22 statements.

23 Then things -- they weren't getting anywhere
24 with him. And that is when Mr. Williams, Ezra Williams,
25 showed up, the guy she was found with the next day, they

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1 had some sort of relationship. And then -- or some sort
2 of involvement, some sort of relationship. He came over
3 and basically Ezra became -- he was the muscle. She got
4 the ball rolling. She got this going. She told Jeremiah
5 and Zach, in their statements, that, Hey, there is a man
6 in here, he has got money. She did profit from the
7 robbery. Zachary Gantt stated that he had \$70 and
8 Jeremiah Johnson gave him \$30 of it and told him to give
9 it to Kyndra, which he did.

10 After -- things started getting really bad after
11 Mr. Williams showed up. It started spiraling out of
12 control. He was still tied up and bound. This was later
13 on. He's probably at this point been held, I believe,
14 four to five hours. Been beaten and assaulted, hands tied
15 behind his back. At that point, Mr. Williams, according
16 to the statements, went and got bug spray and sprayed into
17 his face to try to get him to come off of the numbers,
18 which he kept saying the same thing.

19 They then went into the kitchen. Mr. Williams
20 got a knife out and heated it and then stuck it to his
21 body to try to get him to talk. And the autopsy, Dr.
22 Woodard testified to that. Plus he also testified that
23 there was four or five cut marks on his left leg and four
24 or five cut marks on his right leg, indicating that he had
25 been, not only tortured with a hot knife, but also cut and

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1 with the bug spray. At that point the decision was made
2 to get rid of him.

3 She was still in the house when all of this took
4 place. They took him outside. They took him out back.
5 The only way for her not to have known is for her not to
6 have been there when you walked through. And the
7 testimony is that he was screaming and yelling, because he
8 was being tortured. It was a bad case such as that. The
9 man suffered for hours because of her actions in trying --
10 wanting him to be robbed.

11 They took him out to Big Water Marina Road,
12 which is a road about 15, 20 miles away. They walked him
13 down a path. They shot him. She was not there for that.
14 Both the codefendant statements indicate Ezra was the
15 shooter. They came back in his car, the victim's car, and
16 the victim's car showed when it -- forensics -- when they
17 came back to her house, they did Blue Star on his car on
18 the search warrant and it lit up for blood for him.

19 After they got back they had another
20 individual -- his nickname was Bug. I think his name is
21 something Johnson. Either Jonathan Johnson or something
22 like that, but his nickname is Bug, they had him clean up
23 Mr. Patel's car. At that point they left and took the car
24 out to another part of the county almost to the Georgia --
25 no, it was different. They went to the Townville way and

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1 hid his car in a field, in a farmer's field. And then
2 they all came back to Ms. Howell's house and, according to
3 the witnesses, they all smoked weed at that point in time.

4 Afterwards, like I say, Detective talked to her
5 the next day, she denied any involvement, denied having
6 seen him or knowing him. When confronted with the video,
7 she didn't say anything. They showed it to her. When she
8 was arrested and they brought her back down to talk to her
9 about whether she wanted to give a statement, that is when
10 she first mentioned that -- about witness protection. And
11 she never cooperated or, you know, wanted to assist law
12 enforcement after that. But that was, in a nutshell, kind
13 of her involvement and how it got rolling.

14 I mean, Mister -- Judge McElhannon did a real
15 good job at trial and he got the main charge thrown out of
16 murder. The hand of one, hand of all, that is what our
17 theory was, and he was able to get that taken care of.

18 Q. Okay. You mentioned earlier Ms. Howell's phone was
19 trying to access the victim's bank accounts?

20 A. From her phone number to the two banking
21 institutions, the number that was registered in her name
22 was being used to access those numbers, to try to access
23 the financial information.

24 Q. Okay. On the video -- from the video security
25 footage from her home, which could she be seen outside of the

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1 home during the times when the victim was being tortured?

2 A. She could be seen going in and out.

3 Q. Okay.

4 A. And at no point did she leave or make an attempt
5 to leave that we can show or prove. She had her phone
6 with her the whole time. At no point did she actually
7 reach out to anybody. The only person that she reached
8 out to was Ms. Lomax to say that they had -- she was
9 riding around in his car and he was tied up back at the
10 house. If she could reach out to Ms. Lomax, she could
11 have reached out to law enforcement. But she was not
12 present at the house at the time this was taking place,
13 although she knew about it when she left and knew about it
14 when she came back. She could have easily went to law
15 enforcement driving his car. She had access. So she knew
16 what was going on.

17 Q. Okay. Do you have a copy of Ms. Howell's trial
18 transcript in front of you?

19 A. I do.

20 Q. Can you look at Page 140?

21 A. Okay.

22 Q. Okay. And would you agree with me that this is
23 Zachary Gantt testifying on direct?

24 A. It is.

25 Q. Okay. And on 140, does he say that Ms. Howell was

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. SMITH

1 standing under her carport and called him into the house?

2 A. He did.

3 Q. Okay. And he specifically says that he's referring
4 to Kyndra Howell at that point?

5 A. Correct.

6 Q. And that she was outside on the carport?

7 A. That's right. Mr. Gantt, like I say he -- like
8 she mentioned, he was young, he was 17. He just -- he
9 came over and was playing video games. She did call and
10 told him to leave because Mr. Patel didn't want anybody at
11 her house when he came over. And then when Mr. Jeremiah
12 Johnson pulled up with his girlfriend in his silver
13 Cadillac and got out, that is when, from my understanding,
14 he spoke to Kyndra and Ms. Howell told him the man was in
15 there and that is when he called over Mr. Gantt and asked
16 him did he want to do a robbery and he agreed. And they
17 went inside and that is when it started.

18 Q. Can you tell me what, what was -- at the time of
19 trial, what was Ms. Howell's criminal record? Did she have
20 any convictions?

21 A. She did, I can't recall exactly off of the top
22 of my head. I know it was convictions that were
23 impeachable offenses that could have been used if she took
24 the stand. I don't recall what her rap sheet consisted
25 of. I believe you may have stated, or Judge McElhannon

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. SMITH

1 may have stated, I don't remember who stated her record,
2 but that was probably about right. She had some serious
3 charges that -- it was impeachable offenses.

4 Q. So they weren't just two misdemeanors?

5 A. No, they were something that could be used to
6 impeach her credibility with.

7 Q. So I want to ask you about Kimberly Lomax. At any
8 point in this trial were you aware at any point in this trial
9 where Ms. Lomax testified that law enforcement officers
10 threatened to report her to DSS if she didn't testify against
11 Ms. Howell?

12 A. No. And I will explain that because there is
13 some witness confusion here. Ms. Howell was trying to use
14 Ms. Lomax as her alibi. Ezra Williams was trying to use
15 Martha Everett as his alibi. Martha was his baby mama.
16 He had contacted her while in jail and made a couple of
17 phone calls to her trying to get her to be his alibi. The
18 officers went out there to confirm whether or not Mr.
19 Williams was with Ms. Everett on the night in question.
20 And she gave them a story and they told her, We know this
21 is not true because his phone, according to his records,
22 shows him at Homeland Park and not at CiCi's Pizza where
23 she claimed, and not where her apartment was. It doesn't
24 show it pinging one of the towers there.

25 They had had several run-ins with Ms. Lomax -- I

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1 mean Ms. Everett and she kicked Detective Gebby (phonetic)
2 out of the house because they have had several incidents
3 with Mr. Williams, and so they were not -- she was -- he
4 was not their biggest -- they were not her biggest fan.
5 And so actually, when Detective Gebby gave her the card
6 she tore it up and told him to leave, which he did.

7 Detective Barton gave her one of his cards, and
8 it wasn't a threat, he just told her this -- Detective
9 Barton is a matter-of-fact guy -- he is like, Your baby
10 daddy is -- the daddy of your children are in, he is in
11 prison or in jail, right, and if we catch you lying to us
12 we are going to bring charges against you, and if that is
13 the case then you need to think about your children. And
14 that was kind of it. And then she cussed him and tore his
15 card up and kicked him out too. That was the last that
16 they had any contact. They asked her to put her
17 statements on rec -- on the paper and she wouldn't do it.

18 And so -- then she started making a big fuss
19 that the officers were threatening to take her kids away
20 with DSS, which really wasn't the case. It was just --
21 they told her what could happen if she lied to them and
22 they proved it. But Ms. Lomax was never -- had nothing to
23 do with DSS.

24 Q. So that person you just were talking about, that
25 was Martha Everett?

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1 A. Yes.

2 Q. Did she come and testify at this trial?

3 A. No, she did not. I mean, she had nothing to do
4 with Ms. Howell, period. The only connection that they
5 would have had is that they dated the same guy.

6 Q. I just sent an email to you. Can you look at that?
7 Do you have access to it now?

8 MR. SMITH: Your Honor, I'll note at this point
9 I'm going to try to introduce something into evidence,
10 something that I have just sent to Your Honor and Mr. Thomas.
11 This was not something that I had planned to do or else I
12 would have already done that. But I'm going to ask Mr.
13 Campbell to refer to that now.

14 A. I do not see it. It is not coming through.

15 THE COURT: Madam Court Reporter, you need to
16 let them know what they need to do about exhibits.

17 THE COURT REPORTER: If the exhibit is
18 admitted, you can scan it in and email me copies of it and I
19 will mark it and get it to the clerk of the appropriate
20 courthouse or attorney general's office.

21 THE COURT: It will go to the county
22 courthouse.

23 THE COURT REPORTER: Okay.

24 THE WITNESS: It is not coming through. I have
25 not received it.

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1 MR. SMITH: I am sorry, I just checked. I
2 actually omitted you from the email so I am re-sending it now.

3 Ms. Manley, will you repeat that? I am
4 sorry, I missed some of it.

5 THE COURT REPORTER: If you could scan the
6 exhibits in and email them to me, I will mark them and get
7 them filed with the appropriate county's clerk's office.

8 MR. SMITH: Okay. I included you on the email.
9 If you don't get it, let me know and I will re-send it.

10 THE COURT REPORTER: Okay.

11 THE WITNESS: It still hasn't come through. My
12 last email is at 12:14 from somebody else.

13 MR. SMITH: It shows that it is still sending,
14 that it just sent now. So I don't know how long it might
15 take.

16 THE COURT: This is a transcript?

17 MR. SMITH: That is correct, Your Honor.

18 THE WITNESS: What exactly is it? Maybe I have
19 it.

20 THE COURT: It is Ezra Williams' transcript.

21 THE WITNESS: Okay, I have his transcript.
22 Maybe I can get it.

23 MR. SMITH: Will you refer --

24 THE WITNESS: Just one second, let me go over
25 here and pick it up.

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1 (Pause.)

2 THE WITNESS: Okay.

3 BY MR. SMITH

4 Q. Okay. So you just testified a few minutes ago
5 about the allegations that one of the officers had threatened
6 Ms. Everett. Is that reflected in the transcript?

7 MR. THOMAS: Sorry to interrupt. I was on
8 mute, I apologize. I don't really see what the relevance of
9 Ezra Williams' transcript is in regards to this case. I know
10 they were codefendants, but unless there is something that
11 directly applies to my client, I don't see where it would have
12 any relevance at all as to what we are doing today. They were
13 not tried together.

14 MR. SMITH: I think that you are muted, Your
15 Honor.

16 THE COURT: Sorry. I'm sorry. I need to know
17 what he is going to ask before I can rule.

18 MR. THOMAS: All right, sir. Thank you.

19 BY MR. SMITH

20 Q. Okay. Mr. Campbell, you had talked about a
21 discussion between one of the detectives and Ms. Everett,
22 correct? Is that reflected in this transcript when -- let's
23 see, when you questioned Detective Barton?

24 A. That's about Page 359, is that what you are
25 talking about?

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. SMITH

1 Q. Right.

2 A. Correct.

3 Q. Okay. And of course this is one of the
4 codefendants, but as you mentioned earlier, Ms. Everett was
5 the all -- the source of Mr. Williams' alibi?

6 A. That's correct.

7 Q. Okay.

8 A. Ms. Howell was trying to use Ms. Lomax and Mr.
9 Williams was trying to use Ms. Everett.

10 Q. Okay. And this -- it comes out at trial here, the
11 allegation that he had -- one of the officers had threatened
12 Ms. Everett with a DSS investigation as an allegation?

13 A. That's correct.

14 Q. Did you discuss this with Mr. McElhannon?

15 A. I mean, I can't remember that far back, but I
16 would say probably not because it was not -- didn't have
17 anything to do with his case. This was the guy we
18 believed was the shooter, so he was tried on a different
19 date. And that was -- and basically they found out about
20 Ms. Everett through his jail house phone calls to her. So
21 it's in the actual -- it is in the police reports
22 regarding her. I don't know the page it is on, but the
23 actual police reports indicate -- yes, it is on Page 18 of
24 their supplemental report by Detective Barton.

25 THE COURT: You need to face the microphone.

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. SMITH

1 THE WITNESS: Sorry, I was trying to look at it
2 at the same time.

3 THE COURT: I understand but we can't hear you
4 when you do that.

5 THE WITNESS: The information about Ms. Everett
6 is on Page 18 in a supplemental report from the initial
7 Anderson County Sheriff's Office report regarding this
8 incident on -- by Detective Barton.

9 Q. Okay. And that --

10 MR. THOMAS: That police report, I'll also
11 note. I know that the Court has got to hear it to rule, but
12 we would also object to that if he's going to attempt -- that
13 document is not in evidence. We don't have a copy of that
14 supplemental report before the Court.

15 THE COURT: Mr. Smith.

16 MR. SMITH: And, Your Honor, I'm not trying to
17 ask him about the report. I was actually about to stop him.

18 THE COURT: Sustained. Go ahead. How much
19 longer is this going to be?

20 BY MR. SMITH

21 Q. Well, Mr. Campbell, are you aware of -- in any case
22 someone making threats to miss -- a law enforcement officer
23 threatening Ms. Lomax with a DSS investigation if she did not
24 testify against Ms. Howell?

25 A. I didn't understand your question.

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. SMITH

1 Q. Are you aware of any law enforcement officers
2 threatening Ms. Lomax with a DSS investigation if she did not
3 testify against Ms. Howell?

4 A. Oh, no. She volunteered, she was the one that
5 called law enforcement. She voluntarily came forward.

6 Q. Okay. And that is something that she testified to,
7 right?

8 A. That's correct.

9 Q. Okay. And, Your Honor, for the purpose of
10 explaining why Mr. McElhannon thought someone in this case
11 had been threatened by law enforcement, I would offer the
12 transcript from Ezra Williams' trial where that was discussed
13 into evidence?

14 MR. THOMAS: Objection.

15 THE COURT: Overruled. Do you want to make it
16 part of the record?

17 MR. SMITH: I do, Your Honor.

18 THE COURT: Madam Court Reporter, he has to
19 send it to you and it has to be marked for identification
20 purposes. It is a lot of the pages.

21 MR. SMITH: Okay. I will go that today, Your
22 Honor. I will try my best to get it in the mail today. If
23 not, I will tomorrow.

24 THE COURT: It has got -- she has got to mark
25 it.

DIRECT EXAMINATION OF RAME CAMPBELL BY MR. SMITH

1 MR. SMITH: Right. I can mail it to her, but I
2 have also already emailed it to her.

3 THE COURT: I know, I am just telling her if
4 she has to print it out, it is a lot of pages.

5 MR. SMITH: I'll print it and mail it to her,
6 Your Honor, so she won't have to do that.

7 THE COURT: Okay. I need to know how much
8 longer you are going to be with this witness?

9 MR. SMITH: Your Honor, that was my last
10 question.

11 THE COURT: All right. And you have another
12 witness after this one? I'm trying to plan because it is
13 roughly 25 after 12. We have been going a long time.

14 MR. SMITH: I do, Your Honor. I would like to
15 call Mr. Haigler too.

16 THE COURT: Mr. Thomas, do you have any idea
17 how long your cross is going to be?

18 MR. THOMAS: Your Honor, it is going to be
19 pretty short. I'm looking at my notes, I have got maybe five
20 or six questions here, if that.

21 THE COURT: All right. So, go ahead please,
22 Mr. Thomas. But we may have to stop after this and reconvene
23 after lunch.

24 MR. THOMAS: I understand, Your Honor. Your
25 Honor, if it please the Court.

CROSS EXAMINATION OF RAME CAMPBELL BY MR. THOMAS

1 CROSS EXAMINATION

2 BY MR. THOMAS

3 Q. Mr. Campbell, thank you for being here today. I
4 just have a few questions. As far as the codefendants, those
5 were pleas or trials?

6 A. Mr. Johnson was a -- I can't remember what Mr.
7 Johnson was. I think he -- he went to trial. Mr. Johnson
8 went to trial. Mr. Gantt was a plea. And then Mr. Ezra
9 Williams was a trial, and Ms. Kyndra Howell was a trial.

10 Q. Okay. And Mr. Zachary Gantt, he is the one that
11 testified in Ms. Howell's case?

12 A. Correct, he testified in all cases.

13 Q. All right. And he got some consideration for his
14 testimony?

15 A. Afterwards he did. What happened is law
16 enforcement's whole take this whole time was Ms. Howell
17 set this up. Mr. Ezra Williams was the one that killed
18 the victim. They were both found not guilty of murder.
19 The officer actually -- Mr. Gantt had pled to murder --
20 and he didn't think that it was fair that the guy who
21 cooperated, helped, took them to the body, testified in
22 three trials, who was 17 at the time, that he catch a
23 murder when the two people we felt were the most culpable
24 got off of it. So it was actually his recommendation to
25 plea him down to voluntary manslaughter, which we did, and

CROSS EXAMINATION OF RAME CAMPBELL BY MR. THOMAS

1 he pled straight up. It was no sentence recommendation.

2 I can't remember what he got. I believe it was 22. I am
3 not one hundred percent positive.

4 Q. I think that is correct. I think that is correct.
5 Do you know, did Ms. Howell get more time than anybody; do
6 you know?

7 A. Mr. Williams got more.

8 Q. Oh, did he. What did he receive?

9 A. I believe it was 55 or 50. You know, Judge
10 McIntosh really didn't -- while the jury didn't convict
11 him of it, he didn't feel like, in my opinion, that -- I
12 think he felt like they were more involved than what the
13 jury had convicted them of, both her and him. And she was
14 sentenced to 45, and he was either 50 or 55. I don't
15 remember which. Mr. Johnson I believe got 30 or 35. And
16 I believe Mr. Gantt was 22, but don't quote me on all of
17 those numbers.

18 Q. All right. And you mentioned Ms. Howell's
19 demeanor, that she smiled a lot?

20 A. Yes, sir.

21 Q. You don't have any information about any kind of
22 problems that she was having in regards to coping? I mean,
23 some people laugh when they are nervous. I mean, all you
24 know is that she was smiling?

25 A. That is correct. And her attorney, Mr.

CROSS EXAMINATION OF RAME CAMPBELL BY MR. THOMAS

1 McElhannon, you know, I have worked with him and I have
2 tried cases against him, and knowing how well he prepares
3 for a case, in my opinion if he had felt there was any
4 type of issues regarding capacity to stand trial or any
5 issues regarding that, he would have looked into that.

6 Q. Okay.

7 A. I mean, he does a good job.

8 Q. All right. And Lomax, was she ever considered to
9 be a suspect?

10 A. No, sir, she wasn't.

11 Q. Okay. And there never was any investigation in
12 regards to what her statements were? I mean, they seem to be
13 pretty self-serving?

14 A. They -- she gave a statement. She came and
15 testified. But she had no knowledge or she had nothing to
16 do with the actual robbery, kidnapping, the murder in
17 this. She was the one -- Kyndra was the one involving her
18 in this matter, it wasn't her. She never was directly
19 involved. Kyndra was involving her and she went to law
20 enforcement. Because, like I said, first she thought she
21 was just making things up and didn't believe her.

22 Q. Right.

23 A. But then after the Indian guy came for the food.
24 Actually, you know, I think that Mead Patel and some of
25 his brothers showed up and they spoke to her and she went

CROSS EXAMINATION OF RAME CAMPBELL BY MR. THOMAS

1 to law enforcement and explained what was going on. And
2 she also, when she called in to talk to Detective Barton,
3 Ms. Lomax -- Ms. Howell called in and he listened to their
4 phone call, she put it on speaker. So they never really
5 felt that -- law enforcement felt that she was involved.
6 And she cooperated and she came and testified. But as a
7 -- to be charged, no, she didn't have that type of
8 involvement.

9 Q. In listening to your testimony, it kind of brought
10 -- it kind of took me back to reading the transcript. I
11 mean, there was a lot of testimony, or some testimony, I
12 guess, from Zachary Gantt that, you know, what Mrs. Howell's,
13 involvement was. And basically through this case none of
14 that was ever con -- I mean, none of that was ever explained.
15 I mean, she didn't take the stand so there was no explanation
16 as to those allegations?

17 A. Well, that would have been for her to refute. I
18 mean, Zach, Mr. Gantt, testified. Mr. McElhannon had all
19 of the statements. I believe he gave three.

20 Q. Right.

21 A. And he cross-examined him on those. And like I
22 say, he, he was able to show and prove to the jury they
23 didn't get the hand of one, hand of all, and that she was
24 not there at the time of the murder. And what the video
25 evidence kind of, in my mind what the jury considered was

CROSS EXAMINATION OF RAME CAMPBELL BY MR. THOMAS

1 that at her house the video shows her with the victim, her
2 phone records, the codefendants' statements, and all of
3 the other defendant -- other witness statements put her
4 there at the house. That the robbery took place at her
5 house, the kidnapping took place at the house, that a
6 weapon in this case, that part would have been the knife
7 where he was burned. They took all of that into
8 consideration, and that is why they convicted her of that
9 and they didn't convict her of murder. So he put enough
10 thought in their mind to get the murder charge, which is a
11 life, as you well know, life -- could be a life sentence.

12 Q. Right. Right.

13 MR. THOMAS: If I could beg the Court's
14 indulgence just for a second.

15 (Pause.)

16 BY MR. THOMAS

17 Q. There was no evidence -- I haven't seen any
18 evidence in the transcript that she was in the room when this
19 robbery or torture of Mr. Patel was going on?

20 A. That's correct. We have no -- from our
21 statements from Jeremiah Johnson and Mr. Gantt, she was
22 not in the room.

23 Q. And you don't have any direct evidence that she
24 knew that they were going to take him off and kill him
25 either?

CROSS EXAMINATION OF RAME CAMPBELL BY MR. THOMAS

1 A. Well, it was our theory they were all together.

2 Q. Okay.

3 A. Inside the house and they led him tied up
4 outside. The only way that you could go outside of that
5 house was through the side or the front door which had
6 video cameras.

7 MR. SMITH: Your Honor, I was going to move to
8 strike the question and answer on the basis of relevance
9 because Ms. Howell was acquitted of murder.

10 THE COURT: Overruled. Go ahead, Mr. Thomas.

11 MR. THOMAS: Okay. Your Honor, may it please
12 the Court.

13 BY MR. THOMAS

14 Q. Now, Ms. Howell -- you did say though that when Ms.
15 Howell came in to speak with police, that she indicated that
16 she was fearful because she had asked for some protection?

17 A. She did mention that after she was in custody,
18 about the witness protection program. And when they tried
19 to expand upon it further she never went anywhere with it.

20 Q. Okay. Do you have any information that they had
21 structured that offer of protection or help to her
22 testifying?

23 A. No, that was -- the offer of testifying would
24 have come from me in the solicitor's office.

25 Q. Right.

CROSS EXAMINATION OF RAME CAMPBELL BY MR. THOMAS

1 A. We wanted her to testify. But, and we sent an
2 offer over, and she just didn't want to do it. So that is
3 why we wound up going to trial. Only one offer was made
4 and she rejected it, so we were only left with going to
5 trial.

6 Q. Okay. So really, I guess, in your prosecution,
7 what tied Ms. Howell to this was that she brought Mr. Patel
8 over to the house?

9 A. She -- they had communication, he came to her
10 house. He knew where her house was. And at that point
11 she got Jeremiah and Zachary Gantt involved. And that is
12 when it started going south.

13 Q. Right. He actually drove to her house, isn't that
14 correct?

15 A. That's correct.

16 Q. And as far as Zachary Gantt, I mean, he gave three
17 different statements; is that correct?

18 A. That's correct.

19 Q. Okay. And those statements changed every time to
20 some extent?

21 A. It is correct. The first one was basically, I
22 had no involvement. The second one, I had some
23 involvement. A little more self-serving. You know, I
24 didn't participate in this part of it. And the third one,
25 he confessed and told them everything and then took them

CROSS EXAMINATION OF RAME CAMPBELL BY MR. THOMAS

1 to the body.

2 Q. Okay. Did you ever have any suspicion that he was
3 not being truthful about Mrs. Howell's involvement about
4 bringing him over there -- bringing Mr. Patel over there for
5 the purpose of a robbery.

6 A. Initially, when he was brought over there it
7 wasn't for the purpose of a robbery, it was for them to --
8 basically sexual favors. And according to her and the
9 other guy, Jeremiah Johnson, that is when she proposed
10 robbing him because there is a man back there with money,
11 she had him in the back bedroom.

12 Q. All right.

13 A. And that was their decision. They moved him to
14 the back because they wanted him to where he couldn't
15 exactly get out. And, you know, Mr. Gantt and Mr. Johnson
16 then tied him up.

17 Q. All right. But there was no way -- I mean, in
18 other words, Mr. Gantt's statement about, He's got a lot of
19 money or we were going to rob him and she was involved, I
20 mean, there was no other explanation given in regards to his
21 testimony, other than Kyndra Howell taking the stand?

22 A. That would be fair. I mean, it was their
23 impression, based upon what she told them because they
24 didn't know him, she knew him.

25 Q. Right.

REDIRECT EXAMINATION OF RAME CAMPBELL BY MR. SMITH

1 A. I mean, he ran the Exxon station up on Clemson
2 Boulevard. And the perception was, was he is going to be
3 loaded with money.

4 Q. Right.

5 A. And that is how he took it, and he had 70 bucks
6 on him and his credit cards.

7 Q. So, but without her testifying, those allegations
8 basically went unanswered?

9 A. I guess so.

10 Q. Okay.

11 MR. THOMAS: Your Honor, I have no further
12 questions.

13 THE COURT: Thank you. Mr. Smith?

14 MR. SMITH: Yes, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. SMITH

17 Q. Mr. Campbell, did the video show Ms. Lomax at the
18 house that night while the victim was there?

19 A. No. The only other person that the video showed
20 in it was Mr. Johnson's girlfriend when she dropped him
21 off in the silver Cadillac.

22 Q. Okay. Did either Mr. Johnson or Mr. Gantt tell
23 officers that Ms. Lomax was involved in the murder and
24 torture?

25 A. No, the only way -- no, sir. The only way we