

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

G. Edward Welmaker, Circuit Court Judge

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SEP 04 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DENIA DAWKINS,

APPELLANT

APPELLATE CASE NO. 2012-212529.

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 JUWAN D. LOMAX AND)
 DENIA Z. O. DAWKINS,)
)
 DEFENDANTS.)
 _____)

2011-GS-23-9672A, 9673A & 9676A
2011-GS-23-08019 - 08022

TRANSCRIPT OF RECORD
(VOLUME ONE OF TWO)

APRIL 9 - 11, 2012
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE G. EDWARD WELMAKER

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

KATRYNA SALISBURY
ASSISTANT SOLICITOR

ATTORNEYS FOR DEFENDANTS:

ROBERT IANUARIO, ESQUIRE
CASSANDRA GORTON, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
1				
2				
3	S-1	DAWKINS WAIVER OF RIGHTS -----	34	292
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14	S-12	PHOTO -----	252	253
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1	<u>DEFENDANT DAWKINS EXHIBITS</u>				
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7 COURT REPORTER'S NOTE: (No exhibits were presented by
8 Defendant Lomax.)

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1 Monday, April 9, 2012:

2 (Whereupon court commenced at 9:34 am)

3 THE COURT: Thank you. Please be seated, ladies and
4 gentlemen. All right. Ms. Gorton, I believe I -- Defense
5 had a motion.

6 MS. GORTON: Yes, Your Honor. I have a motion to sever
7 and a motion to exclude statements of Co-Defendant, Juwan
8 Lomax. This is based on Holder and Gray and State v.
9 Johnson. I've provided you with Holder and Gray, which are
10 both South Carolina cases.

11 Now, these are both based on both a Bruton issue and a
12 Crawford issue. They're wanting to try the Co-Defendants
13 together. And we have an unusual circumstance in this case.

14 Juwan Lomax gave a statement July 21. The State has
15 presented a redacted version. I don't believe that the
16 redacted version satisfies the requirements of Gray v.
17 Maryland as described in Holder and Johnson because it's
18 still obvious there's only one person who dated the alleged
19 victim. That's her. That's what the evidence is going to
20 be. And there's no other inference that the jury can come
21 up with other than his statement, even the redacted version,
22 is referring to her.

23 We also have the complication that Juwan Lomax then
24 recanted his statement and said that it wasn't freely and
25 voluntarily given. I don't know if you have that

1 information. I didn't have it at the time I submitted this
2 motion. That has since been supplied to me.

3 I believe that Mr. Ianuario has an identical motion
4 pending before you. And that is because there's really no
5 way I can address the statement by Juwan Lomax without going
6 into his motives as he stated in his recanting letter to do
7 so.

8 And that necessarily has to have me bringing up
9 evidence of the other crimes. He was charged not only in
10 this incident, but he was charged with the home invasion.
11 He was charged with the drive by shooting. He's got a
12 couple of other items that he was questioned about. So in
13 order for me to effectively go into his motive for giving
14 this statement, as I'm clearly entitled to do, I'm going to
15 be bringing out information that Mr. Ianuario is moving that
16 is kept out of the trial.

17 It's really the convenience of the State to try the two
18 together. I don't believe that convenience outweighs the
19 individuals' rights to due process. And that is the basis
20 of my motion to sever.

21 THE COURT: All right. Thank you. Ms. Salisbury, ---

22 MS. SALISBURY: Your Honor, ---

23 THE COURT: Of course, I probably need to look at the
24 statement sometime, but I'll be glad to hear from you first.

25 MS. SALISBURY: Well, Judge, I'll be happy to get those

1 for you. And to respond to that specific Bruton issue, I
2 can tell the Court at the outset that a couple of weeks ago
3 I prepared what I believe to be appropriate redacted
4 statements in an effort to resolve this issue before today
5 at trial. I thought that it might be prudent to have that
6 issue resolved so that Your Honor would not have to spend
7 time discussing this exact issue.

8 However, both Mr. Ianuario and Ms. Gorton took the
9 position that the statements in any form, redacted or
10 otherwise, were outright inadmissible. And for that reason,
11 I made no progress on the redacted version.

12 I would certainly be willing to engage with the Court
13 in a conversation about the appropriate redaction that
14 satisfies the Court of its compliance with the rulings in
15 Bruton, but I don't know that that's part of this motion.
16 Instead, -- to answer the precise motion of severance.

17 To educate the Court a little bit, five defendants were
18 charged with these crimes. The crimes are armed robbery,
19 attempted murder, burglary in the first degree and
20 conspiracy. Five defendants are charged with exactly the
21 same offenses.

22 And to the extent that each defendant would be required
23 or would be allowed in some respect to insist on their own
24 independent trial, certainly the Court can appreciate the
25 extensive demand on judicial economy, but more importantly,

1 the strain on the witnesses and the victims to try five
2 separate cases with exactly the same evidence.

3 And so these two Defendants were paired together. And
4 the other three defendants were paired together on next
5 week's docket. And that was done for some strategic
6 reasons, but it's not really relevant to this particular
7 motion.

8 So I'd just point out to the Court that it's at least
9 the Supreme Court's position that defendants are not
10 entitled to separate trials as a matter of right, and that
11 given the burden on judicial economy, given the burden
12 imposed upon the witnesses, and most importantly, the victim
13 in this case.

14 I don't know that there's a specific prejudice to be --
15 to be suffered by either of these Defendants if they're
16 tried together. Obviously, if these redacted statements are
17 admitted at trial, it's my understanding that they will be
18 admitted with the instruction that they will be considered
19 as evidence against the person who gave that statement only.

20 And again, I know that this conversation or that this
21 motion somehow is connected to the issues raised by Bruton,
22 I'm just not sure that it's worthwhile to discuss those and
23 resolve those right now. But I can hand you both this
24 Defendant and the Co-Defendant's statements. And Mr.
25 Lomax's statement is substantially longer because he

1 discussed more crimes than just the one that's on trial
2 today.

3 To correct something Ms. Gorton says, Mr. Lomax is not
4 charged in several other incidents, he's not charged in a
5 shooting. He has a charge for possession with intent to
6 distribute marijuana for which he was charged the date that
7 he made that statement. When the police arrested him, he
8 had some marijuana in his pocket. And he's also charged
9 with an unrelated burglary, first. That's the extent of Mr.
10 Lomax's charges.

11 THE COURT: No convictions?

12 MS. SALISBURY: None, Your Honor.

13 (Pause)

14 THE COURT: Is the highlighted portion what's to be
15 admitted or the entire statement?

16 MS. SALISBURY: No, Your Honor. The highlighted
17 portion is what I used to then create an even more redacted
18 version that addresses only the crime for which we're --
19 we're on trial this week ---

20 THE COURT: So what portion of the statement of ---

21 MS. SALISBURY: The two paragraphs beginning with:
22 about a month ago; on the first page.

23 THE COURT: Okay.

24 MS. SALISBURY: And then the first paragraph on the
25 second page that begins with: that we're talking about.

1 THE COURT: And portions of that are to be redacted?

2 MS. SALISBURY: Yes, sir.

3 THE COURT: Just undetermined yet?

4 MS. SALISBURY: Yes, Your Honor.

5 THE COURT: Okay.

6 (Pause)

7 THE COURT: All right. Ms. Gorton, you believe the
8 entire statement is not admissible?

9 MS. GORTON: Judge, I believe that -- she did provide
10 us with her proposed redacted version. And the one that she
11 provided us, I don't think, is sufficient under Johnson. In
12 Holder -- have you had a chance to read this, Judge? I'm
13 sorry.

14 THE COURT: I've read the statement of Mr. Lomax.

15 MS. GORTON: Okay. I just don't -- in Bruton the
16 Supreme Court held that in a joint trial admission of a non-
17 testing [sic] co-defendant's statement that expressly
18 inculcates the defendant violates the defendant's
19 Constitution under the Confrontation Clause as the use of
20 only a limiting instruction is insufficient to remove any
21 prejudice to the defendant.

22 And, Judge, where I'm reading that from is page 3 of
23 Holder. It's the second paragraph down. That was in 2009.
24 That was the Supreme Court of South Carolina. And they're
25 referring not just to Bruton, but they're talking about the

1 Confrontation Clause, which we all know includes Crawford.

2 Then in 2010 we've got the State of -- the State v.
3 Johnson, also the Supreme Court of South Carolina. And in
4 that case the State tried to do exactly what the State's
5 trying to do here. They said, well, okay, we'll redact it,
6 and we'll take away all references to the Defendant, the Co-
7 Defendant, themselves.

8 And what they said there was that the case presents an
9 unusual Bruton type issue. Under Bruton a non-testifying
10 co-defendant's confession that inculcates the other
11 defendant is inadmissible at a joint trial even if the
12 jury's instructed that the confession can be only used as
13 evidence against the confessor. However, such a confession
14 may be admissible if the confession is redacted in a way
15 that removes any reference to the non-testifying co-
16 defendant. That's what Johnson said.

17 And then they go on to say -- the State argues that
18 this was not truly a Bruton issue because they had redacted.
19 However, the Court held that because there was no reasonable
20 conclusion that that could be a reference to anyone other
21 than the co-defendant, that that was still a Bruton
22 violation. And where I'm reading from is State v. Johnson,
23 page 4.

24 THE COURT: Okay. I don't have page 3 of State v.
25 Johnson. So I can't quite get a context of it going,

1 but ---

2 MS. GORTON: Let me see if ---

3 THE COURT: --- I'll try to review those. I've got
4 page 2 and then page 4.

5 MS. GORTON: Well, you can have my page 3 because I'm
6 not using it.

7 THE COURT: Well, have y'all tried to work together
8 over a possible redaction? What portions are you ...

9 MS. GORTON: Judge, the same day she sent me that
10 information, I wrote an email to her indicating that I felt
11 that under State v. Holder and State v. Johnson that it was
12 still -- the redacted version she had proposed was still not
13 acceptable. And I received no response.

14 THE COURT: Did you give her a proposal that would be
15 acceptable?

16 MS. GORTON: No, Your Honor. My position is is that I
17 can't conceive of one that would be acceptable ---

18 THE COURT: Okay.

19 MS. GORTON: --- under Crawford because we have an
20 unusual situation where my client gave a statement. She has
21 no prior record either except a shoplifting charge when she
22 was sixteen. But she gave a statement which did not
23 incriminate Juwan Lomax. She said not only did I not know
24 beforehand what was going to happen, I don't think he did
25 either.

1 The problem is for Mr. Ianuario is that when his client
2 takes the stand, while he may only be facing those charges
3 right now, he was questioned and made admissions about being
4 involved in the drive-by shooting and the home invasion. So
5 I'm going to need to be able to go into those as far as his
6 motive for the statement that he did give.

7 So it's a Confrontation Clause that goes beyond Bruton.
8 It's also Crawford. So ---

9 **THE COURT:** So -- all right: So ...

10 **MS. GORTON:** And she says it's for judicial economy.
11 Well, if we have to try both of these again, there's no
12 judicial economy. If she wants to just withdraw the
13 statements, Juwan's statement, I don't care if she still
14 uses hers. I don't think Mr. Ianuario cares if she still
15 uses hers.

16 But she now has two other co-defendants who have
17 presented statements in the last week. If she wants to
18 proceed with those, that's great. But I don't see any way
19 we can effectively do this with us two tried together when
20 Juwan Lomax's statement is the one that I need to cross
21 examine the most.

22 **THE COURT:** So if all references to your client were
23 out of Mr. Lomax's statement, do you have a problem then?

24 **MS. GORTON:** If you mean using her instead, then I
25 would have a problem because there's references to the

1 person dating the victim, being the ex-girlfriend, that if
2 -- if there was no way to determine that that was her that
3 he was talking about, I wouldn't have a problem with it.

4 I think Mr. Ianuario's still going to have a problem
5 with it because I'm still going to want to cross examine
6 Juwan Lomax or cross examine the people who took his
7 statement, regarding his motive to give this statement. So I
8 think Mr. Ianuario's going to have a problem with that, but
9 I'm not, as long as there's no way that there can be an
10 inference ---

11 THE COURT: And what ---

12 MS. GORTON: --- that that's who ---

13 THE COURT: And the motive would be that he had other
14 charges? Is that what you're trying to bring out?

15 MS. GORTON: Just as his recanting statement said, they
16 told him he was looking at all these other charges and that
17 he had to give these statements. That's what his statement
18 says. They told him he was looking at all these other
19 charges and that he had to give them a statement that he
20 gave. This isn't a hypothetical. This is something that
21 has been presented to us.

22 MR. IANUARIO: And her fear is exactly the basis of my
23 motion, Your Honor. I'd like to try to separate these so
24 that, again, any outside acts not presently before the Court
25 don't come in and prejudice the jury's opinion of my client.

1 And I don't see a way that Ms. Gorton can establish or
2 do anything with my client's statements that wouldn't open
3 this up to, you know, the jury being -- gaining knowledge of
4 outside acts.

5 **MS. SALISBURY:** Your Honor, could I respond very
6 briefly to ---

7 **THE COURT:** Yes, ma'am.

8 **MS. SALISBURY:** To the extent that either of these
9 attorneys would like to cross examine Juwan Lomax about
10 other pending charges, it's inappropriate impeachment
11 evidence in any respect. So I would object to their
12 examination of him regarding other pending charges.

13 **THE COURT:** Is there going to be a recanted statement
14 coming in?

15 **MS. SALISBURY:** I have not planned on offering it. I
16 don't have -- here's what happened, Judge, to give you a
17 little bit more background. I didn't think we were going to
18 get into this. I thought we were going to wait to deal with
19 Bruton later.

20 But Juwan Lomax gave this statement on July 21st. At
21 some point after his arrest and incarceration he delivered
22 handwritten, notarized statements to at least three, I
23 believe, four of his co-defendants, two in this case and, I
24 believe, two in other -- well, three in this case, Judge.

25 And those statements weren't delivered to me. They

1 were given to those co-defendants. And it's my
2 understanding that those co-defendants were instructed to
3 deliver those statements to their attorneys.

4 So I don't have the originals. It's only what's been
5 provided to me from those attorneys who have received these
6 statements from their clients. And for that reason, I don't
7 have any valid evidence to offer as substantive evidence of
8 his -- of his recantation of that statement.

9 THE COURT: So how is the recantation going to come in?

10 MS. GORTON: I intend to introduce it, Your Honor. And
11 I do take exception with what Ms. Salisbury said as far as
12 it not being relevant to come in.

13 The South Carolina Supreme Court in State v. Jones said
14 that bias, prejudice or any motive to misrepresent may be
15 shown to impeach the witness either by examination of the
16 witness or by evidence otherwise adduced. And anything
17 having a legitimate tendency to throw light on the accuracy,
18 truthfulness and sincerity of the witness may be shown and
19 considered in determining the credit to be accorded his
20 testimony.

21 What we have here is we have a notarized, signed
22 statement, I, Juwan Lomax, is writing this statement to
23 notify whomever it may concern that I have been threatened
24 and coerced to make a false statement against Joshua Cline.
25 That statement is the same one he gave against my girl, too,

1 Ms. Dawkins.

2 While in the process of this statement there were
3 promises made by the detectives and even threats made toward
4 me to tell on others so they could be taken off the streets.
5 I was put under stress and made promises like, if I just
6 went along with what the detectives said, they would let me
7 go to the hospital to see my mother.

8 I, Juwan Lomax, did not sign this statement upon my
9 free will. I was threatened by the detectives that if I
10 didn't cooperate with the statement I would be charged with
11 the charges also if I didn't make the false statement. I
12 was also told by the detectives that if I didn't make the
13 statement they would have other people go against me to put
14 me in prison. I will testify that the above statement is
15 true.

16 Now, Judge, that was signed August 21st, 2011. I was
17 provided with it last Monday.

18 THE COURT: From whom?

19 MS. GORTON: Ms. Salisbury.

20 THE COURT: Okay. And she's indicated that she didn't
21 have it until some lawyer gave it to her.

22 MS. GORTON: I believe, if I'm not mistaken, that she
23 got it -- she was referring to the statements of the co-
24 defendants that we also got last Thursday.

25 THE COURT: Okay.

1 MS. GORTON: She did not get this from Mr. Ianuario.

2 THE COURT: She did not get it from him?

3 MR. IANUARIO: No, sir.

4 THE COURT: So ---

5 MR. IANUARIO: And, Your Honor, my plan for laying down
6 a foundation on this particular statement that we're -- was
7 just read into the record was regarding Joshua Cline, who is
8 supposed to be testifying in this matter. And I would like
9 to ask him if this was the statement Juwan Lomax delivered
10 to him, thus laying the foundation to bring this in.

11 THE COURT: So bringing in this -- you want this
12 statement in. I'm trying to ---

13 MS. GORTON: If it's ---

14 THE COURT: --- figure out how that's ...

15 MS. GORTON: If Ms. Salisbury's going to bring in a
16 statement by Juwan Lomax, if she wants to not bring in a
17 statement by Juwan Lomax and proceed on ---

18 THE COURT: But she -- she does. I think she does want
19 to bring in ---

20 MS. GORTON: Then, yes, sir.

21 THE COURT: That's why we're here. So then -- all
22 right. So then you've got -- how is your Crawford -- how is
23 there a Crawford issue with you cross examining him if --
24 assuming that we redact everything about her?

25 MS. GORTON: Well, if we have a separate trial, how I

1 expect it would happen is I would be able to cross examine
2 the officer about these other charges. Well, first of all,
3 I'm sure, I'm confident that Mr. Ianuario would be telling
4 his client to plead the 5th. That makes him an unavailable
5 witness.

6 When a witness is unavailable my understanding is is
7 that you can impeach them as if they testified. And I would
8 be able to present this as impeachment material as to the
9 statement that law enforcement would be presenting that he
10 gave, incriminating my client ---

11 THE COURT: Aren't you going to be able to do that in
12 this case?

13 MS. GORTON: I'm sorry. What?

14 THE COURT: Would you not be able to do that in this
15 case?

16 MS. GORTON: I wouldn't -- Mr. Ianuario doesn't want me
17 impeaching his statement ---

18 THE COURT: Yeah, but you're ---

19 MS. GORTON: --- of his other acts.

20 THE COURT: By bringing in the -- oh, the other acts.
21 So you're talking about the other acts, not the statement
22 itself now? When you're talking about motive, are you
23 talking about the threats and going to see the mother and so
24 forth or are you talking about the other acts that were
25 being charged?

1 MS. GORTON: Both. I mean, we could do it here and he
2 could assert his 5th Amendment right, but then he's
3 unavailable. Well, once he's unavailable I have a right to
4 bring out all this impeachment material as if he had
5 testified.

6 Well, he doesn't want that impeachment material out in
7 his trial. If we had separate trials it wouldn't be an
8 issue. And Johnson has said that the limiting instruction
9 isn't good enough. I can appreciate his position.

10 THE COURT: All right. Let me go down and -- anything
11 else? I need to go down and qualify the jury. I'll study
12 these, and we'll -- think we can get a resolution of it.

13 MS. GORTON: Judge, I also have issues with the
14 statement, but my understanding is is that you want us to
15 wait on those motions for later. And the two ---

16 THE COURT: The statement of your client?

17 MS. GORTON: Mr. Lomax. I have an additional issue.
18 And I just ...

19 THE COURT: What is that issue so we can be ---

20 MS. GORTON: The issue is is that it's not properly
21 authenticated. 19 180 says that no witness in any
22 preliminary hearing or any criminal judicial proceeding of
23 any kind shall be examined or cross examined by anyone
24 regarding -- concerning a written statement formerly made
25 and given to any person employed by this State or any

1 County, City or Municipality unless it first be shown that
2 at the time of making the statement the witness was given an
3 exact copy of his statement. Now at the time of the making,
4 we don't have the showing that Juwan Lomax was given a copy.

5 Furthermore, 19 190 says, again, clear and unambiguous
6 language, unless the provisions of 8 15 50 and 19 180 have
7 been complied with. No statement such as referred to in
8 those sections shall be admissible evidence in any case, nor
9 shall any reference be made to it in trial of any case.

10 And 18 15 50, which they just talked about, says, not
11 only shall you give the original -- give a copy to the
12 person making the statement at the time, you shall also
13 obtain from the person making the statement a signed receipt
14 for the copy so delivered. And I have copies of all these.

15 I just want to let you know ---

16 THE COURT: You talking about this being the statement
17 given in July by Mr. Lomax?

18 MS. GORTON: Yes.

19 THE COURT: Or your -- or your client's?

20 MS. GORTON: Well, the other statement wasn't given to
21 a public ---

22 THE COURT: Right.

23 MS. GORTON: May I approach?

24 THE COURT: Yes.

25 MS. GORTON: The other statement wasn't given to a

1 public officer, we don't think. If it was given to ---

2 THE COURT: So ---

3 MS. GORTON: --- another attorney, that's not a public
4 employee. I'm talking about the July statement.

5 THE COURT: Okay. That there was no receipt given.
6 You're saying ---

7 MS. GORTON: Not only -- not only no receipt, which we
8 know clearly wasn't given, but that he wasn't given a copy
9 of it at the time.

10 THE COURT: Okay. Well, I'm assuming there'd be an
11 officer to testify as to what happened there.
12 Preliminarily, we can do that. Yes, ma'am.

13 MS. SALISBURY: More clearly, Judge, I'd just direct
14 the Court's attention to the bottom of both statements that
15 you have in front of you. Both of them indicate that the
16 person signing the statement has received a copy. It's in
17 writing on the statements that the Court has.

18 MR. IANUARIO: And, Your Honor, if I may draw your
19 attention to that. If you take the redacted copy and the
20 original and you hold them up to the light, the signatures
21 are exact and they overlap. As such, we know that the
22 signature block has been cut and pasted from one document
23 onto another.

24 Since that can be done, we don't have authentication
25 that the original document there is what is offered is the

1 original document, hasn't had a signature from another
2 document cut and pasted onto it. Without seeing the
3 original, I would argue this hasn't been authenticated
4 properly just because it has been tampered. You can also
5 see the time stamp has been removed from Mr. Lomax's
6 original statement through the course of the redaction.

7 MS. GORTON: Would the Court like to see ---

8 THE COURT: The time stamp for what?

9 MR. IANUARIO: On the date of the statement.

10 MS. GORTON: May I?

11 THE COURT: Yes, ma'am.

12 MS. GORTON: Judge, what he's talking about is on the
13 original there is a time stamp up here. You also see the
14 initials down the side. I want to show you what happens
15 when you put the two together. Clearly they've been
16 photocopied. This is the ...

17 MR. IANUARIO: They overlap perfectly, Your Honor.

18 MS. GORTON: All the way across.

19 THE COURT: And what ---

20 MS. GORTON: And ---

21 THE COURT: Where are those two pieces of paper you
22 have? The two-page statement?

23 MS. GORTON: This is the original. And this is her
24 proposed redacted.

25 THE COURT: Okay.

1 MS. GORTON: Even the initials have been cut and pasted
2 over. But if you look, they don't line up. But these line
3 up perfectly. You may have ---

4 THE COURT: All right. Thank you. All right. That
5 issue, we can address that as well. Perhaps, Ms. Salisbury,
6 the State can revisit the redaction to ---

7 MS. SALISBURY: Well, Judge, I have -- I have some
8 proposed redactions to resolve at the appropriate time. I'm
9 not sure if you want me to respond to this signature issue
10 ---

11 THE COURT: No, I'll -- I don't need to hear from you
12 on that. I'll study that.

13 MS. SALISBURY: But I have -- depending on the Court's
14 ruling on which pieces of Mr. Lomax's statement ought to be
15 redacted before it's appropriately admissible and complies
16 with Bruton, I've got several proposed versions. Of course,
17 they've been tampered with to the extent that they have been
18 cut and pasted in an effort to ---

19 THE COURT: I understand that.

20 MS. SALISBURY: --- make it appear that the statement
21 was on one page and was initialed as it was at the time.
22 Obviously, I would prefer to admit the original since it is
23 the most -- it maintains the most integrity, but I don't
24 have the ability to do that. So ---

25 THE COURT: Well, I understand that.

1 MS. SALISBURY: --- I have several proposals when we
2 visit that issue.

3 THE COURT: Okay. Well, how many are several?

4 MS. SALISBURY: I have ---

5 THE COURT: Four, five or ...

6 MS. SALISBURY: I have four different ---

7 THE COURT: Okay. With different sentences out or
8 portions out?

9 MS. SALISBURY: Yes, Judge.

10 THE COURT: Okay.

11 MS. SALISBURY: And, again, I wished that we had this
12 resolved before trial today ---

13 THE COURT: Do any of them totally eliminate any
14 reference to her, just reference to who this other person
15 was?

16 MS. SALISBURY: Judge, I have -- I have done what I
17 believe to be everything in my power to eliminate references
18 to gender, existing relationship and using the most generic
19 pronouns I could conceive.

20 THE COURT: Okay. All right. Could I -- while we're
21 in recess, could I have copies of those? And, again, you
22 can share those with the opposing counsel. And we'll try to
23 -- none of these -- hopefully, I'm -- am keeping a lot of
24 your papers that everybody has submitted to me. I'll try to
25 keep them separate and distinct. All right.

1 We'll take a short break. And I need to go down and
2 qualify the jury. And then we'll reassemble. I think we'll
3 have a delay anyhow because of the need for the jury in the
4 other trial. So we'll have a little time maybe without
5 delaying our jury.

6 As far as strikes, let's assume that we're going
7 without a severance, how many alternates would we need? Two
8 ---

9 MS. SALISBURY: Judge, I think one will be sufficient.

10 THE COURT: One alternate?

11 MS. SALISBURY: If it makes the Court more comfortable,
12 two is certainly plenty.

13 THE COURT: All right. Would one alternate, each of
14 you?

15 MR. IANUARIO: Whatever the Court's comfortable with
16 ---

17 THE COURT: Okay. We'll probably go with one. And
18 strikes will be -- is everybody in agreement with what the
19 strikes are?

20 MS. GORTON: Ten and ten.

21 THE COURT: Ten and ten. And you're going to get how
22 many?

23 MS. SALISBURY: Five, Judge.

24 THE COURT: Five. Okay. And then y'all are going to
25 use them separately or jointly?

1 MR. IANUARIO: Probably separately, Your Honor.

2 THE COURT: All right. Just so the clerk will know
3 calling those out. All right. So we're going to need a
4 pretty good pool of jurors in here. Okay. All right.

5 Let's take a short break. And I'll go down and get the
6 jury qualified. And then we'll be back.

7 (Whereupon court was in recess at 10:09 am)

8 (Whereupon court resumed at 12:47 pm)

9 THE COURT: Thank you. Please be seated. All right.
10 I understand we've got a statement at issue. And we
11 probably need to have a Jackson/Denno hearing first of all
12 to see if the statements are voluntarily made.

13 And then after that we can hear any other motions you
14 have about the statements and other matters. Hopefully we
15 can get that done in a short time. Anything else we need to
16 take care of before we have a Jackson/Denno hearing that
17 would necessarily need to take place before that? From
18 anybody?

19 (No response)

20 THE COURT: All right. I'll be glad to hear your
21 witnesses, Madame Solicitor.

22 MS. SALISBURY: Thank you, Your Honor. To the extent
23 that these statements were given close in time by the same
24 group of investigators, if it suits the Court, I'd be happy
25 to address them together rather than as ---

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1 THE COURT: That'd ---

2 MS. SALISBURY: --- separate hearings.

3 THE COURT: --- be fine.

4 MS. SALISBURY: In that respect, Your Honor, the State
5 calls Deputy Devin Hoover.

6 MADAME CLERK: Please place your left hand on the Bible
7 and raise your right hand.

8 Devin Hoover, being duly
9 sworn testified as follows:

10 MADAME CLERK: Thank you. Please be seated. Please
11 state your full name for the record.

12 OFFICER HOOVER: Devin Hoover.

13 Direct Examination by Ms. Salisbury:

14 Q. Deputy, where do you work?

15 A. Greenville County Sheriff's Office.

16 Q. And how long have you been with the Sheriff's Office?

17 A. About five years, eight months.

18 Q. And what's your capacity at the Sheriff's Office?

19 A. I'm a master deputy assigned to armed robbery
20 investigations.

21 Q. And what are some of your duties and responsibilities
22 as part of that assignment?

23 A. To follow up with cases.

24 Q. Now were you working in that capacity in June of 2011?

25 A. I was.

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1 Q. Were you involved in the investigation related to each
2 of these Defendants, Mr. Lomax and Ms. Dawkins?

3 A. Yes, ma'am.

4 Q. Did you at some point in the course of your
5 investigation speak with Ms. Dawkins about the case?

6 A. Yes, ma'am, I did.

7 Q. Would you, please, describe for the Court the
8 circumstances leading up to how you encountered Ms. Dawkins
9 and what happened as a result?

10 A. I was assigned this case for follow-up. It is a
11 preliminary background investigation. I was able to locate
12 a vehicle that was also attributed to Mr. Lomax. We found
13 Mr. Lomax shortly thereafter. I was able to locate Ms.
14 Dawkins and question her.

15 Q. When you went to speak with her was she placed under
16 arrest?

17 A. Yes.

18 Q. Did she indicate to you at some point after that arrest
19 that she wanted to speak with you or give a statement?

20 A. Yes. Actually, when -- when we first found her she --
21 she was very adamant that we speak.

22 Q. Where -- where did you actually end up speaking with
23 Ms. Dawkins?

24 A. We located her at the Probation and Parole Office. And
25 we took her down to my office and spoke with her there.

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1 Q. Which is where?

2 A. At the Law Enforcement Center.

3 Q. At the time that you spoke with her, that you
4 interviewed her, was she in handcuffs?

5 A. Not at the time, no.

6 Q. Who was present with you during that interview?

7 A. I believe at the time there was a lot going on. We
8 interviewed her in my office where there were several other
9 officers around. But just sitting down speaking, it was me
10 and her.

11 Q. Do you recall whether Investigator Brandon Brown was
12 there for this interview?

13 A. He was, yes.

14 Q. Before speaking with her did you read her her Miranda
15 rights?

16 A. I did.

17 Q. Did you read them from a form or did you recite it from
18 memory?

19 A. I read them directly from the form.

20 Q. Was she given a copy of that form?

21 A. Yes.

22 (Whereupon State's exhibit 1 was marked for
23 identification)

24 Q. Deputy, I'm going to show you what's been marked as
25 State's exhibit 1. Do you recognize that document?

DEVIN HOOVER - DIRECT EXAMINATION BY MS. SALISBURY

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1 A. Yes, ma'am, I do.

2 Q. How do you recognize it?

3 A. My signature is at the bottom.

4 Q. What is it?

5 A. It is the waiver of rights.

6 Q. Is that the same rights form that you read to Ms.

7 Dawkins ---

8 A. Yes, ma'am, it is.

9 Q. Now, before she gave a statement -- well, actually,
10 just -- would you read for the Court what you read to the
11 Defendant?

12 A. Before we ask you any questions you must understand
13 your rights. You have the right to remain silent. Anything
14 you say can be used against you in court. You have the
15 right to talk to a lawyer for advice before we ask you any
16 questions and to have him with you during questioning.

17 If you have no money to pay a lawyer's fee, the court
18 will appoint one to represent you without cost, if you wish.
19 If you decide to answer questions now without a lawyer
20 present, you will still have the right to stop answering at
21 any time. You also have the right to stop answering at any
22 time until you talk to your lawyer.

23 And then at the bottom we have the waiver of rights. I
24 have read the statement of my rights and understand what my
25 rights are. I'm willing to make statements and answer.

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1 questions.

2 I do not want a lawyer at this time. I understand and
3 know what I am doing. No promises or threats have been
4 made. No pressure or coercion of any kind have been used
5 against me.

6 I underlined coercion and explained that to her as
7 trickery or threats, which is also highlighted in the
8 statement. And then I explained that to her, asked if she
9 had any questions, and then had her sign and initial each
10 line as understood.

11 Q. So are those -- are those the Defendant's initials
12 beside each of those individual rights that you explained to
13 her?

14 A. Yes, ma'am.

15 Q. And did the Defendant sign the form?

16 A. Yes.

17 Q. Did it -- did it seem to you that she understood her
18 rights?

19 A. Absolutely.

20 Q. Did it seem to you that she wished to give up those
21 rights and give you a statement?

22 A. Absolutely.

23 (Whereupon State's exhibit 2 was marked for
24 identification)

25 Q. Now the document that I've just showed you is State's

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1 exhibit 2. Do you recognize what that document is?

2 A. Yes, ma'am.

3 Q. Does that form also contain a waiver of rights?

4 A. Yes, ma'am, it does.

5 Q. Did you read that waiver of rights to the Defendant?

6 A. I did not read that one verbatim because it came after
7 this one. I explained it to her that it was basically
8 saying the same thing.

9 Q. At that point, again, did it appear to you that she
10 understood her rights?

11 A. Yes, ma'am.

12 Q. Have -- during the course of your duties as an
13 investigator or even before you were assigned to armed
14 robbery, have you ever had an occasion to deal with
15 individuals who are under the influence of alcohol or drugs?

16 A. Yes, ma'am, I have.

17 Q. Did this Defendant appear to you to be intoxicated by
18 either?

19 A. Not at all.

20 Q. Did she respond clearly to your questions?

21 A. Yes, ma'am.

22 Q. Did she appear to understand your questions regarding
23 her rights ---

24 A. Yes, ma'am.

25 Q. --- as you read them to her? Was her speech clear?

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1 A. Very clear.

2 Q. Could you understand what she was saying?

3 A. Yes, ma'am.

4 Q. Did you verify that she could read and write?

5 A. Yes, ma'am.

6 Q. Did you ask her what level of education she had
7 obtained?

8 A. I did. And it is actually written on this rights form.

9 Q. And what level of education did she tell you she had
10 obtained?

11 A. Mauldin graduate of '09, Voorhees College, '09 through
12 '11, and currently in Greenville Tech at the time.

13 Q. Okay. During the course of your interview was she ever
14 threatened, or coerced, or pressured in any fashion or
15 promised a reward in exchange for providing ---

16 A. Not at all.

17 Q. --- a statement? Was she ever deprived of food or
18 water?

19 A. No, ma'am.

20 Q. Was she ever prevented from using the restroom?

21 A. No, ma'am.

22 Q. Did it appear to you that she agreed to freely speak
23 with you without an attorney being present?

24 A. Yes, ma'am.

25 Q. Did it ever appear to you during the course of your

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1 interview that she wanted to change her mind and instead
2 invoke her right to remain silent and not speak with you?

3 A. No, ma'am.

4 Q. How long was your interview with this particular
5 Defendant?

6 A. I don't remember exactly, but it wasn't more than an
7 hour, hour and a half max.

8 Q. Now did the -- did the Defendant then ultimately give a
9 statement?

10 A. Yes, ma'am.

11 Q. Is that the statement that's contained on State's
12 exhibit 2?

13 A. Yes, ma'am, it is.

14 Q. Did you type it for her or did she type it herself?

15 A. I did.

16 Q. Did you give her an opportunity to review it?

17 A. I did.

18 Q. How did that review process work?

19 A. After I finish going over everything, I provide them
20 with a copy of the statement and I have them read it. And
21 as they go down, I have them initial each paragraph all the
22 way down, that they swear to that and that's the truth and
23 nothing needs to be changed.

24 And then at the bottom I have them write that this is
25 the whole truth and everything that I know as the truth at

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1 the bottom. And then they sign it and initial it. And I
2 provide them with a copy.

3 Q. So on State's exhibit 2 has the Defendant initialed
4 before each paragraph as you just described?

5 A. Yes, ma'am.

6 Q. Has she also signed the statement at the bottom?

7 A. Yes, ma'am.

8 Q. Is your signature on State's exhibit 2?

9 A. My unit number and my position and everything is down
10 there typed in. I didn't hand sign this one. I actually
11 typed it in since I was typing.

12 Q. But did you prepare this statement as ---

13 A. I did. Yes, ma'am.

14 Q. Okay. To the best of your knowledge was the Defendant,
15 De'Nia Dawkin's statement freely and voluntarily given?

16 A. Yes, ma'am.

17 Q. What did she say in that statement?

18 A. May I just read it directly through?

19 Q. Yes.

20 A. I am -- I, De'Nia Dawkins, do hereby freely give
21 voluntarily this statement to Investigator Hoover and
22 Investigator Brandon Brown, who have identified themselves
23 to me as deputies of the Greenville County Sheriff's Office,
24 Greenville, South Carolina. I have been advised that I do
25 not have to make this statement, and what I say can be used

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1 against me in the court of law.

2 I have been advised that I have the right to counsel
3 with an attorney of my choice, that if I am financially
4 unable to obtain an attorney, the court will appoint one, an
5 attorney to represent me. I have not been threatened or
6 promised any reward to make this statement.

7 I am twenty years old. And I reside at 218 West
8 Dorchester Boulevard, Greenville, South Carolina. I have a
9 twelve plus two years grade education. I can read and
10 write. I am not under the influence of any drugs or
11 alcohol. I am allowing Investigator Hoover to type this
12 statement for me.

13 On 6/3/2011 at midnight I went to Quadrez Benson's
14 house. He lives in Taylors off of East North Street. I
15 think he lives in apartment number

16 I had hung out with him a couple of weeks before, and I
17 wanted to go chill with him again and buy some weed to smoke
18 with him. I had asked someone else to give me a ride to
19 Drez's house. That person asked if everyone else wanted to
20 go. Since everybody else wanted to go, I hopped into
21 another person's ---

22 MS. GORTON: Objection. He's reading a redacted --
23 it's not the statement she gave. He's reading the redacted
24 statement, Your Honor.

25 THE COURT: Okay. For the purpose of this hearing ---

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1 MS. SALISBURY: I guess it's of no consequence what the
2 substance of the statement is, the content of it.

3 MS. GORTON: Well, we don't even want the redacted,
4 Your Honor. There's no issue with her statement.

5 THE COURT: There's no issue with her statement?

6 MS. GORTON: Well, not with the redacted versus the
7 original. And if he's ---

8 THE COURT: Okay.

9 MS. GORTON: --- going to read what she said, I'd
10 prefer him to read what she said.

11 THE COURT: Okay. I've had -- I have the redacted
12 statement. For the purpose of this hearing, will that ...

13 MS. GORTON: I don't even want the redacted statement
14 at trial, Your Honor. She gave a statement. She named
15 names. I would like for that to be the ---

16 THE COURT: Okay.

17 MS. GORTON: --- statement that she gave.

18 THE COURT: All right. Let him read the original
19 statement then. You got a copy of that, Solicitor?

20 MS. SALISBURY: I do, Judge.

21 THE COURT: Okay.

22 MS. SALISBURY: Your Honor, to the extent that in this
23 statement Ms. Dawkins mentions the Co-Defendant Lomax, that
24 is the basis for which I redacted it. And ---

25 THE COURT: Okay.

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1 MS. GORTON: And I believe Mr. Ianuario has an
2 objection to ---

3 THE COURT: Okay.

4 MS. GORTON: --- the original.

5 THE COURT: All right. I'll go ahead and read the
6 original then. You can start with the meat of it, ---

7 OFFICER HOOVER: Yes, sir.

8 THE COURT: --- Officer Hoover.

9 Direct Examination by Ms. Salisbury Continued:

10 A. On 6/3/2011 after midnight I went to Quadrez Benson's
11 house. He lives in Taylors off East North Street. I think
12 he lives in apartment number .

13 I had hung out with him a couple of weeks before, and I
14 wanted to go chill with him again and buy some weed to smoke
15 with him.

16 I asked Raymond Young to give me a ride to Drez's
17 house. Raymond asked if everybody else wanted to go. Since
18 everybody else wanted to go, I hopped into Juwan's car with
19 Envy. Envy is Shamika Johnson. Juwan's car is a white,
20 four door car. Smoke, Tra'Vis Ware, Fat-So and Raymond
21 Young went into Fat-So's black Nissan Altima.

22 They were following us over there. When we got there I
23 said for them to just stay in the car, and if I decided to
24 stay, I would text them. I took Envy inside with me. I was
25 inside for about five minutes. And Quadrez was going to go

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1 outside with me to break a one hundred dollar bill for the
2 weed. He got his shoes on, and we went to the door. Drez's
3 friends were in the apartment talking to Envy on the couch.
4 When I opened the door the door flew open and they all
5 came in yelling, and I saw Smoke's dreads. I saw Smoke,
6 Fat-So, Raymond -- and Raymond. They were wearing all
7 black. I saw the guns. They were pistols. I heard two
8 gunshots and I took off to the -- out of the door. Envy was
9 running around like a chicken. It scared her too. I was
10 scared.

11 Then Raymond, Smoke and Fat-So went running out of the
12 apartment. When we were outside I was crying and screaming
13 on the ground. Smoke was telling me to get off the ground
14 and get in the car. So me and Shamika went and got into
15 Juwan's car. And the other guys got into Fat-So's car, and
16 we left.

17 I called my mom and told her that they just robbed
18 Drez, and she was crying. I don't think they -- I don't
19 think they included Juwan because he acted like he didn't
20 know about it. He just tried to get me to stop crying.

21 Smoke told me afterwards that I had messed up the whole
22 plan that they had. Drez talked to me afterwards on the
23 phone and he thinks I set him up. Drez was so mad, and
24 yelling and threatening me and my family. So I changed my
25 phone number. And at the bottom handwritten, this is the

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1 whole truth and everything that I know.

2 Q. Okay. Let's shift gears a little bit and talk about
3 the interview of Juwan Lomax. Were you present for his
4 interview?

5 A. Yes, ma'am.

6 Q. Were you present for -- let me start off this way. Did
7 you take Juwan Lomax's statement?

8 A. I did not.

9 Q. Did you participate in the interview?

10 A. I did.

11 Q. Who else participated in the interview?

12 A. I believe Investigator Fortner, Investigator Brandon
13 Brown and, of course, the Solicitor was also there.

14 Q. Now were you present when Investigator Fortner read
15 Juwan Lomax's Miranda rights?

16 A. Yes, ma'am.

17 Q. Did it appear to you that Mr. Lomax understood his
18 rights?

19 A. Yes, ma'am.

20 Q. Did he elect to give a statement?

21 A. Yes, ma'am.

22 Q. At any point during his interview did he indicate that
23 he wished to stop speaking and instead remain silent or
24 request an attorney?

25 A. No, ma'am.

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1 Q. Okay.

2 MS. SALISBURY: I don't have any other questions for
3 the purposes of this hearing, Judge.

4 THE COURT: Okay.

5 MS. SALISBURY: Answer any questions ---

6 THE COURT: Any cross examination from either of the
7 attorneys?

8 Cross Examination by Ms. Gorton:

9 Q. The statement that you're referring to, do you have the
10 original?

11 A. Yes, ma'am.

12 Q. That's the one that was signed at the time, not a
13 photocopy?

14 A. Yes, ma'am. It has a highlighter -- the highlighter
15 marks on it. Yes, ma'am.

16 MS. GORTON: May I approach?

17 THE COURT: Yes, ma'am.

18 Q. When you first approached Ms. Dawkins, she was in
19 Raymond Young's car out in the parking lot, ---

20 A. She ---

21 Q. --- is that correct?

22 A. When I approached her she was already out of the car,
23 yes, ma'am.

24 Q. All right. And you approached her with -- is it Deputy
25 Brandon Brown or is it ---

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1 A. Investigator Brandon Brown. Yes, ma'am, he was ---

2 Q. Okay.

3 A. --- in contact with her.

4 Q. Did he appear to be an FBI agent at the time?

5 A. I was -- I wasn't out there when he approached her. I

6 was actually inside with Raymond.

7 Q. Do you know if he was working with the task force and

8 maybe he was wearing FBI identification ---

9 A. I know he is assigned to the task force, yes, ma'am.

10 Q. Okay. Do you know what was said to her before you

11 approached her?

12 A. No, ma'am.

13 Q. Did you hear her be told -- being told that she was

14 looking at thirty years and she'd better give a statement?

15 A. No, ma'am.

16 Q. You did not say that?

17 A. No, ma'am.

18 Q. And if it was said it was before you approached?

19 A. Yes, ma'am.

20 Q. But if it was said, you wouldn't have known? You

21 weren't there?

22 A. I was not there, no, ma'am.

23 Q. Okay. Did you tell her that you wanted to be able to

24 vouch for her?

25 A. Absolutely.

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1 Q. And did you tell her that the way to do that was for
2 her to come and give a statement?

3 A. I told her the way to do that was for her to come to my
4 office and tell me the truth.

5 Q. And when you took the statement from her did you finish
6 by giving her your card?

7 A. I don't remember. Usually I do.

8 Q. And did you let her know that she could call you if she
9 needed anything?

10 A. Absolutely.

11 Q. Did you stick around to see what happened after you
12 took her over to be booked?

13 A. No, ma'am.

14 Q. Were you aware that Raymond Young was in that same
15 area?

16 A. No, ma'am.

17 Q. Were you aware that they brought Smoke to the same
18 area?

19 A. I wasn't there, no, ma'am.

20 Q. Have you done enough investigation in this case to know
21 who the gunmen were in this incident?

22 A. I believe we -- we don't know for sure, no, ma'am.

23 Q. Did your investigation indicate that Raymond Young was
24 the gunman? Was a gunman?

25 A. Was -- yes. Yes, ma'am.

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1 Q. Did your investigation indicate that Smoke was a
2 gunman?

3 A. Yes, ma'am.

4 Q. And did your investigation also indicate that Raymond
5 Young was the leader of this group?

6 A. Yes, ma'am.

7 Q. Okay. At the conclusion of her -- of your statement
8 from her did you indicate to her that you believed that
9 she'd told the truth?

10 A. Yes, ma'am.

11 Q. You had already spoke with Juwan at that time, correct?

12 A. I'd have to look back at my file. I don't remember who
13 I spoke to first.

14 Q. Could you double check -- I know that you said you
15 didn't actually speak with Juwan, but you ---

16 A. Right.

17 Q. --- were present during that. Could you double check
18 and verify that that date was on July 21st?

19 A. I don't have my file with me. I'd have to look at my
20 file to find the exact dates.

21 Q. If you have Juwan's statement up there -- do you?

22 A. All I have is the first two exhibits that were from Ms.
23 Dawkins.

24 Q. Does that look like Juwan's statement? I'm looking ---

25 A. Yes, ma'am.

DEVIN HOOVER - CROSS EXAMINATION BY MR. IANUARIO

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- 1 Q. --- at that. It was kind of hidden in ---
- 2 A. Yes, ma'am.
- 3 Q. --- between ---
- 4 A. Yes, ma'am. This would have come first.
- 5 Q. Okay. So you would have got this first?
- 6 A. Yes, ma'am.
- 7 Q. And then you got her statement?
- 8 A. Yes, ma'am.
- 9 Q. And you indicated to her that you did believe her?
- 10 A. Yes, ma'am.
- 11 Q. Have you done anything since to help her?
- 12 A. As in?
- 13 Q. Have you helped her in any way? Offered her your help?
- 14 A. I extended it at the time when I took her over. And
- 15 she hasn't contacted me since. So I can only do so much.
- 16 Q. Okay. Nothing further.
- 17 THE COURT: Mr. Ianuario, any questions?
- 18 Cross Examination by Mr. Ianuario:
- 19 Q. Do you have a copy of the waiver of rights signed by
- 20 Juwan Lomax?
- 21 A. It would be in the file.
- 22 Q. Okay. Do you have a copy of the original statement
- 23 that was given by Juwan Lomax?
- 24 A. Yes, in the file. Everything's in the file.
- 25 Q. Okay.

1 MR. IANUARIO: Could that be made available? I'd like
2 to see the original statement, Your Honor, just to verify
3 the signatures are on there so I can ---

4 THE COURT: I presume the next witness will -- the next
5 witness will probably address that.

6 MR. IANUARIO: If that's the case, Your Honor, then I
7 would argue that Investigator Fortner is more apt to testify
8 about whether or not Mr. Lomax's statement was freely and
9 voluntarily given to him ---

10 THE COURT: I think that's what we're going to have
11 next. I think he'll be coming in to testify. I think this
12 one is just relating to Ms. Dixon's [sic] ---

13 MR. IANUARIO: All right. Then nothing further, Your
14 Honor.

15 THE COURT: All right. Any redirect?

16 MS. SALISBURY: Nothing from the State, Judge.

17 THE COURT: Excuse me, Ms. Dawkins. All right. You
18 can step down, Officer Hoover.

19 MS. SALISBURY: Your Honor, to the extent that Ms.
20 Fortner [sic] referred to a document in her examination of
21 Investigator Hoover, it might be prudent to have that
22 document marked as a Court's exhibit at least for purposes
23 of this hearing.

24 THE COURT: That was the Lomax statement, is that
25 correct?

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1 MS. SALISBURY: I believe it was. It may be resolved
2 completely, but to the extent the document was not
3 identified for the record, I wanted to be clear.

4 THE COURT: The document you showed the witness, Ms.
5 Gorton, was the statement of Mr. Lomax, is that right?

6 MS. GORTON: That's at issue, Your Honor. It was a
7 photocopy of his statement.

8 THE COURT: Okay. A photocopy of the statement of July
9 the 21st or whatever?

10 MS. GORTON: Yes. And I was using it to refresh his
11 memory as to this ---

12 THE COURT: Can we just mark that document that you
13 showed him as a Court exhibit or let the court reporter mark
14 it now as a ---

15 MS. GORTON: I borrowed Mr. Ianuario's copy. I'm
16 sorry.

17 THE COURT: Okay. Since we'll have a record of what
18 was shown to the witness. And then she can hold on to that.
19 That's for ID only.

20 (Whereupon Court's exhibit 1 was marked)

21 MS. SALISBURY: I'll call the next witness. State
22 calls Investigator Mike Fortner.

23 THE COURT: If you'll come around and be sworn, please,
24 sir. Place your left hand on the Bible.

25 Michael Fortner, being

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1 duly sworn testified as follows:

2 MADAME CLERK: Thank you. Please be seated. Please
3 state your full name for the record.

4 OFFICER FORTNER: Michael Eugene Fortner.

5 Direct Examination by Ms. Salisbury:

6 Q. Investigator Fortner, where do you work?

7 A. Greenville County Sheriff's Office.

8 Q. And what capacity?

9 A. Currently as an armed robbery investigator.

10 Q. And how long have you been at the Sheriff's Office?

11 A. A little over eighteen years, about eighteen and a
12 half.

13 Q. And how long have you been an armed robbery
14 investigator?

15 A. About -- almost five years now.

16 Q. Were you working in that capacity in June of 2011?

17 A. I was, yes.

18 Q. Do you recall whether you were assisting Investigator
19 Hoover in the investigation in the case we're at trial in
20 today?

21 A. I was, yes.

22 Q. At some point during that investigation did you have an
23 occasion to encounter the Defendant, Juwan Lomax?

24 A. I did.

25 Q. Would you describe for the Court the circumstances of

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1 how you came to be -- how you came to encounter Juwan Lomax
2 and what happened?

3 A. I was working on a case assisting Investigator Hoover.
4 And as a result of our investigation we had identified a
5 particular vehicle. This vehicle was located at some
6 apartments. I believe they're called Fair Hill Apartments
7 on Welcome Avenue Extension.

8 And as a result we did a search warrant on the
9 apartment where Juwan Lomax resided at. That's how I first
10 came across -- crossed paths with him.

11 Q. Now at some point during that encounter was Mr. Lomax
12 arrested?

13 A. Yes, he was.

14 Q. Did he indicate to you that he wanted to speak with you
15 or give you a statement?

16 A. He did, yes.

17 Q. Where did you end up speaking with Mr. Lomax?

18 A. We spoke with him in the muster room, which is located
19 in the basement of the Law Enforcement Center.

20 Q. And who else was present during that interview?

21 A. Let me see. It was myself, Investigator Hoover,
22 Investigator Brown, Investigator Chad Ayers, and a member of
23 the Solicitor's Office, and at one point Investigator Wayne
24 Campbell also came in.

25 Q. While you were speaking with Mr. Lomax was he in

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1 handcuffs?

2 A. He was, yes.

3 Q. Before you spoke with him, before you began asking him
4 any questions did you advise Mr. Lomax of his Miranda
5 rights?

6 A. I did, yes.

7 Q. Did you read those rights from a form or did you recite
8 them from memory?

9 A. From a form.

10 Q. Was the Defendant given a copy of this form?

11 A. No, he was not.

12 Q. Did you read it along with him so that he could see
13 what you were reading?

14 A. I did, yes, ma'am.

15 (Whereupon State's exhibit 3 was marked for
16 identification)

17 Q. I'm showing you State's exhibit 3. Do you recognize
18 that form?

19 A. Yes, ma'am, I do.

20 Q. Is your signature on it?

21 A. Yes, it is.

22 Q. What is it?

23 A. It's down here at the bottom as a witness.

24 Q. Well, what is the form?

25 A. Oh, it's the waiver of rights form advising somebody of

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1 their rights. And then the bottom part is where they
2 actually waive their rights.

3 Q. Is that the exact form that you read to Mr. Lomax that
4 day?

5 A. It is, yes.

6 Q. Did -- how did you read it to him?

7 A.. I read it -- I just start up here at the very first
8 line where it says before we ask you any questions you must
9 understand your rights. As I read each one of those rights
10 I always ask the person I'm reading the rights to to place
11 their initials out to the side of that line.

12 Q. And did the Defendant place his initials at -- one at a
13 time?

14 A. One at a time, yes, ma'am.

15 Q. Did you explain to him what the phrase coercion meant
16 or the word, rather?

17 A. Yes, I did.

18 Q. How did you explain that to him?

19 A. I explained to him that the word coercion is basically
20 another word for pressure. I might use some type of
21 example, I mean, if you don't -- if you refuse to talk to
22 me, I'm not going to do something to somebody in your
23 family, or pry off your fingernails or anything like that.

24 Q. Okay. Would you read then for the Court what you read
25 to Mr. Lomax before your interview began?

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1 A. Yes. It says -- it starts off with before we ask you
2 any questions you must understand your rights. You have the
3 right to remain silent. Anything you say can be used
4 against you in court.

5 You have the right to talk to a lawyer for advice
6 before we ask you any questions and to have them with you
7 during questioning. If you have no money to pay a lawyer's
8 fee, the court will appoint one to represent you without
9 cost, if you wish.

10 If you decide to answer questions now without a lawyer
11 present, you would still have the right to stop answering
12 any time. You also have the right to stop answering any
13 time until you talk to a lawyer.

14 Then once I do that, they place their initials out
15 there. And I always have them read -- the fourth line down,
16 I actually have them read that out loud to me so that I know
17 they, in fact, can read. So after you get done reading that
18 line out loud for me, I always have them sign their name
19 after that line, which just indicates that they read it out
20 loud to me.

21 Q. Okay. Now did the Defendant indicate to you that he
22 wanted to waive those rights and give you a statement?

23 A. He did, yes.

24 Q. How did he do that?

25 A. Well, the waiver of rights part, I always read that

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1 part out loud to them. You want me to read that?

2 Q. Sure.

3 A. Here? I always read the waiver of rights part. It
4 says I've read this statement of my rights and understand
5 what my rights are. I'm willing to make a statement and
6 answer questions. I do not want a lawyer at this time. I
7 understand and know what I am doing. No promises or threats
8 have been made to me. And no pressure or coercion of any
9 kind have been used against me.

10 And then I always ask them -- I explain the word
11 coercion to them, get them to place their initials there.
12 And I tell them that if you're willing to talk to me without
13 an attorney being here, I'll need you to sign your name down
14 there where they sign their name at. And then normally I
15 also get them to print their name below that as well.

16 Q. Did the Defendant sign that form?

17 A. He did, yes, ma'am.

18 Q. Did he also print his name?

19 A. Yes, ma'am.

20 Q. Okay.

21 (Whereupon State's exhibit 4 was marked for
22 identification)

23 Q. Investigator, I'm showing you now what's been marked as
24 State's exhibit 4. Do you recognize that document?

25 A. I do, yes.

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1 Q. And what is that form?

2 A. This is a statement form that was given by Mr. Lomax.

3 Q. Does that form also contain a waiver?

4 A. Yes, it does up at the top. Yes, ma'am.

5 Q. Did you read that to the Defendant?

6 A. I did not read that part, no.

7 Q. Okay. Did it appear to you before this interview began
8 that he understood his Miranda rights?

9 A. Yes, ma'am.

10 Q. Did it appear to you that he wished to waive those
11 rights and give you a statement?

12 A. Yes, he did.

13 Q. Have you had the occasion in the course of your
14 capacity as an investigator or in any law enforcement
15 capacity had an indication to deal with people who were
16 under the influence of alcohol or drugs?

17 A. Yes.

18 Q. Did it appear to you that the Defendant was intoxicated
19 by either of those substances?

20 A. No, ma'am, he was not.

21 Q. Did he respond clearly to your questions?

22 A. Yes, ma'am.

23 Q. Did he appear to understand your questions to him?

24 A. Yes, he did.

25 Q. Was his speech clear?

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1 A. Yes.

2 Q. Could you understand what he told you?

3 A. Yes, I could.

4 Q. Did you ask what his level of education was?

5 A. Yes. That's one of the things I did before I read the
6 rights. In this case he said eleventh grade from Carolina
7 High School.

8 Q. Okay. Was the Defendant ever threatened, coerced or
9 pressured in any fashion in exchange for providing a
10 statement?

11 A. No, ma'am, he was not.

12 Q. Was he ever deprived of food or water during the course
13 of your interview with him?

14 A. No, ma'am.

15 Q. Was he ever prevented from using the bathroom?

16 A. No.

17 Q. Did he -- did the Defendant agree to freely speak with
18 you without his attorney being present?

19 A. Yes.

20 Q. Did it appear to you during the course of your
21 interview at any point that the Defendant intended to invoke
22 his rights to remain silent and not speak with you or to
23 provide a statement to you?

24 A. No.

25 Q. At any point during the interview did he indicate to

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1 you that he wanted to stop speaking and instead have a
2 lawyer present?

3 A. No, he did not.

4 Q. Did the Defendant ultimately give you a statement?

5 A. Yes.

6 Q. Did you type it for him?

7 A. Yes.

8 Q. And did you give him an opportunity to review it
9 afterwards?

10 A. Yes, ma'am, I did.

11 Q. How did that process work?

12 A. Once I get done taking a typed statement from somebody,
13 I always give them the statement itself. I explain to them
14 that I need them to read over their statement. I tell them
15 to read it carefully.

16 If there's anything in the statement that they don't
17 like, they don't like the way it sounds, it's not what they
18 meant to say or whatever, to point it out to me and we'll go
19 back in and we'll change it and get them to go back over it
20 again. In this case here, he said everything looked good.
21 I ask them always to place their initials at the first and
22 last word of each paragraph, which Mr. Lomax did, and at
23 which time I asked him to sign the statement.

24 Q. After he read the whole statement and he placed his
25 initials as you described, did he indicate to you at any

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1 point that he wanted to change any part of the substance of
2 the statement?

3 A. No, he did not.

4 Q. And did he sign the bottom of that statement?

5 A. Yes, ma'am, he did.

6 Q. Did you also sign the bottom of that statement or is
7 your name typed in?

8 A. I signed it, yes.

9 Q. Okay. Did it appear to you that the Defendant
10 understood what was going on during the entire interview
11 process?

12 A. Yes, ma'am, he did.

13 Q. To the best of your knowledge was the Defendant's
14 statement freely and voluntarily given?

15 A. Yes.

16 Q. Would you please tell the Court then what the Defendant
17 said in his statement?

18 A. Sure. You want me to read the whole statement or just
19 the part that goes with what we're dealing with today?

20 THE COURT: I have the statement. Does the other side
21 desire that he read the statement? I've got a copy of the
22 statement that both of you have provided me.

23 MS. SALISBURY: It suits me just fine if ---

24 THE COURT: All right.

25 MS. SALISBURY: --- you want to skip that ---

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1 THE COURT: All right. We don't need to read it.

2 Q. In that event, Investigator, I don't have any other
3 questions for you. If you would, answer any questions the
4 attorneys may have for you, please.

5 THE COURT: Ms. Gorton.

6 MS. GORTON: I don't believe I have standing, Your
7 Honor. So I'm deferring to Mr. Ianuario.

8 THE COURT: All right. Mr. Ianuario, you can ask ...

9 MR. IANUARIO: Thank you, Your Honor. Thank you,
10 Investigator.

11 Cross Examination by Mr. Ianuario:

12 Q. What was the time that Mr. Lomax signed the waiver of
13 rights?

14 A. The time that he actually signed it was 12:54,
15 afternoon.

16 Q. Okay. And what is the time that is on the typed
17 statement? What time was that signed off on?

18 A. It's 15:55 or five minutes til four in the afternoon.

19 Q. So approximately three hours?

20 A. Yes, sir.

21 Q. Does it normally take that long to get a statement from
22 somebody?

23 A. It can. Something this complex with the cases that we
24 were dealing with, yes, sir.

25 Q. Okay. How many police officers were in the room at the

MICHAEL FORTNER - CROSS EXAMINATION BY MR. IANUARIO

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1 time this statement was being given? You listed quite a few
2 there.

3 A. Let's see. It'd been four initially. And then at one
4 point in time Investigator Wayne Campbell came in for a
5 little bit and then he left. So four initially. Five for a
6 little bit, and then back down to four.

7 Q. Okay. How big was the room this statement was taken
8 in?

9 A. It's probably about three fourths of this size, maybe
10 about half of the size of this courtroom right here that
11 we're in.

12 Q. Was my client sitting or standing during this time?

13 A. He was sitting.

14 Q. And were the police officers, yourself included,
15 sitting or standing during this time?

16 A. We were sitting.

17 Q. Okay. At any point in time did the Defendant say why
18 he wished to give a statement?

19 A. He didn't say why, no, sir.

20 Q. When he was arrested what happened with his mother?

21 A. She had a, I believe, like a panic attack of some sort.
22 She was transported by EMS to the hospital.

23 Q. At any point in time during this statement or the
24 questioning did Mr. Lomax state a desire to see his mother?

25 A. He did, yes.

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1 Q. And what was he told?

2 A. That he couldn't see her right then, he was under
3 arrest.

4 Q. And when was he told he could see her?

5 A. I guess while we were talking.

6 Q. I mean, was he told he could see her after he bonded
7 out, when you're done with the statement you could see your
8 mother like ---

9 A. I didn't tell him any time that he could see her. I
10 just told him that he couldn't see her at that time.

11 Q. Were there reference that any other potential charges
12 could possibly come up against my client?

13 A. I'm not sure I understand. Other than what we were
14 talking to him about, no.

15 Q. Was there reference to anything that he has not been
16 charged with during the time the statement was given?

17 A. Anything referenced that he wasn't charged with?

18 Q. Any potential pending charges that are still looming
19 out there.

20 A. As of today?

21 Q. As of the day the statement was given.

22 A. I mean, the only thing we were talking about was what
23 we were talking about. I don't -- about any other pending
24 charges, no, sir.

25 Q. So did you ask him anything about what would happen if

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1 he gave false testimony or make any reference to previous
2 shootings he was being investigated with or any crimes
3 outside of those regarding the statement?

4 A. I'm not sure if I understand what you're asking.

5 Q. In your conversation with Mr. Lomax when you're getting
6 the statement out, was there any crimes that were referenced
7 that are not mentioned in this statement? Any
8 investigations that were referenced that are not mentioned
9 in the statement?

10 A. In his statement? Not that I'm aware of, no, sir. I
11 believe we covered everything that I was aware of at the
12 time.

13 Q. Okay. But y'all did talk about a home invasion, I
14 believe, correct?

15 A. Yes, sir.

16 Q. Not counting the one on Cunningham Avenue, but the one
17 on East Fairfield, I believe it is.

18 A. Right. Yes, sir.

19 MR. IANUARIO: Just one moment, Your Honor.

20 THE COURT: Yes, sir.

21 (Pause)

22 Q. Do you -- do you know the date with which Mr. Lomax was
23 charged in the East Fairfield home invasion?

24 A. The date in which he was actually charged? No, sir, I
25 don't.

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1 Q. Did you receive any retractions from Mr. Lomax or the
2 attempt to retract his statement?

3 A. I do understand that he wrote a letter. And I believe
4 he sent it to the Solicitor's Office in which he said he was
5 retracting his statement, yes, sir.

6 Q. And did you see that letter? Did you read it?

7 A. I never actually did read it, no, sir. But, I mean, I
8 saw it, but I did not read it, no, sir.

9 Q. And so you're not familiar with the allegations of that
10 letter?

11 A. Nothing other than I think he was saying that he was
12 forced into this -- making a statement.

13 Q. Do you recall it saying that he would be charged with
14 additional charges if did make a false statement?

15 A. No, see I -- I didn't read it. So I don't know what he
16 -- what he says in it, no, sir.

17 Q. How long did he take to review the statement before he
18 initialed it and signed the bottom of it?

19 A. A few minutes. I didn't time him or anything, but, I
20 mean, a few minutes.

21 Q. Did it seem unusually quick, unusually long, about
22 right?

23 A. About right, yes.

24 Q. And do people normally make any revisions to their
25 statement before they sign it?

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1 A. Most the time, no. But every once in a while somebody
2 might point something out, yes, sir.

3 Q. Okay. When you saw the handwritten copy of Mr. Lomax's
4 retraction, where did that come from? Where were you
5 provided with a copy of it?

6 A. I think Investigator Hoover maybe had a copy of it in
7 his case file.

8 MR. IANUARIO: Nothing further, Your Honor.

9 THE COURT: Anything else from the Defense?

10 MS. GORTON: Judge, I needed to clarify. I had
11 submitted two motions to suppress. One was a supplemental.
12 And it had to do -- I realized after I sat down, you asked
13 me before, it had to do with the chain of custody ---

14 THE COURT: But any questions ---

15 MS. GORTON: --- involving ---

16 THE COURT: Do you have any questions of this witness?

17 MS. GORTON: No.

18 THE COURT: All right. Any reply?

19 MS. SALISBURY: No, Your Honor.

20 THE COURT: All right. You may step down. All right.
21 Just, again, focused on the Jackson v. Denno as to the
22 issues here, is there anything from the Defense that you
23 wish to put up in the way of testimony?

24 (Pause)

25 MR. IANUARIO: May we approach a minute, Your Honor? I

1 have a question about whether if I put my client to testify
2 in a motion hearing if that exposes him to any trial
3 matters, testimony, or if it's limited strictly to the
4 pretrial motion.

5 THE COURT: I tell you what, let's take a lunch break.
6 It's getting late. Let's be back at 2:30. We'll be ready
7 to start back at that time. For your benefit, the jury will
8 be here about 2:15, 2:30. So we'll be ready to hopefully
9 select a jury. We'll take a lunch break.

10 (Whereupon court was in recess at 1:30 pm)

11 (Whereupon court resumed at 1:36 pm)

12 THE COURT: All right. This is on the record before we
13 break for lunch. The parties at the bench here have,
14 through their attorneys, have agreed that the statement of
15 Dawkins, Defendant Dawkins, will go -- again, depending on
16 my ruling on the Jackson v. Denno hearing, if it is
17 admissible, that the entire statement without redaction will
18 be admitted.

19 Again, contingent upon my ruling on the Lomax statement
20 on the Jackson v. Denno hearing, which I have not heard all
21 of the evidence in, if the statement were to be admitted it
22 will be admitted pursuant to the conference we had earlier
23 as far as what matters are redacted, what matters are not
24 with the Defendant being protected. And we will state on
25 the record the objections to that going in in addition to.

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1 the Jackson v. Denno objection that may be lodged as well.

2 Did I correctly state that?

3 MS. SALISBURY: I believe that's correct, Judge.

4 THE COURT: Everyone agree?

5 MR. IANUARIO: No objection.

6 THE COURT: Okay. All right.

7 (Whereupon court was in recess at 1:38 pm)

8 (Whereupon court resumed at 2:35 pm)

9 THE COURT: Thank you. Please be seated. All right.

10 Mr. Ianuario or Ms. Gorton, any witnesses you wish to put up
11 on the matter of the Jackson v. Denno? I'll be glad to hear
12 from you now.

13 MR. IANUARIO: Thank you, Your Honor. I'd like to call
14 Juwan Lomax to the stand.

15 THE COURT: Come around and be sworn, please, sir.

16 MADAME CLERK: Sir, if you'd please place your left
17 hand on the Bible and raise your right hand.

18 Juwan Lomax, being duly
19 sworn testified as follows:

20 MADAME CLERK: Please be seated. Please state your
21 name for the record.

22 MR. LOMAX: My name is Juwan Lomax.

23 MADAME CLERK: Thank you.

24 THE COURT: You may proceed.

25 MR. IANUARIO: Thank you, Your Honor.

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1 Direct Examination by Mr. Ianuario:

2 Q. Juwan, do you remember being arrested in July of 2011?

3 A. Yes, sir.

4 Q. On the date of your arrest was there an incident with
5 your mother?

6 A. Yes, sir.

7 Q. Okay. Now was she taken to the hospital?

8 A. Yes, sir.

9 Q. Okay. Now when it comes time to give a statement, were
10 you given the waiver of rights form?

11 A. Yes, sir.

12 Q. Is this the form that you were given?

13 A. Yes, sir.

14 Q. Is this your signature on the form?

15 A. Yes, sir.

16 Q. Did you have a chance to read this form over in its
17 entirety or was it read to you?

18 A. I had looked over it. They had -- they had told me to
19 look over it.

20 Q. Was it read to you at any point?

21 A. Yes, sir.

22 Q. Okay. Did you have any questions understanding any of
23 these?

24 A. Yes, sir.

25 Q. What questions did you have?

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1 A. I had asked them about -- that's when I asked them
2 about if I signed it could I go see my mama.

3 Q. And what did they say?

4 A. They told me that we'll see depending on how things
5 are. But later down they told me that they were going to
6 let me go see my mom.

7 Q. They said -- during this time that you were in the room
8 giving this statement they said you could go see your mom or
9 was that after you were done with the statement?

10 A. That was during -- during the statement.

11 Q. Okay. And during the course of this statement did they
12 ask you about any crimes with which you had not yet been
13 charged?

14 A. Yes, sir.

15 Q. Did you provide information on those?

16 A. Yes, sir.

17 Q. Why did you provide that information?

18 A. Because they told me if I didn't tell them they would
19 -- they would add me to those crimes and try to charge me
20 for them.

21 Q. Okay. So they -- if you didn't provide the statement
22 you would have the other charges?

23 A. Yes, sir.

24 Q. Did they tell you to provide a truthful statement or
25 just to provide a statement?

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1 A. Just to provide a statement.

2 Q. On this document, which was used earlier as Court's
3 exhibit number 1, is this the statement that you provided?

4 A. I don't remember because I didn't read over it.

5 Q. Why didn't you read over it?

6 A. Because when it was placed to me, it was placed to me
7 and I was just told that if I signed it I could go see my
8 mom and that I wouldn't -- I wasn't going to get in no other
9 kind of trouble.

10 Q. Are these your initials on this document?

11 A. Yes, sir.

12 Q. Do you recall initialing next to each paragraph?

13 A. Yes, sir.

14 Q. Did you read each paragraph in full before you
15 initialed next to it?

16 A. No, sir.

17 Q. Okay. How many officers were in the room when you gave
18 this statement?

19 A. Approximately like -- it was like five or six.

20 Q. Okay. At any point in time did you feel intimidated?

21 A. Yes, sir.

22 Q. At any time did you have an apprehension of fear?

23 A. Yes, sir. They told me that they was gonna give me
24 thirty years.

25 Q. They said they'd see to it you got thirty years if you

JUWAN LOMAX - DIRECT EXAMINATION BY MR. IANUARIO

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1 didn't give a statement?

2 A. Yes, sir. Or if I didn't give them names.

3 MR. IANUARIO: Nothing further, Your Honor.

4 THE COURT: Any examination?

5 MS. SALISBURY: Nothing from the State, Judge.

6 THE COURT: All right. Thank you, sir. You may step
7 down. Any other witnesses?

8 MR. IANUARIO: No, Your Honor.

9 THE COURT: Any witnesses from the Co-Defendant?

10 MS. GORTON: No.

11 THE COURT: Okay. Anything in reply from the State?

12 MS. SALISBURY: No, Your Honor.

13 THE COURT: Okay. Has the redacted statement of Mr.
14 Lomax been revised and presented to Defense counsel?

15 MS. SALISBURY: It has been revised. And at the last
16 moment I realized that I neglected something. And a fellow
17 solicitor is photocopying the now correct complete version
18 as we speak.

19 THE COURT: Okay.

20 MS. SALISBURY: I thought this hearing might take up a
21 little bit of time ---

22 THE COURT: All right. As soon as they get here with
23 that, I want the Defense counsel to have a chance to look
24 over it, and then we'll address that.

25 (Pause)

1 MS. GORTON: Judge, may I approach?

2 THE COURT: Everyone can. I'll be glad to ...

3 (Whereupon a bench conference was held off the record)

4 (Whereupon the bench conference was ended)

5 (Pause)

6 THE COURT: Let me know when y'all have had a chance to
7 look over the statement, okay?

8 MS. GORTON: I'm sorry, Judge. No issue. I didn't
9 realize that's what you were waiting ---

10 THE COURT: Okay. I'm sorry. I thought I was. All
11 right. The -- as far as the statements given by the
12 Defendants in this case, I have certainly done the analysis.
13 I've weighed the testimony given.

14 And using all the totality of the circumstances and the
15 factors given as far as the -- certainly it was custodial,
16 certainly it was interrogation, but the -- there's no mental
17 deficiencies, both were very -- sounding intelligent.
18 Certainly the Defendant who testified was. And the other
19 was a high school grad from Mauldin.

20 I find that under the totality of the circumstances the
21 statements are freely and voluntarily given. And based on
22 the standard that I must weigh at this time, I'll allow them
23 into evidence. Certainly the jury will have a decision as
24 to the -- beyond a reasonable doubt as to their propriety.
25 But I'll give them the appropriate instruction on weighing

1 the testimony given through the statements.

2 And, again, my ruling on that is in light of the
3 redaction that has been made by the State on the statement
4 of Defendant Lomax has been seen by both Defendants. At
5 this time only the redacted statement will be admitted. The
6 full statement by the agreement of the parties, both
7 Defendants in agreement of Defendant Dawkins will be
8 admissible based on my ruling. All right.

9 Are there any other matters that we need to take care
10 of before we select a jury in this case?

11 MS. SALISBURY: As I mentioned, Judge, there's the
12 issue of the initial witness' prior record. If you want to
13 take that up after we select a jury, that's just fine with
14 me.

15 And I believe for housekeeping purposes I need to have
16 this -- Ms. Dawkins' statement marked as an exhibit since I
17 believe there was a substitution for the proposed redacted
18 version as opposed to the actual original.

19 THE COURT: Okay.

20 (Whereupon the Court was conferring with the court
21 reporter about exhibits)

22 THE COURT: Is that exhibit 2 that needs to be
23 replaced?

24 MS. SALISBURY: And I'd be happy to replace it as
25 number 2 ---

1 **THE COURT:** Right. Would there be any objection from
2 the -- does that mess you up?

3 (Whereupon the Court was conferring with the court
4 reporter about exhibits)

5 **THE COURT:** Is there any objection from the Defense
6 that -- the exhibits in now are the waiver of rights, number
7 1, the statement of Ms. Dawkins, number 2, if we make that
8 as Defendant ID number 2 and not for admission so that the
9 substitute, that's the -- well, we're back on -- was the
10 full statement of Ms. Dawkins the one admitted?

11 **MS. SALISBURY:** No, Your Honor. The proposed redaction

12 ---

13 **THE COURT:** Right.

14 **MS. SALISBURY:** --- was marked as number 2.

15 **THE COURT:** With the redaction. So we need to make
16 that as an ID number 2, and the full statement of Ms.
17 Dawkins come in as exhibit number 2. Is there any objection
18 to that? That's, I think, what you raised.

19 **MADAME COURT REPORTER:** Exhibit number 5.

20 **THE COURT:** Excuse me, that'll be exhibit 5.

21 **MS. SALISBURY:** And none of these have been offered yet

22 ---

23 **THE COURT:** So 2 will not be admitted. So it will be

24 ---

25 **MS. SALISBURY:** Sure.

1 THE COURT: So the full statement will be marked now as
2 exhibit number 5.

3 (Whereupon State's exhibit 5 was marked for
4 identification)

5 THE COURT: And if there are any other ones you have to
6 pre-mark, that'd be great.

7 We want to take up the -- I'll give the jury a break
8 after they -- after they get sworn in. Then we'll take up
9 the record of the first witness before that witness
10 testifies. Anything else from the State?

11 MS. SALISBURY: Nothing from the State, Judge.

12 THE COURT: Yes, ma'am, Ms. Gorton.

13 MS. GORTON: Judge, can you make a ruling on the record
14 regarding the authentication issue on the statements?

15 THE COURT: All right. Have you seen the original
16 statements?

17 MS. GORTON: I saw my original of hers. I don't know
18 if he saw the original of Lomax. I know we talked ---

19 THE COURT: Okay.

20 MS. GORTON: --- about it ---

21 THE COURT: So having seen the original statement of
22 your client, do you still have the issue as far as the
23 statutes and the authenticity?

24 MS. GORTON: Yes, Your Honor, in that she did not sign
25 a receipt for the copy.

1 **THE COURT:** Okay. Doesn't the statement say that she
2 had received a copy?

3 **MS. GORTON:** Two requirements, Your Honor, under this.
4 One is that she receive a copy of. The second is that she
5 signed a receipt for a copy. So I get now what you're
6 saying. Let me look at the wording of it.

7 (Pause)

8 **MS. GORTON:** Yes, Your Honor, she -- it does say that.
9 I withdraw that.

10 **THE COURT:** All right.

11 **MR. IANUARIO:** So just for the record, Your Honor, I
12 would like to reference my motion in limine about acts
13 referencing search warrants and other documents.

14 **THE COURT:** Right. We need to put that on the record.
15 We did talk about it. I understand that in our discussion
16 that your motion, Mr. Ianuario, about the -- any reference
17 to other charges, the State has agreed that none of those
18 will be asked by the State and none will be elicited by any
19 of the State's witnesses on their own. They're admonished
20 now and understand that they won't do that.

21 And also at the bench mentioned of the officer who
22 testified earlier outside the presence of the jury about
23 seeing Ms. Dawkins at the Probation Office. That would be
24 avoided as well in the testimony.

25 **MS. GORTON:** Judge, when we were talking about that

1 there was one other concern, and that is that the victim
2 witness not disclose that he spoke with the management.
3 And, I believe, the State indicated that he was one of the
4 first ones up. That was also a motion in limine regarding
5 statements allegedly made by the apartment manager. And
6 that's a motion in limine.

7 THE COURT: Okay.

8 MS. GORTON: And since he's present, I thought you
9 might want to address that.

10 THE COURT: Solicitor, did you have a response to that?

11 MS. SALISBURY: I'm sorry, Judge.

12 THE COURT: I guess that's the first thing on the
13 motion in limine about management.

14 MS. SALISBURY: And as I mentioned in chambers, Your
15 Honor, I'm instructed that particular witness that -- it's
16 not appropriate for him to testify about any conversations
17 he's had with anyone ---

18 THE COURT: Okay.

19 MS. SALISBURY: --- about this. So he will testify
20 from what he knows from his personal knowledge and that's
21 it.

22 THE COURT: All right.

23 MS. GORTON: Okay. Thank you, Your Honor.

24 THE COURT: Any other matters?

25 (No response)

1 **THE COURT:** Okay, Mary, you can have them sent up.

2 (Whereupon court was in recess at 3:05 pm)

3 (Whereupon court resumed at 3:20 pm)

4 (Whereupon the jury panel entered the courtroom at 3:20
5 pm)

6 **THE COURT:** Ladies and gentlemen, you've been patient
7 with us. We've not been doing nothing. We've had several
8 matters we needed to take care of. And I apologize.

9 Also, that I'm an Administrative Judge for this circuit
10 for the year for civil matters. And sometimes even during
11 lunch I have some emergency matters that lawyers need to get
12 worked out. So I apologize for keeping you waiting, but
13 this is the earliest that we could possibly get you here.
14 And now we're ready to select the jury for the trial of the
15 first case that will be taking place in this courtroom.

16 I have before me indictments. And these indictments
17 charge Juwan Darnell Lomax with the offense of burglary in
18 the first degree. And the indictment basically says that on
19 or about the 3rd of June, 2011 that Mr. Lomax wilfully and
20 unlawfully entered the dwelling of Demetrius Benson, that
21 being on -- at , without
22 consent and with the intent to commit a crime therein.

23 The burglary was accompanied by circumstances of
24 aggravation being that the entering, remaining in the
25 dwelling was during the nighttime and/or armed with a deadly

1 weapon or displayed what appeared to be a firearm or a
2 handgun.

3 And the -- there's a burglary indictment also of a Co-
4 Defendant in this case, Ms. De'Nia Dawkins. It says that on
5 that same date of June the 3rd, 2011 that she unlawfully
6 entered that property of Mr. Demetrius Benson, apartment
7 without consent and with the intent, again, to commit a
8 crime therein with circumstances of aggravation, entering
9 during the nighttime and/or armed with a deadly weapon or
10 displaying what appeared to be a firearm or a handgun.

11 Also charged is the offense of armed robbery. The
12 indictment also says on that same date of June the 3rd, 2011
13 Mr. Lomax, while armed with a deadly weapon or alleged
14 either by action or words that he was armed with a -- by
15 representation a deadly weapon committed the offense of
16 robbery by displaying what was or reasonably could be
17 represented to be a deadly weapon upon a person present
18 during the commission of that robbery and that would --
19 reasonably believe that to be a deadly weapon, took by force
20 or intimidation goods, monies or other properties, that
21 being a laptop computer from the person of Demetrius Benson.
22 Again, both Defendants in this case, Ms. Dawkins and Mr.
23 Lomax, have been charged with an armed robbery.

24 Also, on that same date, same location, Mr. Lomax has
25 been charged with unlawfully and with malice aforethought

1 with the intent to kill attempt to kill Demetrius Benson.

2 Ms. Dawkins also has been charged unlawfully with
3 malice aforethought with an intent to kill Demetrius Benson.
4 Those both being in violation of the law of South Carolina.

5 There's a fourth indictment on each of them, Mr. Juwan
6 Darnell Lomax, this indictment says on or about the 3rd of
7 June, 2011 they wilfully and unlawfully combined with
8 Raymond Young, and/or Tra'Vis Ware, and/or Joshua Cline or
9 De'Nia Dawkins for the purpose of accomplishing an unlawful
10 object or a lawful object by unlawful means, that being
11 armed robbery, this constituting the offense of conspiracy.

12 Ms. Dawkins, likewise, is charged on that same date
13 with wilfully and unlawfully combining with Mr. Joshua
14 Cline, or Raymond -- and/or Raymond Young, and/or Tra'Vis
15 Ware, and/or Juwan Lomax, again, to accomplish an unlawful
16 purpose, that being armed robbery, and/or attempted murder
17 and/or burglary in the first degree constituting, again, the
18 statutory offense of conspiracy.

19 Each of these four charges against each Defendant, each
20 of them -- each Defendant has entered a plea of not guilty
21 to these charges. Now, by entering a plea of not guilty, of
22 course, the State of South Carolina has the full burden of
23 proof to prove guilt beyond a reasonable doubt.

24 Anybody charged in South Carolina with a -- any offense
25 is presumed innocent. And until the State meets that burden

1 of proof they would remain innocent of the charge.

2 I'm going to be the judge of the law in this case to
3 determine what the law is. We need to find twelve fair and
4 impartial jurors to decide what the facts in the case are.
5 The State of South Carolina, Ms. Dawkins, Mr. Lomax, they
6 desire to have fair and impartial jurors to hear this. They
7 deserve to have fair and impartial jurors to hear this case.

8 You've been qualified already to serve as a juror this
9 week. I need to ask you some additional questions to
10 determine your eligibility to serve on this particular case
11 that we're about to start.

12 First of all, ladies and gentlemen, I need to ask you
13 is there any member of the jury panel that has any prior
14 knowledge about this particular alleged incident that took
15 place back in June of last year? I've read you just a brief
16 resume of the allegations made. If you have any prior
17 knowledge of living in the community, hearing something on
18 the radio or television, or hearing about it at a coffee
19 shop or any source of information whatsoever, if you have
20 prior knowledge about this, would you please stand at this
21 time?

22 (No response)

23 **THE COURT:** Thank you. There is no response.

24 Is there any member of the jury panel related by blood
25 or marriage to Mr. Juwan Darnell Lomax or Ms. De'Nia

1 Dawkins? If so, would you please stand.

2 (No response)

3 **THE COURT:** Is there a member of the jury panel who has
4 a close business or a social or a personal relationship with
5 either of these individuals, Ms. Dawkins or Mr. Lomax? If
6 so, would you please stand.

7 (No response)

8 **THE COURT:** Thank you. There is no response.

9 Several witnesses may be called upon to testify in this
10 case. I'm not sure that all of them will be, but I'm going
11 to read you a list of some of the potential witnesses. Then
12 I'll have some follow-up questions, ladies and gentlemen.

13 Among the witnesses who may be called upon to testify
14 with the Greenville County Sheriff's Office would be Deputy
15 David Picone, Deputy Jeremy Jones, Sergeant Mark McCoy,
16 Investigator Devin Hoover, Investigator Mike Fortner,
17 Investigator Brandon Brown.

18 Other witnesses who may be called upon to testify would
19 include Demetrius Benson, Jaquan Boyd, Tyrell Holland,
20 Horrace Tobin, Tim Woodward, Woodard, excuse me, Joshua
21 Cline, Tra'Vis Ware, Karl Allen, Chastity Adams, Kaylin
22 Adams, Michael Hutchins, Myesha Hill, also from the
23 Sheriff's Office Clay Gunter, J.F. Hamilton.

24 Is there any member of the jury panel related by blood
25 or marriage to any of these potential witnesses? If so,

1 would you please stand.

2 (No response)

3 THE COURT: Is there a member of the jury panel who has
4 a close business or a social, a personal relationship with
5 any of these potential witnesses? If so, would you please
6 stand.

7 (No response)

8 THE COURT: Thank you. There is no response.

9 Is there any member of the jury panel expressed or
10 formed an opinion in any way about the facts in this case?
11 If so, would you please stand.

12 (No response)

13 THE COURT: Is there a member of the jury panel aware
14 of any bias or prejudice that would interfere with your
15 ability to be a fair juror if selected in this case? If so,
16 would you please stand. You don't believe you could be a
17 fair juror in this case?

18 MS. BELUSKOV: I know De'Nia. I just recognized her.

19 THE COURT: Okay. So earlier I asked if you ---

20 MS. BELUSKOV: I had looked and I -- yeah.

21 THE COURT: Okay. So you know her socially?

22 MS. BELUSKOV: Yeah, I know about her life. So, yes.

23 THE COURT: Would that -- the fact that you know her,
24 would that interfere with your ability to be a fair juror in
25 this case?

1 MS. BELUSKOV: I think so.

2 THE COURT: All right. Well, if you don't believe you
3 could be fair then you don't need to respond to any of my
4 other questions. I'll excuse you from the trial of this
5 case. If you'd remain seated there. What's your name,
6 please?

7 MS. BELUSKOV: Bridget Beluskov.

8 THE COURT: All right. Thank you, ma'am. I'll excuse
9 you from the trial of this case.

10 Is there any member of the jury panel who is a
11 contributing member of any organization whose primary
12 concern is that of the promotion of law enforcement or
13 victim's rights such as MADD, or SADD, an organization known
14 as CAVE or PAR? If you're a contributing member of any of
15 those organizations, would you please stand.

16 (No response)

17 THE COURT: Thank you. There's no response.

18 Is there any member of the jury panel ever been the
19 victim of a violent crime whereby you were burglarized or
20 robbed? If you've been a -- a crime of violence against the
21 person any, if any of you have been the victim of such an
22 offense, would you please stand at this time. All right.
23 Your name, please.

24 MS. EPPS: Miranda Epps.

25 THE COURT: And when was it that you were a victim?

1 MS. EPPS: About two years ago.

2 THE COURT: All right. And was it an attack upon you
3 or was it a property offense?

4 MS. EPPS: It was a home invasion.

5 THE COURT: Okay. The fact that you had this occur to
6 you approximately a couple of years ago, would that affect
7 your ability to be a fair juror in this case? In other
8 words, we're going to decide this case on what evidence
9 comes out of this courtroom, the testimony that's given, any
10 documentary evidence, the law that I give you. Do you
11 believe that this event that happened in your life some two
12 years ago would affect your ability to be a fair juror?

13 MS. EPPS: No, sir, I don't.

14 THE COURT: You could be fair to the State of South
15 Carolina and you could be fair to both of these Defendants?

16 MS. EPPS: Yes, sir.

17 THE COURT: All right. Thank you. Again, your name,
18 please?

19 MS. EPPS: Miranda Epps.

20 THE COURT: Thank you very much.

21 Is there any member of the jury panel or a member of
22 your immediate family involved in law enforcement in any
23 way? If so, would you please stand. All right. Your name,
24 please, on the front row?

25 MS. BROWN: Jody Brown.

1 THE COURT: All right. Is it you or a family member?

2 MS. BROWN: Ex-husband.

3 THE COURT: Your ex-husband ---

4 MS. BROWN: But my son's father.

5 THE COURT: Your son's father is in law enforcement.

6 And where is he in law ---

7 MS. BROWN: The City of Travelers Rest.

8 THE COURT: Okay. If you'd remain standing just a
9 moment. Yes, ma'am, your name, please.

10 MS. GENCO: Tammy Genco.

11 THE COURT: And what relative do you have in law
12 enforcement?

13 MS. GENCO: My husband is with the highway patrol.

14 THE COURT: Highway patrol. All right. If you'd
15 remain standing. Yes, ma'am, your name, please.

16 MS. JOLLY: Jamie Jolly.

17 THE COURT: And what relative do you have?

18 MS. JOLLY: My father-in-law works for Greenville
19 County.

20 THE COURT: Works for Greenville County?

21 MS. JOLLY: He's a deputy.

22 THE COURT: All right. Those of you who are standing,
23 the fact that you have relatives or former relatives who've
24 been in law enforcement, again I ask you the question, do

1 you believe this will interfere with your ability to be a
2 fair juror? Will it taint in any way your ability to listen
3 to all the evidence, to weigh the testimony that's given and
4 all the evidence that's presented in light of the law that I
5 give you?

6 If you feel, those of you standing, if you feel you
7 could be a fair juror in this case to both the Defendants
8 and to the State, I'm going to ask if you would be seated.
9 If you feel for any reason you can't be a fair juror, please
10 remain standing.

11 (Whereupon all jurors were seated)

12 **THE COURT:** Let the record reflect that all the jurors
13 have been seated.

14 At this time I'm going to ask the attorneys, if you
15 would, please, stand and introduce yourselves to the jury.
16 Solicitor.

17 **MS. SALISBURY:** May it please the Court, Your Honor.
18 Good afternoon, ladies and gentlemen. My name is Katryna
19 Salisbury. I'm an assistant solicitor here in Greenville
20 County. I prosecute cases for the Thirteenth Circuit.

21 **THE COURT:** Thank you. Mr. Ianuario.

22 **MR. IANUARIO:** Good afternoon, ladies and gentlemen.
23 My name is Robert Ianuario. I'm a public defender. And I'm
24 working with Mr. Lomax and representing him in this matter.

25 **THE COURT:** Ms. Gorton.

1 **MS. GORTON:** I'm Cass Gorton. I'm also an attorney.
2 I'm court appointed. And I represent De'Nia.

3 **THE COURT:** Thank you. Is there any member of the jury
4 panel related by blood or marriage to any of these
5 attorneys? If so, would you please stand. Or their
6 offices, anybody in their offices, if you're related by
7 blood or marriage.

8 (No response)

9 **THE COURT:** Is there any member of the jury panel who
10 has a close business, or a social or a personal relationship
11 with anyone -- any of these attorneys or members of their
12 staff or their offices? If so, would you please stand.

13 (No response)

14 **THE COURT:** Thank you. There's no response.

15 Is there any member of the jury panel ever been
16 involved in any litigation in which either of these
17 attorneys represented either you or the opposing side? If
18 you've ever been involved in litigation where they
19 represented you or were on the opposing side would you
20 please stand.

21 (No response)

22 **THE COURT:** Thank you. There is no response.

23 It bears repeating, I've said it, ladies and gentlemen,
24 the State of South Carolina, Mr. Lomax, Ms. Dawkins, they
25 deserve to have fair jurors to hear this case. Is there any

1 member of the jury panel aware of any reason whatsoever that
2 you believe in this case you could not be fair to both the
3 State and to the Defendants, render a verdict that would be
4 based on the truth, the evidence that's presented, the law
5 that I give you and that alone? If for any reason you
6 believe you could not be a fair juror, would you please
7 stand.

8 (No response)

9 THE COURT: Thank you. There is no response.

10 Any other questions from the State?

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

12 THE COURT: From the Defense? Any other questions?

13 MS. GORTON: No, Your Honor.

14 MR. IANUARIO: No, Your Honor.

15 THE COURT: All right. Let's empanel our jury.

16 MADAME CLERK: All right. When I call your name if
17 you'll please stand in place and wait for further
18 instructions. Juror 120, Elizabeth Klotz.

19 (Whereupon a white female stood)

20 MADAME CLERK: What says the State?

21 MS. SALISBURY: Please present Ms. Klotz.

22 MADAME CLERK: What says the Defendant?

23 MS. GORTON: Present.

24 MR. IANUARIO: Present.

25 MADAME CLERK: All right. Ma'am, please come have a

1 seat. Bring your things, come and have a seat in the jury
2 box. Juror 75, Rose Grant.

3 (Whereupon a black female stood)

4 MADAME CLERK: What says the State?

5 MS. SALISBURY: Please present Ms. Grant.

6 MADAME CLERK: What says Defendant Lomax?

7 MS. GORTON: Present.

8 MR. IANUARIO: Please present the juror.

9 MADAME CLERK: All right. Thank you. Please come have
10 a seat in the jury box. Juror 230, John Williamson.

11 (Whereupon a white male stood)

12 MADAME CLERK: What says the State?

13 MS. SALISBURY: Please present Mr. Williamson.

14 MADAME CLERK: What says Defendant Lomax?

15 MS. GORTON: I'm Dawkins.

16 MADAME CLERK: All right.

17 MS. GORTON: Strike..

18 MADAME CLERK: Defendant Dawkins. All right. Thank
19 you. You may be seated. You have been excused from this
20 case. Juror 159, Shelia Posley.

21 (Whereupon a black female stood)

22 MADAME CLERK: What says the State?

23 MS. SALISBURY: Please excuse Ms. Posley.

24 MADAME CLERK: All right. You may be seated, ma'am.

25 Juror 92, Mandy Hartsoe.

1 (Whereupon a white female stood)

2 MADAME CLERK: What says the State?

3 MS. SALISBURY: Please present Ms. Hartsoe.

4 MADAME CLERK: What says the Defendants?

5 MS. GORTON: Strike, please.

6 MADAME CLERK: All right. You may be seated, please.

7 That is a strike for Defendant Dawkins. Juror number 3,

8 John Adams.

9 (Whereupon a white male stood)

10 MADAME CLERK: What says the State?

11 MS. SALISBURY: Please present Mr. Adams.

12 MADAME CLERK: What says Defendant Lomax?

13 MR. IANUARIO: Please strike the juror.

14 MADAME CLERK: Strike the juror. All right. Strike
15 for Mr. Lomax. All right. Thank you. Juror 100, Rudolph
16 Hill.

17 (Whereupon a black male stood)

18 MADAME CLERK: What says the State?

19 MS. SALISBURY: Please present Mr. Hill.

20 MADAME CLERK: What says Defendant Lomax?

21 MR. IANUARIO: Please present the juror.

22 MADAME CLERK: What says Defendant Dawkins?

23 MS. GORTON: Present.

24 MADAME CLERK: Thank you very much. Mr. Hill, would
25 you please come have a seat in the jury box. Juror number

1 2, Charles Adams.

2 (Whereupon a white male stood)

3 MADAME CLERK: What says the State?

4 MS. SALISBURY: Please present Mr. Adams.

5 MADAME CLERK: What says Defendant Lomax?

6 MR. IANUARIO: Please strike the juror.

7 MADAME CLERK: All right. Sir, you may be seated.

8 Juror 157, Stacy Plunkett.

9 (Whereupon a white female stood)

10 MADAME CLERK: What says the State?

11 MS. SALISBURY: Your Honor, may we approach briefly?

12 THE COURT: Yes, ma'am.

13 (Whereupon a bench conference was held off the record
14 in the presence of the jurors, but out of their hearing)

15 (Whereupon the bench conference was ended)

16 MADAME CLERK: What says the State?

17 MS. SALISBURY: Please present Ms. Plunkett.

18 MADAME CLERK: What says Defendant Lomax?

19 MS. GORTON: Strike.

20 MADAME CLERK: Thank you. Please be seated, ma'am.

21 Juror 240, Linda Turner.

22 (Whereupon a white female stood)

23 MADAME CLERK: What says the State?

24 MS. SALISBURY: Please present Ms. Turner.

25 MADAME CLERK: What says Defendant Lomax?

1 MR. IANUARIO: Please present the juror.

2 MADAME CLERK: What says Defendant Dawkins?

3 MS. GORTON: Present.

4 MADAME CLERK: Ma'am, please bring your things, have a
5 seat in the jury box. Juror 39, Tammie Capps.

6 (Whereupon a white female stood)

7 MADAME CLERK: What says the State?

8 MS. SALISBURY: Please present Ms. Capps.

9 MADAME CLERK: What says Defendant Lomax?

10 MR. IANUARIO: Please present the juror.

11 MADAME CLERK: What says Defendant Dawkins?

12 MS. GORTON: Present.

13 MADAME CLERK: All right. Ma'am, please be seated in
14 the jury box. Juror 22, Cristi Boling.

15 (Whereupon a white female stood)

16 MADAME CLERK: What says the State?

17 MS. SALISBURY: Please present Ms. Boling.

18 MADAME CLERK: What says Defendant Lomax?

19 MR. IANUARIO: Please excuse the juror.

20 MADAME CLERK: All right. You may be seated. You have
21 been excused from this case. Juror 70, Tammie Genco.

22 (Whereupon a female stood - race unknown)

23 MADAME CLERK: What says the State?

24 MS. SALISBURY: Please present Ms. Genco.

25 MADAME CLERK: What says Defendant Lomax?

1 MR. IANUARIO: Please excuse the juror.

2 MADAME CLERK: All right. You may be seated, Ms.

3 Genco. Juror 183, Michael Sijon.

4 (Whereupon a white male stood)

5 MADAME CLERK: What says the State?

6 MS. SALISBURY: Please present Mr. Sijon.

7 MADAME CLERK: What says Defendant Lomax?

8 MR. IANUARIO: Please excuse the juror.

9 MADAME CLERK: All right. You may be seated, sir.

10 Juror 167, John Reid.

11 (Whereupon a white male stood)

12 MADAME CLERK: What says the State?

13 MS. SALISBURY: Please present Mr. Reid.

14 MADAME CLERK: What says Defendant Lomax?

15 MR. IANUARIO: Please excuse the juror.

16 MADAME CLERK: All right. You may be seated, sir.

17 Juror 221, James Warren.

18 (Whereupon a white male stood)

19 MADAME CLERK: What says the State?

20 MS. SALISBURY: Please present Mr. Warren.

21 MADAME CLERK: What says the Defendants?

22 MR. IANUARIO: Please present the juror.

23 MADAME CLERK: All right. Ms. Dawkins?

24 MS. GORTON: Excuse, please.

25 MADAME CLERK: Thank you. You may be seated, sir.

1 Juror 51, David Dayton.

2 (Whereupon a white male stood)

3 MADAME CLERK: What says the State?

4 MS. SALISBURY: Please present Mr. Dayton.

5 MADAME CLERK: What says Defendant Lomax?

6 MR. IANUARIO: Please excuse the juror.

7 MADAME CLERK: All right. You may be seated, sir.

8 Juror 64, Jessica Fisher.

9 (Whereupon a white female stood)

10 MADAME CLERK: What says the State?

11 MS. SALISBURY: Please present Ms. Fisher.

12 MADAME CLERK: What says Defendant Lomax?

13 MR. IANUARIO: Please present the juror.

14 MADAME CLERK: What says Defendant Dawkins?

15 MS. GORTON: Please present.

16 MADAME CLERK: All right. Ma'am, please, will you

17 please have a seat in the jury box. Juror 72, Sara Goetz.

18 (Whereupon a white female stood)

19 MADAME CLERK: What says the State?

20 MS. SALISBURY: Please present Ms. Goetz.

21 MADAME CLERK: What says Defendant Lomax?

22 MR. IANUARIO: Please present the juror.

23 MADAME CLERK: What says Defendant Dawkins?

24 MS. GORTON: Present, please.

25 MADAME CLERK: All right. Ma'am, please have a seat in

1 the jury box. Juror 60, Miranda Epps.

2 (Whereupon a white female stood)

3 MADAME CLERK: What says the State?

4 MS. SALISBURY: Please present Ms. Epps.

5 MADAME CLERK: What says Defendant Lomax?

6 MR. IANUARIO: Please present the juror.

7 MADAME CLERK: What says Defendant Dawkins?

8 MS. GORTON: Excuse, please.

9 MADAME CLERK: All right. Ma'am, you may be seated.

10 You have been excused from this case. Juror 199, Diane

11 Sullivan.

12 (Whereupon a white female stood)

13 MADAME CLERK: What says the State?

14 MS. SALISBURY: Please present Ms. Sullivan.

15 MADAME CLERK: What says Defendant Lomax?

16 MR. IANUARIO: Please present the juror.

17 MADAME CLERK: What says Defendant Dawkins?

18 MS. GORTON: Please present.

19 MADAME CLERK: All right. Ma'am, please take a seat in

20 the jury box. Juror 87, Suelane Hannah.

21 (Whereupon a white female stood)

22 MADAME CLERK: What says the State?

23 MS. SALISBURY: Please present Ms. Hannah.

24 MADAME CLERK: What says Defendant Lomax?

25 MR. IANUARIO: Please present the juror.

1 MADAME CLERK: What says Defendant Dawkins?

2 MS. GORTON: Please present.

3 MADAME CLERK: Ma'am, please have a seat in the jury
4 box. Juror 223, Marissa Webb.

5 (Whereupon a white female stood)

6 MADAME CLERK: What says the State?

7 MS. SALISBURY: Please present Ms. Webb.

8 MADAME CLERK: What says Defendant Lomax?

9 MR. IANUARIO: Please present the juror.

10 MADAME CLERK: What says Defendant Dawkins?

11 MS. GORTON: Please present.

12 MADAME CLERK: All right. Ma'am, have a seat in the
13 jury box, please. Juror 158, Janet Pomponio.

14 (Whereupon a female stood - race unknown)

15 MADAME CLERK: What says the State?

16 MS. SALISBURY: Please present Ms. Pomponio.

17 MADAME CLERK: What says Defendant Lomax?

18 MR. IANUARIO: Please present the juror.

19 MADAME CLERK: What says Defendant Dawkins?

20 MS. GORTON: Please present.

21 MADAME CLERK: All right. Ma'am, have a seat in the
22 jury box, please. Juror 147, Adam Owens.

23 (Whereupon a white male stood)

24 MADAME CLERK: What says the State?

25 MS. SALISBURY: Please present Mr. Owens.

1 MADAME CLERK: What says Defendant Lomax?

2 MR. IANUARIO: Please excuse the juror.

3 MADAME CLERK: All right. Sir, you may be seated.
4 Juror 11, Teresa Ashley.

5 (Whereupon a white female stood)

6 MADAME CLERK: What says the State?

7 MS. SALISBURY: Please present Ms. Ashley.

8 MADAME CLERK: What says Defendant Lomax?

9 MR. IANUARIO: Please present the juror.

10 MADAME CLERK: What says Defendant Dawkins?

11 MS. GORTON: Please excuse.

12 MADAME CLERK: All right. Ma'am, you may be seated.

13 Juror 215, Rhonda Turner.

14 (Whereupon a white female stood)

15 MADAME CLERK: What says the State?

16 MS. SALISBURY: Please present Ms. Turner.

17 MADAME CLERK: What says Defendant Lomax?

18 MR. IANUARIO: Please present the juror.

19 MADAME CLERK: What says Defendant Dawkins?

20 MS. GORTON: Please excuse.

21 MADAME CLERK: All right. Ma'am, you may be seated.

22 You have been excused. Juror 164, Nicole Ramsbey.

23 (Whereupon a white female stood)

24 MADAME CLERK: What says the State?

25 MS. SALISBURY: Please present Ms. Ramsbey.

1 MADAME CLERK: What says Defendant Lomax?

2 MR. IANUARIO: Please present the juror.

3 MADAME CLERK: What says Defendant Dawkins?

4 MS. GORTON: Please present.

5 MADAME CLERK: All right. Ma'am, please have a seat in
6 the jury box. And for our alternate, juror 166, John Reese.

7 (Whereupon a white male stood)

8 MADAME CLERK: What says the State?

9 MS. SALISBURY: Please present Mr. Reese.

10 MADAME CLERK: What says Defendant Lomax?

11 MR. IANUARIO: Please present the juror.

12 MADAME CLERK: All right. What says Defendant Dawkins?

13 MS. GORTON: Please present.

14 MADAME CLERK: All right. Sir, please have a seat in
15 the jury box.

16 (Whereupon the Clerk was conferring with the Court)

17 MADAME CLERK: Juror 234, Allen Young.

18 (Whereupon a black male stood)

19 MADAME CLERK: What says the State?

20 MS. SALISBURY: Please excuse Mr. Young.

21 MADAME CLERK: All right. Mr. Young, you may be
22 seated. Juror 219, Kevin Wallace.

23 (Whereupon a white male stood)

24 MADAME CLERK: What says the State?

25 MS. SALISBURY: Please present Mr. Wallace.

1 MADAME CLERK: What says Defendant Lomax?

2 MR. IANUARIO: Please excuse the juror.

3 MADAME CLERK: All right. Sir, you may be seated.

4 Juror 196, Kathryn Stanford.

5 (Whereupon a white female stood)

6 MADAME CLERK: What says the State?

7 MS. SALISBURY: Please present Ms. Stanford.

8 MADAME CLERK: What says Defendant Lomax?

9 MR. IANUARIO: Please present the juror.

10 MADAME CLERK: What says Defendant Dawkins?

11 MS. GORTON: Please strike.

12 MADAME CLERK: All right. Ma'am, you may be seated.

13 Juror 222, Derrius Watson.

14 (Whereupon a black male stood)

15 MADAME CLERK: What says the State?

16 MS. SALISBURY: Please present Mr. Watson.

17 MADAME CLERK: What says Defendant Lomax?

18 MR. IANUARIO: Please present the juror.

19 MADAME CLERK: What says Defendant, Ms. Dawkins?

20 MS. GORTON: Please present.

21 MADAME CLERK: All right. Sir, please have a seat in
22 the jury box.

23 THE COURT: Are there any legal matters that we need to
24 take care of as far as the selection of the jury in this
25 case? Anything from the State?

1 **MS. SALISBURY:** Yes, Your Honor, I believe I do have a
2 matter.

3 **THE COURT:** Okay. Anything from the Defense? Any
4 matters from the Defense?

5 **MR. IANUARIO:** No, Your Honor.

6 **MS. GORTON:** No.

7 **THE COURT:** Okay. Ladies and gentlemen, what I need
8 you to do is go back to your jury room. Ms. Sims will show
9 you where you are. And, of course, you shouldn't be
10 discussing the case. We've got a matter of law that we need
11 to take care of.

12 My job is to rule on legal matters and yours, of
13 course, will be to -- all the jurors will be to rule on
14 factual matters. So if you'll go back there just for a few
15 minutes, we'll call you back just as soon as we can. Just
16 get to know each other. And if you'll stay back there just
17 for a few moments. If you'll go with the bailiff at this
18 time.

19 (Whereupon the jury exited the courtroom at 3:54 pm)

20 **THE COURT:** Ladies and gentlemen that were not
21 selected, I need for you to hang close by, but I need you to
22 go, if you would, with Mr. Dougherty. He's going to take
23 you into courtroom number 7. If you'll just have a seat
24 there, he'll let you in. And we'll call you back just as
25 quick as we can. If you'll just -- I'll give you time to

1 get over there. If you'll just stay just for a few moments
2 in courtroom 7.

3 (Whereupon the remaining jurors exited the courtroom at
4 3:55 pm)

5 **THE COURT:** All right. Solicitor, I believe you have a
6 legal matter that you wanted to raise with the Court.

7 **MS. SALISBURY:** I do, Your Honor. The State is
8 prepared to make a Batson motion based on my record-keeping
9 during jury selection. The Defendants struck every white
10 male. And I believe that at that point it appears that
11 they're -- appears to be a purposeful discrimination against
12 those white males in the jury pool.

13 **THE COURT:** All right. I'll be glad to hear from
14 Defense attorneys on the striking as to the non-gender
15 racial ...

16 **MR. IANUARIO:** We made strikes -- first of all, there
17 wasn't a large significant -- a large portion of white males
18 to choose from. It seemed like it was mainly women.

19 One of the strikes was wearing red, which is a gang
20 color, this being a gang crime where we don't want any
21 possible affiliations with that.

22 The other strikes we made for non-racial, non-gender
23 purposes. And it just so happened that what we selected was
24 mainly women.

25 **MS. GORTON:** I'm not sure if she's referring to one of

1 us or both of us, but I think that I might have struck some
2 white men and he might have struck some white men.

3 But, Your Honor, I go on eye contact. And the white
4 men, I don't know if it's a cultural thing, but the white
5 men were not making eye contact with me. The women that I
6 accepted were making contact with me, even the extremely
7 conservative looking woman in the front row. So that's what
8 I went by.

9 THE COURT: Were you raising it as to both Defendants,
10 Solicitor?

11 MS. SALISBURY: Well, Judge, to the extent that both
12 Defendants systematically struck every white male in the
13 jury pool, I assume so.

14 THE COURT: Mr. Ianuario, did -- my records show that
15 you struck seven out of nine. You had nine strikes and you
16 struck seven white males. Is that correct or maybe you can
17 look at your list. I want to make sure that my notes ---

18 MR. IANUARIO: I wasn't ---

19 THE COURT: --- would be right.

20 MR. IANUARIO: --- making a strike on the basis of race
21 or gender, or keep track of that. I struck on the
22 impression I got from some of the clients or some of the
23 potential jurors. And I believe one of them stated she had
24 some law enforcement ---

25 THE COURT: Well, we're talking about the males now,

1 the white males.

2 MR. IANUARIO: I had no objection with the white male
3 that was called for the alternate. We didn't have a lot of
4 white males to choose from. If you want to play by the same
5 rules, we don't have a lot of black women on the jury, but
6 there weren't a lot to choose from either. We have to work
7 with what we have.

8 THE COURT: All right. Let's just go down them one by
9 one. First white male that was struck is number 3. Or
10 we'll just go down the printed side on the right, number 3.
11 That was challenged by Ms. Gorton. Was that, again, on the
12 eye contact?

13 MS. GORTON: It would be, Your Honor. I'm not very
14 good with faces and memory. I don't even remember what this
15 gentleman looks like. But if they weren't willing to look
16 at me, I take that as a sign they're not going to listen to
17 me. So I don't pick people who don't look at me regardless
18 of their gender.

19 THE COURT: Mr. Ianuario, do you have an articulatable
20 reason why you struck number 6?

21 MR. IANUARIO: With all due respect, Your Honor, I
22 don't remember who number 6 was. I ---

23 THE COURT: That would be juror John Adams, Jr.

24 MR. IANUARIO: Again, without recalling what she [sic]
25 looked like, I can't say why I struck him. But I went with

1 the gut reaction that I had.

2 THE COURT: Well, ---

3 MR. IANUARIO: If he looked shifty, I would have struck
4 him. If he looked just like a white man, I wouldn't have.
5 You know, if it was a black woman giving me a shifty
6 impression, I would have struck her as well.

7 THE COURT: Well, -- and I understand. But under the
8 Batson analogy can you give me some basis of which you
9 struck that individual?

10 MR. IANUARIO: I didn't like the way he looked at me.
11 That's all I can figure. Without remembering exactly who he
12 is, I base it just upon my, you know, instinctive reaction,
13 not a strategy to get a jury of all white men or a jury free
14 of white men, just on the basis of the feeling I got from
15 him.

16 If you wish to call in each of the ones I struck, I'll
17 happily say I struck this one because of this ---

18 THE COURT: That's what I'm doing. I'm calling you the
19 names of those you struck.

20 MR. IANUARIO: Without looking at their face, Your
21 Honor, I really don't remember who was what.

22 THE COURT: Well, how are we going to get a fair and
23 impartial jury here if you can't tell me the reasons that
24 you struck certain jurors other than he didn't look at me
25 right?

1 MR. IANUARIO: If you let me put a face with a name, I
2 can tell you. Just going on the basis of a name and a
3 number, there were forty-five people in here who went quick,
4 and I don't have that good of a memory.

5 (Pause)

6 MS. GORTON: Judge, I'm getting out the chart we had
7 done ---

8 THE COURT: All right.

9 MS. GORTON: --- to try -- could you tell us where
10 these jurors were sitting by the number?

11 THE COURT: No, ma'am.

12 MR. IANUARIO: How many white men were in the pool of
13 forty-five, Your Honor?

14 THE COURT: Of those that were called, there were ten
15 of thirty-four, of thirty-three. One-third were white
16 males.

17 MR. IANUARIO: Okay. How many white females did we
18 strike? And if it's statistically relevant and within the
19 -- if there's no statistically significant difference and
20 all the white males are adequately represented, we work with
21 what were called.

22 THE COURT: You struck two white females.

23 MR. IANUARIO: How many did Ms. Gorton strike?

24 THE COURT: Again, I thought maybe y'all kept a record.
25 Maybe the State could -- may have a different record. She

1 struck five. He struck two.

2 MR. IANUARIO: I tell you, Your Honor, there's just --
3 there's no scheme or plan here. It's the reaction which I
4 get from -- when I look at them.

5 THE COURT: Can you tell me why we don't have any white
6 males on the jury then?

7 MR. IANUARIO: One of them looked like he might be a
8 Bob Joneser, strictly conservative. I have issues with that
9 any time I go to trial.

10 One of them, I didn't really like the way he looked at
11 my client. I didn't like the way he looked at me. I didn't
12 get a good fuzzy feeling from him.

13 Most of those I just struck on the basis of I didn't
14 like them for whatever reason. Race, gender, nothing to do
15 with it. Did they look at my client, make eye contact? Did
16 they stare me down? Did they look like they'd be fair and
17 open-minded or did they look like any potential person that
18 could be accused of these crimes, must automatically be
19 guilty?

20 THE COURT: Anything else from the State as far as the
21 challenge?

22 MS. SALISBURY: Nothing, Your Honor. I'll leave it to
23 the Court's discretion.

24 (Pause)

25 THE COURT: Well, based upon the totality, while I

1 don't think that the reasons given have been very articulate
2 by the Defense, I can't say as I find them pretextual, but
3 unfortunately don't have more of a basis. And the burden
4 being on the moving party, I'll overrule your objection, Ms.
5 -- Madame Solicitor, ---

6 MS. SALISBURY: Thank you, Your Honor.

7 THE COURT: --- and allow the jurors to be seated. All
8 right. Mr. Dougherty, you can dismiss our other jurors in
9 courtroom number 7 and have them go back downstairs. All
10 right.

11 I'll be glad to hear from you, Solicitor, about the
12 record on the first potential -- our first couple of -- are
13 there any criminal records on any of the first few
14 witnesses?

15 MS. SALISBURY: The State's first set of witnesses,
16 actually, Judge, I'll just start with the victim. I've
17 prepared or had my investigator prepare fresh NCIC reports
18 as of this morning.

19 With regard to Mr. Benson, I'm showing that he is
20 participating, I believe, in the tail-end of a conditional
21 discharge for a possession of cocaine base conviction. And
22 I'm sure this Court is aware of the procedure by which a
23 conditional discharge is effected. And it's the State's
24 position that that conviction is not a conviction to the
25 extent that it's appropriate for cross examination and

1 impeachment purposes.

2 THE COURT: That's all he's got?

3 MS. SALISBURY: Well, now that I look at it, Judge, I
4 see an April 2011 conviction or maybe July 2011 conviction
5 for possession of marijuana, but I take the position that
6 that is not eligible ---

7 THE COURT: Simple possession of marijuana?

8 MS. SALISBURY: Yes, Judge.

9 THE COURT: Okay. All right. What's the Defense
10 position on impeachment?

11 MS. GORTON: Judge, the Defense position that is that
12 first of all in Detective Hoover's report on 7/24/11 he
13 indicates he called the victim in this case and updated him.
14 He actually chuckled and he advised that he had heard of
15 Young. Keep in mind that Young ---

16 THE COURT: He had what?

17 MS. GORTON: He had heard of Young.

18 THE COURT: Okay.

19 MS. GORTON: Keep in mind that Young is the leader of
20 the Gangster Disciples. Now the big issue in this case is
21 whether they came to rob a drug dealer or whether this was a
22 set-up by De'Nia.

23 Now he denied when he spoke with the police that she
24 was there to buy pot. She told them that she was. This was
25 her first statement as she was arrested.

1 They thought that it was drug related. The
2 investigators thought that it was drug related. That's
3 throughout the reports. He was shot. He talks about a clip
4 going missing out of the gun when he wrestled with the guy.
5 And then the police show up at the door five minutes later.
6 There's no bullets, there's no casing, there's no clip and
7 there's no marijuana.

8 Ms. Dawkins will be testifying that when she started to
9 leave to go get change with him that there was a jar of
10 marijuana sitting on his dresser. And she can describe that
11 jar. So a big part of our case is to establish that he was
12 a marijuana dealer.

13 She's also going to be talking extensively about where
14 he kept the marijuana and how he kept it throughout the time
15 they were dating. They dated for three years. They had
16 broke up while she was in college and had just recently
17 started getting back together.

18 So this issue of marijuana is significant. I
19 anticipate that he will continue denying that this was about
20 marijuana. And I need to be able to establish that, yes, it
21 was.

22 And it's up to the jury to decide whether she was
23 involved with the marijuana issue or not, but I hope to be
24 able to show that the gang -- people knew that he was a
25 marijuana dealer and took it upon themselves. They used her

1 to find out where he was, but they knew about him. They
2 knew each other. They were rivals. And so it's terribly
3 relevant and terribly significant.

4 Furthermore, Your Honor, Ms. Salisbury hasn't raised
5 this yet, but I also have a recording of the victim offering
6 for five thousand dollars not to appear in court. You take
7 that under the totality of the circumstances that he
8 repeatedly refused to cooperate with law enforcement, I
9 don't believe he actually came in until July 13th, perhaps,
10 and even at that he only came in to get a report of this
11 event because he was threatened with eviction. He wasn't
12 coming to talk to the officer like the officer had asked him
13 to, he actually came in for an original of the report and
14 then was escorted to the officer.

15 He was evicted. He's going to say that it was because
16 of what this -- what happened here. I would submit to Your
17 Honor that, again, his marijuana dealings are relevant as to
18 why he was actually evicted.

19 He was pulled over. The possession with intent to
20 distribute -- the marijuana was found in the same place that
21 she'll be testifying that he kept it in throughout their
22 relationship, which was his center console of his car along
23 with crack cocaine. And I think it's relevant, Your Honor.
24 If you'd like, I'll play the recording.

25 THE COURT: I guess we're talking about the conviction

1 of the crime. You consider that to be impeachable under
2 609?

3 MS. GORTON: No, Your Honor. I don't think a
4 conviction is required. I think under the case law that we
5 have wide latitude in establishing motive and bias and that
6 he did not want the police to find out that this was drug
7 related. And he or his roommates hid evidence that this was
8 drug related.

9 THE COURT: So you do not intend to cross examine him
10 on prior convictions?

11 MS. GORTON: No, Your Honor, I intend to cross examine
12 him on his arrest and where the marijuana was found, and the
13 tape and the fact that he stated he knew of Young.

14 THE COURT: Okay. So as far as the prior criminal
15 record, I gather that's not going to be an issue since ---

16 MS. SALISBURY: No, it doesn't sound like the prior
17 record's an issue. Obviously, I take issue with any
18 examination regarding a non-conviction or a pending charge.
19 I don't know that there are any pending charges, but I don't
20 believe that's appropriate cross examination. It's not
21 appropriate impeachment to ask about arrests.

22 THE COURT: I gather she wasn't going to ask about
23 arrests. She was just going to ask about use of marijuana.

24 MS. GORTON: I was going to ask whether he keeps
25 marijuana in his car. And he's going to say no. And then I

1 would use the arrest report as impeachment. He does keep
2 marijuana in his car, Your Honor. He keeps it in his center
3 console.

4 MS. SALISBURY: Your Honor, it's my understanding of
5 the rules that Defendants aren't entitled to offer extrinsic
6 evidence as part of that type of impeachment.

7 THE COURT: How would that be relevant that he was
8 arrested, that he keeps it in his car?

9 MS. GORTON: That he is a marijuana dealer, that this
10 was a drug robbery, that she had ---

11 THE COURT: Well, I understand where you're coming from
12 on that, but how does the prior conviction relate to that?

13 MS. GORTON: It establishes that she's telling the
14 truth when she said that he keeps marijuana, he sells
15 marijuana ---

16 THE COURT: Okay.

17 MS. GORTON: And he's got it in his room and he's got
18 it in his car.

19 THE COURT: But what does that have to do with the
20 conviction? Again, saying all that evidence is admissible
21 for whatever reason that he uses marijuana, but -- or that
22 he keeps it in his car ---

23 MS. GORTON: Yes.

24 THE COURT: How do you tie that into the prior
25 conviction? Was there an other conviction relating to an

1 automobile, possession of marijuana, or was it in the home
2 or was he using it on the corner somewhere? How ---

3 MS. GORTON: I don't know where prior conviction is
4 coming from, Your Honor.

5 THE COURT: Well, ---

6 MS. GORTON: I'm not ---

7 THE COURT: --- that's what we're having this hearing
8 on is whether or not you can impeach him on a prior
9 conviction as far as his credibility.

10 MS. GORTON: I didn't claim he even had any. He had an
11 arrest.

12 THE COURT: Okay. An arrest only, not a conviction?

13 MS. GORTON: That's my understanding. It's my
14 understanding that they have taken that and sent it into
15 conditional discharge, which is not public record. I have
16 no way of knowing that.

17 THE COURT: But how can the arrest come in under prior
18 bad acts?

19 MS. GORTON: I believe that the case law says that I'll
20 be able to do that especially when I establish that that is
21 our defense, that it relates directly to our defense as to
22 what happened.

23 THE COURT: But can't you establish your defense
24 without mentioning arrest or conviction? Your defense, I
25 gather, is that he uses marijuana.

1 **MS. GORTON:** I suppose if he admits that he's a
2 marijuana dealer, I don't need to impeach him by presenting
3 that he does keep it in his car and that it's in the volume
4 that it is. If he wants to admit that he's a marijuana
5 dealer so that I can argue that that's what was going on.
6 But if he denies that, if he denies that he -- that she was
7 there to buy marijuana, then I've got to be able to impeach
8 him. She went there to buy marijuana.

9 **THE COURT:** And your impeachment is that from other
10 witnesses that he sells marijuana or that he was arrested
11 some time in the past?

12 **MS. GORTON:** Well, I'm going to ask him -- he's in
13 here, Your Honor. He's listening to all of this. And I'm
14 revealing my defense. I'm going to ask him, do you keep --
15 are you a marijuana dealer, do you keep marijuana in your
16 car? If he says no, then I think I should be able to
17 present that, yeah, they stopped him, he had marijuana in
18 his car.

19 (Pause)

20 **MS. GORTON:** Judge, what I'm looking at is State v.
21 Jones. This subsection of rule 608 preserves South Carolina
22 precedent holding that generally anything having a
23 legitimate tendency to throw light on the accuracy,
24 truthfulness and sincerity of a witness may be shown and
25 considered in determining the credit to be afforded his

1 testimony.

2 He lied about what this was about. This was a
3 marijuana deal. The only issue is whether she knew they
4 were going to rob him before she went in to buy her pot or
5 whether she knew after. He didn't tell the truth. He said
6 it was about a ride and her owing money.

7 (Pause)

8 MS. GORTON: Not only do we have State v. Brown that
9 tells us that, we have State v. Baker, 390 SC 56, Court of
10 Appeals 2010. We have State v. Burgess, 393 SC 396, Court
11 of Appeals 2011.

12 You know, in one of those cases, Burgess or Baker, they
13 were talking about a Rape Shield Statute. They were talking
14 about something that specifically by statute is protected.
15 But in that case, because it went to the core of the
16 defense, they said, no, that you can open it up on that.

17 THE COURT: Would that not go to his truthfulness,
18 Solicitor, under rule 608?

19 MS. SALISBURY: No, Your Honor. I think that in the
20 event of the impeaching party offering evidence of a
21 specific instance of conduct the defendant -- the impeaching
22 party is entitled to inquire about it but is not entitled to
23 prove any of that or offer extrinsic evidence of the subject
24 of that impeachment. And whether or not the victim
25 distributes, sells, uses drugs or any kind is no -- not a

1 character trait involving or implicating truthfulness.

2 MS. GORTON: I'm not submitting it entirely for
3 truthfulness, Your Honor. I'm submitting it primarily for
4 his motive to testify untruthfully. He needs to keep hiding
5 the fact that he was dealing marijuana. It's his motive and
6 bias that I'm looking at, not his truthfulness, although, he
7 happens to be lying about it.

8 THE COURT: Solicitor, disregarding the arrest or
9 conviction for a crime and disregarding whether it goes
10 toward impeachment, would not the Defendant be allowed to
11 bring up marijuana use to show the basis of the defense in
12 this case as to what kind of burglary, robbery, conspiracy
13 was taking place?

14 MS. SALISBURY: Well, Your Honor, to the extent that
15 it's a specific instance of conduct not offered for
16 impeachment as originally, I guess, conceived, but instead
17 offered as an element of the defense, I believe that 405
18 would authorize inquiries into the witness' character trait
19 of being a drug user or drug seller. But, again, I don't
20 believe that that allows any latitude for there to be any
21 presentation of extrinsic evidence to prove those character
22 traits.

23 THE COURT: Meaning the arrest?

24 MS. SALISBURY: Or more generally, drug use generally.
25 It doesn't seem to me that the inquiry is designed to be

1 limited to a single arrest, but instead it's designed to
2 inquire into the victim's habits of using or selling
3 marijuana. And to the extent that that is not an arrest but
4 a specific instance of conduct, I don't believe that there's
5 any rule that authorizes the Defendant to offer extrinsic
6 evidence of proof. I believe that the Defendant's allowed
7 to inquire of the witness to the extent that it supports or
8 helps explain the defense, but I don't believe that there's
9 ---

10 THE COURT: Wouldn't 405(b) allow that?

11 MS. SALISBURY: Again, I ---

12 THE COURT: Based on your argument?

13 MS. SALISBURY: I believe that 405 allows an inquiry
14 into that character trait, but I don't know that short of
15 presenting something independent in their case in chief that
16 there would be an opportunity to rebut the victim's
17 testimony with any extrinsic evidence. I believe that so
18 long as the victim is testifying the only appropriate
19 latitude is that designed by the rules of impeachment.

20 If instead we're not talking about the cross
21 examination and impeachment of the witness, then we're
22 talking about the presentation of independent extrinsic
23 evidence. And if that's what's happening, then that's most
24 probably done in the Defendant's case, the Defendant's
25 presentation of evidence.

1 And if there's evidence to be presented that somehow
2 supports this theory of defense, then that's something that
3 the Defendant can concede when they're preparing their case.
4 But, no, Judge, I don't think that 405 allows cross
5 examination to extend latitude ---

6 **THE COURT:** Okay.

7 **MS. SALISBURY:** --- to the Defendant ---

8 **THE COURT:** Only in the defense then, you're saying not
9 in the cross examination?

10 **MS. SALISBURY:** Yes, Judge. I believe in the
11 affirmative presentation of evidence that the Defendant can
12 call whatever witness they want to to develop their theory
13 of the defense, but in terms of cross examination, I don't
14 believe that's appropriate.

15 **THE COURT:** Isn't that a fair reading of rule 405, Ms.
16 Gorton?

17 **MS. GORTON:** It says in cases where the character, a
18 trait or character of a person is an essential element of a
19 charge claimed or defense.

20 **THE COURT:** Okay. And when you put up your defense,
21 then you'd be able to ...

22 **MS. GORTON:** Judge, are you ruling that if he gets up
23 there and testifies that this was about money she owed him
24 for a ride? I can't cross examine him about this being a
25 drug buy and that he sold marijuana? Is that what I

1 understand the State to be seeking, that I can't cross
2 examine him about what the true purpose of this was?

3 THE COURT: Well, I'm going to allow you leeway on your
4 cross examination, Ms. Gorton, but I don't believe it meets
5 the elements for the arrest or the conviction. If you have
6 evidence relating to the -- for your defense, I'll certainly
7 allow you -- we don't know what the answers are. You're
8 anticipating the answers. The answers may be something
9 totally different. Maybe if we need to have the jury go
10 out, then we can certainly do that at the time.

11 MS. GORTON: I just don't want to offend this Court by
12 violating any rulings that you're making. So ---

13 THE COURT: Well, ---

14 MS. GORTON: --- I'm trying to clarify them.

15 THE COURT: I don't know what the answer is yet. So I
16 ---

17 MS. GORTON: Okay.

18 THE COURT: --- don't know how my ruling can stand yet.

19 MS. GORTON: All right. Thank you.

20 MS. SALISBURY: In an effort to get back on track, very
21 quickly, Judge, the -- another of the State's witness, Mr.
22 Jaquan Boyd, appears to have some pending charges from
23 February of 2011. Again, I take the position that those are
24 not appropriate in the sense that they are pending charges
25 for impeachment, cross examination.

1 For the Court's information I would note that Mr. Boyd
2 has been convicted of simple possession of marijuana and
3 possession of drug paraphernalia, but it's the State's
4 position that neither of those meets the elements of 609.

5 And with regard to Mr. Woodard, Mr. Woodard has a 2007
6 conviction for assault and battery of a high and aggravated
7 nature. And I believe that -- that 609 makes clear that
8 that is crime for which he could be impeached.

9 **THE COURT:** All right. Who is your second witness?
10 Boyd?

11 **MS. SALISBURY:** He's not my second witness, but of the
12 first group ---

13 **THE COURT:** Okay. Boyd was the other one?

14 **MS. SALISBURY:** Yes, Judge.

15 **THE COURT:** Okay.

16 **MS. GORTON:** Judge, Mr. Boyd, his position in this case
17 was that he was not a roommate, that he stayed behind after
18 the shooting. And while he was there the evidence all
19 disappeared. By the time the police arrived there was no
20 shell casing.

21 **THE COURT:** So you believe you can cross examine him on
22 his prior record?

23 **MS. GORTON:** Yes. His prior record was possession with
24 intent to distribute, I believe.

25 **THE COURT:** Simple possession, did you say, ---

1 MS. SALISBURY: Simple possession, Judge, together ---

2 THE COURT: --- and paraphernalia?

3 MS. SALISBURY: --- possession with intent to
4 distribute is pending.

5 THE COURT: Is pending, but not a conviction?

6 MS. GORTON: Yes. I think it also goes to his motive
7 for testifying ---

8 THE COURT: Well, how we going to get pending -- tell
9 me under the rule how you're going to get a non-conviction
10 in ---

11 MS. GORTON: Well, Judge, ---

12 THE COURT: --- under 609?

13 MS. GORTON: Because it goes to motive and bias. If
14 these gentlemen are out on bond and they're engaged in
15 illegal activity, it gives them motive and bias to testify
16 the way they did with the police and the way they are going
17 to today consistently with the police reports.

18 If they're out on bond and they say, yes, this was a
19 marijuana deal, then they don't get -- they violate bond.
20 It's their motive and bias to testify. They're highly
21 motivated to try to convince the jury that this was not
22 about drugs. And it was.

23 THE COURT: Solicitor, is it any different from a plea
24 and pending a sentence for her to cross examine them on the
25 motive to testify and so forth to get a lighter sentence?

1 **MS. SALISBURY:** It's dramatically different. I mean,
2 to the extent that it's an unrelated case, it involves not
3 marijuana, but cocaine base, as I understand it, and was
4 pending before this robbery happened. I mean, no, I think
5 they're dramatically different. It's not -- it's not
6 related to this case to the extent that it involves another
7 drug.

8 And, again, it's -- the presumption of innocence
9 follows these defendants the same as it does these that are
10 on trial this week. It's -- the rules are written this way
11 for exactly that reason. The jury should not evaluate the
12 witness' credibility based on something that they alleged to
13 have done, but for which they have not yet been convicted.

14 It's preposterous to suggest that we can quiz them
15 about pending charges that remain unresolved. I don't see
16 any basis in any rule to allow an examination about those
17 charges that are, as I've said, irrelevant to this case, but
18 more importantly, unresolved.

19 **MS. GORTON:** Rule 608, anything having legitimate
20 tendency. These guys are not fighting for their freedom.
21 They're not on trial. They're not going to be prosecuted
22 based on what I show today.

23 Judge, I think what Ms. Salisbury would like to be able
24 to do is to suggest to the jury that these guys have no
25 reason to testify other than their basic, good, civic duty.

1 And that's simply not the case.

2 One of them was out on bond when this occurred. He's
3 the one who stayed behind. And when he stayed behind there
4 was miraculously no evidence. It disappeared. We know that
5 Drez was shot. It's gone. We know that a whole clip fell
6 on the floor. It's gone.

7 And we have our client who has absolutely no reason to
8 tell the law enforcement, when she did, that she was there
9 to buy marijuana. And that's what she told. And she's
10 going to be able to describe the marijuana that was sitting
11 on the dresser when they left.

12 Now I don't know and she doesn't know whether it was
13 the people who robbed him that took that marijuana or
14 whether it was Mr. Boyd. But Mr. Boyd has an equal motive
15 to hide the marijuana before the cops arrive. And both of
16 them have a motive to give the statement they gave other
17 than it being the truth.

18 **THE COURT:** Well, you know, we've got to overcome the
19 extrinsic evidence. And we don't need to have three trials
20 going on in this one trial. That's -- again, I may have to
21 just wait til I hear the testimony.

22 But other than for the purposes of your defense do you
23 agree that or do you disagree that you'd be able to bring
24 out their prior arrests? You intend to bring up the prior
25 arrests on both of them?

1 **MS. GORTON:** Yes, Your Honor.

2 **THE COURT:** Even the conviction of the simple
3 possession of marijuana and paraphernalia?

4 **MS. GORTON:** Yes.

5 **MR. IANUARIO:** And so, Your Honor, I would argue in Mr.
6 Boyd's case in particular that if there had been evidence of
7 drug activity his bond would have been violated and he would
8 have been rearrested on the spot and take him back in. So
9 he did have something to lose. It wasn't just on the basis
10 of he hadn't been convicted.

11 He stood a very likely chance of going back to jail had
12 that scene not been cleaned up or had there been drugs found
13 there or whatever happened. But if the situation is as Ms.
14 Dawkins describes it, Mr. Boyd very likely would have gone
15 back to jail for violation of bond conditions. And we
16 believe that that is the essence of his motivation to offer
17 testimony different than what we believe happened.

18 **THE COURT:** Do other witnesses other than the first
19 group also have records? Are we going to have this to cross
20 later?

21 **MS. SALISBURY:** No, Your Honor, except to the extent of
22 the co-defendants who plan to testify, obviously have
23 pending charges. But I'm not sure how that -- how that
24 conversation is going to go. We may want to revisit that
25 later in the trial.

1 THE COURT: Okay. I presume you want to ask them about
2 pending charges?

3 MS. GORTON: Oh, yes.

4 THE COURT: This is not probably an appropriate time
5 this afternoon to require you to make your opening
6 statements to the jury and try to get a witness up. I think
7 what I'm going to do is bring our jury back, make a few
8 preliminary remarks about our process and what will go on
9 and tell them that we'll break for the evening. And then
10 we'll start back at 9:00 in the morning.

11 And I'll -- I think I understand the nature of your
12 request, Ms. Gorton and Mr. Ianuario. I'll study my rules
13 and those cases you had. What were the cases you cited?
14 Hill, ---

15 MS. GORTON: Judge, there's three. There's State v.
16 Jones, 343 SC 562. There's State v. Baker, 390 SC 56.
17 There's State v. Burgess, 393 SC 396. Those are both -- the
18 last two are both Court of Appeals, 2010 and 2011.

19 In one case they said there was no error in failing to
20 allow the cross examination because it did not go to the
21 essence of the defense.

22 In the other case it was a Rape Shield case, Rape
23 Shield issue. And they said it was error not to allow the
24 cross examination in their -- even with the Rape Shield
25 Statute because it did go.

1 **THE COURT:** All right. Let's have our jury come in if
2 they're ready, Ms. Sims.

3 (Whereupon the jury entered the courtroom at 4:42 pm)

4 **THE COURT:** Ladies and gentlemen, today has worn on. I
5 needed your fellow jurors -- I had to keep them separate.
6 And we have now dismissed them.

7 You're the jury that's been selected for this case.
8 You've seen the process by which you were selected. Both
9 the State and both the Defendants believe you're the best
10 people to hear this case to decide what the facts are. And
11 I'm honored to have the chance to work with you on this
12 case.

13 As I told you before, you're going to be the judge.
14 I'm going to be a judge of the law and you're going to judge
15 the facts. I'm the one that wears the black robe and
16 referred to as the Judge, but you're every bit as much a
17 judge as I am in this case.

18 You may never have had an opportunity to serve as a
19 juror before. Some of you maybe have never been in the
20 courthouse before, certainly not a courtroom. And then you
21 appeared as you were required to this morning. You answered
22 your summons. You were with a large group. We've moved you
23 around from different floors.

24 And now all of a sudden you've found yourself sitting
25 in a jury box thinking to yourself, well, you know, how can

1 I be here? I don't have any qualifications whatsoever to be
2 a judge. I assure you, ladies and gentlemen, that what
3 you're going to need to utilize in being judges of the facts
4 is the good common sense with which you've been blessed and
5 the every-day experiences that you enjoy in the course of
6 your life in the home and the workplace and social
7 activities or wherever.

8 You're going to be judging credibility. You're going
9 to listen to the witnesses testify under oath. There may be
10 some documents or other tangible evidence admitted. You're
11 going to decide based upon that testimony and the demeanor
12 of those witnesses and how they sounded on the stand, the
13 believability of those witnesses.

14 And in light of the other evidence that's given and
15 ultimately the law that I give you at the end, you're going
16 to decide what the truth of this case is and render a
17 verdict that will speak the truth. You've made a
18 commitment, a high commitment to both of these parties, all
19 of these parties to be fair and impartial.

20 Part of my job not only is to instruct you on the law
21 of the case at the end of the case, but to conduct the trial
22 as it progresses. I alluded downstairs when I qualified
23 you, we'll take periodic breaks. Part of my job is to tell
24 us when we'll take breaks.

25 Normally we'll start about 9:00 in the morning and

1 we'll have a morning break, sometimes go an hour, hour and a
2 half. Sometimes -- rarely we'll be longer than that,
3 depending on where the testimony of the witness is at a
4 particular time. We'll take a lunch break normally around
5 1:00 or so, sometimes a little earlier, as today, a little
6 later. Then we'll have an afternoon break and hopefully be
7 finished each evening by five, 5:30 in the afternoon.

8 You may need a break and I haven't called for a break.
9 It's vitally important that you be a good listener. If
10 you're uncomfortable in any way, if you need to take a
11 break, please let me know, get my attention. Get one of
12 these bailiffs' attention.

13 You perhaps have had a chance to meet with them
14 already. To your right is Ms. Sims, Ms. Katrina Sims.
15 She'll be there to help you. Mr. Dougherty in the back of
16 the room. Those will be taking care of your needs in the
17 jury room and in here.

18 We have other courthouse personnel around. The young
19 lady seated directly in front of me, Ms. Susan Hudgins,
20 she's the court reporter. And she's taking down everything
21 that's said during the course of the trial, keeping a
22 record. If there's exhibits that need to be marked, she'll
23 mark those and keep up with all the exhibits. She's a
24 valuable assistant. And you can certainly get her eye if
25 you need a break.

1 Ms. Troop, Ms. Mary Troop, who called your names
2 earlier and will administer an oath to you in just a few
3 moments. She's also here from the Clerk's Office, able to
4 assist you.

5 Shawn Hinton is the young man seated beside me, recent
6 law school graduate, admitted to the South Carolina Bar, my
7 law clerk. And he's a valuable asset as well. You may see
8 him coming and going during the course of the trial. You
9 certainly can get his attention as well. But any of these
10 folks will be more than glad to help you.

11 Cases take place in stages. Normally there's an
12 opening statement made by the attorneys. There's -- after
13 the opening statement is made the State will have an
14 opportunity to present witnesses to you. They'll be
15 examined and cross examined. And whatever witnesses are
16 testifying, each side will have a chance to ask them
17 questions.

18 Part of my job is to rule on the admissibility of
19 evidence. Sometimes in the course of a trial there's an
20 objection made. One side or the other, based on rules of
21 evidence, or procedure or the law will object to a document
22 or a question or whatever it may be.

23 Frequently I can rule on that objection from the bench
24 here and say overruled or sustained and we move on to the
25 next question. Sometimes, as you've seen already, the

1 attorneys may ask that we huddle up here at the bench and we
2 can whisper and hopefully resolve a legal matter.

3 Sometimes, as you've already seen, even though we
4 haven't started the trial, there's a legal matter that comes
5 up for which you have to go back to the jury room. When I
6 have legal issues that come up, I want to do the very best
7 job I possibly can as the Judge of the law. I want to make
8 sure I have sound footing in the decisions I make.

9 Sometimes that may require me to listen to testimony that
10 wouldn't properly be offered before you. Sometimes I may
11 need to examine law books or hear argument from the legal
12 counsel.

13 In doing that sometimes it's necessary for me to do
14 those things outside of your presence. Not that we're
15 hiding things from you, it's just that I need to resolve
16 those legal issues, and you have no concern with those.

17 You're a fellow judge as I am. And when all the
18 evidence is in, and I've instructed you on the law, and the
19 case is then yours to decide. I won't be back there with
20 you helping you work through the facts because that's not my
21 prerogative. That's only your prerogative and yours alone
22 to decide what the facts are. I decide the law. And you'll
23 be back there deciding the facts without me.

24 It would be improper for me to comment on the facts or
25 have any opinion about the facts. Our Constitution in South

1 Carolina prohibits me from having an opinion on the facts.
2 So you can be assured that I don't have an opinion and I
3 won't have an opinion as the case progresses.

4 Only when all the evidence is in and I've instructed
5 you on the law should you discuss the case while you're back
6 in your chambers. And, otherwise, you should not be
7 discussing the case in any way.

8 Likewise, our Chief Justice in South Carolina has given
9 an instruction to all jurors such as you empaneled to hear a
10 case that we Circuit Court judges are required to instruct
11 you of, and that is that you should not be discussing the
12 case with anyone while you're actually sitting on the trial
13 of a case.

14 You're going to, obviously, have curious family
15 members, and loved ones and business associates who want to
16 know all about your jury service. They know you went today.
17 Did you get picked? And what's the case about? And then
18 they want to give you information. Oh, let me tell you
19 about what I heard about something like that or -- that
20 would be improper, ladies and gentlemen.

21 Certainly, you can tell your loved ones that you're
22 serving on a jury, and it involves a burglary, and an armed
23 robbery, and so forth, but you shouldn't be sharing with
24 anyone about the facts of the case or anything you've heard
25 in the courtroom. When the case is completed, and over and

1 done with, you'll have an opportunity to share with family
2 and friends and others your experience while serving as a
3 juror, but while the case is going on you should not be
4 doing that.

5 You should not let anyone talk with you about the case.
6 If you see anyone in the hallway or restaurant tomorrow and
7 you overhear conversations about the case, you take the
8 initiative and move to another table. If you're in a
9 restaurant and there's some witnesses talking about it or
10 other folks talking about it, you need to realize the
11 importance of the process we're now in. And we want to
12 maintain the purity of that process by making sure that all
13 of you jurors maintain that purity and don't have any other
14 influences from anyone.

15 I would not expect that anyone would try to contact you
16 and see you on the street and want to give you information
17 or ask you questions. You would certainly just tell that
18 individual you're a juror and you can't talk about this case
19 with anyone, I've instructed you not to.

20 If that individual were to persist and want to give you
21 information or ask you anything, then, please, excuse
22 yourself as soon as you can. If possible, get the name of
23 that individual, report it back here to me, and I assure you
24 I'll take care of that. I would not expect anything like
25 that to happen, but I want to emphasize to you how important

1 it is.

2 Our Chief Justice has also instructed us to tell jurors
3 such as you that any kind of social media would be against
4 the law as well while you're serving on a jury. I know that
5 we're curious by nature.

6 And I tell you this not by way of tempting you in any
7 way, but the importance of how vital your service is that
8 you should not do any kind of social media, or do any kind
9 of internet checks, or archives, or go to the library or do
10 anything like that to find out facts about this case or
11 locations or anything like that. These attorneys are going
12 to present everything they need for you to make a good,
13 solid decision about this case. And you certainly should
14 not have that come from extraneous sources.

15 As you come and go in the hallway and outside of the
16 courtroom you may see the attorneys passing in the hall.
17 They may -- or in the elevator. They may seem very distant
18 and high-hat you and not be as friendly as you would expect
19 them to be. Please understand, that's their training.
20 They're trained to make sure there's no appearance of any
21 impropriety with a lawyer talking to a juror.

22 Even though it may be innocent conversation about the
23 weather, or Springtime, or something else, they want to make
24 sure that there's no appearance of any impropriety. So if
25 any of these lawyers seem to be distant and walk the other

1 way, you please don't hold that against them. That's their
2 -- the way they are trained.

3 You are making a commitment to both sides to render
4 justice, both to the State of South Carolina and to each of
5 these two Defendants. It makes me proud that you've
6 accepted this responsibility to work on this case and you've
7 made that high commitment to the parties.

8 I'm going to have the Clerk at this time administer an
9 oath to you. I hope you'll understand and listen carefully
10 as the oath is given you. It's a time honored oath that's
11 been in existence well before the foundation of our Country.

12 Even in England jurors such as you have taken this oath
13 to well and truly try a case both on the criminal side and
14 civil side. I'm confident that throughout our Country today
15 there have been jurors such as you who have taken an oath
16 very similar to this in different States to be the fact-
17 finders and to be the judge of the facts. So after the oath
18 is administered to you I'll give you some final instructions
19 for the day. Ms. Troop, you may swear the jury.

20 **MADAME CLERK:** All right. Please stand and raise your
21 right hand for the oath. The proper response is I will.
22 I'm going to say this in two sections because there's two
23 Defendants.

24 You shall well and truly try the cases 2011-GS-23-7990,
25 the State versus Juwan Darnell Lomax, indicted for

1 conspiracy, 7991 for armed robbery, 9673A for attempted
2 murder and 9676A for burglary. All right.

3 The second part, you shall well and try the -- well and
4 truly try the cases 2011-GS-23-8019, the State versus De'Nia
5 Zsirita On'Jean Dawkins, indicted for armed robbery, 8082
6 for attempted murder, 8021 for conspiracy and 822 [sic] for
7 burglary and a true verdict rendered according to the law
8 and the evidence so help you God. I will?

9 THE JURY: I will.

10 MADAME CLERK: Thank you. Please be seated.

11 THE COURT: It would be unfair to these attorneys for
12 us to have them make their opening statements to you this
13 evening and maybe get part of the testimony of a witness in
14 and then have to break. So rather than us starting and
15 maybe working for another thirty minutes or forty-five, I'm
16 going to just dismiss you for the day.

17 What I want you to do is in the morning when you come
18 in I need you to select a foreperson from among the first
19 twelve of you who were selected. The last two jurors
20 selected are alternates. They'll occupy those seats back
21 there.

22 They're every bit as much a part of the jury as anyone
23 else. They're going to be listening just as well as any of
24 you do. Don't know how long this trial may take. It
25 certainly won't go into next week. You're serving as a

1 juror for this week.

2 But sometimes events happen, there might be an
3 emergency in your home or hopefully an illness would not
4 befall any of you. But in the event that some problem did
5 develop with one of the first twelve, rather than us having
6 to start this case all over again, we've got alternates who
7 are ready to step into your shoes. And they will occupy
8 those seats on the back where they are now. The rest of you
9 as you come and go, you may want a front row seat or back
10 row seat, but I do want you to select a foreperson.

11 What the foreperson does is -- would occupy the front
12 row seat, the seat closest to the witness chair here. The
13 bailiffs will certainly let you know where the foreperson
14 sits.

15 But what the foreperson will do is sometimes in the
16 course of a trial exhibits may be offered by one party or
17 another and they may want to pass them around to the jury.
18 They'd show them to the foreperson, let the foreperson look
19 at them, pass them on to other folks on the jury.

20 Sometimes when you're back in your jury room you may
21 have a need. The temperature may need adjusting or you need
22 a cup of coffee or you need to make a call about picking up
23 a child or whatever it may be.

24 Your foreperson is going to be your liaison with the
25 Court. That's going to be the individual who will, on

1 behalf of whatever juror, just write out on a piece of paper
2 the particular need that you have, be it from the Clerk's
3 Office or a legal question for me. Get it to one of the
4 bailiffs, and they'll get it to the appropriate person.
5 Hopefully we'll get a satisfactory answer to you. Sort of
6 be the presiding officer, if you would, while you're back in
7 your jury room.

8 Ultimately what the foreperson will do is when all the
9 evidence is in, and the case is concluded, I give you
10 instruction on the law, your foreperson will be the one who
11 will sign the verdict form on behalf of all the jurors and
12 have the verdict delivered back here to the court. Your
13 foreperson will be the one who will facilitate the
14 discussion, make sure everyone on the jury has a full input
15 into the facts as each individual juror sees them and write
16 out the verdict form on behalf of all of you. I'll
17 certainly give instructions on that as the case progresses.

18 But when everyone's in tomorrow, and I'm sure you'll
19 make sure that everyone is in before you start that
20 selection process. But when you have a foreperson selected,
21 if you would just write the name down on a piece of paper
22 that the bailiff will provide you and give it to us.

23 And when we come in the foreman will -- the foreperson
24 will occupy that seat, the alternates in their seats and the
25 rest of you as you come and go can take a front row, or left

1 side, right side, back row, whatever you choose. Sometimes
2 you might want to keep the same seat.

3 But we'll be ready to start tomorrow. If you'll be in
4 at 9:00. And as soon as you have a foreperson selected,
5 we'll be ready to begin with the opening statements of the
6 attorneys. Have a good evening, ladies and gentlemen.
7 Thank you very much. You may be dismissed at this time.

8 (Whereupon the jury exited the courtroom at 5:00 pm)

9 MS. GORTON: Judge?

10 THE COURT: Yes, ma'am.

11 MS. GORTON: I gave you the wrong case cite. Both
12 Baker and Burgess are where there was insufficient nexus to
13 the case. State v. Finley is the one that I was referring
14 to that talked about Rape Shield and how it was in essence
15 of the defense. And State v. Finley is 300 SC 196, South
16 Carolina Supreme Court, 1989.

17 THE COURT: Thank you. All right. We'll be at ease
18 til 9:00 in the morning. Since the case has started now the
19 Defendants will be taken into custody with the Sheriff's
20 Office since the bond is now over for each of them. And be
21 prepared to start back in the morning. All right. We'll be
22 at ease til 9:00 in the morning.

23 (Whereupon court was in recess at 5:02 pm)

1 Tuesday, April 10, 2012:

2 (Whereupon court commenced at 9:13 am)

3 THE COURT: Thank you very much. Please be seated,
4 ladies and gentlemen.

5 MS. SALISBURY: Judge, could we approach very quickly?

6 THE COURT: Yes, ma'am.

7 (Whereupon a bench conference was held off the record)

8 (Whereupon State's exhibits 6, 7 & 8 were marked for
9 identification)

10 THE COURT: All right. Everybody ready to proceed?

11 MS. SALISBURY: Yes, Your Honor.

12 THE COURT: All right. Let's have our jury come in.

13 (Whereupon the jury entered the courtroom at 9:28 am)

14 THE COURT: Good morning, ladies and gentlemen. Madame
15 Forelady, others of the jury, I understand that some of you
16 had made a request about taking notes during the trial.

17 I allow notes to be taken, but let me give you a
18 warning. Sometimes when you're taking notes you miss the
19 trial. You're busy taking notes. And notes, of course, are
20 just your personal recollection of what took place and
21 they're not a piece of evidence.

22 If you do wish to take notes, then what you would need
23 to do is on the legal pad that's provided to you, you need

1 to write your name. The notes will be collected every time
2 you come in and out by the bailiff. They'll be handed back
3 to you as the trial progresses if you want to take notes.

4 But oftentimes when you're busy taking notes you miss
5 the demeanor of witnesses, you miss the actions in the
6 courtroom. But I'm certainly going to allow you to take
7 notes if you feel that that would be a benefit to you.

8 Just remember that those would be notes only for your
9 personal recollection and, of course, would not in any way
10 be considered as evidence. Sometimes notes are in error
11 even. And we have a transcript of everything that's being
12 said that we -- we do have an accurate record here.

13 If -- those of you who need to takes notes, I'll have
14 -- Ms. Sims will be glad to pass out any. If you'll just
15 sort of raise your hand. She's got a few note pads there
16 with pencils if you feel like you need to take notes.
17 Certainly just write your name down and be sure and leave it
18 in your chair when you leave.

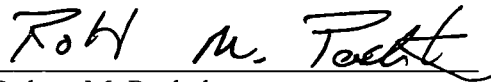
19 (Pause)

20 **THE COURT:** All right. We're now ready for the opening
21 statements of the attorneys. What the attorneys have to say
22 to you, ladies and gentlemen, in their opening statements,
23 that's not evidence. The evidence is going to come from the
24 witness stand, from documents that may be presented, other
25 tangible evidence.

CERTIFICATE OF COUNSEL FOR APPELLANT

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

September 4, 2013

A handwritten signature in black ink, reading "Robt M. Pachak". The signature is written in a cursive, slightly slanted style.

Robert M. Pachak
Appellate Defender

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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

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SEP 04 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DENIA DAWKINS,

APPELLANT

APPELLATE CASE NO. 2012-212529.

CERTIFICATE OF SERVICE

I certify that a true copy of the Supplemental Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of September, 2013.

Brandon Hall
Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 4th day of September, 2013.

Talal McKay (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.