

VOLUME I OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Spartanburg County

S.C. SUPREME COURT

Honorable William C McMaster, III, Circuit Court Judge

JADEN I. GARY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-001000

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Jaden Imarion Gary,) 2019-GS-42-05573;05574
7 Defendant.) August 10 - 12, 2021
8) Spartanburg, South Carolina
9

10 B E F O R E :
11 HONORABLE J. MARK HAYES, II, JUDGE; and a jury
12

13
14 A P P E A R A N C E S :
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16 Attorney for the State
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23 Circuit Court Reporter
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1 (Proceedings August 10, 2021)

2 (The following takes place at the Spartanburg Memorial
3 Auditorium.)

4 THE COURT: Thank you for your patience, ladies and
5 gentlemen.

6 The operation of jury trials is not an exact science,
7 and we have a lot of components in order to get the
8 judicial branch of government to function properly when
9 dealing -- when dealing with the jury. And so y'all are
10 experiencing some of this challenges that we have to deal
11 with, not only with the masks and with social distancing,
12 and now being in this building for part of it, having to go
13 to that building when you do a trial. There's also
14 different components. That's what we're dealing with.

15 Part of what we also do that y'all cannot be part of
16 and what y'all can't see is that when we're -- we, being
17 the Court, the lawyers and the participants in a trial --
18 when we're not out here in front of y'all we are more than
19 likely working on the case to try to get the case to a
20 position that either doesn't require your participation or
21 your participation is -- is taken so that it's minimal.
22 And so that's part of what we have been doing this
23 afternoon, is trying to get the case to a situation where
24 y'all's involvement is reduced.

25 So while -- and I would be frustrated if I were

Jury qualification

1 sitting out there. while I appreciate y'all coming in, we
2 are working on reducing the inconvenience that we're
3 imposing on your life. So just be patient with us. We're
4 working on it.

5 Now, with that being said, I need to see the lawyers
6 for a moment. Just come right up here.

7 (Bench conference held off the record.)

8 THE COURT: Okay. Part of the other problems we have
9 is that microphones go dead, and so somebody left the
10 microphone on, so now we don't have a battery. So let me
11 know if you can't hear me. I'm going to try to really
12 speak up.

13 What we're going to do as opposed to just keeping you
14 sitting here is I'm going to let you take a break for about
15 15 minutes, and then we're going to get back together, and
16 we then should be in a position to be able to proceed
17 forward.

18 Welcome to Spartanburg Memorial Auditorium. I think
19 there are restrooms right outside. You can step outside in
20 the heat if you want to stretch your legs but I -- but do
21 come back in about 15 minutes. I've got that it's like
22 2:32. So make it about a quarter till, a little bit after
23 quarter till, and get -- come back here in your seats.

24 I appreciate your patience. We are doing the best
25 that we can given the limitations that I'm given. So thank

1 you very much. I'll see you shortly.

2 (Whereupon, a recess was taken.)

3 THE COURT: Okay. Ladies and gentlemen, I have sent
4 for the wooden barrel to come back over here because our
5 technology is faltering, but I think we've got the wooden
6 barrel part taken care of. So thank you for your patience.

7 All right. Ladies and gentlemen, we are now going
8 to -- we're now going to start the trial, select the jury
9 for the next trial.

10 This will be the case of the State of South Carolina
11 vs. Jaden Gary.

12 I'm going to ask Mr. Gary to please stand.

13 (Whereupon, the defendant stood.)

14 THE COURT: Ladies and gentlemen, I've got to ask the
15 clerk of court to swear you in. And so, if you will,
16 please stand and rise your right hand and let the clerk of
17 court swear you in.

18 (Whereupon, the jury was duly sworn.)

19 MR. SCHULTZ: Your Honor, can Mr. Gary be seated?

20 THE COURT: Give me just a moment.

21 MR. SCHULTZ: Yes, sir.

22 THE COURT: All right. Ladies and gentlemen, like I
23 said, this is Mr. -- Mr. Gary.

24 Now, Mr. Jaden Gary -- he is charged by way of
25 indictment with two criminal -- no -- three criminal

Jury qualification

1 offenses. Those are the count -- the charge of burglary in
2 the first degree, possession of a weapon during the
3 commission of a violent crime and grand larceny.

4 Now, the indictments provide that in regards to the
5 burglary first degree that Mr. Gary did in Spartanburg
6 County on or about July the 22nd of 2019 wilfully and
7 intentionally entered a dwelling belonging to Jason
8 Williams located at [REDACTED] Street in Startex without
9 consent and with intent to commit a crime therein and when
10 effecting entry and/or while dwelling and/or in immediate
11 flight therefrom he and another participant in the crime
12 did arm himself with a deadly weapon and/or display what
13 appeared to be a knife, pistol, revolver, rifle, shotgun,
14 machinegun or other firearm.

15 Now, in regards to the charge of possession of a
16 weapon during the commission of a violent crime the
17 indictment alleges that Mr. Gary did in Spartanburg County
18 on or about July the 22nd of 2019 possess a firearm or what
19 appeared to be a firearm during the commission of a violent
20 crime as defined by South Carolina law.

21 Now, the indictment in regards to grand larceny
22 alleges that Mr. Gary did in Spartanburg County on or about
23 July the 22nd of 2019 feloniously take away and carry away
24 goods of Jason Williams valued at more than \$2,000 but less
25 than \$10,000, and the property being described as seven

1 firearms and/or ammunition, and/or body armor with the
2 intent to deprive the owner of such property.

3 Now, ladies and gentlemen, Mr. Gary has pled not
4 guilty to these allegations that are contained in these
5 indictments, and that is the purpose of this trial.

6 Now, ladies and gentlemen, I need to ask you. Is
7 anybody part of the jury panel who is related by blood or
8 marriage to Mr. Gary, or do you have a close personal or
9 social relationship with Mr. Gary, or have you ever been
10 employed in any type of employment or business with Mr.
11 Gary? If so, please stand at this time.

12 (No response.)

13 THE COURT: Thank you very much, Mr. Gary. You may be
14 seated.

15 All right. Ladies and gentlemen, in the indictment
16 the alleged victim is listed as a Mr. Jason Williams.

17 Is there anybody who is a part of this jury panel who
18 is related by blood or marriage to Jason Williams, or do
19 you have a close personal or social relationship with Mr.
20 Williams, or have you ever been employed with Mr. Williams
21 or in some capacity worked with Mr. Williams? If you have,
22 please stand at this time.

23 (No response.)

24 THE COURT: Thank you very much.

25 Ladies and gentlemen, at this time I'm going to read a

Jury qualification

1 list of potential witnesses who may be called as part of
2 this trial. And I say potential witnesses because these
3 witnesses may not be called, but I've asked the lawyers to
4 provide me with a list of any witnesses who may be called.

5 Now, please listen to these names, because after these
6 names are all read out to you I'm going to ask that you
7 please stand if you're related by blood or marriage to any
8 of these witnesses, or if you have a close personal or
9 social relationship with any of these witnesses, or if
10 you've ever been employed with, or in some capacity, or
11 work with any of these witnesses, I'm going to ask that you
12 please stand. But please listen to these names.

13 Brad Newton with the Spartanburg Sheriff's Office;
14 Coby Stepp with the Spartanburg Sheriff's Office; Jonathan
15 Kent with the Spartanburg Sheriff's Office; Trevor Shue
16 with the Spartanburg Sheriff's Office; Paul Norris with the
17 Spartanburg Sheriff's Office; Jason Williams; Haley
18 Hunsberger; Tyquez McKinney; and Zion Miller.

19 Ladies and gentlemen, I would ask that you please
20 stand if you're related -- if you are related by blood or
21 marriage to any of these individuals, if you have a close
22 personal or social relationship with any of these
23 individuals, or if you've ever been employed with or worked
24 with any of these individuals, please stand at this time.

25 (No response.)

1 THE COURT: Ladies and gentlemen, I'm now going to ask
2 the lawyers who will be participating in the trial of the
3 case to please stand and introduce themselves to you.

4 I'll ask the state to please go first.

5 MR. SMITH: My name is Spenser Smith. I'm an
6 assistant solicitor with the Seventh Circuit Solicitor's
7 office.

8 THE COURT: Thank you, Mr. Smith.

9 Yes, sir.

10 MR. SCHULTZ: My name is Attorney E. Joshua Schultz.
11 I run a small business, small law firm, in Spartanburg, and
12 I represent my client, Jaden Gary.

13 THE COURT: Ladies and gentlemen, if you are related
14 by blood or marriage to any of these attorneys or if you
15 have a close personal relationship with any of these
16 attorneys, I would ask -- or if you've ever worked with any
17 of these attorneys in some capacity, I would ask that you
18 please stand at this time.

19 (No response.)

20 THE COURT: Ladies and gentlemen, I would also ask
21 that in regards to the state, if you have ever been a
22 victim of a crime that has been prosecuted by the Seventh
23 Circuit Solicitor's Office or if you've ever been a
24 defendant in a case where you've been accused of committing
25 a crime that has been prosecuted by the Seventh Circuit

Jury qualification

1 Solicitor's Office, or a member of your family has been
2 prosecuted by them, then I would ask that you please stand
3 at this time.

4 (No response.)

5 THE COURT: Ladies and gentlemen, in regards to the
6 defense attorney, if you have ever been represented by Mr.
7 Schultz or if a immediate -- or if a member of your
8 immediate family has ever been represented by Mr. Schultz,
9 then I would ask that you please stand at this time.

10 (No response.)

11 THE COURT: Has any member of the jury panel or member
12 of their immediate family ever been a victim of or accused
13 of committing a violent crime? If so, please stand at this
14 time.

15 All right. If you would, the three of y'all, line up
16 right here, and I'll see you one at a time over here in
17 front of the court reporter.

18 THE BAILIFF: 158.

19 THE COURT: Just come right here. The court reporter
20 needs to be able to hear us. Give me just a moment. I
21 know you told me before, but these lawyers have not heard
22 it. Okay.

23 JUROR NO. 158: Okay.

24 THE COURT: So let me find your list. And I will.

25 Yes, ma'am, Ms. Smith-Byrd. Tell me it's -- who was

1 it that you are related to?

2 JUROR NO. 158: Well, I had a brother that was
3 convicted of a crime just a couple of weeks ago, and I am a
4 victim. My family is a victim of a -- a violent crime.

5 THE COURT: All right. And I believe -- if you are
6 selected to be part of this jury would that affect your
7 ability to give both the state and the defense a fair and
8 impartial trial?

9 JUROR NO. 158: Yes. I think that it would. Yes,
10 sir.

11 THE COURT: Thank you for sharing that with us. Okay.

12 JUROR NO. 158: Thank you.

13 THE BAILIFF: Juror No. 20.

14 THE COURT: She needs to be able to hear everything
15 that we say. I know we've talked before, but the lawyers
16 are brand new. Let me find you on the list.

17 MR. SMITH: Is this 20 or 21?

18 THE COURT: Twenty.

19 Ms. Callicott, you -- what was it that --

20 JUROR NO. 20: My dad was hit by a car. My mother ran
21 over him in 2009.

22 THE COURT: And, Ms. Callicott, the fact that that has
23 occurred, would that in any way affect your ability to give
24 both the state and the defense a fair and impartial trial
25 in the event you're selected as a member of the jury?

Jury qualification

1 JUROR NO. 20: No.

2 THE COURT: Thank you very much.

3 THE BAILIFF: Juror 149.

4 THE COURT: Give me just a moment while I turn the
5 page.

6 All right. Mr. Schumann, I know that you told me
7 things before, but these lawyers are new. So tell me.
8 What is it that your situation -- the reason you came up.
9 Is it you, a member of your family?

10 JUROR NO. 149: My grandfather was robbed and
11 assaulted and later died of his wounds.

12 THE COURT: Mr. Schumann, the fact that that has
13 occurred, would that in any way affect your ability to give
14 both the state and the defense a fair and impartial in the
15 event you're selected as a member of this jury?

16 JUROR NO. 149: I still say no, the same as yesterday.

17 THE COURT: Thank you, sir.

18 THE BAILIFF: Juror No. 3.

19 THE COURT: All right. I know that you already told
20 me before, but we have new lawyers. So tell -- relate to
21 the lawyers the reason that you came up in response.

22 JUROR NO. 3: One of my brothers was attacked and
23 injured years ago when I was in college. I was attacked
24 and stabbed in an unsuccessful attempt to get my wallet.

25 THE COURT: And the fact that that has occurred, would

1 that in any way affect your ability to give both the state
2 and the defense a fair and impartial trial in the event
3 you're selected as a member of this jury?

4 JUROR NO. 3: No, Your Honor. I don't believe so.

5 THE COURT: Thank you.

6 THE BAILIFF: Juror No. 21.

7 JUROR NO. 21: Twenty-one.

8 THE COURT: I know you told me before.

9 JUROR NO. 21: Yesterday.

10 THE COURT: But let me -- these are new lawyers.

11 JUROR NO. 21: Okay.

12 THE COURT: So I've got to ask you again.

13 Tell me, Ms. Carruth. Why did you come up here to
14 speak with me?

15 JUROR NO. 21: My daughter was a victim of criminal
16 domestic violence when she was eight months pregnant with
17 my granddaughter.

18 THE COURT: Okay. And the fact that that has
19 occurred, would that in any way affect your ability to give
20 both the state and the defense a fair and impartial trial
21 in the event you're selected as a member of the jury?

22 JUROR NO. 21: I would do my best to be -- you know,
23 it was like I said yesterday, pretty traumatic for our
24 family, but I would do my best to.

25 THE COURT: Do you think you would be able to be fair

Jury qualification

1 and impartial to the state and the defense if you're
2 selected as a member of the jury?

3 JUROR NO. 21: You know, I'd -- I would like to think
4 I could. I'll put it that way.

5 THE COURT: Okay. Thank you very much.

6 Has any member of the jury panel formed or expressed
7 any opinions about any issues or matters involved in this
8 case? If so, please stand at this time.

9 (No response.)

10 THE COURT: Is there any member of the jury panel who
11 is aware of any bias or prejudice towards either the state
12 or the defense in this case? If so, please stand at this
13 time.

14 (No response.)

15 THE COURT: Is there any member of the jury panel that
16 is a member of the grand jury who issued the indictments in
17 this case? If so, please stand at this time.

18 (No response.)

19 THE COURT: Is there any member of the jury panel who
20 is a contributor of or member of any group which has as its
21 primary concern the promotion of law enforcement or
22 victims' rights?

23 Now, these groups would certainly include, but be not
24 limited to, groups such as MADD, SADD or CAVE -- Citizens
25 Against Violent Crimes? If so, please stand at this time.

1 (No response.)

2 THE COURT: And I know we asked this question
3 yesterday, but is there any member of the jury panel who is
4 a member of an organization that does not recognize the
5 government of the United States of America or of the state
6 of South Carolina? If so, please stand at this time.

7 (No response.)

8 THE COURT: Does any member of the jury panel know of
9 any reason whatsoever why he or she should not serve as a
10 juror in this case with particular emphasis being placed on
11 your ability to be fair and impartial to both the state and
12 the defense in this case? If so, please stand at this
13 time.

14 (No response.)

15 THE COURT: Does the state have any additional
16 questions?

17 MR. SMITH: No, Your Honor.

18 THE COURT: Does the defense have any additional
19 questions?

20 MR. SCHULTZ: No, sir.

21 THE COURT: Thank you very much.

22 All right. I believe that we are in agreement it's
23 ten and five.

24 We will ask. Is this the only copy we have? we will
25 use that as our strike sheet.

Jury qualification

1 Ladies and gentlemen, what we did is -- well, tell you
2 what. I've got to ask the lawyers to come forward.

3 (Bench conference held off the record.)

4 THE COURT: All right. Ladies and gentlemen, we have
5 got the computer system to work so we have randomly
6 selected a list of jurors.

7 As we did yesterday when your number or the clerk
8 calls your name and number, any personal belongings that
9 you have with you, bring them up, stand right here in the
10 middle of the area, and then we will let the lawyers go
11 through the striking process.

12 If you are selected, you will move to this side of the
13 auditorium and sit in those seats.

14 If for some reason they don't -- they ask that you not
15 serve on this jury, just return back to the seat where
16 you're at.

17 But at this time we're in agreement it's five and ten.
18 We will proceed, Madam clerk.

19 THE CLERK: No. 92, Angela Lowe.
20 What says the state?

21 MR. SMITH: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. SCHULTZ: Please seat the juror in this case.

24 THE CLERK: No. 16, John Bradley.
25 What says the state?

1 MR. SMITH: Please present the juror.
2 THE CLERK: What says the defense?
3 MR. SCHULTZ: Please present the juror.
4 THE CLERK: No. 119, Joshua Odom.
5 What says the state?
6 MR. SMITH: Please present the juror.
7 THE CLERK: What says the defense?
8 MR. SCHULTZ: Please seat the juror.
9 THE CLERK: No. 150, Kaelyn Scurry.
10 What says the state?
11 MR. SMITH: Please present the juror.
12 THE CLERK: What says the defense?
13 MR. SCHULTZ: Please seat the juror.
14 THE CLERK: No. 116, Jazmyne Nelson.
15 What says the state?
16 MR. SMITH: Please present the juror.
17 THE CLERK: What says the defense?
18 MR. SCHULTZ: That was 116?
19 THE CLERK: 116, yes.
20 MR. SCHULTZ: Please seat the juror.
21 THE CLERK: No. 103, Eric McCurry.
22 What says the state?
23 MR. SMITH: Please present the juror.
24 THE CLERK: What says the defense?
25 MR. SCHULTZ: Please seat the juror.

Jury qualification

1 THE CLERK: No. 3, Thomas Allred.

2 What says the state?

3 MR. SMITH: Please present the juror.

4 THE CLERK: What says the defense?

5 MR. SCHULTZ: Please excuse the juror in this case.

6 THE CLERK: No. 79, Victoria Jeter.

7 What says the state?

8 MR. SMITH: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. SCHULTZ: Please seat the juror in this case.

11 THE CLERK: No. 123, Renee Pangel.

12 What says the state?

13 MR. SMITH: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. SCHULTZ: Please seat the juror.

16 THE CLERK: No. 149, David Schumann.

17 What says the state?

18 MR. SMITH: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. SCHULTZ: Please excuse the juror in this case.

21 THE CLERK: No. 168, Michael Tapp.

22 What says the state?

23 MR. SMITH: Please excuse the juror.

24 THE CLERK: No. 95, Maurice Makupson.

25 What says the state?

1 MR. SMITH: Please excuse the juror.

2 THE CLERK: No. 129, Laura Perkins.

3 What says the state?

4 MR. SMITH: Please present the juror.

5 THE CLERK: What says the defense?

6 MR. SCHULTZ: Please seat the juror in this case.

7 THE CLERK: No. 30, John Corbitt.

8 What says the state?

9 MR. SMITH: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. SCHULTZ: Please excuse the juror in this case.

12 THE CLERK: No. 26, Elizabeth Clevenger.

13 What says the state?

14 MR. SMITH: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. SCHULTZ: Please seat the juror.

17 THE CLERK: No. 2, Peyton Allen.

18 What says the state?

19 MR. SMITH: Please present the juror.

20 THE CLERK: What says the defense?

21 MR. SCHULTZ: Please seat the juror in this case.

22 THE CLERK: No. 41, Lisa Farash.

23 What says the state?

24 MR. SMITH: Please present the juror.

25 THE CLERK: What says the defense?

1 MR. SCHULTZ: Please excuse the juror in this case.

2 THE CLERK: No. 109, Jared Moore.

3 What says the state?

4 MR. SMITH: Please excuse this juror.

5 THE CLERK: No. 151, Penny Shaw.

6 What says the state?

7 MR. SMITH: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. SCHULTZ: Please seat the juror in this case.

10 THE CLERK: And for the alternate. No. 9, Misty

11 Barham.

12 What says the state?

13 MR. SMITH: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. SCHULTZ: Seat the juror in this case.

16 (Whereupon, a jury was impaneled.)

17 THE COURT: Anything concerning the manner and method

18 of selection of the jury from the state?

19 MR. SMITH: No, Your Honor.

20 THE COURT: Any from the defense?

21 MR. SCHULTZ: No, sir.

22 THE COURT: All right. May I see the lawyers just for
23 a moment?

24 (Bench conference held off the record in the presence
25 of the jury but out of the hearing of the jury.)

1 THE COURT: Okay. Thank everybody for your patience
2 while we went through this process of selecting the next
3 jury.

4 Be patient with me just a moment. I need to talk to
5 these people first like I did yesterday.

6 Congratulations on being selected our next jury. I
7 think you were in the room yesterday when I instructed the
8 jury. There's two initial charges, instructions I need to
9 give you.

10 First is you do not have any discussions among anyone
11 about anything involved in the case until you begin your
12 deliberations.

13 The deliberations in the case will begin after the
14 trial has occurred, all of the testimony has been presented
15 to you, I've instructed you on the law of the case. Then
16 you begin your deliberations. And that is the only time
17 when you can have any discussions among yourselves or with
18 anyone else about anything involving the case.

19 Even if, like, at suppertime tonight your loved ones
20 or friends, oh, you got picked on a jury, what kind of case
21 is it, tell them that the judge has instructed me I cannot
22 talk to you about the case. You don't even tell them the
23 nature of the case, because you can only have discussions
24 with the case when your deliberations begin at the end of
25 the trial.

1 Second instructions. Do not do any type of
2 independent research or investigation into anything that
3 involves this case. You've heard my name. You've been
4 introduced the lawyers' names. You've heard a location.

5 Do not do any type of independent research. Don't
6 Google anybody's name, go on facebook to look up anything.

7 Like I mentioned yesterday, even if I've used or
8 one -- somebody used a word that you don't quite
9 understand, do not even pull websters dictionary off the
10 shelf and look the word up.

11 Allow the lawyers to educate you as to what the
12 evidence is in the case. Allow me the opportunity to tell
13 you what law you will apply to that evidence and allow us
14 to conduct this trial so that when your deliberations
15 begin, your deliberations can begin in earnest and based on
16 proper evidence and testimony and law that's been presented
17 to you.

18 with those two preliminary instructions, I will ask
19 that you not start your -- I'll ask that you have a nice
20 afternoon because we are not going to start the
21 presentation of the evidence to you as a jury until about
22 10:00 o'clock in the morning.

23 And so there's other things I've got to take up with
24 the lawyers that's got to be done outside of your presence.
25 I've also -- we have another jury taking place, another

1 trial taking place. I'm -- I've got to get y'all in and
2 out of the courthouse, as well as the other jury in and out
3 of the courthouse, without y'all crossing each other. So
4 that jury's coming in earlier. So I need y'all to show up
5 at 10:00 o'clock.

6 You'll park in the parking deck and then walk into the
7 building. The bailiff will be able to give you
8 instructions on how to enter and exit the building. I'll
9 see y'all at 10:00 o'clock in the morning.

10 With those preliminary instructions, you may go with
11 the bailiff, and he will show you how to exit the building.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: All right. We've started the trial of the
15 case. Okay. So I'm going to let you stay out and not take
16 you into custody. But you're on electronic monitoring,
17 right?

18 If anything happens, you don't show up tomorrow, we
19 will go forward with the trial out of your -- you know,
20 with you not being present. You can talk to your lawyer.
21 That's fine. Not a good situation for you to be in.

22 So behave, and we'll see you back in the morning.

23 If you have any questions about anything, you talk to
24 your lawyer. Okay. All right. Thank you very much.

25 END OF PROCEEDINGS AUGUST 10, 2021

Brad Newton (In-camera)
Direct examination by Mr. Smith

1 (Proceedings August 11, 2021)

2 (The following takes place at the Spartanburg County
3 Courthouse.)

4 (C.D. marked State's Exhibit No. 1 for Identification;
5 preinterrogation waiver form marked State's Exhibit No. 2
6 for Identification; voluntary statement marked State's
7 Exhibit No. 3 for Identification; photographs marked State's
8 Exhibit Nos. 4 through 17 for Identification; C.D. marked
9 State's Exhibit No. 18 for Identification.)

10 (The following takes place outside the presence of the
11 jury.)

12 THE COURT: We'll go on the record in the matter of
13 the State vs. Jaden Gary. I did have an opportunity to
14 review the C.D. or review -- listen to it, because it was
15 just audio recording. So I've done that.

16 And I believe that y'all wanted to conduct a Jackson
17 vs. Denno hearing, is that correct?

18 MR. SCHULTZ: It is, Your Honor.

19 THE COURT: Okay. Is the state ready to proceed with
20 that?

21 MR. SMITH: We are, Your Honor.

22 THE COURT: Okay. Do you want me to put the C.D. as a
23 -- evidence?

24 MR. SMITH: I have it marked as State's Exhibit 1.

25 You want a -- I have a separate copy. So if you want

1 to make that one a court's exhibit, that will be fine.

2 Just make sure they are the same --

3 THE COURT: I'm sure that they're the same.

4 MR. SMITH: -- because of any questions later.

5 THE COURT: Okay. So the court reporter already has
6 one?

7 MR. SMITH: We have one marked as State's Exhibit 1
8 and we have the preinterrogation waiver marked as
9 State's 2.

10 THE COURT: I have not seen that, but I will take a
11 look at it, I'm sure.

12 (C.D. marked Court's Exhibit No. 1.)

13 (Pause.)

14 THE COURT: All right. I have reviewed that. Thank
15 you very much.

16 MR. SMITH: Your Honor, the state would call
17 Investigator Brad Newton.

18 THE COURT: Sir, just come right up here.

19 I'm going to ask you, if you would, I need for you to
20 wear a mask if you're not going to be 6 feet apart.

21 BRAD NEWTON, having been first
22 duly sworn, testified as follows:

23 THE COURT: Sir, watch your step as you're stepping
24 up.

25 THE WITNESS: Thank you.

Brad Newton (In-camera)
Direct examination by Mr. Smith

1 THE COURT: Thank you. Just pull the chair up to the
2 microphone.

3 DIRECT EXAMINATION BY MR. SMITH

4 Q Investigator Newton, where are you employed?

5 A Spartanburg County Sheriff's Office.

6 Q And how long have you been employed there?

7 A Since 2013, so will be going on eight years.

8 Q Do you have any previous law enforcement experience
9 other than the sheriff's office?

10 A I was with the Greenville Police Department from 2003
11 to 2005, and then the highway patrol from 2005 to 2010.

12 Q And what's your current position at the sheriff's
13 office?

14 A I'm sergeant in the criminal investigations division
15 over the property section that covers the north end of the
16 county.

17 Q All right. And what position were you in on
18 July 22nd of 2019?

19 A At that time I was property crimes investigator that
20 covered the north end of Spartanburg County.

21 Q All right. And as a property crimes investigator,
22 what do you do?

23 A We are assigned various property crimes, cases. And
24 once we're assigned those cases we -- we begin the
25 investigations and conduct those investigations.

1 Those property crimes could include anything from
2 burglary to shopliftings to larcenies, that type of thing.

3 Q All right. And do you get assigned cases that are
4 initially like a report's taken by the uniform patrol and
5 it gets referred to you?

6 A Yes, sir. So the uniform patrol officer typically
7 goes out. They initiate the -- the initial report from
8 a -- a victim or a complainant, citizen complainant. That
9 report is then sent to the criminal investigations division
10 at which time the supervisor assigns that to an individual
11 investigator.

12 Q All right. Were you ultimately assigned a burglary
13 that occurred July 22nd in the Startex community?

14 A Yes, sir.

15 Q All right. And just for purposes of this hearing,
16 ultimately did you sign warrants on Jaden Gary?

17 A I did.

18 Q And is Jaden Gary this man in the courtroom next to --

19 A Yes, sir.

20 Q -- Mr. Schultz?

21 All right. How did Jaden Gary get taken into custody?
22 How did you ever come into contact with him after signing
23 warrants?

24 A After the warrants were signed he, I think, understood
25 that -- that we needed to speak with him in reference to an

Brad Newton (In-camera)
Direct examination by Mr. Smith

1 incident we were investigating, and he voluntarily showed
2 up to the sheriff's office requesting to speak with me.

3 Q All right. So had y'all gone out looking for him
4 possibly in that?

5 A I had not, however, other investigators may have due
6 to their familiarity with -- with him.

7 Q All right. And then did you ultimately interview him
8 at the sheriff's office?

9 A I did.

10 Q Do you know how he got to the sheriff's office?

11 A If -- if my record -- if I'm remembering correctly, I
12 believe his mother brought him to the sheriff's office
13 and -- and then they requested to speak with me.

14 Q All right. So he requested to speak with you.

15 A Yes. From what I recall, his mother waited for him in
16 the lobby.

17 Q All right. And did you ultimately speak with him?

18 A I did.

19 Q And did you record that conversation?

20 A Yes, sir.

21 Q And when you conduct investigations or interviews with
22 suspects do you ever -- do you give them Miranda rights in
23 the course of doing that?

24 A Yes. So that -- the -- the conversation what I'm --
25 when I'm speaking with -- with potential suspects always

Brad Newton (In-camera)
Direct examination by Mr. Smith

1 begins with -- with Miranda.

2 Q All right. And does the sheriff's office have a form
3 that y'all use to guide you to do that correctly?

4 A We do. We have a preinterrogation waiver.

5 Q All right. And this is the standard form y'all use
6 every day at the office.

7 A Correct.

8 Q I'm going to hand you State's Exhibit 2 and ask if you
9 can tell me what that is.

10 A That's the preinterrogation waiver that I read to
11 Mr. Gary and had him sign stating that he completely
12 understood everything.

13 Q All right. And do you go over biographical
14 information with him as you're doing this as well?

15 A I do. I'll confirm his date of birth, most recent
16 address. I will confirm his education level, typically
17 discuss where they went to high school, how long they were
18 in school, that type of thing.

19 Q And that's the -- the interrogation waiver you went
20 over Mr. Gary with?

21 A Yes, sir.

22 MR. SMITH: Your Honor, at this time just for purpose
23 of the motion, we move State's Exhibit 2 into evidence.

24 MR. SCHULTZ: No objection for purposes of this
25 motion.

Brad Newton (In-camera)
Direct examination by Mr. Smith

1 THE COURT: Without objection for this motion.

2 (Preinterrogation waiver form marked State's
3 Suppression Exhibit No. 2.)

4 Q Did he seem that he was under the influence of
5 anything when you talked with him or...

6 A No, sir.

7 Q Do you know, remember, what his state of mind was or
8 how -- how his attitude presented to you?

9 A As far as his state of mind, he was -- he was clear.
10 He was, you know, openly discussing this particular case
11 with me.

12 You know, his -- he seemed as if, you know, it
13 potentially wasn't a big deal but he wanted to get his side
14 of the story out there. He wanted to -- to discuss it with
15 me as openly as he -- as he could.

16 Q All right. And prior to beginning questioning him,
17 you make them understand what it is. I mean, he turned
18 himself in. So you had an idea that he knew what was going
19 on, right?

20 A Right, yeah. He -- he -- he knew -- he knew what --
21 what we were there to -- to talk with him about. But,
22 again, I wanted to make sure he understood, you know, what,
23 so there wasn't any question as far as what was going on.

24 Q And do you have any feelings that he did not
25 understand the Miranda rights or anything like that?

Brad Newton (In-camera)
Cross-examination by Mr. Schultz

1 A No. I believe he understood everything as was
2 explained.

3 Q And you also recorded the interview, is that right?

4 A Correct.

5 Q And it's not on video, so it's hard to tell. Do you
6 know who was in the room when you did that interview?

7 A From my recollection it was -- it was he and I. There
8 may have been somebody that stepped in throughout the
9 conversation, but it was mainly, from what I remember, just
10 the two of us in the -- in the room.

11 Q And do you remember if he was restrained in any way at
12 this time?

13 A He -- he was not handcuffed. He was sitting across
14 the table from me just, you know just, as we're having a
15 normal conversation.

16 Q Did you tell him that he had arrest warrants before
17 this begun, that he was going to be arrested?

18 A I -- I don't remember. I don't believe so, but I --
19 I'm not one hundred percent sure.

20 Q But, regardless, he wasn't chained.

21 A Correct, right.

22 Q I am going to hand you what's been marked as State's
23 Exhibit 1 and just ask if you can identify what that is.

24 A This is a copy of the interview, of the audio portion
25 from --

Brad Newton (In-camera)
Cross-examination by Mr. Schultz

1 Q How do you know that's the copy of the interview?

2 A This is -- I listened to this prior to court and have
3 initialed that.

4 MR. SMITH: Your Honor, at this time we'd move State's
5 Exhibit 1 into evidence for purposes of the motion hearing.

6 MR. SCHULTZ: No objection for purposes of the motion.

7 THE COURT: Without objection, it'll be State's 1.

8 (D.V.D. marked State's Suppression Exhibit No. 1.)

9 Q And during the conversation you had on that audio
10 interview did he ever ask for an attorney or ask to speak
11 with his mother or anything like that that showed he was
12 hesitant to speak with you?

13 A No, sir.

14 Q Please answer any questions Mr. Schultz has.

15 CROSS-EXAMINATION

16 BY MR. SCHULTZ

17 Q Officer Newton or Sergeant Newton -- I'm sorry --
18 you've been employed for about eight years now with the
19 Spartanburg County Sheriff's Office?

20 A Yes, sir.

21 Q Okay. And you -- in that time you've interviewed
22 several defendants, people that have been charged with
23 various crimes, correct?

24 A Yes, sir.

25 Q All right. And you were also employed at the

Brad Newton (In-camera)
Cross-examination by Mr. Schultz

1 Greenville County Sheriff's Office, correct?

2 A Greenville City Police department.

3 Q I'm sorry. Greenville city. Okay. Were you working
4 property crimes at Greenville city as well?

5 A No, sir. I was assigned to the uniform patrol
6 division and traffic division there.

7 Q Are you still employed by the Spartanburg County
8 Sheriff's Office?

9 A Yes, sir.

10 Q All right. And, again just to confirm, you've been
11 employed since 2013, correct?

12 A Yes, sir.

13 Q And you still are apprehending various suspects of
14 property crimes, is that correct?

15 A Most of my job is administrative at this point, but I
16 do assist in investigations from time to time.

17 Q Take us back to when you first encountered Mr. Gary on
18 that day. And you said it was Mr. Smith, that he
19 voluntarily turned himself in, is that correct?

20 A From my recollection he came to the sheriff's office
21 and -- and asked to speak with me. And I believe his
22 mother brought him there.

23 Q All right. And do you recognize his mother in this
24 courtroom here?

25 A I do not.

Brad Newton (In-camera)
Cross-examination by Mr. Schultz

1 Q Okay. But your recollection is that him and his
2 mother came to the sheriff's office, or was it the jail?

3 A The sheriff's office.

4 Q The sheriff's office. Okay. And what's the address
5 for the sheriff's office?

6 A 8045 Howard Street.

7 Q Thank you.

8 And were you aware of the fact that Mr. Gary was 17
9 years ago old at the time?

10 A Yes.

11 Q Because you confirmed his date of birth, correct?

12 A Correct.

13 Q Okay. Have you apprehended and questioned juveniles
14 in this capacity before?

15 A Yes.

16 Q All right. And were you aware that Mr. Gary was a
17 juvenile at the time?

18 A I was aware that he was 17 at the time.

19 Q Okay. What is your definition? I mean, you've been
20 around for a while, at least eight years with Spartanburg
21 County and a couple of years with Greenville City. What is
22 your definition of the age limit of a juvenile?

23 A Well, if we're talking about different crimes, it
24 varies from crime to crime and -- and different type, you
25 know, different things of that sort. But with him being

Brad Newton (In-camera)
Cross-examination by Mr. Schultz

1 17, the nature of this crime, you know, I spoke with him
2 and interviewed him, completed the preinterrogation waiver.
3 And at no point in time did he ask for an attorney or his
4 mother. I would have been happy to -- to have his mother
5 sit in had he asked for her.

6 Q Well, did you ever offer that?

7 A Did I offer it?

8 Q Yeah.

9 A During the preinterrogation waiver, you know, I
10 offered to have -- to have his attorney present. He -- he
11 understands that -- that he has the right to have that
12 attorney present.

13 Q What about his mother?

14 A Did I specifically ask about that? I don't remember,
15 but probably not.

16 Q Thank you.

17 You said in your direct testimony with Mr. Smith there,
18 you said that to Mr. Gary it didn't seem like a big deal to
19 him, is that correct? I don't want to put words in your
20 mouth. Did you say that on direct?

21 A I did and my -- and my -- what I'm meaning as far as
22 that goes is it -- it didn't appear that he -- it appeared
23 that he understood the gravity of the situation and the
24 gravity of the charge but that it's not a big deal. You
25 know, I'm not saying it's an everyday occurrence, but he --

Brad Newton (In-camera)
Cross-examination by Mr. Schultz

1 he didn't seem worried about this specific incident or
2 charge.

3 Q And in your experience based on eight years with the
4 county and time in the City of Greenville, would you say
5 that because Mr. Gary didn't think -- your words -- that
6 this was a big deal, could that be attributable to -- to
7 his youth?

8 A I don't -- I don't -- repeat the question. I don't
9 know that I understand.

10 Q You stated the fact that you believed that Mr. Gary
11 didn't think this was a big deal, correct?

12 A Yeah.

13 Q Okay. And because your perception of it revealed at
14 least that you did not believe that Mr. Gary thought this
15 was a big deal, do you think that that attitude that Mr.
16 Gary displayed could be attributable to his youth?

17 A Is it possible? It's possible. But if you're asking
18 my opinion, I think he understood the gravity of the
19 situation based on the preparations going into the house.

20 Q All right. But it's possible that that sort of blase
21 attitude could be attributed to his youth, correct?

22 A It's -- almost anything is a possibility.

23 Q Thank you.

24 Now, he wasn't free to leave during this interrogation,
25 was he?

Brad Newton (In-camera)
Cross-examination by Mr. Schultz

1 A He wasn't -- he wasn't in custody.

2 Q He wasn't in custody, but was he --

3 A Had he asked to leave, then I believe we had warrants
4 signed. I had not actually placed him under arrest at that
5 point in time.

6 Q So your -- your testimony is -- is that when he was at
7 the sheriff's office at that point in the early morning of
8 that date and -- officer, could you -- do you have the
9 preinterrogation waiver up there?

10 A I don't. I think the --

11 MR. SCHULTZ: Can I approach?

12 Thank you, Judge.

13 Q Could you read into the record the date there of the
14 statement?

15 A August the 2nd of 2019.

16 Q Thank you, sir.

17 MR. SCHULTZ: Approach, Judge.

18 Q And to your recollection was it in the early morning
19 of August 2nd of 2019?

20 A I -- I don't remember. I think the time's on the -- I
21 don't remember what time it was. Let me see if I can find
22 it in my notes.

23 Q I will give you a minute there.

24 (Pause.)

25 A I don't have the time notated in here. It may be on

Brad Newton (In-camera)
Cross-examination by Mr. Schultz

1 the preinterrogation waiver.

2 Q Thank you.

3 MR. SCHULTZ: Approach the witness.

4 A So I've got the time dated 12:38 so just -- just after
5 lunchtime.

6 Q Just after noon. Okay. Thank you.

7 So it wasn't in the early morning hours then, correct?

8 A Right.

9 Q It was later on in the day.

10 A Yeah. Looks like just after lunch.

11 Q All right. But -- but you don't know -- and I'll be
12 happy to refresh your memory with the insert part, which is
13 appears you have there.

14 A I've got a portion.

15 Q Okay. Do you know when his mother and Mr. Gary turned
16 himself in, like what time?

17 A No. I don't.

18 Q Okay. You don't. All right. So how long in your
19 recollection did this interview actually last?

20 A I'm guessing maybe 25 minutes. I mean, I can't be
21 sure.

22 Q And after the interview was Mr. Gary placed under
23 arrest, or did that happen way later?

24 A I don't -- I don't remember if he was -- I don't
25 know -- I don't remember if he was taken into custody once

1 that interview had concluded or not.

2 Q All right. Understand. But all during this interview
3 Mr. Gary was cooperative, correct?

4 A Yes.

5 Q Okay. That day did you have any further dealings with
6 Mr. Gary or his mother?

7 A That day, I'm not sure.

8 Q Okay. And I just want to limit your testimony to that
9 day specifically. Did you remember that day?

10 A Right. I don't -- I had dealings with them later on,
11 but that day I can't be sure if it was that day or later.
12 I don't -- I don't remember.

13 Q All right. Thank you. You -- you stated in your
14 direct examination of Mr. Smith of his state of mind. Do
15 you -- did you smell any marijuana when he came in --

16 A I did not.

17 Q -- to the sheriff's office?

18 A I don't recall smelling anything of that.

19 Q Okay. And you didn't make him take a drug test
20 obviously, right?

21 A No.

22 Q Okay. Is that your normal course of practice, to have
23 a potential defendant to take a drug test before they make
24 a statement?

25 A No.

Brad Newton (In-camera)
Cross-examination by Mr. Schultz

1 Q But you want to make sure that the person is of free
2 mind, free will, right?

3 A Right.

4 Q And you want to make sure that you cross every "T" and
5 dot every "I" as far as that goes, because a statement like
6 that is very important because he's waiving very important
7 constitutional rights, right?

8 A We try.

9 Q Okay. And you try to make sure that the potential
10 defendant is not under any influence of anything, right?

11 A Yeah. If there's something that I detect, then we --
12 we take measures from -- from there.

13 Q What kind of measures would you take?

14 A I would simply ask him about it.

15 Q And -- okay. And your normal course of practice if
16 you determine that the defendant is under the influence of
17 something, would you cease the interview or would you keep
18 going?

19 A Most of the time we would try to -- we would try to
20 reschedule. We would give him the opportunity to sober up
21 or -- or, you know, have a little bit of time before we
22 re-approach that -- that issue.

23 Q All right. Prior to you talking to Mr. Gary that
24 morning, early morning, late morning, did you talk to his
25 mother?

1 A I don't recall; I don't remember. I may have. I know
2 I've -- I know I've had a conversation or two with her. I
3 don't remember if we spoke that -- that morning or
4 afternoon, or not.

5 Q Did -- when you're interrogating a 17-year-old is that
6 your normal course of business, to not speak to the parent
7 before you talk to the juvenile?

8 A It just depends. I mean, if -- if he asked me to
9 speak with her, then I will. Again, I'm not saying that I
10 didn't. I'm just saying I don't recall.

11 Q Well, let me ask you this. When you're interrogating
12 a 17-year-old, what is your normal course of practice, to
13 talk with the parent or just to -- to talk with the parent
14 to see if you can talk to the 17-year-old by himself or by
15 yourself, I suppose, or just to have the parent at least in
16 the room with the 17-year-old? What was your normal course
17 of practice?

18 A The normal course of practice with a 17-year-old is to
19 have him in the room just as we did with Mr. Gary.

20 Q And you don't give any consideration to the fact that
21 under the law he's under the age of majority, correct?

22 A Had he asked for her or a lawyer, then we would have
23 made those steps and taken that and made that -- made that
24 happen.

25 Q But -- but I just want to make --

Jaden Imarion Gary (In-camera)
Direct examination by Mr. Schultz

1 MR. SMITH: Your Honor, there's a legal definition of
2 a juvenile, and Mr. Gary isn't it. Under 16.

3 THE COURT: All right. He's on cross-examination. He
4 can go into it. If you need to redirect the witness, you
5 can.

6 Q Just one more question and then I'll stop this line of
7 questioning.

8 Did you ask permission to speak to Mr. Gary from his
9 mother?

10 A I don't recall if I did. I don't -- I may have spoken
11 with -- again, I may have spoken with her prior to them
12 coming up. I may not have. I don't know.

13 A lot of times I try to be transparent with everyone
14 involved. But, again, I can't speak to that particular
15 incident as far as if I spoke with her that day prior to or
16 after the conversation that I had with Mr. Gary.

17 Again, I know that a conversation took place at a
18 later time with her, but I can't speak to that day.

19 MR. SCHULTZ: Thank you, Judge. That's all I have on
20 cross right now.

21 THE COURT: Any redirect limited to what he went into?

22 MR. SMITH: No, Your Honor.

23 THE COURT: All right, sir. You may step down. Watch
24 your step as you're stepping down.

25 Those documents -- you can't just give them to the

Jaden Imarion Gary (In-camera)
Direct examination by Mr. Schultz

1 court reporter.

2 THE WITNESS: Okay.

3 THE COURT: Thank you.

4 THE WITNESS: Thank you.

5 THE COURT: You can have those back. I'm sorry.

6 They're not exhibits.

7 Does the state have any other witnesses in this
8 hearing?

9 MR. SMITH: No, Your Honor.

10 MR. SCHULTZ: The defense would call Jaden Gary to the
11 stand.

12 JADEN IMARION GARY, having
13 been first duly sworn, testified as follows:

14 THE COURT: Watch your step as you're stepping up.
15 Have a seat in the chair with the microphone.

16 The second time I've told you all this. I need for
17 you to wear a mask if you're not 6 feet apart. The chief
18 justice has an order in place, and we have to do this.
19 Sorry.

20 All right. Yes, sir.

21 MR. SCHULTZ: Thank you, Judge.

22 Judge, I don't want to break the protocol here. It is
23 okay if I --

24 THE COURT: You're asking questions. You can talk,
25 yes, without a mask on if you feel comfortable doing it.

Jaden Imarion Gary (In-camera)
Direct examination by Mr. Schultz

1 MR. SCHULTZ: Yes, sir. Thank you, Judge.

2 THE COURT: If you wear a mask be sure you really
3 speak up because she's got to make a recording.

4 MR. SCHULTZ: Yes, sir. Thank you, Judge.

5 DIRECT EXAMINATION BY MR. SCHULTZ

6 Q Sir, please state your name for the record.

7 A Jaden Gary.

8 Q Jaden, you've really got to speak up here.

9 A Jaden Gary.

10 Q All right. Mr. Gary, how old are you now?

11 A I am 19.

12 Q And how old were you when you were interrogated by the
13 officer there that just took the stand?

14 A I was -- just turned 17. I'd just turned 17.

15 Q Okay. So you were 17 at the time of this
16 interrogation.

17 A Yes, sir.

18 Q Okay. When is your birthday?

19 A May 8th of 2002.

20 Q All right. And the incident in question, I believe,
21 was July 22nd, correct?

22 A Yes, sir.

23 Q Okay. And you were interrogated on August 2nd of
24 2019, correct?

25 A Yes, sir.

1 Q All right. Do you remember that day that you were
2 interrogated?

3 A Not really, because I was under the influence. So I
4 do not remember much of that day.

5 Q Okay. Well, let's -- I understand that. But do you
6 remember when you woke up that day?

7 A Yes, sir.

8 Q All right. Tell the Court the nearest possible
9 recollection of your memory of what happened that day from
10 the time you woke up. Just be as detailed as you possibly
11 can.

12 A Yes, sir. Well, first, I woke up, and I woke up to
13 phone calls. And it was my mother, and she said that she
14 did -- she didn't -- I can't remember who she said she
15 spoke with, but she said she spoke with somebody and they
16 mentioned that some firearms had been misplaced.

17 Q Jaden, I'm sorry to interrupt you.

18 THE COURT: I tell you what let's do.

19 You can wear the mask if you want to. If you're
20 comfortable enough removing the mask while you're
21 testifying, you may do so as well, because that might give
22 us an opportunity to understand you better.

23 If you're going to wear the mask I need you to speak
24 slowly but really speak up because we've got to understand
25 what you're saying.

1 THE WITNESS: Yes, sir. I apologize.

2 A So I woke up to a phone call from my mother.

3 Q And what's your mother's name?

4 A Mariah Williams.

5 Q Okay. The court reporter is making a record of this.

6 So you got to be clear when you say names.

7 A Mariah Williams.

8 Q Thank you.

9 A Yes, sir.

10 Q Go ahead.

11 A So my mother called me, and she told me that she spoke
12 with somebody that was saying that they were talking about
13 the missing weapons.

14 I knew about them already. I knew exactly what it was
15 about right when she called me. And she told me that they
16 had already took Tyquez McKinney.

17 Q Who is Tyquez McKinney?

18 A My codefendant. Yes, sir. And so I told her that
19 I'll go up there and she said turn yourself in, which I was
20 going to do. So I turned myself in.

21 And once I got to the sheriff's office, I remember I
22 waited for a minute. I told them I came to turn myself in.
23 They didn't really know that I was coming to turn myself
24 in. And then waited. The gang unit, I want to say, came
25 out and put cuffs on me and took me to the back for

1 interrogation.

2 Q And to the nearest of your recollection, was this at
3 the county sheriff's office or was this at the Spartanburg
4 County Detention Facility?

5 A This is -- this is really my first time ever getting
6 in trouble or being anywhere near the county, and honestly.
7 So I -- I thought it might've been the county, but it
8 might've been the sheriff's office. I'm not really sure.

9 Q Okay. When you got this phone call from your mother,
10 Mariah Williams, what did you decide to do at that point?

11 A Smoke.

12 Q Okay. You have to clarify. Can you elaborate that,
13 on that?

14 A Yes, sir.

15 Q Were you smoking a cigarette --

16 A No, sir.

17 Q -- or were you smoking something else?

18 A I was smoking marijuana. I -- I happened to have
19 marijuana on me, and I wanted to get rid of it before I
20 left, so I smoked it, all of it.

21 Q And so you got in the car with your mother. I don't
22 want to put words in your mouth there. You got in the car
23 with your mother and left from that point, right?

24 A Yes, sir.

25 Q When you're -- when you're with your mother in the car

Jaden Imarion Gary (In-camera)
Direct examination by Mr. Schultz

1 were you under the influence?

2 A Yes, sir.

3 Q When you went to the sheriff's office were you under
4 the influence?

5 A Yes, sir.

6 Q All right. When you were speaking to Officer Newton
7 were you under the influence of marijuana?

8 A Yes, sir.

9 Q Did you tell the officer that you were under the
10 influence of marijuana?

11 A I can't remember. I know I told him that I was under
12 the influence during the situation. I remember that. But
13 during the interrogation I don't remember him asking me if
14 I was under the influence.

15 Q To the nearest of your recollection, Jaden --
16 marijuana sometimes has a very pungent odor. Did you smell
17 like that when you walked in?

18 A Yes, sir.

19 Q All right. Do you remember smelling like that when
20 you walked in?

21 A Yes, sir.

22 Q Did you request from Officer Newton that your mother
23 be allowed to be in the interrogation room with you?

24 A No, sir.

25 Q You did not request that.

- 1 A No, sir.
- 2 Q All right. Did Officer Newton ever say, hey, would
3 you like your mom here?
- 4 A No, sir.
- 5 Q Okay. Did Officer Newton read you your rights?
- 6 A Yes, sir.
- 7 Q Okay. Did you understand those rights?
- 8 A I was under the influence. I really wasn't paying
9 attention. I was kinda nervous. I didn't know how to
10 handle the situation.
- 11 Q Okay. And this is the first time you were ever
12 interrogated by law enforcement, correct?
- 13 A Yes, sir.
- 14 Q All right. Any prior involvement with the department
15 of juvenile justice for you, Jaden?
- 16 A No, sir.
- 17 Q So you were never interrogated or interviewed or
18 arrested by any other law enforcement officers prior to
19 this, correct?
- 20 A No, sir.
- 21 Q Did you hear Officer Newton when he just testified a
22 couple of minutes ago?
- 23 A Yes, sir.
- 24 Q All right. Twenty-five minutes now.
25 His words were that he perceived that you thought that

Jaden Imarion Gary (In-camera)
Direct examination by Mr. Schultz

1 this didn't seem like it was a big deal. Do you remember
2 hearing those words?

3 A No, sir. When he was interviewing at the time?

4 Q No. Did you hear the officer testify just 25 minutes
5 ago?

6 A Oh, yes, sir, yes, sir. I heard him when he said
7 that.

8 Q Okay. You remember when he said -- said that.

9 A Yes, sir.

10 Q Let me rephrase the question.

11 He perceived that you thought that this didn't seem
12 like it was a big deal. Do you remember that?

13 A Yes, sir.

14 Q All right. Was his perception in your mind correct?

15 A No, sir.

16 Q No, sir? It wasn't?

17 A You said -- can you restate that question?

18 Q When you were being interrogated by the officer and
19 you signed a statement did you -- did you think that this
20 was a big deal?

21 A Yes, sir. I did.

22 Q Okay. Were you free to leave during this -- this
23 whole interrogation?

24 A I didn't know if I was or not. I didn't think I was
25 until I just heard that he said I was free to leave. The

1 first time of ever knowing that.

2 MR. SCHULTZ: Beg the Court's patience.

3 (Pause.)

4 MR. SCHULTZ: Your Honor, could I approach the
5 witness?

6 THE COURT: Yes, sir.

7 Q Could you read this? Let me ask you this, Jaden. Do
8 you recognize this?

9 A Yes, sir.

10 Q All right. And is that your signature at the bottom?

11 A Yes, sir.

12 Q All right. Do you remember who the witness is there,
13 or no?

14 A No, sir.

15 Q Okay. But this -- this is your correct, all of your
16 correct, information?

17 A Yes, sir.

18 Q All right. This is a 1-page statement that you wrote.
19 Is this your own handwriting or is this somebody else's
20 handwriting?

21 A This is my handwriting.

22 Q All right. Could you read this into the court record?
23 And be slow.

24 A Yes, sir.

25 Q They're making a recording of this.

Jaden Imarion Gary (In-camera)
Cross-examination by Mr. Smith

1 A It starts by saying, "I seen a girl on snapchat with a
2 gun, and I asked to buy it. The girl said I couldn't --
3 she couldn't sell it to me but she said she knew where one
4 was -- where some were that I could get. She then said a
5 man was moving out across the street and that he left a
6 bunch of guns. She told me her brothers had went in
7 before -- before me and that's how that she knew about
8 them. Me and my brothers went in and we got them but only
9 to sell guns for money to help ourselves get -- to help
10 ourselves because of the situations we were facing at home.
11 After selling the guns we left and was dropping people off.
12 During the dropoff I was robbed by three men wearing red
13 flags on their faces. Nothing was done to me, so I went
14 home. I never knew anybody stayed there and I never knew
15 how bad this was -- I never knew how bad this was bound to
16 turn out. But I could get the guns back."

17 Q Okay. Approach, Judge.

18 THE COURT: Yes, sir.

19 MR. SCHULTZ: Thank you.

20 Q You never knew how bad this was bound to turn out.

21 A Yes, sir.

22 Q Okay. At that time -- the statement itself, do you
23 still stand by that statement?

24 A Yes, sir.

25 Q All right. You never knew how bound this was -- bad

1 to turn out, right?

2 A Yes, sir.

3 Q Okay. So let me circle back to what the officer just
4 said.

5 okay. At that time that you were talking to Officer
6 Newton who just testified -- at the time that you were
7 talking to him in the interrogation room of the sheriff's --
8 sheriff's office did you realize the full severity of what
9 had happened?

10 A Oh, no, sir.

11 Q All right. And so his perception of you thinking that
12 you did not think that this was a big deal is indeed
13 correct, right?

14 A Yes, sir.

15 Q All right.

16 MR. SCHULTZ: That's all I have, Judge. Thank you.

17 CROSS-EXAMINATION

18 BY MR. SMITH

19 Q So, basically, if you knew that this carried 15 to
20 life you would have just kept your mouth shut. Is that
21 what you're saying?

22 A No, sir.

23 Q No. But you thought this was going to be easy.
24 That's what you said at the interview -- interview with
25 Newton, right?

Jaden Imarion Gary (In-camera)
Cross-examination by Mr. Smith

- 1 A No, sir. I never said that.
- 2 Q Okay. You know the judge has listened to it, right?
- 3 A Yes, sir.
- 4 Q Okay. So how much weed did you smoke?
- 5 A It was at least a half. That's 14-gram.
- 6 Q You smoked 14 grams. How long did it take you to
- 7 smoke 14 grams?
- 8 A From the time my mother left her job until the time
- 9 she got to me.
- 10 Q All right. How -- how long is that it?
- 11 A I'm not sure.
- 12 Q Were you rolling blunts? What were you doing?
- 13 A Yes, sir.
- 14 Q All right. How much do you put in each blunt?
- 15 A I'm not sure.
- 16 Q You don't know?
- 17 A No, sir.
- 18 Q You smoked 14 grams in a half a day but you don't know
- 19 how much you normally put in a blunt?
- 20 A No, sir. You don't weigh it when you put it in there.
- 21 Q Okay. Do you have an estimate of how many blunts you
- 22 smoked in that time?
- 23 A No, sir.
- 24 Q Would you put like half a gram in a blunt, or more?
- 25 A More.

1 Q More. So like 14 blunts maybe if you put --

2 A Not that -- not that many.

3 Q Okay. So then you're putting even more than a gram
4 in.

5 A Yes, sir.

6 Q All right. And you're smoking that by yourself.

7 A No, sir.

8 Q Oh, who are you with?

9 A Zion -- Zion Miller.

10 Q Your other codefendant?

11 A Yes, sir. That's who I turned myself in with.

12 Q All right. And so the purpose of smoking 14 grams
13 before you turned yourself in was to what?

14 A Two reasons. One, because I had marijuana on me and I
15 wanted to get rid of it; two, because I didn't know what
16 was going to happen once I got inside of that interrogation
17 room once I got up to the county.

18 Q So you thought it would be best to be 14 grams in --
19 before you talked with the police.

20 A Yes, sir. I didn't know I was coming to talk with the
21 police or really what was going on. They just told me they
22 needed me up there.

23 Q All right. But you thought it was a good idea to
24 smoke 14 grams, half of an ounce, of marijuana.

25 MR. SCHULTZ: Objection, Your Honor. Asked and

Jaden Imarion Gary (In-camera)
Cross-examination by Mr. Smith

1 answered.

2 THE COURT: All right. He's on cross-examination.
3 He's got leeway.

4 Q All right. You got kicked out of school in the
5 eleventh grade, right?

6 A Yes, sir.

7 Q This is your statement. Would you admit you have
8 remarkably good cursive handwriting for somebody who's
9 14 grams of marijuana in?

10 A Yes, sir.

11 Q All right. When -- you obviously smoked more than
12 just when -- this day, right?

13 A Yes, sir.

14 Q How often do you normally -- when do you smoke on a
15 normal day?

16 A Every day when I wake up before I eat. All day every
17 day.

18 Q And how much? How much -- how much marijuana do you
19 have to buy for a week's worth of smoking?

20 A I'm not sure. It's kinda a daily thing.

21 Q All right. How much do you buy on a daily basis?

22 A It just depends on how I'm feeling. It's between a
23 half, and it's on a daily basis.

24 Q And a zip for the uninitiated is an ounce of
25 marijuana.

- 1 A Yes, sir, yes, sir.
- 2 Q All right. And how do you fund that?
- 3 A How do I?
- 4 Q Yeah. I mean, you didn't have a job, did you?
- 5 A No, sir.
- 6 Q So how did you -- how do you buy an ounce of marijuana
- 7 a day --
- 8 A It was --
- 9 Q -- without a job?
- 10 A I didn't have to pay for it.
- 11 Q Oh, how did you get it?
- 12 A Somebody else.
- 13 Q Why did they give it to you?
- 14 A Because we were friends.
- 15 Q Okay. And how much does an ounce of marijuana cost?
- 16 A I'm not sure because I don't pay for it.
- 17 Q You've never paid for weed.
- 18 A No, sir.
- 19 Q Okay. That's quite an arrangement. Who is that
- 20 friend?
- 21 A I can't remember --
- 22 Q You can't remember because you smoked too much weed?
- 23 A Yes, sir.
- 24 Q All right.
- 25 A I couldn't remember who I got it from at the time.

Jaden Imarion Gary (In-camera)
Cross-examination by Mr. Smith

1 No, sir.

2 Q But you have one guy who gives you an ounce of weed a
3 day and you can't even recall his name.

4 A No, sir.

5 Q All right. So it's your testimony that you were so
6 high that you don't even remember talking to Newton or just
7 that you wouldn't have talked to him?

8 A No, sir, no, sir. I remember -- I remember certain --
9 like parts of it.

10 Q All right.

11 A But it's a little shaky, and it was two years ago.

12 Q Well, it was like a week or so ago when you did the
13 interview compared to the burglary. Today is two years
14 ago, but when you turned yourself in it was like a week
15 after the incident.

16 A Yes, sir.

17 Q Okay. Do you remember telling them the order of how
18 people went into the house?

19 A I -- I don't. I know I mentioned that I was the first
20 one into the home.

21 Q All right. And that Paso or Zion is the one that
22 actually busted the door in.

23 A I don't know if I mentioned that or not.

24 Q All right. Did you smoke 14 grams before you came in
25 today? You have a better recollection on this day when you

1 were high than you have today.

2 A No, sir. I didn't smoke today.

3 Q All right. So, you know, I don't know if you know the
4 purpose of this hearing. The purpose is to say that the
5 statement wasn't voluntary. How was the statement not
6 voluntary or are you just saying that you were high when
7 you gave it?

8 A No. Because I'm not -- I didn't know that I had a
9 chance to leave at any time. I didn't know that I had a
10 chance to -- for a lawyer. I didn't know I was going to
11 fight a case. I didn't know I had to get a lawyer. I
12 didn't know that I had a chance to bring my mother back or
13 none of that.

14 Q All right.

15 A I thought that they would tell me, what they told me
16 to do was what I had to do, so that's what I did.

17 Q What did he tell you to do? The first thing he starts
18 is telling you that you have the right to a lawyer, you
19 have the right to remain silent. And you agreed with all
20 of those things, right?

21 A I was under the influence.

22 Q Okay. So but, anyway, you just decided to sign the
23 form that says that you understood those rights.

24 A Yes, sir, yes, sir. I didn't want to disagree with
25 the police.

Jaden Imarion Gary (In-camera)
Cross-examination by Mr. Smith

1 Q And you were able to recall your social security
2 number, your phone number.

3 A Yes, sir.

4 Q All of that.

5 A Yes, sir. That was back in the charge remember.

6 Q The name of the girl.

7 A What girl?

8 Q That set this up. Bethany from Snapchat. Do you
9 remember telling him about her?

10 A Yes, sir, because that's -- I remember that I did talk
11 to her on Snapchat.

12 Q And you remember that it was a white car -- a
13 Toyota -- that you came in on.

14 A Yes, sir.

15 Q All right. And that it was a rifle, a Sniper, \$400.
16 You remember all the details about the crime. It's just
17 that you were high? What I'm getting at is what -- you're
18 just saying you didn't understand that you didn't have the
19 right to talk with them?

20 A No, sir. I'm saying that under the influence some
21 things, like little things, little things, it's hard to
22 remember. Bigger things, like what we had and what I got
23 in return, how I got them, that's a little different.

24 Q Did you tell your mom you were under the influence?

25 A No, sir, but she mentioned it to me when I got in the

1 car.

2 Q That you reeked?

3 A Yes, sir. And I shouldn't be going to the county
4 under the influence.

5 Q Okay. But she took you there anyway.

6 A Yes, sir.

7 Q So why would she do that?

8 A Because that was the right thing to do.

9 Q Okay. But she said you shouldn't go there if you're
10 under the influence.

11 A Just because I shouldn't go don't mean I -- I don't do
12 it. That's the right thing to do. You don't run; you
13 don't leave. The best thing was to turn myself in, so
14 that's what I did, under the influence or not.

15 Q Did you consider saying, guys, I'd really like to
16 explain this but I've just smoked a half an ounce of weed
17 and --

18 A I was scared to say anything. I didn't know. I just
19 gave them what they wanted. Simple.

20 Q How do you even know what they wanted? You came to
21 them, right?

22 A Yes, sir. But, like I said, once my mother called me,
23 she told me what the incident was about.

24 So I came and I gave them all of the information I had
25 on it.

Mariah Williams (In-camera)
Direct examination by Mr. Schultz

1 MR. SMITH: Your Honor, can we make his statement
2 State's Exhibit 3 for the hearing?

3 MR. SCHULTZ: No objection to -- for purposes of the
4 hearing.

5 THE COURT: Without objection, that'll be State's 3.

6 (Voluntary statement marked State's Suppression Exhibit
7 No. 3.)

8 Q Do you remember if you were handcuffed during the
9 interview?

10 A No, sir, I don't remember.

11 Q Do you remember how long it lasted?

12 A No, sir. I don't remember it.

13 Q But you believe that you were improperly advised of
14 your rights, or just that you were too high to understand?

15 A That I was improperly advised of my rights, yes, sir.

16 MR. SMITH: I don't have any further questions.

17 THE COURT: Any redirect limited to what the state
18 went into?

19 MR. SCHULTZ: No, sir.

20 THE COURT: Sir, you may step down. Watch your step
21 as you're stepping down. We had a witness to fall one
22 time.

23 MR. SCHULTZ: Your Honor, I have one more witness, and
24 that's Mariah Williams, for purposes of this hearing.

25 THE COURT: All right.

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Mariah Williams (In-camera)
Direct examination by Mr. Schultz

1 A It is.

2 Q All right. And could you take the Court through this
3 day to the nearest of your recollection?

4 A Yes. I was at work. I was --

5 Q Where is work for you?

6 A I was working at Magna, which is in Moore off 290 on
7 the further end.

8 I received a phone call from my mother. She watches
9 my younger two kids, and she said that, Mariah, the police
10 just came here looking for Jaden.

11 She said they came in the house. One was at the back
12 door and one was at the front door.

13 She said a card was left here with Officer Newton's
14 name on it. That's how I got his name and a number.

15 So I'm at work. I told her I'm getting off the phone
16 with you, I'm going to call him. I called. He told me
17 what was going on.

18 I immediately called Jaden, asked where he was at. I
19 said I'm leaving work, I'm coming to get you. And that's
20 what I did. From work it took me maybe 15 minutes to get
21 to Jaden.

22 Q And Magna is on 290.

23 A Yes.

24 Q All right. And where were you living at -- where --
25 where was Jaden living at the time?

- 1 A [REDACTED] Street, Duncan, South Carolina 29334.
- 2 Q And just to reiterate, how long did it take you to get
- 3 from Magna to where Jaden was living?
- 4 A About 15 minutes.
- 5 Q And when you walked into -- was this a house; was this
- 6 an apartment?
- 7 A Where -- when I called Jaden he was not at that
- 8 address. He was with -- at a friend's house spending the
- 9 night. So I asked him for that location, and I went there
- 10 to get him.
- 11 Q All right. And so you went to that location.
- 12 A Yes.
- 13 Q Okay. And was that an apartment or was it a house?
- 14 A It was a house.
- 15 Q All right. And so you went up there. And Jaden knew
- 16 you were coming?
- 17 A Yes.
- 18 Q All right. And so you got Jaden in the car and --
- 19 A Yes, sir.
- 20 Q -- then you went up to the sheriff's office, right?
- 21 A Yes.
- 22 Q On the car ride over from where you picked up Jaden to
- 23 the sheriff's office was he -- was there any particular
- 24 thing that you remember Jaden saying or the way he smelled
- 25 or anything?

Mariah Williams (In-camera)
Direct examination by Mr. Schultz

1 A I didn't smell anything, but his eyes were red. I
2 asked him had he been smoking, and I did tell him that's
3 not the right thing to do, to go to the -- to the sheriff's
4 office to talk to no one smelling like smoke.

5 I asked them if they wanted something to eat. They
6 said they couldn't eat because they were too nervous to
7 eat. And I drove them there.

8 Q And when you say -- I don't want to put words in your
9 mouth. But when you said just a couple of seconds ago,
10 smelled like smoke, did you mean marijuana?

11 A I didn't smell anything. His eyes -- well, I -- yes.
12 Smelling like marijuana, yes.

13 Q Okay. Thank you.

14 And you also noticed, just to reiterate, his eyes were
15 bloodshot, right?

16 A Yes.

17 Q Okay. And, well, let me ask you this. You are
18 Jaden's mother, correct?

19 A Yes.

20 Q You've been around him all of your life.

21 A Yes.

22 Q Does -- prior to that statement that day was he a
23 frequent smoker of marijuana?

24 A Yes.

25 Q Much to your disgust apparently.

- 1 A Yes.
- 2 Q All right. You try to raise him right.
- 3 A Definitely.
- 4 Q But you were around him when he -- when you were
- 5 perceived -- when you perceived to be -- him under the
- 6 influence, right?
- 7 A Yes.
- 8 Q Now, was he under the influence of marijuana that day?
- 9 A I'm pretty sure he was.
- 10 Q You drive up to the sheriff's office. You park there,
- 11 right?
- 12 A Yes.
- 13 Q Okay. Do you and Jaden walk in or just -- just Jaden
- 14 walk in?
- 15 A No. I get outta the car. Because I'm his mother, so
- 16 I go and I talk to this lady at the front, and I asked to
- 17 speak to Officer Newton. And she asked does he know you're
- 18 coming.
- 19 Q And officer Newton is this -- this gentleman over
- 20 there --
- 21 A Yes.
- 22 Q -- behind the solicitor?
- 23 A Yes.
- 24 Q Okay. All right. And then what happens?
- 25 A All of a sudden the gang unit come in -- I guess

Mariah Williams (In-camera)
Direct examination by Mr. Schultz

1 that's what you call them -- and they put the boys in
2 handcuffs. And I just remember pouring tears, and all I
3 could hear his words saying, you know, what his crime was,
4 how many years it holds and everything like this. And they
5 take him away.

6 And my son looked back at me and told me don't cry,
7 stop crying, why are you crying. And I stopped there -- I
8 stopped there until I had to go. I mean, and that was
9 that. Told them just -- I can't remember if I left my
10 number or anything for him to call me or if he gave me his
11 number. And I left.

12 Q Did -- did Newton -- did the officer ever say, hey,
13 man, we're about to interrogate your 17-year-old son, why
14 don't you come back there?

15 A No. He didn't.

16 Q All right. Did you know you had the option to go back
17 there?

18 A I did not.

19 Q If you knew you had at least that option of going back
20 there with the investigator and Jaden, would you have done
21 that?

22 A Most definitely.

23 Q Let me ask you this. Was Jaden ever interrogated by
24 any officer in Spartanburg County or anywhere in this state
25 or any other state?

- 1 A No, sir.
- 2 Q Okay. He was never involved in the department of
3 juvenile justice or anything like that, right?
- 4 A No, sir.
- 5 Q Okay. He was never charged before.
- 6 A No.
- 7 Q He was never arrested before.
- 8 A No, sir.
- 9 Q Did he ever get a speeding ticket before?
- 10 A No, sir.
- 11 Q All right. So this is his very first involvement with
12 law enforcement to your knowledge, correct?
- 13 A Yes, sir.
- 14 Q All right. And, again, just to reiterate, your son
15 was 17 years old at the time, right?
- 16 A Yes, sir.
- 17 Q And you left that day. Did the sheriff's office ever
18 call you back that day saying we are interrogating your
19 17-year-old son right now, why don't you come here --
- 20 A No, sir.
- 21 Q -- and sit in on this? No? Never?
- 22 A No, sir.
- 23 Q And that day that never happened.
- 24 A No, sir.
- 25 MR. SCHULTZ: That's all I have, Judge. Thank you.

Mariah Williams (In-camera)
Cross-examination by Mr. Smith

1 THE COURT: Answer any questions Mr. Smith may have
2 for you.

3 CROSS-EXAMINATION

4 BY MR. SMITH

5 Q Do you know Victoria Jeter that works at Magna?

6 A I do not.

7 Q All right. And the order was that you found out that
8 somebody left a card at the house and then you immediately
9 went and picked Jaden up.

10 A Yes.

11 Q All right. Was it surprising to you to hear him say
12 that he smokes a half an ounce of marijuana a day?

13 A Yes.

14 Q But you're around him -- were you around him in the
15 months leading up to this?

16 A Yes.

17 Q Did you notice a difference in his behavior on that
18 day versus any other day?

19 A No. I did not.

20 Q Did you have Officer Newton's -- or do you to this day
21 still have Officer Newton's cell phone number?

22 A I do.

23 Q All right. Have you ever communicated with him?

24 A We met with Officer Newton maybe -- when Jaden first
25 got out of jail. So this was probably about two years ago,

1 and that's how I got Officer Newton's number. He gave it
2 to me and told us we could reach out to him with any
3 questions. And I saved it in my phone.

4 Q You stated that -- that the gang unit came and
5 arrested him. And when you said the boys, was Mr. Zion
6 Miller with you? Was that the person that Jaden was with
7 when you picked him up?

8 A Yes.

9 Q And he was wanted or they wanted to talk with him as
10 well?

11 A Yes.

12 Q You're saying that they told you how many years that
13 it carried. Was Mr. Gary in there when that happened? Was
14 he in earshot when they were saying how much that charge
15 carried?

16 A They were speaking amongst themselves, and, yes, they
17 was putting the boys in handcuffs and speaking amongst
18 themselves out loudly.

19 Q So he and you knew that this charge carries 15 years
20 to life.

21 A Yes.

22 MR. SMITH: I don't have any further questions.

23 THE COURT: Any redirect limited to what he went into.

24 MR. SCHULTZ: No, sir.

25 THE COURT: Thank you, ma'am. You may step down.

Brad Newton (In-camera)
Direct examination by Mr. Smith

1 watch your step as you're stepping down if you would.

2 Defense have any other witnesses to call?

3 MR. SCHULTZ: No, sir.

4 THE COURT: Does the state have any witnesses in
5 reply?

6 MR. SMITH: Can we call Officer Newton briefly?

7 THE COURT: All right. Sir, just come right back up
8 here to the witness stand.

9 I just need to remind you that you remain under oath.
10 And watch your step as you're stepping back up.

11 BRAD NEWTON, having been
12 previously duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. SMITH

14 Q You stated you are worked at highway patrol prior to
15 working at the sheriff's office.

16 A Yes, sir.

17 Q What did you do at highway patrol?

18 A I -- I was a trooper with the highway patrol. We
19 investigated collisions, investigated traffic enforcement
20 violations, that type of thing.

21 Q What about D.U.I.s?

22 A Yes.

23 Q Do you have training and experience on people that may
24 be under the influence of certain drugs or alcohol?

25 A I do.

1 Q All right. And you've made dozens of D.U.I. arrests,
2 maybe hundreds, in your career?

3 A I can't put a number on it, but yes.

4 Q And performed field sobriety tests on people that you
5 both arrested and did not arrest?

6 A Correct.

7 Q So in terms of an investigator in the sheriff's office
8 you might have more experience with drug and alcohol
9 detection than most?

10 A Maybe. Maybe more than others.

11 Q All right. Did you have any thoughts that Mr. Gary
12 was under the influence?

13 A No, sir. Had that -- had that entered into my mind I
14 would have kind of delved into that before we began
15 questioning.

16 Q And the fact that somebody has had some amount of
17 alcohol or maybe marijuana or even something more intense,
18 would that mean that you necessarily wouldn't interview
19 them or just would assess them?

20 A No. It -- it -- I wouldn't necessarily dismiss the
21 interview, but we would assess the situation to see how
22 much -- you know, if he is under the influence or if he
23 just had a small amount of alcohol or drugs in his system
24 and go from there.

25 Q Do you have experience -- I don't know if you've ever

Brad Newton (In-camera)
Cross-examination by Mr. Schultz

1 worked in narcotics. Do you know about, like, normal
2 consumptions of marijuana and things like that?

3 A I -- I don't. Fourteen ounces in 15 minutes seems
4 excessful -- excessive.

5 Q Or 14 grams?

6 A 14 grams. Sorry.

7 Q which is a half of an ounce.

8 A Right.

9 Q If you'd thought that he didn't know what he was doing
10 or didn't understand what he was doing would you have
11 conducted the interview with him?

12 A No, sir.

13 Q And he was able to recall from the interview that I
14 listened to many, many details about this crime, correct?

15 A Yes.

16 Q And his own biographical details. And pretty much
17 anything that you wanted to know about the crime, he was
18 able to recall.

19 A Correct.

20 Q And did most of that come without questioning? I
21 mean, were you --

22 A I'm not sure --

23 Q -- having to lead him and -- and forcefully extract
24 information, lie to him --

25 A No, no.

1 Q -- do advanced interrogation techniques to trick him,
2 or did it come out freely?

3 A No, sir. It was -- it was freely and -- and he
4 recalled the majority of it with -- with -- without
5 prompting.

6 MR. SMITH: I don't have any further questions.

7 CROSS-EXAMINATION

8 BY MR. SCHULTZ

9 Q Is it your normal practice to trick people?

10 A I -- I don't typically trick people. I'm not sure
11 what you're getting at here.

12 Q Well, you just answered a question with Mr. Smith.
13 I'm not asserting that that's your normal practice, but I
14 just want to make sure. Is that your normal practice to
15 trick people?

16 A No, sir.

17 Q Okay. The answer is no, right?

18 A Right.

19 Q Is that your normal practice with a lot of people?

20 A No, sir.

21 Q No. Okay. Because you're a good officer. You -- you
22 do your job well, and you had my client sign a
23 interrogation waiver, right?

24 A He did.

25 Q Okay. And you witnessed that, right?

Brad Newton (In-camera)
Cross-examination by Mr. Schultz

1 A I did.

2 Q Okay. Did you notarize it?

3 A I'm not a notary.

4 Q Okay. Did you try to get it notarized?

5 A There was a witness that signed it. I'm not sure who
6 that was. I have to look at the -- the form.

7 Q Okay. Why wasn't it notarized?

8 A Sir, I don't -- I don't know that -- who we have that
9 are notaries at the office.

10 Q But -- but the statement that you took from Jaden
11 Gary, that wasn't notarized. Is there any explanation why
12 it wasn't notarized?

13 A I don't know who the notaries are that we would have
14 available to do that.

15 Q Now, you answered a couple of questions for Mr. Smith
16 about field sobriety tests and field sobriety tests where
17 you were on patrol in Greenville County. You probably
18 conducted hundreds of these, right?

19 A I've done several.

20 Q When you're taking a defendant back into -- lack of a
21 better word -- custody there at the sheriff's office, it's
22 not your normal practice, again, to conduct field sobriety
23 tests on that person, right?

24 A No, sir.

25 Q Okay. But it's -- it would be your normal course of

1 practice to make sure that person is -- is not under the
2 influence at all, right?

3 A If I had any indication that they were under the
4 influence.

5 Q Did you notice bloodshot eyes with Mr. Gary at the
6 time?

7 A Not that I recall.

8 Q All right. Did you notice an odor of marijuana or
9 anything like that?

10 A Had I noticed that odor -- that odor it would have
11 been documented and I would have discussed that with him.

12 Q And you would have discussed it, but would you have
13 ceased questioning of my client?

14 A Potentially.

15 MR. SCHULTZ: That's all I have, Judge. Thank you.

16 THE COURT: Any redirect limited to what he went into?

17 MR. SMITH: No, Your Honor.

18 THE COURT: Thank you, sir. You may step down. Watch
19 your step as you're stepping down.

20 Those are your papers, right?

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay. You may take those.

23 Anything else from the state?

24 MR. SMITH: No, Your Honor.

25 THE COURT: All right. The -- we're having the

1 hearing, so I made the assumption without asking.

2 The defense contends this is not a voluntary
3 statement?

4 MR. SCHULTZ: We do.

5 THE COURT: Okay. Tell me why.

6 MR. SCHULTZ: Your Honor, the main reason -- well,
7 there's two main reasons.

8 THE COURT: Okay.

9 MR. SCHULTZ: Number one, at the time -- now,
10 Mr. Gary, now, is a couple of years older, but at the
11 time -- and I think the record is pretty clear that he was
12 17 -- well, the record is clear that he was 17 years old
13 at -- at this time of the interrogation.

14 I stated, or I questioned, I elicited testimony from
15 the officer and also elicited testimony from my client that
16 because of his youth to him it didn't seem like it was a
17 big deal.

18 I believe that because he was 17 that if he would have
19 known that it was a big deal he probably would not have
20 waived his rights. So that's number one in my argument
21 there.

22 Number -- number two would be that we received
23 testimony from two people that I put up on the stand -- my
24 client and also his mother -- that he was under the
25 influence of marijuana at -- at this time.

1 My supposition with this is that he got a call from
2 his mother to basically, hey, I'm going to drive you up to
3 the sheriff's office.

4 He was under a lot -- Mr. Gary was under a lot of
5 stress. He -- he takes what he has. Unfortunately, he was
6 committing a crime there because marijuana is illegal.
7 But, nevertheless, he was still under the influence at the
8 time that he gave this statement.

9 He testified to it. His mother testified to bloodshot
10 eyes, and his mother also testified to the fact that he
11 smelled like marijuana.

12 So that would be the two bases of my argument that
13 this was an involuntary statement because of his age. And
14 I think clearly he was under the influence of marijuana.
15 Thank you.

16 THE COURT: Thank you.

17 Is the state's -- have any -- or rather the state or
18 the defense have any case law that indicates that it's
19 automatically considered not voluntary if a 17-year-old
20 gives a statement?

21 MR. SMITH: Your Honor, I'm reading State vs. Parker
22 here, just it's got a lot of factors to consider. It's 381
23 SC 68.

24 THE COURT: Tell me about the question that I asked
25 about simply because of an age.

1 MR. SMITH: It says the statements of juveniles are
2 reviewed under the totality of the circumstance, that the
3 United States Supreme Court held a juvenile -- well, it
4 says that you should consider --

5 THE COURT: I've got age, educational level, physical
6 and mental condition of the defendant, was he in custody at
7 the time, was he promised anything at the time, and his
8 overall, the way that he acted.

9 Anything else, any other factors?

10 MR. SMITH: This lists length of the interrogation,
11 the location, police coercion, defendant's maturity,
12 education, physical condition, mental health, failure of
13 the police to advise them of their rights, police
14 misrepresentations, isolation of a minor from having their
15 parents, threats of violence, promises of leniency,
16 similar -- similar type things. But I don't think there's
17 a per se rule. It just seems it should be analyzed under
18 the totality of the circumstances whether it was freely,
19 knowingly and voluntarily given.

20 THE COURT: All right. Do y'all disagree as to the
21 burden at this hearing, is the state's burden is the
22 preponderance of the evidence?

23 MR. SMITH: I agree with that.

24 MR. SCHULTZ: I would agree that it's the state's
25 burden as well, but I would just like to be heard briefly.

1 THE COURT: Sure. Okay.

2 MR. SCHULTZ: I would -- I would agree that the Court
3 has to look at all of the totality of the circumstances,
4 and I think I've pretty much established the facts as such.

5 He was -- Mr. Gary was 17; his mother was there; she
6 left. He was under the influence. The interrogation
7 lasted for close to half an hour. He was put in cuffs at
8 the sheriff's office, so he was in custody. He was not
9 free to leave.

10 So taking all of that into the totality, I believe the
11 statement should be ruled inadmissible.

12 THE COURT: Okay.

13 MR. SMITH: Your Honor, I just would ask, obviously,
14 you have to weigh credibility of witnesses in this case.

15 Sergeant Newton has extensive experience as a law
16 enforcement officer both as a trooper that his main role
17 would have been detecting people that are under the
18 influence. He didn't mention anything of it, said he would
19 have documented it if he had.

20 There's actually conflicting testimony between
21 Mr. Gary and his mother because Mr. Gary is wanting to make
22 himself totally stoned and saying he smoked 14 grams.

23 He tried to extend the time period that it took for
24 Ms. Gary to -- or excuse me -- Ms. Williams to get to him.
25 She says 15 minutes, and Josh reasked the question. I

1 don't know if it was to try to get a different answer, but
2 she actually gave the same answer the second time, said it
3 was 15 minutes.

4 So he's smoking 14 grams, which he said maybe he puts
5 a little over a gram. He was talking about smoking 14
6 cigars, although he did have some help, in a 15-minute
7 period. It's just not believable.

8 Also, she initially said he didn't smell like
9 marijuana, and it was when Mr. Schultz asked the question
10 again that we got a different response where she said he
11 did smell like marijuana. She initially had just said the
12 bloodshot eyes.

13 I also point out he stated that he smokes this amount
14 of marijuana frequently. And, Your Honor, I know you deal
15 with a lot of drug issues, the tolerance that's developed
16 to these things. And it wouldn't be the same as somebody
17 who's never smoked marijuana consuming that amount.

18 You have his interrogation waiver form where he has
19 signed it. You have his written statement which is in, you
20 know, almost perfect cursive and is lengthy. And, you
21 know, there's just not a lot of things to support that he
22 would be under the influence.

23 I think what happened here is perhaps he didn't
24 realize the gravity of the crime, but Ms. Williams kind of
25 stated that they were talking about the severity of the

1 crime and said she thought that he understood it going in.

2 So I think he just has buyer's remorse that he
3 confessed to the crime and that he's facing what he's
4 facing now. But there's ample evidence to at least make --
5 let the jury make the determination of whether the
6 statement was voluntarily made during the trial.

7 MR. SCHULTZ: Your Honor, if I can be heard on that
8 briefly.

9 THE COURT: All right.

10 MR. SCHULTZ: As far as the believability goes, both
11 my witnesses for this hearing basically admitted that my
12 client committed a crime on that day, which is smoking
13 marijuana, which, as the Court knows, is illegal in this
14 state.

15 So I think believability is heightened by the fact
16 that Mr. Gary said, yeah, I smoked a lot. And his mother
17 testified to the fact that she knew that, unfortunately, he
18 did smoke a lot. So believability is increased, I believe,
19 expedientially.

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

21 MR. SCHULTZ: Yes, sir.

22 THE COURT: All right. At this hearing, this hearing
23 is for purposes of determining admissibility of the
24 statement.

25 The defense -- I am going to find that the state has

1 met its burden of proof by the preponderance of the
2 evidence in establishing that the statement was given
3 voluntarily -- voluntarily and freely by the defendant.

4 The Court did have the opportunity, as I mentioned
5 before, to listen to the statement, and a lot of the
6 statement from the Court's position was given voluntarily
7 and freely by the defendant without much questioning by
8 the -- by the police officer. I think the defendant knew
9 why he was there. It dealt with the issue of the guns
10 and -- and he cooperated with the police in giving the
11 statement.

12 The issues about was he under the influence, his age
13 all of those are factors that I've considered. There can
14 be factors that the Court -- that the jury can consider in
15 whether or not they believe the statement was freely and
16 voluntarily made, and those arguments and that line of
17 questioning can be elicited during the trial of the case so
18 that the jury can -- maybe they will find that they do not
19 believe the statement was voluntary and they can disregard
20 the statement.

21 But I think for purposes of admissibility, I think the
22 statement -- the Court's going to find that it was freely
23 and voluntarily made and that the state has met its burden
24 of proof based on the totality of the circumstances.

25 Anything else pretrial?

1 MR. SMITH: Nothing from the state, Your Honor.

2 THE COURT: Lawyers want to approach?

3 (Bench conference held off the record.)

4 THE COURT: We'll step down for a few moments.

5 (Whereupon, a recess was taken.)

6 THE COURT: Okay. Thank y'all for waiting.

7 One thing we didn't know this morning was that not all
8 of our jurors were here. So we had to wait for the
9 thirteenth juror to arrive, and I am told that she is now
10 here.

11 So is there anything else that we need to address
12 before we bring the jury in?

13 MR. SMITH: No, Your Honor.

14 MR. SCHULTZ: None from the defense.

15 THE COURT: Okay. What we'll do is I've got the two
16 indictments. Three charges, correct? Grand larceny,
17 burglary first, possession of a weapon during the
18 commission of a violent crime. I've got my instructions.

19 Opening statements, hopefully, will be relatively
20 brief and the state ready to call their first witness.

21 MR. SMITH: We have all of our witnesses for the
22 trial.

23 THE COURT: We'll try. The jury has been here. Even
24 though they haven't been in the courtroom, they have been
25 in the building waiting to work. They started at about

1 10:00. So I'm going to try to shoot for a bunch break
2 12:30, 12:45, 1:00 at the latest to let them be able to
3 have their break.

4 So if we're in the middle of a testimony, we're just
5 in the middle of a testimony. Sort of gear yourself
6 towards that.

7 I'm ready for the jury.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: All right. Ladies and gentlemen, thank
11 y'all very much for waiting while we took care of some
12 preliminary matters and got the case ready to be able to
13 present to you.

14 we're ready to begin the trial of the case. In order
15 to start the trial I need for you all to please stand,
16 raise your right hand, because the clerk of court has to
17 administer an oath to you.

18 (Whereupon, the jury was duly sworn.)

19 THE COURT: All right. Ladies and gentlemen, we are
20 now going to begin the trial of the case of the State vs.
21 Jaden Gary.

22 Now, before we begin this trial I want to tell you
23 that this trial probably will be different from what you
24 might expect. People do not have the chance to attend an
25 actual court session as you are doing now and may think

1 from watching television or movies or reading books that
2 trials are always full of high drama, intense action and
3 riveting circumstances.

4 Now, while all of these things may be true at times,
5 this trial is not for entertainment. It is a foundational
6 part of our democracy.

7 And trials -- they are often slow, deliberate and
8 repetitive, just the opposite of what maybe you've seen in
9 television or watched in a movie or read about in a book.

10 This courtroom is a place of honor dedicated to the
11 protection and preservation of citizens' rights to do what
12 many have called the greatest justice system ever created.

13 The attorneys appearing before you, they are advocates
14 for the parties that they represent, but first and foremost
15 they are officers of the court sworn to uphold the
16 integrity and fairness of our judicial system.

17 You should expect them to be professional, competent
18 and ethical in their representation of their client's
19 interest. But remember that you have taken an oath to try
20 the case and reach a fair and just verdict. And you are
21 also expected to be professional, reasonable and ethical.

22 Thank you for accepting the important responsibility
23 of jury service and for your contribution today to our
24 justice system.

25 Now, what I will say now is intended to serve as an

1 introduction to the trial. These remarks are not a charge
2 on the law of the case. I will instruct you on the law
3 applicable to this case at the end of the trial before you
4 retire to consider your verdict. This is merely an
5 explanation of the procedures that we will follow during
6 the course of this trial of this case so that you may
7 better understand what is happening.

8 The defendant in this particular case is charged with
9 the crimes of burglary in the first degree, possession of a
10 weapon during the commission of a violent crime and grand
11 larceny, the elements of which is charged by way of
12 indictment of these three crimes, the elements of which
13 will be explained to you later.

14 Now, these indictments, they are simply by the --
15 excuse me -- these indictments are simply the charges by
16 which the cases are brought into court, and it is not in
17 any sense -- these indictments, they're not in any sense
18 evidence of the allegations contained in these indictments.

19 The defendant has pled not guilty to these
20 indictments. The state therefore has the burden of proving
21 each element of the indictment beyond a reasonable doubt.
22 And it will be your duties, ladies and gentlemen, to decide
23 whether or not the state has met that burden.

24 Your purpose as jurors is to determine the facts of
25 this case. You are the sole judge of the facts of this

1 case. If at any time I make any comment regarding the
2 facts of this case, you must disregard my comments. You
3 are to determine the facts from the testimony that you hear
4 and any other evidence that is introduced during this
5 court.

6 It is up to you to determine the inferences which you
7 may feel properly can be drawn from the evidence that is
8 presented during the course of this trial.

9 Now, it is especially important that you perform your
10 duty of determining the facts diligently and
11 conscientiously, because ordinarily there is no way to
12 correct an erroneous determination of facts that is made by
13 a jury.

14 Now, on the other hand and with equal emphasis, the
15 same law that makes you the judge of the facts of the case
16 makes me the judge of the law of this case.

17 The law as given by the Court is the only law that you
18 may consider. You must accept and follow it even though
19 you may disagree with it.

20 I cannot tell you what the facts are and you cannot
21 disagree with me about what the law is or what the law
22 ought to be.

23 Your job is to take the law as I give it to you and
24 apply it to the facts as you find them from the testimony
25 of the witnesses and any other evidence that is introduced

1 during the course of this trial.

2 After doing that you will render your verdict, a true
3 and just verdict under the solemn oath that you just took
4 as jurors.

5 As I mentioned before, until I advise you to begin
6 your deliberations you must not discuss the case with
7 anyone, including your fellow jurors, friends, family
8 members and anyone involved in this case.

9 Now, this includes discussions that are face to face
10 and those by telephone, email, text, blog or any other type
11 of communication. You may not use a computer, cell phone
12 or other electronic device with communication capabilities
13 at any time while in this courtroom or during your
14 deliberations.

15 During your breaks for meals or overnight if necessary
16 you can use those devices. However, as I've told you,
17 cannot use those devices to communicate to anyone anything
18 about the case, nor can you use those devices to do any
19 type of research about the case.

20 Now, ladies and gentlemen, during this trial I do not
21 anticipate that there would be any type of news coverage.
22 But if there is, do not read, listen to or watch any news
23 reports about this case. This includes anything that might
24 be in a newspaper or on the internet, radio or television.
25 You must not consider anything that you may have read or

1 heard about the case outside of this courtroom, whether
2 before or during the trial.

3 Now, ladies and gentlemen, after the case is submitted
4 to you you must discuss it only in the jury room in the
5 presence of your fellow jurors.

6 The attorneys and the parties have been advised that
7 they are not to talk to you at all. So if you see anyone
8 involved in the case and they do not even say hello to you
9 as you're coming and going through the building, they're
10 not being unfriendly. They're just following my
11 instructions.

12 Now, it's important for you to keep an open mind and
13 not decide any issue in the case until all of the
14 evidence -- until all the evidence has been presented, the
15 parties have made their closing arguments to you and I've
16 had the opportunity to instruct you on the law applicable
17 to this case.

18 It is your solemn responsibility to assure that your
19 verdict must be based on the evidence as it is presented to
20 you during this trial and on the law as I instruct it to
21 you during and at the close of this trial.

22 In just a moment the solicitor is going to make what
23 is called an opening statement in which the solicitor will
24 explain to you the issues that he believes are -- that are
25 involved in this case.

1 The attorney representing the defendant, he may also
2 make an opening statement, although he is not required to
3 do so.

4 Ladies and gentlemen, what the attorneys say to you
5 during their openings -- opening statement is not evidence
6 in this case. It is only their contention as to what the
7 issues are in this case.

8 The evidence in this case will be presented to you by
9 witnesses from this witness stand who are sworn and from
10 any exhibits that are introduced during the course of this
11 trial.

12 Now, ladies and gentlemen, I'll let you know in
13 advance that from time to time you may hear one of the
14 lawyers say something like, Your Honor, I believe we have a
15 question of law or a matter of law to discuss with you, or
16 that may say, Your Honor, may we approach the bench, or
17 sometimes I myself may find it necessary to excuse you from
18 the courtroom for a short while so that the attorneys and I
19 can have discussions about things that are called matters
20 of law.

21 Now, the reason that we exclude you from these
22 discussions is because you are the sole judges of the facts
23 the case, and sometimes when I'm discussing matters of law
24 with the attorneys it's necessary for me to make comments
25 about the facts in connection and in ruling on what's known

1 as matters of law.

2 I'm not supposed to tell you what I think about the
3 facts, and so I will excuse you from the courtroom for a
4 short while so that you're not influenced by any comments I
5 make in rulings on matters of law.

6 Now, in determining what the true facts are in the
7 case you must decide whether or not the testimony of a
8 particular witness is believable. It will be my
9 responsibility to rule as a matter of law as to whether
10 certain testimony is admissible at all or not, but once the
11 testimony is admitted, whether or not you believe it is
12 solely up for you to determine.

13 In deciding whether or not to believe a witness you
14 have the right to consider the interest of any witness, the
15 bias of any witness, the prejudice of any witness, the
16 opportunity for the witness to have seen the matters and
17 things about which the witness may testify and the way the
18 witness acts on the witness stand.

19 You have a right to consider anything that is in the
20 record that will help you evaluate the testimony of the
21 witness.

22 That means that it is your duty to pay close attention
23 to the witnesses, to observe the witnesses, to listen to
24 the witnesses and to pay close attention to the attorneys
25 and to the Court.

opening statements

1 Don't let your thoughts wander but give strict
2 attention to the testimony in the case so that at the end
3 of all of the testimony, after the arguments of counsel and
4 the charge on the law by the Court, you will then be in a
5 position to determine what the true facts are and to apply
6 the law to those facts and thus to render a true and just
7 verdict.

8 All right. It is now -- Madam -- Ms. Pangel, Renee --
9 THE FOREPERSON: Yes.

10 THE COURT: All right. Ma'am, I'm going to appoint
11 you foreperson of this jury, and it will be your duty to
12 preside in the jury room and be the jury spokesperson in
13 this courtroom if that becomes necessary.

14 Now, it will also be your duty to write the verdict,
15 but I'm going to give you further instructions about that
16 later on, but you will be foreperson of this jury.

17 Now, in order to preserve everyone's rights I will
18 give the parties an opportunity to object to anything that
19 I have said through these instructions.

20 Are there any objections from state?

21 MR. SMITH: No, Your Honor.

22 THE COURT: Any from the defense?

23 MR. SCHULTZ: No, sir.

24 THE COURT: Ladies and gentlemen, at this time I am
25 going to let the state present their opening statement.

1 MR. SMITH: Thank you, Your Honor.

2 On July 22nd of 2019 Jason Williams was at work.
3 You're going to hear from him. He's on the front row, the
4 left there.

5 He was at work, but while he was at work there were
6 three men that forcefully entered his house for the
7 purposes of stealing guns and selling those guns on the
8 street.

9 One of those men is Jaden Gary. And we know that
10 because it's on video tape and because he confessed to it.
11 And you're going to get to see both -- see one and hear the
12 other.

13 Jason Williams had had a previous incident where his
14 guns had been stolen by some very, very young children that
15 lived in his neighborhood, and as a result of that he ended
16 up getting a surveillance camera that's in his living room
17 that shows both into his bedroom and into another section
18 of his house.

19 He'd been living at this house for several years.
20 He's former military, has a -- likes guns. Don't know why
21 Jaden Gary went to the house, but he did, and he was
22 actually armed with the firearm when he went into this
23 house. You can see that on video tape. It's not on his
24 person. It's actually out and ready to shoot.

25 You'll see him whispering as he walks through this

1 house and telling his other codefendants to be quiet.
2 You'll see them carrying kitchen knives that they picked up
3 from Mr. Williams' kitchen as they walked through his house
4 and make their way back to his bedroom where they end up
5 stealing multiple long guns. And they leave and then the
6 second man -- well, the second man in, the one that
7 actually forced the door open, he comes back in a second
8 time and grabs a bookbag that he had forgotten.

9 Mr. Williams -- this happened around 2:30, 2:45 in the
10 afternoon. He didn't have his phone at work. So he gets a
11 notification from his nest at 4:30 when he gets to look at
12 it.

13 He immediately contacts law enforcement. Law
14 enforcement arrives on the scene and begins their
15 investigation. You're going to hear from Investigator
16 Newton and how they narrow down that it was Jaden Gary.
17 And then they were able to get warrants on him, and then he
18 turned himself in and confessed to the incident that is
19 what the trial is about here.

20 He's charged with three charges. Burglary is probably
21 the most complex one. I know when I was a kid, you know,
22 you'd see T.V. shows. They come in and they turn the
23 lights on and everything's gone, and you say I've been
24 robbed. That's not a robbery. That's a burglary. Robbery
25 would be if somebody, like, stuck a gun in your face or

1 beat you up and took your money.

2 Burglary is the entry into a dwelling. In this that's
3 what we're talking about, is a house, or nonlawyers speak,
4 where he lives.

5 An entry without consent. He does not know these
6 people. He'll tell you that. He doesn't know these young
7 men at all. And that they enter into the house without
8 consent and that when they came in they intended to commit
9 a crime. And from watching the video and from his own
10 words you'll know that they intended to commit a crime when
11 they did this.

12 And then what makes it a burglary in the first degree,
13 which is what he's charged with in this case, is the fact
14 that he was armed when he did that. And that being armed
15 can happen either when you go in, when you're inside or
16 when you're leaving. In this case it's all three because
17 he entered in with a firearm and then stole Mr. Williams'
18 firearms.

19 The possession of a weapon during a violent crime is
20 simply -- it's on the same indictment. It just means that
21 when he committed that burglary, which burglary first is a
22 violent crime, that he possessed a weapon, which you'll
23 see.

24 And then the grand larceny is for the actual taking,
25 that that was the crime that they were intending to commit,

opening statements

1 is larceny, which is a lawyer word for theft, taking
2 something that's not yours with the intent to permanently
3 deprive the owner of it, which you'll also hear he's never
4 gotten his guns back.

5 It becomes grand because it's over \$2,000 worth of
6 items that were taken out of his house.

7 So I always think the jury process is kind of weird.
8 You get all of the facts before you know what the crimes
9 are even supposed to be. You know the names of them but
10 not what we have to prove. So I just want to give you a
11 brief outline of what we're trying to prove.

12 Basically, he entered into Mr. Williams' house with a
13 weapon, stole his weapons and then left. That's the gist
14 of the case. And I just appreciate your attention. We'll
15 ask for a guilty at the end. Thank you.

16 MR. SCHULTZ: Thank you, Judge.

17 Ladies and gentlemen of the jury, my name is Josh
18 Schultz, and I represent Jaden Gary, and he's seated to my
19 right there. And I'm not sure how long we are going to be
20 here, probably for at least the rest of this day, if not
21 briefly going into tomorrow as well.

22 I hope this has been a good learning experience for
23 all of y'all, but, at the same time, we're not done yet.
24 We have testimony to take. We have witnesses to go up
25 there, and they're going to put their hand on the Bible,

1 and they're going to swear to tell the truth, the whole
2 truth, nothing but the truth, so help them God.

3 Some of you may have been at jury trials before. Some
4 of you have not. Judge Hayes said a couple of minutes ago
5 that it is a fundamental part of our democracy, is a
6 fundamental part of our republic to have you all here to
7 sit in judgment and to render what is known as a verdict.
8 And verdict means to tell the truth, to see the truth.

9 And at the close of this trial the defense, and both,
10 the state, are going to ask you for a verdict.

11 Now, I'm going to ask you for a not-guilty verdict on
12 burglary first and the charges. The state is more than
13 likely going to ask you for a guilty verdict. But,
14 nevertheless, you're going to have to come to some decision
15 at this time. Maybe tonight, possibly tomorrow morning.
16 Not sure. See how it goes.

17 I want to tell you the process of what you all are
18 doing right now, because, again, some of you may have sat
19 on juries before. Some of you may have not. Again, a very
20 important part of our American democratic system.

21 In a jury trial in a criminal matter, which is what
22 this is -- you are sitting in the Court of general
23 sessions -- the state has what is known as the burden of
24 proof, meaning they go first. Okay. They have to prove
25 the case against Jaden. And if they can't prove the case

opening statements

1 against Jaden, then you have to find him not guilty.

2 Okay. Let me say that again. It's the state's burden
3 of proof. They're the ones that have to present the case.
4 They're the ones that have to put up witnesses. They're
5 the ones that have to put up photographs. They're the ones
6 that have to put up the video-taped evidence. They're the
7 ones that have to put up their evidence.

8 I don't have to put up any evidence at all. I don't
9 have to put up a case if that makes sense. How that makes
10 sense is that I don't have a burden of proof. I don't have
11 to prove anything. These folks over here have to prove the
12 whole thing. And if they can't meet the elements of the
13 crimes charged, then you have to find Jaden not guilty.

14 Let me say that again. They have to prove each and
15 every element of the case against Jaden, and if they can't
16 do that, if these folks over there can't do it -- the
17 officers and Mr. Smith -- if they can't do it, then you
18 have to find him not guilty of the charge or charges.

19 Now, how do you do that? Well, in tonight, tomorrow
20 morning, whenever it is, you're going to go back in your
21 jury deliberation room.

22 Okay. Our foreperson is going to lead you in
23 discussions, and you're going to be presented with some
24 verdict forms. It's going to be three charges -- burglary
25 first -- could be more -- possession of a weapon during a

1 violent crime and also larceny. And you have to put, you
2 have to check off, either guilty or not guilty.

3 Now, I'm going to address you again when all of the
4 testimony is taken. All right. This is an opening
5 statement, and then I'm going to come back and talk to
6 y'all about what is my closing statement, which is I'm
7 going to go over all of the reasonable doubts in this case.

8 Now, that's another -- those are other two key
9 words -- reasonable doubt -- reasonable doubt.

10 Well, as Judge Hayes said a couple of minutes ago, you
11 probably heard that phrase on T.V., probably heard it in
12 the media. I mean, we've had quite a contentious year
13 looking at trials all over the country.

14 Reasonable doubt. Our state laws and our judges and
15 Court of Appeals and Supreme Court has ruled that a
16 reasonable doubt causes a reasonable person some hesitation
17 to act. Reasonable doubt causes a reasonable person some
18 hesitation to act. And that's why we have you here.

19 Okay. So you're thinking, oh, my God, why am I here,
20 why am I doing this. Well, number one, you're summonsed.
21 Okay. Number two, it's a very important part of our
22 democracy. And, number three, you do actually have a job
23 to do.

24 Your job is to determine if the witnesses up there are
25 telling the truth or -- and this is the key part -- this is

James Coby Stepp
Direct examination by Mr. Smith

1 the very key part -- if the state has met their burden of
2 proof. Right?

3 Tie it all together. If the state has met their
4 burden of proof, if you determine that there's a reasonable
5 doubt as to the state's presentation of evidence, all of
6 the witnesses and everything like that, if you find one
7 reasonable doubt -- not two, not three, not four, not
8 five -- if you find one reasonable doubt, then you -- then
9 you can't find Jaden guilty of the crime. You have to find
10 him not guilty.

11 Judge Hayes at the end of this day -- maybe
12 tomorrow -- is going to instruct you on that. He is going
13 to instruct you and say if you have a reasonable doubt as
14 to the guilt of my client, Jaden Gary, then you have to
15 come back with not guilty.

16 So, I'm not going to get into the facts now. You're
17 going to clearly hear what happened. Okay. The state's
18 going to present video and they're going to present audio.
19 They're going to present people that are going to put their
20 hand on the Bible, like I had said, swear to tell the
21 truth, the whole truth and nothing but the truth.

22 what I want to let you know, the process and the
23 procedure, because this is the first time several of you
24 have served on juries. So I hope this is a good experience
25 for you all. But you do have a job to do. You -- you have

1 to determine if there's reasonable doubt in this case. And
2 I think at the end of the taking of the testimony, I think
3 at the end of the state's case, I think, it's my
4 supposition that I think, all of y'all will. Thank very
5 much for listening.

6 THE COURT: Is the state ready to call their first
7 witness?

8 MR. SMITH: Yes, Your Honor. The state calls Deputy
9 Stepp.

10 JAMES COBY STEPP, having been
11 first duly sworn, testified as follows:

12 THE COURT: Sir, watch your step, and step up and have
13 a seat at the chair and pull the chair up to the
14 microphone.

15 THE WITNESS: May I remove my mask, sir?

16 THE COURT: Yes, sir. If you're comfortable, you can
17 remove your mask.

18 THE WITNESS: Thank you.

19 THE COURT: And if you would, just state your full
20 name for the court reporter.

21 THE WITNESS: James Coby Stepp, S-T-E-P-P.

22 THE COURT: Thank you, sir.

23 DIRECT EXAMINATION BY MR. SMITH

24 Q Deputy Stepp, where are you employed?

25 A With the Spartanburg County Sheriff's Office.

James Coby Stepp
Direct examination by Mr. Smith

- 1 Q And what is your role at the sheriff's office?
- 2 A Crime scene investigations.
- 3 Q How much experience do you have in law enforcement?
- 4 A Twenty-two-and-a-half years.
- 5 Q Have you done the forensics during that entire time?
- 6 A No. About ten years.
- 7 Q All right. And what do you as a forensics officer?
- 8 A Go to a crime scene, take overall photographs, search
- 9 for items of evidentiary value.
- 10 Q Would you be like the C.S.I. type people? Is that --
- 11 A Yes, sir.
- 12 Q And how do you get sent out? Who orders you to go,
- 13 whatever?
- 14 A We'll get a -- usually, we get a call from dispatch
- 15 that officers on the scene are requesting our assistance.
- 16 Q All right. And did you get a call on July 22nd of
- 17 2019 to respond to a burglary or potential burglary?
- 18 A Yes. I did.
- 19 Q Do you know the address that that was at?
- 20 A [REDACTED] Street, Startex.
- 21 Q Is that in Spartanburg County?
- 22 A Yes, it's Spartanburg County.
- 23 Q All right. And what do you do when you initially get
- 24 to a scene like this? Say if it's a burglary,
- 25 specifically.

1 A Well, just, initially meet with the officer who is on
2 the scene to kind of discuss what he has and what's going
3 on with the case.

4 I met with Officer Kent who advised me that the victim
5 at the time was not on scene. He was at work and was
6 alerted somehow through a security system that someone had
7 forced entry into his home and went into the master bedroom
8 and stole some firearms.

9 Deputy Kent stated to me that he -- when he got on
10 scene he observed the back door to be forced open. Upon
11 that he went in and cleared the residence making sure that
12 no one was inside. And the victim still had not arrived on
13 scene at the time.

14 Q So the only people that, as far as you're aware, that
15 had been there since the burglary had happened is Deputy
16 Kent and yourself when you started taking pictures and --

17 A Yes. And the suspects that --

18 Q Yeah. But at -- once they had left, the only other
19 people that had been there.

20 A Until the victim arrived.

21 Q All right. And you -- how do you begin an
22 investigation like this once you've got kind of the details
23 of what's going on?

24 A I begin by taking overall photographs of the scene on
25 both exterior and interior of the scene.

James Coby Stepp
Direct examination by Mr. Smith

1 Q All right. And I'm just going to get some of these
2 pictures in one big group if we can.

3 This is State's Exhibits 4 through 17, and ask if you
4 can identify what these are. Not specifically know. What
5 they are pictures of, what residence.

6 A These are the exterior and interior photographs of the
7 residence at [REDACTED] Street, Startex.

8 Q And have you reviewed those prior to your testimony
9 today?

10 A Yes. I have reviewed these.

11 Q And those are pictures -- fairly and accurately
12 represent the house on 17, on July 22nd of 2019?

13 A Yes, sir.

14 MR. SMITH: Your Honor, at this time we'd move
15 State's 4 through 17 into evidence.

16 MR. SCHULTZ: Can I see them, Judge?

17 THE COURT: Yes, sir. Take a look at them.

18 (Pause.)

19 MR. SCHULTZ: Four through 17, Spenser?

20 MR. SMITH: Yes.

21 (Pause.)

22 MR. SCHULTZ: No objection.

23 (Photographs marked State's Exhibits Nos. 4 through
24 17.)

25 Q I'm just going to go through some of these quickly.

James Coby Stepp
Direct examination by Mr. Smith

1 This is State's Exhibit 4.

2 A That's the exterior of the residence.

3 Q All right. That's the house you looked at though.

4 A Yes, sir.

5 Q All right. And was there anything specifically you
6 noted about how they may have entered the house?

7 A Yes, sir. I noticed the damage to the rear door.
8 There was a faint outline of a shoe-print impression on the
9 exterior door that was dirty. And there was damage to the
10 frame. The strike plate to the locking mechanism was
11 actually on the ground below.

12 Q All right. I'm going to show you State's Exhibit 15.
13 Is that the back door that you're referring to?

14 A Yes, sir. It is.

15 Q All right. And what do you notice about this picture
16 that's --

17 A Damage, like, to the doorframe, was split.

18 Q What I'm indicating here between the plates and the
19 other piece of wood?

20 A Yes, sir.

21 Q All right. And then you mentioned the strike plate
22 was on the ground. This is State's Exhibit 14.

23 A Right. Along with a piece of the framing as well,
24 wood framing.

25 Q The framing is the white thing to the right of the

1 piece of metal?

2 A Yes, yes, sir.

3 Q And this is State's Exhibit 13. That's --

4 A The rear door.

5 Q What's that?

6 A The overall shot of the rear door leading into, like,
7 the kitchen area.

8 Q All right. Do you standardly take pictures -- we're
9 going to go over them with Mr. Williams, but you take
10 pictures of the inside of the house, all the rooms and
11 everything?

12 A Yes, sir. I do overall photographs.

13 Q All right. What did you note about the house? Did it
14 appear that it was a place that somebody lived at?

15 A Yes, sir. I noticed there's food inside the kitchen,
16 clothing inside. There's power to the residence. Some
17 electronic. I think I saw a laptop, some -- saw a
18 television, alarm clock beside the bed. I think I even saw
19 a record player kind of out, like somebody would be using.
20 Things of those nature.

21 Q Did the victim ultimately end up arriving while you
22 were still doing your job?

23 A Yes, sir. He did arrive on scene.

24 Q Did you speak with him at all?

25 A Yes. I did.

1 Q Okay. Did you discover anything out of place as a
2 result of your conversation with him?

3 A Yes. I spoke with victim and he -- we went into the
4 master bedroom where the gun -- guns were taken and noticed
5 that they were -- taken from his kitchen area, a knife on
6 the nightstand and a knife on the master bedroom floor.

7 Q Okay. So because of the victim you knew that those
8 were out of place.

9 A Yes. And he also noted that they were his.

10 Q All right. This is State's Exhibit 9. Is that the
11 kitchen knife that was on the nightstand?

12 A Yes, sir. To the left. Uh-huh.

13 Q And State's Exhibit 16. Is that the other kitchen
14 knife there?

15 A Yes, sir. On the floor.

16 Q Next to the fan?

17 A Yes, sir.

18 Q Did you process those items looking for fingerprints?

19 A Yes. Both were processed.

20 Q And did you find anything as a result of that?

21 A Yes. I found latent prints on the one that was on the
22 master bedroom floor, that knife right there.

23 Q This one in State's Exhibit 16.

24 A Yes. That one right there on the floor.

25 Q All right. Did you do anything else or did you

James Coby Stepp
Cross-examination by Mr. Schultz

1 collect any other items forensically or --

2 A Did not collect, but, you know, I processed the doors
3 and other items -- master bedroom doors and other things
4 like that. The knife itself was the only items that
5 yielded any type of latent prints. Off that knife.

6 Q Please answer any questions Mr. Schultz has.

7 A Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. SCHULTZ

10 Q Officer, after you took these pictures that day did
11 you have any further involvement in the case?

12 A No, sir. I had no further involvement in the case
13 after I took the pictures and I collected it on the scene.

14 Q About how long were you there at that residence?

15 A A little over, I'd say, probably at least well over a
16 good hour or so conducting everything just as far as
17 on-scene processing, photographing, talking with the
18 victim, things of that nature.

19 Q All right. And have you ever investigated crimes in
20 the Startex area?

21 A I probably have, but, I mean, I can't -- I've been
22 doing it so long I can't really recall a specific one that
23 I've investigated there outside of this one.

24 Q Now, this picture -- referring to State's Exhibit 5 --
25 after reviewing the case there did you determine that

1 Mr. Gary entered this room?

2 A That is, like, I think the living room area. Like I
3 say, I -- I saw them come through the back door, and, like
4 I say, I viewed it very briefly with the victim there.
5 They came through the back door, through that living room,
6 and went, like, into the master-bedroom area, seems like
7 where they spent the bulk of the time, what little bit I
8 saw of that video footing.

9 Q Okay. But -- but you didn't see that entire video,
10 correct?

11 A Not the entire.

12 Q Okay.

13 A No, sir. I did not see the entire video footage at
14 all.

15 Q So you're -- you're not sure if Mr. Gary went -- went
16 inside this, this room, right?

17 A Not really sure.

18 Q Okay.

19 A Just, like I say, when I spoke with the victim on
20 scene he said that this was the primary, that they went in
21 and stole his guns from that master-bedroom area.

22 Q Okay. What about this, referring to State's
23 Exhibit 6? Do you know if Mr. Gary went in this area?

24 A Not in particular, but I'm not really -- that appears,
25 like, it's coming from the kitchen into a living area if

James Coby Stepp
Cross-examination by Mr. Schultz

1 I'm not mistaken.

2 Q Okay. Can you see that okay, Officer?

3 A Yeah. I can see it.

4 Q Okay. All right. But, again, you're not sure if Mr.
5 Gary went into that area, correct?

6 A Not sure, because, like I say, I didn't observe all of
7 the footage, just through the major walk-through with the
8 victim.

9 Q Okay. What about this area right here? Can you see
10 that okay, Officer?

11 A Uh-huh. I can see it.

12 Q All right. Did Mr. Gary go in that area to your
13 recollection?

14 A Not to my recollection. I mean, could have, but, like
15 I say, I didn't view the whole footage of where all they
16 went.

17 MR. SMITH: That was State's Exhibit 7?

18 MR. SCHULTZ: Yes. I apologize, Judge. It's
19 referring to State's Exhibit 7.

20 THE COURT: Thank you, sir.

21 Q Referring to State's Exhibit 8. This looks similar to
22 State's 7. Can you see that, Officer?

23 A I can see it.

24 Q And, again, I'm sorry. I don't mean to belabor this
25 point, but do you know if Mr. Gayden -- Mr. -- did he go in

James Coby Stepp
Cross-examination by Mr. Schultz

1 there? Did the defendant go in there?

2 A Like I say, once again, I didn't review all of the
3 footage of the video, and I can't answer, attest, to that
4 particular thing.

5 Q All right. Thank you.

6 A Yes, sir.

7 Q This looks like -- again, is this the master bedroom,
8 or no?

9 A It appears to be the master bedroom.

10 Q Okay. Do you know if he went in this area?

11 A I did observe that going into the door.

12 Q Okay. Going into the door.

13 A To -- you know, to the -- to the right of the living
14 room, I think, going into the master bedroom.

15 Q And this is referring, again, to State's Exhibit 10.

16 And what -- what about this area? Did you -- did you
17 see Mr. Gary on -- on there?

18 A That's the kitchen area, the point of entry. I didn't
19 see him, but that is the point of entry. Once again, I
20 didn't observe the video.

21 THE COURT: That was 11 -- number?

22 MR. SCHULTZ: Yes, sir. I apologize, Judge. State's
23 Exhibit 11.

24 THE COURT: Thank you.

25 MR. SCHULTZ: Thank you.

James Coby Stepp
Cross-examination by Mr. Schultz

1 Q Now, this is the -- I'm talking about point of entry
2 here. This is the front of the house? Referring to
3 State's Exhibit 4. Is that correct?

4 A That's the front of the house.

5 Q Okay. All right. Now, it appears to be two windows
6 and a door, right?

7 A Two windows and a door.

8 Q Okay. Now, was there any forced entry to the front of
9 the home?

10 A Did not observe any.

11 Q Okay. Now, were any pictures taken of the side of the
12 home?

13 A To my knowledge, they should have been, yes.

14 Q They should have been.

15 A Yes.

16 Q Okay. Now, let me refer to State's Exhibit 13 here.

17 A That's the rear door.

18 Q The rear door. Okay. Now, you're saying that that's
19 the kitchen, correct, or no?

20 A Yes, sir. That's the point.

21 Q Okay. And you would -- you are classifying that as
22 the point of entry, correct?

23 A According to the force, yes.

24 Q According to the what?

25 A According to the force, yes. Forced entry.

James Coby Stepp
Cross-examination by Mr. Schultz

1 Q Forced?

2 A The forced entry, yes.

3 Q Forced entry. Okay.

4 A Yes, sir.

5 Q Now, is this in the back of the house?

6 A That's toward the back side of the back. That leads
7 into the kitchen area.

8 Q Back side.

9 All right. Now, this looks like -- referring to
10 State's Exhibit 14. This looks like a closeup of the ground
11 around that door, correct?

12 A Yes, sir, or the strike plate.

13 Q Okay. Now, it's rather messy, isn't it, in your
14 opinion? It's rather messy, isn't it?

15 A What is rather messy, sir?

16 Q The -- referring to State's Exhibit 13 there, that
17 room there.

18 A You're talking about the exterior of the door where I
19 noted that it -- the exterior of the door was dirty where
20 the shoe outline was on the door -- exterior? You talking
21 about the surface of the door?

22 Q No. I'm talking about when you -- when you walk in
23 there. Was it cluttered?

24 A It was cluttered --

25 Q Okay.

James Coby Stepp
Cross-examination by Mr. Schultz

1 A -- throughout the residence. I observed clutter in
2 areas, yes, sir.

3 Q All right. In -- in your opinion was -- was it clear
4 to you, or at least, you know, did you have any kind of
5 reasonable assumption that somebody had lived there, or no?

6 A I -- I had -- once I got through and, like I say, went
7 in and looked over, it appears someone lived there to me.

8 Q Okay. Now, you walked around this -- this address,
9 right?

10 A Yes, sir.

11 Q Okay. And that address in and of itself has a lot of
12 kudzu grown over it.

13 A Yes, sir. I mean, it had vegetation.

14 Q All right. And there's a lot of trees in that area,
15 right?

16 A Yes, sir, as you can see in the foreground.

17 Q In the foreground or in the background?

18 A Background. Excuse me.

19 Q Okay. And looking at -- now, there was no forced
20 entry into the -- into the front of the residence, correct?

21 A Correct.

22 Q And there was no forced entry around the corners or
23 the sides and everything, right?

24 A None was noted, that's correct.

25 Q Okay. So and this -- could it -- could it be

James Coby Stepp
Cross-examination by Mr. Schultz

1 reasonable to assume that somebody thought this was a
2 storage area back there?

3 A I have no idea what someone else would think on that.

4 Q Well, let me ask you this. Could it have been
5 possible that somebody could interpret that as a storage
6 facility?

7 A I suppose someone could interpret it based on what
8 they think if that's what they feel.

9 Q So it's possible, right?

10 A I would stay so if that's what they feel.

11 Q You could say so?

12 A If that's what they feel. I can't be the eyes. I
13 can't perceive what someone else would perceive.

14 Q Okay.

15 MR. SCHULTZ: Beg the Court's patience.

16 (Pause.)

17 Q Now, again, this is State's 4. This is the front of
18 the house. And, again, I just want to establish this. No
19 forced entry was found in that, into that door, right?

20 A Correct.

21 Q Okay. Now, the only -- in back of this -- this
22 residence --

23 A Yes, sir.

24 Q -- did it appear that the area of the forced entry was
25 connected or not connected to that house?

Jason Williams
Direct examination by Mr. Smith

1 A It appeared to me based -- because the door was open
2 and you could see, it appeared to be connected to the
3 house.

4 Q Okay. But looking at it, looking at the back of the
5 house, did you take a picture? Like you took a picture of
6 State's Exhibit 4, did you take a look at the back of the
7 house?

8 A Yes, sir. I took a picture -- I looked at the back of
9 the house, searched all around it and things like that.

10 Q What about did you take a picture from the back of the
11 house from the road? Did you do that?

12 A From the road? I don't think I could get to a road
13 from the back of the house.

14 Q Okay. Was the house on a corner?

15 A I don't recall if it was on a corner or not, sir.

16 Q But you -- you went around there, right?

17 A Yeah. I did take pictures, but I don't recall if
18 there was another house beside it. I was just focusing on
19 the house itself.

20 MR. SCHULTZ: That's all I have, Judge. Thank you.

21 THE WITNESS: Thank you.

22 THE COURT: Any -- any redirect limited to what he
23 went into?

24 MR. SMITH: No, Your Honor.

25 THE COURT: Thank you, sir. You may step down. Watch

1 your step as you're stepping down.

2 THE WITNESS: Thank you, sir.

3 THE COURT: Yes, sir. Thank you.

4 Any reason why the witness cannot be excused if he
5 wishes to be?

6 MR. SMITH: No, Your Honor.

7 MR. SCHULTZ: No, sir.

8 THE COURT: Sir, you may be excused as well. Thank
9 you.

10 (Whereupon, the witness was excused.)

11 THE COURT: Is the state ready to call their next
12 witness?

13 MR. SMITH: Yes, Your Honor. The state calls Jason
14 Williams.

15 THE COURT: Sir, just come right up here and let the
16 clerk of court swear you in. Place your left hand on the
17 Bible and raise your right hand.

18 JASON WILLIAMS, having been
19 first duly sworn, testified as follows:

20 THE COURT: Mr. Williams, watch your step as you
21 stepping up, but just have a seat in the chair and pull the
22 chair up to the microphone.

23 And, sir, you may, since you're testifying if you feel
24 comfortable, you can remove the mask.

25

Jason Williams
Direct examination by Mr. Smith

1 DIRECT EXAMINATION BY MR. SMITH

2 Q Good afternoon.

3 Mr. Williams, where were you living on July 22nd of
4 2019?

5 A [REDACTED] Street in Startex, South Carolina.

6 Q Is that in Spartanburg as well?

7 A Yes, sir.

8 Q How long had you been residing there?

9 A Three-plus years.

10 Q And who lived there with you?

11 A Just myself.

12 Q All right. You did not have Deputy Stepp as a
13 roommate at any point?

14 A No.

15 Q Okay. So it's not unreasonable he doesn't know every
16 nook and cranny of your house there.

17 A Yes, sir.

18 Q All right. But you did.

19 A Yes, sir.

20 Q Can you tell me about the incident that happened
21 previously where your guns were stolen?

22 A The previous incident was the neighborhood children
23 across the street from mine broke into the house and took
24 all of my firearms. And then I got -- after contacting the
25 police, investigation, the mother of the individuals turned

1 them in and everything was returned.

2 Q All right. And do you know if anybody was prosecuted
3 as a result of that or what happened?

4 A They were -- I won't say prosecuted. They were --
5 they were brought up on charges and I was able to talk to
6 the fire -- police department and remedy the situation with
7 the family.

8 Q Okay. So it was handled out of court.

9 A Yes, sir.

10 Q Is what it sounds like. Do you know how old those
11 individuals were?

12 A Around eight years old.

13 Q All right. So they were not Mr. Gary.

14 A No.

15 Q Do you know Mr. Gary?

16 A No.

17 Q Never met him at all.

18 A No, sir.

19 Q Never give him permission to come to your house.

20 A No.

21 Q Did you take any measures as a result of your house
22 being broken into?

23 A Yes. From the first -- due to the first incident I
24 had an internal camera installed.

25 Q All right. And where did you install that camera?

Jason Williams
Direct examination by Mr. Smith

1 A In the living room corner facing towards the kitchen
2 entry door.

3 Q All right. Do you know how the young -- the children
4 got into your house?

5 A Yes. Unfortunately, they found an unlocked window and
6 crawled through it.

7 Q Okay. So let's go to the actual date of July 22nd of
8 2019. What were you doing?

9 A I was working.

10 Q And where did you work?

11 A I work at the Greenville-Spartanburg International
12 Airport.

13 Q All right. Are you allowed to have your phone with
14 you at all times or --

15 A I am, but at that particular day my outer case that
16 clipped to your belt had broke. So I had my phone on my
17 desk.

18 Q All right. And what happened when you found your
19 phone in the afternoon?

20 A After coming in from working outside I noticed that I
21 had an alert from my security system. After reviewing it I
22 saw that I'd had a break-in -- for my manager, and at the
23 same time I called 9-1-1.

24 Q All right. Did you ultimately provide a copy of that
25 surveillance video to Spartanburg County?

1 A Yes, sir.

2 Q I'm going to show you what's been marked as State's
3 Exhibit 18 and ask if you can tell me what that is.

4 A That's a D.V.D. of the surveillance video that I
5 turned in. I saw it today as well and initialed it.

6 Q So you know it because you initialed it and watched it
7 previously.

8 A Yes.

9 MR. SMITH: Your Honor, at this time we'd move State's
10 Exhibit 18 into evidence.

11 MR. SCHULTZ: No objection.

12 THE COURT: Without objection, it will be State's 18.
13 (D.V.D. marked State's Exhibit No. 18.)

14 MR. SMITH: Permission to publish it to the jury.

15 MR. SCHULTZ: No objection.

16 THE COURT: Without objection.

17 How long is it?

18 MR. SMITH: It's about seven minutes long. I might
19 cut it off before.

20 Q Can you explain what while I'm getting this loaded
21 what happen -- when you enter into the back, what's been
22 referred to as the back door, the kitchen area, kind of how
23 your house is laid out?

24 A The back door has access to a porch. So you come in
25 through the back entrance. You would be into the kitchen.

Jason Williams
Direct examination by Mr. Smith

1 From the kitchen you have an adjacent room, which is a --
2 would be a second bedroom, but it's my studio. It is an --
3 off that is the toilet.

4 From in the kitchen there is the laundry room, which
5 has just enough space for washer and dryer. If you take
6 a -- go through the second door in the kitchen. So that'll
7 be come into your left. That leads into the living room.
8 And then from that you have the either front door or you
9 have entrance to my master bedroom.

10 Q Do you have any storage buildings on the property?

11 A No.

12 Q And are you saying that it's a porch that's outside of
13 the front of the house?

14 A Yes. Earlier you saw the front porch. There's a
15 pressure treated porch up -- you take stairs up to it to
16 get to the back door.

17 Q Okay. So that, the picture that we've seen of the
18 door that's forced open, is on a porch area?

19 A Yes. You have -- it's elevated. So it's not ground
20 height. You have to go upstairs onto the porch to get into
21 that door.

22 Q All right. I'm going to switch over to the video
23 here. This is a little laser pointer.

24 What -- what room are we looking at, the main room that
25 this is looking at?

1 A This is overview from into the living room, which
2 shows a view. This is from the corner. So if you look at
3 the exterior of the house from the front, it's on the --
4 the right side.

5 Q All right. And what is this room on the left side of
6 the video?

7 A That's -- that's the master bedroom.

8 Q All right. And what about this doorway? What does
9 this take you into?

10 A That leads into the kitchen where you would take a
11 right, and that's where the back door is.

12 If you look where the pointer is right there that's
13 the second room, which has the office space and the
14 bathroom.

15 Q So the kitchen to the left if you -- if you go in
16 through here and then to the left?

17 A You would -- where that door right there, you'd take a
18 right into the kitchen. Basically, the step-in is to the
19 kitchen.

20 Q All right. And so -- and so this one -- I'm sorry.
21 This one to the left would be the office.

22 A Yes.

23 Q All right. Did you know you were expecting guests
24 today and you needed to clean up the house?

25 A No.

Jason Williams
Direct examination by Mr. Smith

1 Q All right. Do you know if your nest, is it motion
2 activated? How did it --

3 A Motion and sound.

4 Q Okay.

5 A That's for the alert. It's continuous run.

6 Q Did you have your fan running at the time?

7 A Yes.

8 Q All right. And are these the people that you noticed
9 on the camera in this area where you've referred to as the
10 kitchen and the --

11 A Yes. You kinda see the shadow coming up from the
12 front [sic] and then that's where the guns -- the office.

13 Q They're going to the office now --

14 A Yeah. They're clearing the office.

15 Q -- from the kitchen. And now they're all in your
16 bedroom.

17 A Yes, sir.

18 Q And where did you keep your guns stored?

19 A I had -- the long rifles were in the -- my Pelican
20 case, and I keep under the bed. And then I had the shotgun
21 in the closet space that I had just purchased it so I
22 can -- because of the first incident.

23 (Whereupon, the video was played for the jury.)

24 Q Did you see anybody else on the video after that last
25 person left?

- 1 A No.
- 2 Q I'm going to go through some of these pictures just to
3 clarify the things that these people would have walked
4 past. Investigator Stepp wasn't able to. This is State's
5 Exhibit 8. What room is that from?
- 6 A That's the living room.
- 7 Q All right. So they would have seen the record player
8 and T.V. remote.
- 9 A Yes.
- 10 Q Or at least would have walked past it.
- 11 A Well, yes, because you from the video can see them go
12 and search the couch and go right next to it.
- 13 Q Yes. This is State's Exhibit 7. That's just a
14 picture to the right, I believe.
- 15 A Yes. That's -- to the right of that is the living
16 room, I mean, the bedroom, and that's the front door.
- 17 Q All right. This is State's Exhibit 6. It is just the
18 T.V. in your living room on the left side of the picture?
- 19 A Yes, sir.
- 20 Q And then this is where you were saying to the left
21 would be your office and to the right would be the kitchen?
- 22 A Yes. To the left, yeah, I had like all of my hard
23 stuff and computers.
- 24 Q So when we begin seeing on the video they're coming
25 from the right of this picture going into this left room --

Jason Williams
Direct examination by Mr. Smith

1 A Yes, sir.

2 Q -- and then down into the living room over to your
3 bedroom.

4 A Yes, sir.

5 Q All right. This is State's Exhibit 5. Is this -- is
6 this the coffee table in your living room?

7 A Yes, sir.

8 Q All right. What do you know? Is there anything of
9 note to you about --

10 A Yeah. I got my laptop setting there. I've got my --
11 must have had --

12 Q Laptop is the red thing in the middle?

13 A Right, yeah. It's the middle right there. To the
14 left I've got a thermos. I've got some -- a drink and a
15 remote for the fan and heater and stuff I was working on
16 for --

17 Q And what about -- what are these?

18 A Boots.

19 Q All right. And it's hard to tell in this picture, but
20 is there -- you an X-box player?

21 A Yeah. I watch live stream through -- through my Xbox.
22 You can see the remote on the couch.

23 Q On the couch. And that's the area that you saw on the
24 video, the first man with the gun actually.

25 A Came around, yeah. He came around and had the -- my

1 shotgun in his hand.

2 Q All right. But you -- Investigator Stepp was asked
3 about State's Exhibit 10. Can you tell us what room this
4 is -- this is in?

5 A That's the bedroom. Right in the right-hand corner,
6 lower, is my bed frame, and that's the dresser indicating
7 the door that leads into the -- the living room. You can
8 see them coming through.

9 Q And what -- what is this up here, this?

10 A That's a picture of myself and my niece.

11 Q All right. This is State's Exhibit 11. This is the
12 kitchen, correct?

13 A Yes, sir.

14 Q And where the back door is.

15 A Yeah. You see into the -- into the corner of the
16 table right there where the light's coming through. That's
17 the -- the doorway.

18 Q There's, you know, some discussion that it could have
19 been perceived as a storage room. Do you know what type
20 of -- there's windows on your back door, correct?

21 A Yes.

22 Q Do you know how you had -- do they have blinds on that
23 door, or not?

24 A Yes.

25 Q Do you know if they were up or down?

Jason Williams
Direct examination by Mr. Smith

1 A They were down, but they're not closed all the way.
2 So you could still see through them.

3 Q This is State's Exhibit 13 on the right side of the
4 picture. Those are the window you're talking about that
5 looks in through the back door?

6 A Yeah. To kind of -- yes, yeah. Right there. I
7 can't -- yeah.

8 Q Yeah.

9 A Yeah. It's got, like, 12 panels in it, typical.

10 Q Yeah. The top -- top half of the door is windows.

11 A Yes.

12 Q All right. This is State's Exhibit 17. That's your
13 T.V. and golf clubs that were in the living room?

14 A Yes. T.V. Well, it's got my stereo system, and then
15 golf clubs to the right. And in the background you see the
16 washing machine, and that's it to the kitchen.

17 Q This is State's Exhibit 9. This is your bed and your
18 nightstand?

19 A Yes, sir.

20 Q All right. And this knife that's on there, that's not
21 where you normally keep it?

22 A No. That's a knife in the kitchen, in the kitchen
23 block on the counter.

24 Q This is State's Exhibit 16. This has the other knife.
25 This is inside your bedroom?

1 A Yes. So the -- yeah. The last picture is in the
2 bedframe and the -- the sideboard. This is the other side
3 of the room where I had my plate carrier and where the
4 shotgun was housed.

5 Q All right. And this is State's Exhibit 12. This is
6 the only picture I printed out. I don't think anything was
7 taken from your office, is that correct?

8 A No. I just had my Mac, my printer on that and the
9 rest of my other stuff in there.

10 Q But the room that the three individuals are seen going
11 into.

12 A Yeah. The first one they clear. Off the kitchen is
13 that one. And backtrack through that kitchen to the living
14 room.

15 Q Can you tell the jury what items were taken from your
16 house?

17 A Besides three Pelican -- one Pelican case to a gun
18 case that you see them walk out with, it was a 308 rifle, a
19 12-gauge shotgun, two black powders. And then I had
20 ammunition, my plate carrier which had my plate set on the
21 couches, G.P.S. inside of it, and then that was --

22 Q What do you mean when you say plates for people that
23 don't know?

24 A Okay. Sorry. It's -- it's a body armor. It's,
25 basically it's, basically Eagle Industries kevlar top, so

1 and then plates is your protective plates, steel plates in
2 this one, it's supposed -- ceramic. I wore one in service,
3 so that's kinda --

4 Q Okay. Is that something that you kept from being in
5 service or --

6 A Parts of it. I had to repurchase -- I purchased it
7 for myself, but, yeah, I had some other points to keep from
8 military when I was in.

9 Q And what branch of the military were you in?

10 A Army.

11 Q Did you serve abroad?

12 A Yes. Two tours Afghanistan, one Iraq.

13 Q All right. Did you make a claim on your insurance or
14 anything for the items?

15 A I did.

16 Q What were the value of the items that was taken from
17 your house.

18 A That was \$2,000 plus.

19 Q All right. Did you ever recover any of those items?

20 A No, sir.

21 Q Did you express to law enforcement that you wanted
22 them back?

23 A Absolutely. I didn't want them on the street.

24 Q To your knowledge law enforcement doesn't have them.

25 A Not to my knowledge, no. The first time -- the first

1 break-in I got -- was able to recover everything.

2 Q Right. And, again, you gave nobody permission to come
3 to your house while you're at work that day?

4 A No, sir.

5 Q Not even a friend or somebody to check on the house.

6 A No, sir.

7 Q Please answer any questions Mr. Schultz has.

8 CROSS-EXAMINATION

9 BY MR. SCHULTZ

10 Q Your name is Jason Williams?

11 A Yes, sir.

12 Q Okay. All right. Mr. Williams, was this the first
13 time you testified in court like this?

14 A Yes, sir.

15 Q Okay. And you lived there in Startex.

16 A Yes, sir.

17 Q Do you still live there?

18 A No, sir.

19 Q Okay. When did you move out from that residence?

20 A As soon as I found a place to live after that, the
21 break-in. So that's -- I don't -- September or October.

22 Q of last year?

23 A of 2019.

24 Q 2019. Okay. So, but you no longer live there at that
25 residence, correct?

1 A No, sir, yes, sir, no. I don't live there.

2 Q When did you move into that residence?

3 A 2015. I moved out here from New Hampshire.

4 Q New Hampshire. Okay. Where are you from in New
5 Hampshire?

6 A Family was living in Lindale [sic], which is next to
7 Manchester.

8 Q All right. Were you living by yourself in that
9 house --

10 A Yes, sir.

11 Q -- at the time in July of 2019?

12 A Yes, sir.

13 Q All right. And nobody else was living there. You
14 didn't have any roommate or anything like that.

15 A No. Just myself.

16 Q All right. The house -- and please correct me if I'm
17 wrong here. The house is basically on a corner, right?

18 A Yes.

19 Q Okay. And the back of the house -- I'm not talking
20 about actually the front of the house but the back of the
21 house -- is -- would you say it's fair and accurate to say
22 that it's sort of obscured by kudzu and branches and trees?

23 A There is some foliage back there so you can't see
24 directly into my house, the house, yes.

25 Q Okay. So you can't see directly into your house. Is

1 that what you're saying, or no? I don't want to put words
2 in your mouth.

3 A No. It's -- it's not like completely filled up where
4 it's privacy so you can't see the house at all. You can
5 see it from the road and see that, you know, see the front,
6 the back porch and the building itself.

7 Q Okay. Would it be -- I guess if somebody was driving
8 down that road, not -- not Church Street -- but there --
9 there's another road that -- go ahead.

10 A Elm Street. I believe it's Elm Street that's the
11 other street that's close to --

12 Q The back of your house.

13 A It curves around, yes.

14 Q Right. Okay. If somebody is there looking at the
15 back of the house could that person reasonably say, well,
16 maybe that's a storage unit or something like that?

17 A No.

18 Q No.

19 A Uh-uh.

20 Q No possibility of that at all?

21 A No. Because the houses in it, because you can see the
22 trailer, which is next to the road. You have another house
23 right behind mine, a house, a renting. It's -- it's not
24 like it has an offshoot or any kind of sub-buildings or
25 that. It's clearly a house.

- 1 Q Now, there's a fairly big porch there, right?
- 2 A It's five -- 10 by 12.
- 3 Q Okay. And you said it was stained, I guess?
- 4 A Pressured treated, yes.
- 5 Q Sir?
- 6 A Pressure treated.
- 7 Q Pressure treated. Yeah. That's what I was looking
- 8 for there. It was pressure treated. So, but -- but the
- 9 opening, the actual opening, to your house on the front,
- 10 that was never broken into, right?
- 11 A No.
- 12 Q Okay. Well, what about the previous burglary that
- 13 happened to you? Did -- did they try to break in the front
- 14 door, or the back?
- 15 A They went through a window.
- 16 Q They went through a window. Do you remember what
- 17 window that was?
- 18 A It was the kitchen.
- 19 Q Kitchen window. Okay. All right. Now, again,
- 20 referring to State's Exhibit 4 here, that's the front of
- 21 your house, right?
- 22 A Yes, sir.
- 23 Q Okay. All right. Can you see that okay, sir?
- 24 A Yeah.
- 25 Q Okay. All right. And, again, we don't really have a

1 clear shot of the back of your house, but we have several
2 views of the interior of your house. But the best view
3 that we have right here is this is the -- the back. Now,
4 is this -- this from the side or is this from the back?

5 A That is from the back. So you have to have it on the
6 porch.

7 MR. SCHULTZ: Excuse me. I'm referring to State's
8 Exhibit 13 there, Judge.

9 Q This -- this is the porch?

10 A This is the back rear of the house.

11 Q The rear of the house.

12 A Yes.

13 Q Okay. All right. And when somebody -- when somebody
14 would walk in here -- it's no offense, sir -- it's -- it's
15 sort of cluttered. It's messy. Would you say that's fair
16 and accurate?

17 A It looks worse than it is because of all of the stuff
18 I've got on the floor was against the door so whereas to
19 take out the trash for recycling. So that got pushed into
20 it. But, yes. It's quite -- it's not spick-and-span.

21 Q When somebody walks into this specific room --

22 A Uh-huh.

23 Q -- could it reasonably be interpreted that the house
24 was unoccupied?

25 A No.

1 Q Okay. Now, I understand when you go into the front of
2 the house, obviously. Okay. That's but -- but this --
3 it's sort of cluttered and sort of messy, correct?

4 A Yes.

5 Q No offense, again.

6 Now, in this picture you really don't see it, but the
7 back of the house is really obscured. Is that fair and
8 accurate to say?

9 A I -- define obscure. From what preference point?

10 Q The preference point of from the back side of the
11 house. You really can't see much because there's -- it's
12 kudzu and foliage and everything. Would you say that's
13 fair and accurate? At least when you were living there.

14 A No. You can see the house. You can see the house
15 from the road. But are you talking about looking -- be
16 able to look up into this door, or are you saying just in
17 general from the road?

18 Q Just -- just in general from the road. What I'm
19 specifically referring to is -- let me -- let me clarify
20 this a little bit.

21 This is the front of your house.

22 A Yes.

23 Q State's Exhibit 4. Okay. Obviously, you can see
24 that's a house. Do you see that, sir?

25 A Yes.

- 1 Q Okay. All right. But the back of your house is
2 obscured by foliage and branches and kudzu and everything.
3 So you clearly can't see that that's the back of the house.
- 4 A No. You can see it -- you can clearly definite it's a
5 house. It's not like it's the trees and foliage, it's so
6 opaque that you can't -- it blocks all vision. No. You
7 can from the road clearly see it's a house.
- 8 Q All right. Could it -- could it be -- did -- did you
9 have a shed there? Did you have an outbuilding?
- 10 A No.
- 11 Q Okay. Did you have any kind of storage unit
12 whatsoever there?
- 13 A No.
- 14 Q Okay. All right. Did you have -- now, the porch
15 leading up to what you classify as the back of the house,
16 were you using that for storage?
- 17 A The back porch?
- 18 Q Yes.
- 19 A No. The only thing that was on the back porch was the
20 mop and the mop bucket.
- 21 Q All right. The mop bucket.
- 22 A Yeah. And some leaves I needed to clean up.
- 23 Q All right.
- 24 MR. SCHULTZ: That's all I have, Judge. Thank you.
- 25 THE COURT: Any redirect limited to what he went into?

Trevor Lee Shue
Direct examination by Mr. Smith

1 MR. SMITH: Just very briefly, Your Honor.

2 THE COURT: Yes, sir.

3 REDIRECT EXAMINATION

4 BY MR. SMITH

5 Q This is State's Exhibit 15. Is this the porch railing
6 that you're referring to?

7 A Yes. That leads in the back and then goes into the
8 side of the house. So it's -- there's a walkway there.

9 Q And then these items, is that what you're talking
10 about that needed to go out to the recycling?

11 A Yes.

12 Q And then is this your spice rack, I guess?

13 A Spice, kinda staples.

14 Q All right. And is that how they were, or do you think
15 they got knocked over?

16 A They got kinda -- you can see the doorframe back.
17 It's split apart. So there's enough force to kinda, yes,
18 move some around.

19 Q This door was locked. Is that --

20 A Yes. Locked and dead-bolted.

21 Q Locked and dead-bolted.

22 MR. SMITH: I don't have anything further.

23 THE COURT: All right. Thank you, sir. You may step
24 down. Watch your step as you step down.

25 May I see the lawyers for a moment?

1 MR. SMITH: Yes, sir.

2 (Bench conference held off the record in the presence
3 of the jury but out of the hearing of the jury.)

4 THE COURT: Is the state ready to call their next
5 witness?

6 MR. SMITH: Yes, Your Honor. We call Investigator
7 Shue.

8 THE COURT: Sir, just come right up here and let the
9 clerk of court swear you in.

10 TREVOR LEE SHUE, having been
11 first duly sworn, testified as follows:

12 THE COURT: Watch your step as you're stepping up, but
13 please a seat in the chair and pull the chair up to the
14 microphone.

15 Give us your full name if you would.

16 THE WITNESS: Trevor Lee Shue.

17 THE COURT: Thank you, sir.

18 DIRECT EXAMINATION BY MR. SMITH

19 Q Investigator Shue, where are you employed?

20 A Spartanburg County Sheriff's Office.

21 Q How long have you been with the county?

22 A Seven years.

23 Q Is that your sum total of law enforcement experience?

24 A Yes, sir.

25 Q All right. And what is your current role?

1 A I'm currently an investigator with the sheriff's
2 office.

3 Q All right. And were you doing the same back in
4 July 22nd of 2019?

5 A Yes, sir.

6 Q All right. Is part of your duties or just general
7 roles as law enforcement to make contacts in the community
8 and try to know who people are?

9 A Yes, sir.

10 Q In the sheriff's office is it common sometimes when
11 maybe an investigator has a video and they're trying to
12 identify the suspects are to sent that out through the
13 sheriff's office or through the investigation office to see
14 if anybody knows the person?

15 A Yes. It is.

16 Q All right. Did that happen in this case?

17 A Yes, sir.

18 MR. SCHULTZ: Your Honor, I'd object to this line of
19 questioning. I think it probably calls for a matter of
20 law.

21 THE COURT: Lawyers want to approach a moment?

22 (Bench conference held off the record in the presence
23 of the jury but out of the hearing of the jury.)

24 THE COURT: All right. Ladies and gentlemen, this is
25 one of those times where I have to take up matters of law

1 outside of your presence.

2 So I need to remind you you cannot have any
3 discussions among yourselves or with anyone else about
4 anything involved in the case. And I don't think you will,
5 but don't do any type of independent research or
6 investigation as well.

7 We're going to get you back just shortly because I
8 just -- I don't anticipate this matter of law will take
9 very much time. But I need to exclude you from the
10 courtroom. So, if you will, go with the bailiff, and we'll
11 get you back just shortly.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: Yes, sir, Mr. Schultz.

15 MR. SCHULTZ: Thank you, Judge.

16 As I said before on the record there, this, I believe,
17 is an improper line of questioning with the investigator
18 here.

19 The state has an alternative means to present evidence
20 that Mr. Gary did this. He's on video, and also the
21 statement there too.

22 What the state is attempting to do, I believe, is to
23 question Investigator Shue about prior involvement with
24 Investigator Shue with Mr. Gary. I don't think the jury
25 should be able to hear that. I believe that's way too

1 prejudicial.

2 Now, my fear is that what will happen is the jury may
3 hear that, they would assume, oh, Mr. Gary's doing other
4 crimes too. Why is he doing other crimes? Well, because
5 the -- one of the chief investigators for the sheriff's
6 office is testifying to this fact that he knows Jaden Gary
7 and can identify him on that tape.

8 If it was somebody else not working for the sheriff's
9 office, maybe the state could present that person. But I
10 fear the implication that the jury will have is they're
11 going to say, well, Mr. Gary is -- he's probably involved
12 in crimes. Well, how did we know that? Because this guy,
13 this -- this officer, is testifying to the fact that he
14 knows him. So that would be the basis for my objection to
15 the Court.

16 THE COURT: Okay. All right, sir.

17 MR. SCHULTZ: Thank you.

18 THE COURT: What's the witness going to testify to?

19 MR. SMITH: Investigator Shue identified two of the
20 individuals off the video. We're not planning to get into
21 the fact that he did that because he's on the gang unit.
22 We've already danced around that in his initial thing.
23 We're not getting into if he knows him from prior crimes or
24 from church. Or certainly if Mr. Schultz wants to ask him
25 how he knows him, you know, maybe he would open the door.

1 But the state doesn't have any intention to do that. We're
2 just going to keep it general and that --

3 THE COURT: Aren't you baiting him?

4 MR. SMITH: No. I mean, he's apparently conceding
5 identity, but we have to prove that. That's an
6 essential --

7 THE COURT: You do have to prove that.

8 MR. SMITH: -- element of the crime, is proving his
9 identity. I don't necessarily know that the video's clear
10 enough to say that it's him.

11 THE COURT: All right. You have to prove that, but
12 you do not prove that by implicating him in another crime.

13 MR. SMITH: And no one's doing that, Your Honor.

14 THE COURT: Then how is it that he's going to open the
15 door? How is it he's going to cross-examine this witness?
16 How do you know it? How -- how is it that you're able to
17 identify him? Does that open the door, they maybe say,
18 well, I've had other investigations?

19 MR. SMITH: If he -- if he cares to, I guess. I mean,
20 I -- I don't -- he has no prior record. He's not been
21 arrested on anything. So I think what he actually knows
22 him from is social media if we want to get into that. He
23 knows him off of Instagram.

24 THE COURT: Okay.

25 MR. SMITH: We're not going to get into that it was

1 part of a gang investigation.

2 THE COURT: Okay.

3 MR. SMITH: We're actually trying to not get into
4 that, but this is how they got to identifying Jaden Gary.
5 Before he confessed --

6 THE COURT: Okay.

7 MR. SMITH: -- it came from -- from this. And as far
8 as I'm aware, I mean, as we heard in the pretrial, he
9 doesn't --

10 THE COURT: Okay. That's fine. But you cannot
11 convict someone due to suspicion of other crimes, and
12 you're putting a witness out here, and sounds like you are
13 baiting the defense in order to open this door so that then
14 this witness can testify as to his credentials of I'm a
15 gang investigator, I've done X, Y and Z as part of my job
16 in order to create the inference that this defendant is
17 part of those other investigations.

18 MR. SMITH: That is not my intention.

19 THE COURT: Okay. Let's just be sure it doesn't go
20 there, because this is a serious crime. And as I think
21 I've mentioned to both of you, this trial needs to
22 conclude, this trial, because otherwise we're going to come
23 back and have to do this trial in five, six -- 17 years.

24 MR. SMITH: Right.

25 THE COURT: Okay.

1 MR. SMITH: We -- well, I've instructed Investigator
2 Shue to not talk about the gang involvement.

3 THE COURT: Okay.

4 MR. SMITH: Just that -- Your Honor, I've submitted
5 that I know people to the sheriff's office when they're
6 looking for them. Mine usually comes from criminal
7 knowledge, but he goes to church. I mean, he -- I just --
8 we're not trying to get the damaging portion and --

9 THE COURT: You may refer to it as damaging, but other
10 people might refer to it as constitutional or
11 unconstitutional identification. Okay.

12 MR. SMITH: We're trying to avoid -- we had another
13 witness that could identify him who is not in law
14 enforcement but had their life threatened by a codefendant
15 in this case, and we're trying to avoid that happening so
16 we're trying to do this in the cleanest way possible and
17 not get into any sort of prior criminal activity. And he
18 can ask him do you know him from prior criminal activity,
19 and his answer's going to be no because he's never arrested
20 him.

21 THE COURT: All right. I just want to be sure.

22 MR. SMITH: Yes, sir.

23 THE COURT: Because I do not want a mistrial of this
24 case. I do not want a P.C.R. coming back later.

25 MR. SMITH: I do not either, Your Honor.

Trevor Lee Shue (In-camera)
Direct examination by Mr. Smith
Cross-examination by Mr. Schultz

1 THE COURT: Okay. All right. Anything else,
2 Mr. Schultz?

3 MR. SCHULTZ: Well, I -- I would still object to this
4 line of questioning.

5 THE COURT: Okay.

6 MR. SCHULTZ: It's -- and I want to make the record
7 clear. He's -- he's asking an employee of the Spartanburg
8 County Sheriff's Office who investigates crimes, hey, do
9 you know Jaden Gary? Yeah, I do, yeah. Well, was he
10 investigated for anything else? Well, maybe. I don't
11 know. I -- I work -- but he works for the police. He is a
12 police officer.

13 THE COURT: I mean -- okay. But Mr. Smith says that
14 you can cross-examine him and go into the reliability and
15 the credibility of his identification without opening those
16 doors.

17 MR. SCHULTZ: Understand.

18 THE COURT: Can you?

19 MR. SCHULTZ: I may not.

20 THE COURT: All right. Do you want to proffer a
21 cross-examination of the witness?

22 MR. SCHULTZ: Yes, sir.

23 THE COURT: Okay. He hasn't identified anything yet.
24 Let the witness tell us how he's going to testify and how
25 he's going to identify it.

1 BY MR. SMITH

2 Q Did you -- did you reach out, or how did you become
3 aware of the video from this burglary?

4 A Investigator Newton showed me a clip of the same video
5 they showed earlier, and just based off of that clip I was
6 able to tell them in discussion, not via email but just us
7 talking at our cubicals, that Jaden Gary was the person
8 that entered into the residence with the firearm.

9 Q And did you identify another individual in that as
10 well?

11 A I -- I identified him as a nickname that was
12 associated off Instagram.

13 Q So somebody you're not familiar with their first and
14 last name.

15 A I never dealt with that individual.

16 Q And then did you tell Investigator Newton about
17 somebody that may know about these people?

18 A Yes, sir.

19 MR. SMITH: That would be the end of my questioning.

20 THE COURT: Do you want to proffer cross-examination?

21 MR. SCHULTZ: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. SCHULTZ

24 Q Have you ever met my client?

25 A Yes.

Trevor Lee Shue (In-camera)
Cross-examination by Mr. Schultz

1 Q Okay. How did you meet him? How did you meet him?

2 A He was involved in a traffic stop that I pulled some
3 associates over approximately three years ago.

4 Q So that was prior to August -- or excuse me -- July
5 22nd.

6 A It was prior to this incident.

7 Q Yes. Let me finish my question. That was prior to
8 July 22nd of 2019, right?

9 A Yes.

10 Q Okay. So you knew him from a traffic stop?

11 A Yes.

12 Q Okay. What kind of traffic stop was this?

13 A It was an investigation I was doing on a drive-by.

14 Q You were doing a drive-by?

15 A I was doing an investigation on a drive-by.

16 Q You were doing an investigation on a drive-by. I
17 apologize. Okay. And was my client questioned in this
18 drive-by?

19 A No.

20 Q Okay. So when did this traffic stop occur?

21 A I can't give you the date.

22 Q All right. Was it in Spartanburg County or was it
23 elsewhere?

24 A Spartanburg County.

25 Q Okay. So do you know what year it was?

- 1 A No. Not without the incident report, I wouldn't be
2 able to give you that.
- 3 Q Okay. So you don't know what year it was. You don't
4 remember the date. You just remember that you stopped him
5 in a traffic stop, right?
- 6 A Uh-huh.
- 7 Q Okay. And do you remember anything else from that
8 traffic stop?
- 9 A There was some firearms recovered. I believe Memphis
10 Black, an individual that was in the car, went to jail for
11 it.
- 12 Q Okay. An individual. But Mr. Gary didn't go to jail.
- 13 A He didn't go to jail.
- 14 Q Okay. Who is that individual?
- 15 A Memphis Black.
- 16 Q Sir?
- 17 A Memphis Black.
- 18 Q Memphis Black. Is that his name or a nickname?
- 19 A It's his name.
- 20 Q Sir?
- 21 A That is his name. Memphis Black is his name.
- 22 Q That's his real name.
- 23 A That's his real name.
- 24 Q Okay. So you knew that Mr. Gary was, at the very
25 least, associated with a guy named Memphis Black that you

Trevor Lee Shue
Continued direct examination by Mr. Smith

1 arrested --

2 A Yes.

3 Q -- for firearms possession, right?

4 A Yes, sir.

5 Q Okay.

6 MR. SCHULTZ: That's the problem we have here, Judge.

7 That's all I have, Judge. I'm sorry.

8 THE COURT: Any proffer on redirect?

9 MR. SMITH: Nothing, Your Honor. The questioning was
10 very limited. That's his questions if he wants to get into
11 that.

12 THE COURT: Well, we're going to proffer the
13 testimony. That's what we're doing here in order to be
14 able to convince me that this would not be an
15 unconstitutional line of questioning so that the defendant
16 would not be convicted because of prior associations of
17 which he was never found guilty of and was never charged.

18 So do you have any redirect that you want to do,
19 understanding where this Court's concern is?

20 MR. SMITH: No. I don't, Your Honor.

21 THE COURT: All right. I think we're floating on very
22 thin ice. I'm going to let the witness identify him. I
23 think you've got room in which you can elicit the testimony
24 from the witness.

25 The solicitor has presented you a very tight line

1 which to go. You open the door. You know, I do not
2 foresee -- I don't think that you're limited into going
3 into things that are going to be completely detrimental to
4 your client.

5 I think after he opens the door for a lot of
6 opportunities for you to clarify the record as to your
7 client's lack of involvement, lack of prior criminal
8 record, maybe things that normally we would not get into
9 unless your client testified, by this type of
10 identification -- this is going to be the only
11 identification of this defendant?

12 MR. SMITH: Other than his confession. We're just
13 telling the story of how the investigation was done.

14 THE COURT: I understand that. So I think the state's
15 giving you, while he's boxing you in he's giving you, an
16 opportunity as well. Okay.

17 MR. SMITH: Yes, sir, Judge. Thank you.

18 THE COURT: Thank you.

19 All right. Bring the jury back in.

20 (The following takes place in the presence of the
21 jury.)

22 THE COURT: Yes, sir, Mr. Smith.

23 MR. SMITH: Thank you, Your Honor.

24 CONTINUED DIRECT EXAMINATION BY MR. SMITH

25 Q You stated that you were an investigator with the

1 sheriff's office and sometimes people pass videos around
2 trying to identify them.

3 A Yes, sir.

4 Q Did Investigator Newton show you a video, the
5 surveillance video that we previously watched?

6 A If I remember correctly, it was a clip of a video.

7 Q All right. Were you able to identify anybody or at
8 least that you thought given some clues of who they might
9 be?

10 A I wasn't a hundred percent, but in the video it
11 appeared that the first -- or the clip that I saw with the
12 gentleman holding the firearm was Jaden Gary.

13 Q Were you able to identify or any clues as to who any
14 of the other two individuals were?

15 A I believe as they were standing in a line -- and I
16 don't have the video to replicate -- but as they're
17 standing in line in the clip that I was shown the person in
18 the back, I believed, went by the name of Quez.

19 Q All right. But you're not -- you just admitted not a
20 hundred percent sure.

21 A No, sir. It appeared.

22 Q Just to give them some clues about where to go.

23 A Yes.

24 Q And was the end of your involvement in this case?

25 A Yes, sir.

1 MR. SMITH: That's all I have.

2 THE COURT: Yes, sir. Mr. Schultz.

3 MR. SCHULTZ: Briefly.

4 CROSS-EXAMINATION

5 BY MR. SCHULTZ

6 Q Officer, prior to this charge has Mr. Gary ever been
7 charged with a crime?

8 A No.

9 Q Has Mr. Gary ever been arrested --

10 A No.

11 Q -- for a crime?

12 A Not that I'm aware of, no.

13 Q Has Mr. Gary had any involvement with the department
14 of juvenile justice in this state or this county?

15 A Not to my knowledge, no, sir.

16 MR. SCHULTZ: That's all I have, Judge. Thank you.

17 THE COURT: Any redirect limited to what he went into?

18 MR. SMITH: No, Your Honor.

19 THE COURT: Thank you, sir.

20 Officer, you may step down. Watch your step as you're
21 stepping down.

22 Any reason why the witness cannot be excused if he
23 wishes to?

24 MR. SMITH: No, Your Honor.

25 MR. SCHULTZ: No, sir.

1 THE COURT: Sir, thank you for coming.

2 THE WITNESS: Thank you.

3 THE COURT: You may be excused.

4 (Whereupon, the witness was excused.)

5 THE COURT: Ladies and gentlemen of the jury, I
6 appreciate your patience and your time and your attention
7 while we undertook and began this trial.

8 Given the hour that it is, I've consulted with the
9 lawyers. We feel like this would be a good time to take a
10 lunch break, and so I am going let you go to lunch.

11 I remind you of those two ongoing continuing
12 instructions. Do not have any discussions with anyone
13 about anything involved in the case, including yourselves
14 or anybody you run into, as well as do not do any type of
15 independent research or investigation in the case.

16 You've now heard some testimony. You've heard of a
17 location. If you're going out driving around, don't drive
18 by the location. Don't look it up on Google. Do not do
19 any type of research whatsoever, because after -- when you
20 begin your deliberations let those deliberations be based
21 on the evidence that's been presented by the lawyers, as
22 well as the instruction on the law that I will give you
23 towards the end of the case.

24 But, again, thank you for your patience and your
25 service so far in this case.

1 Looking at the clock on the wall, understanding of the
2 maze you've got to go through to now get out of this
3 courthouse, I'm going to ask that you be back -- it's
4 almost -- it's almost 1:00 o'clock. I'm going to ask that
5 you be back in the jury assembly room where you're going at
6 2:30, and we will resume the presentation of the testimony.

7 But, again, thank you very much for your service so
8 far. I'll let you go with the bailiff.

9 (The following takes place outside the presence of the
10 jury.)

11 THE COURT: Okay. Can I see the lawyers for a moment?

12 (Bench conference held off the record.)

13 THE COURT: Enjoy your lunch. We'll come back.

14 I have not received any special requests for charge.
15 I'm going to use just the standard ones so far.

16 MR. SCHULTZ: As far as the charge, I am going to
17 argue for a burglary second.

18 THE COURT: Okay. Thank you for telling me.

19 MR. SCHULTZ: Yes, sir.

20 THE COURT: What else?

21 MR. SMITH: I mean, I feel like arguing some sort of
22 lesser. I don't know if the testimony was two thousand or
23 more.

24 THE COURT: Well, I know he's got to have a factual
25 basis to make that request, but I'm just trying to prepare

1 myself in advance so that we can move more smoothly.

2 MR. SCHULTZ: That would be the only specific request
3 that I would have.

4 THE COURT: So far?

5 MR. SCHULTZ: So far would be burg second, either
6 violent or nonviolent.

7 THE COURT: Okay. I tell y'all. We will not be
8 arguing and charging today even if we get through with the
9 testimony. Physically, that is impossible.

10 MR. SCHULTZ: Yes, sir.

11 THE COURT: Okay. Just want y'all to know. You stood
12 up there and said tonight. No.

13 MR. SCHULTZ: I said tomorrow morning too.

14 THE COURT: You also said that and you also said
15 tonight. No. That's not happening.

16 Thank y'all very much.

17 (Whereupon, a recess was taken.)

18 (Question from the jury marked Court's Exhibit No. 2.)

19 THE COURT: Okay. We'll go back on the record.

20 I discussed with the lawyers that the bailiff had
21 given me information that one of the jurors had stated to
22 her and gave her a note that she thought that she knew one
23 of the defendant's family members and had some concern and
24 wanted us to know about that.

25 I spoke with the lawyers. What we are going to do is

1 bring Juror No. 2, Peyton Allen, into the courtroom. I
2 will ask her a few questions and see if that clears up any
3 concern that the lawyers might have as to her role in this
4 case.

5 I'd also informed the lawyers that Juror No. 103, Eric
6 McCurry -- that I have been informed that his mother has
7 been rushed to the hospital and that he has gone to the
8 hospital to be with his mother. I've advised the lawyers
9 of that fact as well.

10 The note that -- hand note that the bailiff made and
11 showed to me, I've made this an exhibit, Court's Exhibit 2
12 to this trial. So this will become part of the court's
13 record.

14 I now would like, if you would, to bring Juror No. 2,
15 Peyton Allen, around here. Just ask her to come with you.
16 Don't bring any of the other jurors.

17 (Pause.)

18 (The following takes place with Juror No. 2 and
19 counsel.)

20 THE COURT: Ms. Allen, if you would, just have a seat
21 in that chair. I've got to ask you a couple of questions,
22 and that microphone, if you would, just -- so the lady next
23 to us, as you've heard, makes a recording of everything
24 just to be able to be sure that we all hear you.

25 First of all, I want to thank you for providing the

1 information to the bailiff. She brought it to my attention
2 that you potentially knew a member of the defendant's
3 family. So thank you for providing us with that
4 information.

5 The way that you knew or potentially knew that you had
6 a member that might knew -- might know a member of the
7 defendant's family was because you saw them present in the
8 courtroom.

9 JUROR NO. 2: Yes, sir. In the courtroom.

10 THE COURT: Okay. Do you know who that family member
11 is, or is it just somebody in general?

12 JUROR NO. 2: I don't know his name and it's hard to
13 tell with the mask, but I believe I do.

14 THE COURT: Okay. And you knew -- you know this
15 family member from school, work, church, how?

16 JUROR NO. 2: School.

17 THE COURT: From school. A fellow -- is it a student
18 or --

19 JUROR NO. 2: I believe so. She is a student.

20 THE COURT: Okay. Do you remember, was this a student
21 now, a year ago, two years ago?

22 JUROR NO. 2: I'm not sure. Within the past six
23 years.

24 THE COURT: The past. All right. Now, the fact that
25 you know -- and, again, thank you for telling us about

1 this. The fact that you know that member of the
2 defendant's family, potentially know that member of the
3 defendant's family, would that in any way affect your
4 ability to continue to serve on this jury and give both the
5 state and the defense a fair and impartial trial?

6 JUROR NO. 2: Yes, sir. I would not feel comfortable
7 participating potentially knowing a member of the family.

8 THE COURT: Okay. Thank you for sharing that with us.

9 All right. Thank you very much. I would ask, if you
10 would, just return back to that area with the jury, but do
11 not share any information with the jury.

12 JUROR NO. 2: Yes, sir.

13 THE COURT: And we will get you back shortly. Okay.

14 JUROR NO. 2: Thank you so much.

15 THE COURT: Thank you.

16 (Whereupon, Juror No. 2 was excused from the
17 courtroom.)

18 THE COURT: Did I sufficiently cover the questioning?
19 Do I need to ask more questions, or what? Do y'all have
20 opinions on what y'all want to do?

21 MR. SMITH: I mean, given the -- I don't really think
22 any more questions are necessary. I would, I guess, be
23 inclined to let her go if she doesn't feel comfortable
24 continuing forward.

25 MR. SCHULTZ: I agree.

1 THE COURT: Okay. We don't know how that -- how she
2 would feel, whether that would make her uncomfortable and
3 favor the state and/or make her uncomfortable and favor the
4 defense.

5 You know, but I would tend to agree with both of
6 y'all's assessments that with her not -- she didn't -- she
7 wasn't milquetoast on it.

8 She was very clear that her continued participation
9 would be affected by her knowledge and knowing that
10 potential member of the defendant's family. Whether or not
11 that's an actual family member or not, we don't know, but
12 there was somebody in the courtroom who she thought was a
13 member of his family.

14 Okay. What I'll do is I will have her -- I'll dismiss
15 her from the jury.

16 Now, with that being said, as I told y'all, we have
17 Juror 103 is now at the hospital with his mother. That
18 brings us to less than 12 members of the jury.

19 I have asked the clerk of court's office prior to our
20 meeting in chambers. I asked the clerk -- I asked the
21 bailiff to start the process of trying to find out about
22 his mother to see if he can return tomorrow.

23 I don't know if his mother is in fatal condition,
24 deathbed, or whether it's just that she had hopefully a
25 momentary emergency that requires his brief attention. But

1 I wouldn't know one way or the other. So we will find out
2 what his availability is for tomorrow.

3 Do y'all have an alternative other than to stop the
4 trial now and to pick it up tomorrow?

5 MR. SCHULTZ: I don't have. I'm sorry.

6 THE COURT: Mr. Smith.

7 MR. SMITH: I would be okay.

8 THE COURT: Does he want to tell you something?

9 (Pause.)

10 MR. SMITH: But, yes, we were going to say that we
11 would be okay with proceeding with 11 but...

12 THE COURT: I'll be fine with that.

13 Mr. Schultz.

14 MR. SCHULTZ: No, sir. I'm not going to go with
15 proceeding with 11.

16 THE COURT: I mean, you've got -- I mean, I understand
17 that you have that constitutional right, but you also have
18 been participating and set through portions of a trial that
19 might have very well have gone very favorable to your
20 client.

21 Do you want to discuss it with him?

22 MR. SCHULTZ: I suppose I could.

23 THE COURT: Okay. We'll take --

24 MR. SCHULTZ: If it pleases the Court.

25 THE COURT: I mean, it is your -- you're a fine

1 advocate, a fine lawyer. Your client would be doing a
2 disservice not to listen to you. But I think it is
3 something you need to explore with him.

4 You know, I did a trial one time and a lot of good --
5 a lot of the trial progressed very favorably for the
6 defendant. So, and sometime this is no fault of the state
7 due to the fact we had a juror who came up and knew who
8 your client was and no fault of the state, the fact that
9 the other juror had to go to the hospital. You know, those
10 things happen.

11 So sometimes, you know, trials are going pretty well,
12 but that's your assessment for your client.

13 I'll step down for about five minutes or so and you
14 talk to him.

15 MR. SCHULTZ: Thank you, Judge.

16 THE COURT: Okay. We'll come back. I will not
17 dismiss the juror without telling you all.

18 (Whereupon, a recess was taken.)

19 (The following takes place with Juror No. 123.)

20 THE COURT: Ma'am, you can just stand right there.

21 Is it Pangel?

22 THE FOREPERSON: Pangel.

23 THE COURT: Ms. Pangel, thank you for coming in.

24 I selected you as foreperson so that you get to be the
25 spokesperson for me back with the jury.

1 THE FOREPERSON: Right.

2 THE COURT: And so I need you to deliver a message to
3 them. If you feel like you can't deliver this message,
4 just let me know and I'll bring them all in. But usually
5 this is the most convenient way.

6 We've reached a point today to where I need to bring a
7 conclusion to y'all's participation in this trial.

8 THE FOREPERSON: Okay.

9 THE COURT: So I need you to thank the jury for their
10 service so far today.

11 Ask them if they would be back in the courthouse to
12 begin again at 10:00 o'clock in the morning.

13 THE FOREPERSON: Okay.

14 THE COURT: Remind them of those two continuing
15 instructions of don't talk to anybody, including
16 yourselves, about the case. Don't do any research in the
17 case.

18 THE FOREPERSON: Okay.

19 THE COURT: But ask them if they would to be back at
20 10:00 o'clock in the morning. Can you do that for me?

21 THE FOREPERSON: Sure.

22 THE COURT: Thank you so much.

23 THE FOREPERSON: Thank you.

24 THE COURT: Okay. I need for you to bring Juror No.
25 2, Ms. Allen, in here.

1 (Pause.)

2 THE COURT: Stand right there, Ms. Allen.

3 Ms. Allen, I want to thank you for your service as
4 part of this jury.

5 We're going to excuse you from any further
6 participation in the trial of this case, but I did want to
7 bring you in to thank you for your patience while we went
8 through the jury qualification, selection. You got to hear
9 testimony.

10 Due to the fact that citizens like you are willing to
11 come in and do this jury service, we know it's not
12 convenient, and we try to do everything we can to keep it
13 as inconvenient as possible. But, hopefully, you got some
14 taste as to the important role that jurors do play in our
15 community and in our state. So I do want to thank you
16 personally, and I know the lawyers join me in thanking you
17 for your service.

18 The clerk of court will somehow take your badge and
19 they will send you that large check that you get for your
20 mileage and everything for jury service. But thank you
21 very much.

22 THE JUROR: I appreciate it.

23 THE COURT: If anybody ever bothers you or you feel
24 like you're being harassed about your jury service, just
25 reach out to the clerk of court's office and we'll delve

1 into it. Okay. Thank you very much.

2 (Whereupon, the juror was excused.)

3 THE COURT: All right. We'll step down until in the
4 morning.

5 END OF PROCEEDINGS AUGUST 22, 2021

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1 (Proceedings August 12, 2021)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Okay. We'll go on the record on the
5 matter State vs. Gary.

6 After our conversation yesterday about the jurors, we
7 were informed this morning that Juror No. 103, in fact,
8 will not be with us today.

9 His mother is, we're told is, in stable condition at
10 the hospital and that he is -- this morning has to be with
11 his 80-year-old father and that he could not make it in
12 this morning.

13 With that, we have less than 12 jurors since we
14 dismissed one of the jurors yesterday. And I am
15 informed -- and correct me if I'm wrong -- that the defense
16 has not agreed to proceed with less than 12, and so that
17 means that at this juncture, unless there's some other
18 motion or recommendation, I would have to declare a
19 mistrial in this case based on our juror situation.

20 Is that -- anybody have other suggestions other than
21 to declare a mistrial at this time?

22 MR. SCHULTZ: None from the defense, Your Honor.

23 MR. SMITH: Nothing from the state, Your Honor.

24 THE COURT: All right. Mr. Gary, I encourage you to
25 continue to stay in touch with your lawyer. Converse with

1 him. My assessment this is out of your lawyer's control,
2 was out of the control of the state. These are just,
3 unfortunately, situations that happen when you try to
4 conduct a trial, especially when you try to conduct a trial
5 in the time that we are living in now dealing with the
6 COVID virus. But these things happen. So just stay in
7 touch with your lawyer, and I'm sure that he'll be able to
8 answer any questions or explain anything to you and let you
9 know what's going to happen next.

10 END OF REQUESTED TRANSCRIPT OF RECORD
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 10th, 11th and 12th days of August 2021.

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

December 23, 2021

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS

3
4 THE STATE OF SOUTH CAROLINA,) TRANSCRIPT
5 PLAINTIFF,) OF
6 VS.) RECORD
7 JADEN IMARION GARY,)
8 DEFENDANT.) 2019-GS-42-5573
2019-GS-42-5574

9
10 August 31st - September 1st, 2021
11 Spartanburg, South Carolina

12 B E F O R E:

13 THE HONORABLE R. KEITH KELLY, JUDGE; and a jury.

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

15 SPENSER SMITH
16 ASSISTANT SOLICITOR
17 Attorney for the state

18 JOSHUA SCHULTZ
19 ESQ.
Attorney for the Defendant

20
21
22 PAMELA E. GREEN
23 Circuit Court Reporter
24
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P R O C E E D I N G S

(WHEREUPON, the following takes place within the presence of the entire jury panel.)

THE COURT: All right. Good morning again, ladies and gentlemen.

Can everybody hear me?

Can you -- in the back -- can you hear me in the very back?

(WHEREUPON, the jurors respond affirmatively.)

THE COURT: Okay. I'm trying to use my outside voice.

We are here this morning on the matter of the State of South Carolina versus Jaden Gary. Mr. Gary is charged by Indictment 2019-GS, for General Sessions, 42, Spartanburg County, 5574 with the criminal offense of burglary in the first degree and possession of a wine -- of a weapon during the commission of a violent crime.

It is alleged in the indictment that he committed this crime in the County of Spartanburg, State of South Carolina on or about July 22 of 2019 by entering a dwelling belonging to Jason Williams who lives at the Startex community.

Mr. Gary has entered a plea of not guilty to this indictment, and, under our system of justice for over 200 years, he is presumed innocent of the allegations contained in this indictment.

1 Ladies and gentlemen, I will say that more than one
2 time this morning. He is presumed innocent of the
3 allegations contained in this indictment. The indictment is
4 a piece of paper that brings him before the court. It is
5 not evidence against him.

6 He is also charged in the Indictment 2019-GS-42-5573
7 with the criminal offense known as grand larceny. It is
8 alleged that he did, in Spartanburg County, South Carolina,
9 on July 22 of 2019, feloniously take and carry away goods
10 belonging to the victim, Jason Williams, valued at more than
11 \$2,000 but less than \$10,000 in that he took firearms,
12 ammunition, and body armor from that individual.

13 Again, he has entered a plea of not guilty to this
14 indictment and he is presumed innocent of the charges
15 contained in the indictment. The indictment is not evidence
16 against him. It is just the vehicle that brings him before
17 the court for trial.

18 They're several questions that I'm required to ask at
19 this point in time and you were sworn yesterday and you
20 remain under oath.

21 Is there any member -- let's do this.

22 Mr., Mr. Gary, if you would stand please, sir, and
23 lower your mask just for about 15 seconds.

24 (WHEREUPON, the defendant complies.)

25 THE COURT: Thank you, sir. You may be seated.

1 (WHEREUPON, the defendant complies.)

2 THE COURT: Is there a member of this jury panel who is
3 related by blood or marriage or ever has been related to
4 Mr. Jaden Gary, if so, please stand.

5 (WHEREUPON, there was no response.)

6 THE COURT: Is there a member of this jury panel who
7 has a social or personal relationship or knows Mr. Gary in
8 anyway, if so, please stand.

9 (WHEREUPON, there was no response.)

10 THE COURT: The following is a list of potential
11 witnesses in this case:

12 Brad Newton.

13 Coby Stepp.

14 Jonathan Kent.

15 Trevor Shue.

16 Paul Norris.

17 Jason Williams.

18 Haley Hunsberger.

19 Tyquez McKinney.

20 Zion Miller.

21 Is there any member of this jury panel who is related
22 by blood or marriage or ever been related by blood or
23 marriage to any of the potential witnesses in this case, if
24 so, please stand.

25 (WHEREUPON, there was no response.)

1 THE COURT: Is there any member of the jury panel who
2 has a social or personal relationship with any of those
3 potential witnesses, if so, please stand.

4 You know them from work. You know them from school,
5 recreation, somehow or the other.

6 (WHEREUPON, there was no response.)

7 THE COURT: I'm gonna ask the lawyers to introduce
8 themselves at this time.

9 solicitor.

10 SOLICITOR SMITH: My name is Spenser Smith. I'm
11 assistant solicitor with the seventh circuit solicitor's
12 office.

13 MR. SCHULTZ: My name is Joshua schultz. I represent
14 Mr. Gary.

15 THE COURT: Thank you.

16 Is there any member of this jury panel who is related
17 by blood or marriage to either of the lawyers in this case,
18 if so, please stand.

19 (WHEREUPON, there was no response.)

20 THE COURT: Is there a member of this panel who has a
21 social or personal relationship with either of the lawyers,
22 if so, please stand.

23 (WHEREUPON, there was no response.)

24 THE COURT: Is there a member of this jury panel, you
25 yourself, who have ever been a commissioned law enforcement

1 officer?

2 That includes military police, municipal officer, a
3 county, state officer, or a federal agent, if so, please
4 stand.

5 You yourself have been a law enforcement officer.

6 (WHEREUPON, there was no response.)

7 THE COURT: Is there a member of this jury panel who
8 has a relative or a very close friend who is a law
9 enforcement officer again for any agency, please stand.

10 (WHEREUPON, jurors respond at this time.)

11 THE COURT: Yeah, I always get a few on that.

12 Starting over here in the back.

13 THE JUROR: My son-in-law's a state trooper.

14 THE COURT: And would that interfere with your ability
15 to be fair and impartial?

16 THE JUROR: No.

17 THE COURT: You may stay -- your number please?

18 THE JUROR: 84.

19 THE COURT: 84.

20 Okay. Yes, ma'am.

21 THE JUROR: One of the close personal friend of the
22 family is a sheriff's deputy.

23 THE COURT: Would that interfere with your ability to
24 be fair and impartial?

25 THE JUROR: I don't think so.

1 THE COURT: Thank you. You may stay with us.

2 Yes, sir.

3 SOLICITOR SMITH: Can we get her---

4 THE COURT: Your, your number please?

5 THE JUROR: 24.

6 THE COURT: 24.

7 THE JUROR: 182. My father and my brother are.

8 THE COURT: Law enforcement?

9 THE JUROR: Yes, sir.

10 THE COURT: Would that interfere with your ability to
11 be fair and impartial?

12 THE JUROR: I don't think so.

13 THE COURT: I'm sorry, sir. I got to have a definitive
14 answer.

15 THE JUROR: No.

16 THE COURT: It would not. Thank you. You may stay
17 with us.

18 Yes, sir, your number.

19 THE JUROR: My Juror Number's 48. We got a farm. Both
20 my partners are law enforcement.

21 THE COURT: Would that interfere with your ability to
22 be fair and impartial?

23 THE JUROR: No, sir.

24 THE COURT: Thank you. You may stay.

25 Yes, sir, your number.

1 THE JUROR: 168. My across the road neighbor and
2 family friend is a sheriff's deputy.

3 THE COURT: Would that interfere with your ability to
4 be fair and impartial?

5 THE JUROR: No.

6 THE COURT: Thank you. You may stay.

7 Your number, sir.

8 THE JUROR: 177. Close personal friend is a registered
9 officer in Canada and a family member and husband, husband
10 is a policeman.

11 THE COURT: Would that interfere with your ability to
12 be fair and impartial?

13 THE JUROR: No, sir.

14 THE COURT: Thank you. You may stay.

15 Yes, sir.

16 THE JUROR: 153. My next door neighbor is a sheriff
17 and my niece by marriage is a correctional officer.

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

20 THE JUROR: No, sir.

21 THE COURT: Thank you. You may stay.

22 Yes, sir.

23 THE JUROR: Juror Number 65. I have a very close
24 friend who is assistant chief of police in Louisiana, New
25 Brandford (phonetic) Sheriff's Department in Calabaris

1 (phonetic) and one is a sheriff in -- I can't remember where
2 in North Carolina.

3 THE COURT: would that interfere with your ability to
4 be fair and impartial?

5 THE JUROR: No.

6 THE COURT: Thank you. You may stay.

7 Yes, sir.

8 THE JUROR: 158. I have a cousin and a few friends
9 that are police officers.

10 THE COURT: would that interfere with your ability to
11 be fair and impartial?

12 THE JUROR: No, sir.

13 THE COURT: Thank you. You may stay.

14 Is there any member of this jury panel -- I'm sorry. I
15 got one more.

16 THE JUROR: 185. My father-in-law and parents are in
17 law enforcement and I have a cousin in law enforcement.

18 THE COURT: would that interfere with your ability to
19 be fair and impartial in this case?

20 THE JUROR: No.

21 THE COURT: No?

22 THE JUROR: No.

23 THE COURT: Thank you. You may stay.

24 Is there a member of this jury panel who has a family
25 member or close friend who is employed with the seventh

1 circuit solicitor's office?

2 That'd be Cherokee and Spartanburg County.

3 Friend or a family member employed by the
4 Seventh Circuit solicitor's office, please stand.

5 (WHEREUPON, there was no response.)

6 THE COURT: Is there a member of this jury panel that's
7 employed in the law firm of Josh Schultz here in Spartanburg
8 or a family member or a friend, please stand.

9 (WHEREUPON, there was no response.)

10 THE COURT: Is there a member of this jury panel who
11 has been summoned to testify in a case by the Seventh
12 circuit solicitor's office?

13 You were called as a witness to testify in a case, if
14 so, please stand.

15 (WHEREUPON, there was no response.)

16 THE COURT: Is there a member of this jury panel that's
17 ever been summoned to a -- in a case by the Josh Schultz Law
18 Firm, please stand.

19 (WHEREUPON, there was no response.)

20 THE COURT: Is there a member of this jury panel who
21 has ever sought legal advice from either of these lawyers?

22 whether that be for a real estate matter, a, a criminal
23 matter, a car wreck, anything, you talked to either of the
24 lawyers even if you did not hire him, please stand.

25 (WHEREUPON, there was no response.)

1 THE COURT: Is there a member of this jury panel who is
2 ever been the victim of a burglary at your residence or
3 workplace, please stand.

4 (WHEREUPON, jurors respond at this time.)

5 THE COURT: Your number please, ma'am?

6 Wait. He's gonna bring the microphone.

7 Okay. 24?

8 THE JUROR: Yes, sir.

9 THE COURT: Would that interfere with your ability to
10 be fair and impartial?

11 THE JUROR: No, sir. No, sir.

12 THE COURT: Thank you. You may stay.

13 Yes, ma'am.

14 THE JUROR: Juror 79.

15 THE COURT: Would that interfere with your ability to
16 be fair and impartial?

17 THE JUROR: No, sir.

18 THE COURT: Thank you. You may stay.

19 THE JUROR: 69.

20 THE COURT: Would that interfere---

21 THE JUROR: No, sir.

22 THE COURT: It would not interfere?

23 THE JUROR: No, sir.

24 THE COURT: You may stay.

25 Yes, sir.

1 THE JUROR: Yes, somebody stole something out of my
2 house.

3 THE COURT: Your number, sir?

4 THE JUROR: 81.

5 THE COURT: 81.

6 would that interfere with your ability to be fair and
7 impartial?

8 THE JUROR: No, sir.

9 THE COURT: sir, you may stay.

10 Yes, sir.

11 THE JUROR: 102.

12 THE COURT: would it interfere with your ability to be
13 fair and impartial?

14 THE JUROR: No, sir.

15 THE COURT: Thank you. You may stay.

16 Is there any party here have -- is there any member of
17 this panel who knows of any reason why he or she should not
18 serve as a juror in this case, please stand.

19 (WHEREUPON, there was no response.)

20 THE COURT: Any juror here know anything about this
21 case?

22 I do not other than what I just told you.

23 Anyone, please stand.

24 (WHEREUPON, there was no response.)

25 THE COURT: Anything from the state?

1 SOLICITOR SMITH: No, Your Honor.

2 THE COURT: From the defense?

3 MR. SCHULTZ: No, sir.

4 THE COURT: Okay. We're ready to pick. It's five and
5 10.

6 SOLICITOR SMITH: Yes, sir.

7 MR. SCHULTZ: That's my understanding.

8 THE COURT: Five and 10. We'll have a jury.

9 (WHEREUPON, the jury panel of 12 was selected along
10 with one alternate at this time.)

11 THE COURT: We'll pick one more.

12 THE CLERK: Yes, sir.

13 (WHEREUPON, a second alternate juror was selected at
14 this time.)

15 THE COURT: Any matters from the State?

16 SOLICITOR SMITH: No, Your Honor.

17 THE COURT: From the defense?

18 MR. SCHULTZ: No, sir.

19 THE COURT: Okay. Let me see the lawyers real quick.

20 (WHEREUPON, a bench conference was held out of the
21 hearing of the jury at this time.)

22 THE COURT: Ladies and gentlemen who were selected on
23 this trial, I'm gonna ask you, when you leave here, to
24 report to the courthouse by 11:15, 11:15. Park on the third
25 level or higher please. Park on anything third level or

1 higher.

2 Again, the lawyers feel uncomfortable not speaking to
3 you. They think that's rude and it is. We're in South
4 Carolina. We like to speak to each other.

5 So use the elevators or use the stairs, whichever you
6 choose. When you come out of the garage, that is the
7 Library Street entrance. They'll be law enforcement there.
8 They'll be bailiffs there that, that will escort you to the
9 jury assembly room.

10 okay. Please be in place about 11:15. They'll be
11 coffee over there, water if you need it, restrooms are
12 available for you. We're gonna go back over there and work
13 on some pretrial stuff. We've got to do that outside of
14 your presence. We're not hiding anything from you. I'll
15 tell you, when I start charging the jury, that, that I have
16 to deal with matters of law and you deal with the facts in
17 the case.

18 okay. So we're gonna go do a little pretrial stuff
19 outside of your presence. We'll be over there working here
20 in about the next 15 minutes.

21 okay. About 11:15 or thereabouts.

22 okay. With that, you want to take them out a different
23 entrance?

24 THE BAILIFF: Yes, Your Honor.

25 THE COURT: Okay. Ms. Rita's gonna -- okay. Ms.

1 Rita's gonna take you out right here. I need all, I need
2 all of you now. 11:15.

3 (WHEREUPON, the following takes place outside the
4 presence of the jury.)

5 THE COURT: Mr. Gary?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You're, you're on the street.

8 SOLICITOR SMITH: He's on home detention, Judge.

9 THE COURT: Oh, okay.

10 MR. SCHULTZ: On home detention, Judge.

11 THE COURT: All right. This, this case is gonna start
12 with you or without you.

13 You understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: So if you absent yourself --

16 THE DEFENDANT: Yes, sir.

17 THE COURT: -- I'm gonna go forward.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay.

20 (WHEREUPON, a short recess was taken in this case at
21 this time.)

22 THE COURT: Okay. We're back on the record in the
23 matter of The State versus Jaden Gary. 2019-5573 and 5574.

24 Anything from the state?

25 SOLICITOR SMITH: I can respond to what I think is

1 coming from the defense.

2 THE COURT: Okay. From the defense.

3 MR. SCHULTZ: Your Honor, we would challenge the
4 voluntariness and the admissibility of the statement that
5 Mr. Gary gave to the Spartanburg County police officers
6 based upon the case of Jackson v. Denno.

7 THE COURT: All right, sir.

8 SOLICITOR SMITH: Your Honor, the, the State's position
9 on this is that this motion has already been heard in front
10 of Judge Hayes. This case was scheduled for trial about
11 three weeks ago.

12 We heard testimony from Officer Newton, the defendant,
13 and the defendant's mother, which he alleged that he was
14 under the influence. Judge Hayes denied the defendant's
15 motion and, and thought that the statement was given freely,
16 knowingly, and voluntarily. And just because I sat through
17 the previous one, I'd like to try to keep the motion, you
18 know, tethered to the law since the jury is not here and
19 they made arguments about him not being an adult are, are
20 not legally correct given what he's charged with. He is an
21 adult and he's charged as an adult.

22 We certainly would stipulate to his age. That's not in
23 dispute and I know, just for purposes of the last hearing,
24 Your Honor, we cited State v. Parker, which is 381 S.C. 68,
25 and, ultimately, and despite the defendant's age, it's the

1 totality of the circumstances considering length of
2 detention, techniques done by police that might be
3 manipulative or coercive, actions taken to deprive of sleep,
4 the defendant's relative intelligence, education, age, and
5 other factors that, that are listed in that case.

6 But, ultimately, it's -- there is no bright line rule
7 about a parent being required for a defendant of this age,
8 and that was the thrust, I thought, of the last hearing in
9 addition to the allegations of being under the influence.

10 THE COURT: Yes, sir.

11 MR. SCHULTZ: Your Honor, I, I think this matter should
12 be heard in front of the trial judge and you are the trial
13 judge, Judge Kelly.

14 That matter in front of Judge Hayes was, again,
15 Mr. Smith is right, was scheduled about three weeks, three
16 weeks ago. We had the Jackson v. Denno hearing. Judge
17 Hayes ruled that the statement was voluntarily made and
18 given to the Spartanburg County Sheriff's Office on that
19 date.

20 State v. Parker, I do agree with Mr. Smith that that is
21 the relevant case and I also do agree that the totality of
22 the circumstances is required and I'm, I'm looking at the
23 case here, case here and it cites Jackson v. Denno as well
24 as Arizona versus Del Monte and also State v. Myers and
25 that's another 2004 South Carolina case. That's 359 S.C.

1 40. It says determination whether a statement was given
2 voluntarily requires an examination of the totality of the
3 circumstances.

4 So, you are the trial judge, Judge Kelly, and we would
5 like you to hear this.

6 THE COURT: Okay. I'm gonna hear it.

7 MR. SCHULTZ: Yes, sir.

8 THE COURT: I will tell both of, both of you though
9 that, and I think I told you off-the-record, I I'll tell you
10 now on the record, the audio disk tape was provided either
11 some time this morning I think -- yes, and my law clerk and
12 I listened to that earlier this morning. I mean I've --
13 we've been here since eight o'clock or thereabouts. So, so
14 we listened to it while we had a cup of coffee. So, I'm
15 familiar with the interview that we're talking about.
16 So --.

17 All right.

18 SOLICITOR SMITH: The state calls officer Brad Newton.

19 THE COURT: All right.

20 BRAD NEWTON, being first duly
21 sworn, testified as follows:

22 THE COURT: So, voluntariness, just so I understand
23 here, is not Miranda. It's voluntariness of the statement
24 is the issue.

25 MR. SCHULTZ: Yes, sir.

Brad Newton - Direct examination
By solicitor Smith

1 THE COURT: okay.

2 MR. SCHULTZ: Yes, I, I think it's pretty clear that
3 the Miranda was given and the pre-interrogation waiver was
4 signed.

5 THE COURT: I just want to make sure I had, I had the
6 issue.

7 MR. SCHULTZ: Yes, sir.

8 THE COURT: The issue is voluntariness.
9 solicitor.

10 DIRECT EXAMINATION

11 BY SOLICITOR SMITH:

12 Q Where are you employed?

13 A Spartanburg County Sheriff's office.

14 Q What is your law enforcement experience?

15 A I began my law enforcement career in 2003 with the
16 Greenville Police Department. From there, in 2005, I went
17 to the South Carolina Highway Patrol until 2010, and then I
18 was hired here at the Sheriff's Office in 2013 where I have
19 remained since then.

20 Q And, and you're in investigations at the Sheriff's
21 office?

22 A I am.

23 Q As a part of that, do you routinely, or maybe not in
24 your supervisory role now, but did you use to interview
25 potential suspects in crimes?

Brad Newton - Direct examination
By solicitor Smith

- 1 A Yes.
- 2 Q Both at the Sheriff's Office and out in the field?
- 3 A Yes, sir.
- 4 Q All right. And your -- specifically about your
5 training as a trooper, do you have training in the detection
6 of alcohol or drug detection in an individual?
- 7 A I do. I've got several hours of -- had several
8 different courses in the detection of impaired drivers,
9 impaired persons.
- 10 Q All right. And were you assigned a burglary case that
11 occurred on July the 22nd of 2019 in Startex?
- 12 A Yes.
- 13 Q All right. Did you ultimately sign warrants on a man
14 named Jaden Gary as a result of that?
- 15 A Yes, sir.
- 16 Q And can you describe how the interview with Mr. Gary
17 came about?
- 18 A There had been -- I consulted with other officers
19 within the department and we had developed Mr. Jaden or
20 Mr. Gary as a suspect. Those other officers were able to
21 locate him or locate some family members of his who then
22 brought him down to the Sheriff's Office to the front lobby
23 at which point in time I think those individuals or those,
24 those officers were called to the front lobby at which time
25 they brought Mr. Gary upstairs to the investigations

Brad Newton - Direct examination
By Solicitor Smith

1 division.

2 Q Do you know who brought him to the Sheriff's office?

3 A His mother.

4 Q All right. So he did not come in handcuffs or under
5 the arrest or in the custody of law enforcement?

6 A No, sir.

7 Q But he was aware that y'all were looking for him --

8 A He was.

9 Q -- or, or at least his family was aware?

10 A Yes.

11 Q All right. Do you recall what date that was?

12 A I don't.

13 (WHEREUPON, State's Exhibit Nos. 1 through 3 were
14 marked for identification purposes only at this time.)

15 Q I'm gonna hand you what's been marked as State's
16 Exhibits 2, the waiver.

17 Is it listed on there?

18 A It is. It's August the 2nd of 2019 --

19 Q All right.

20 A -- at 12:38 in the afternoon.

21 Q All right. And what I've handed you is State's Exhibit
22 2.

23 That's a copy of the pre-interrogation waiver form that
24 was filled out in this case?

25 A Yes, sir.

Brad Newton - Direct examination
By Solicitor Smith

1 SOLICITOR SMITH: Your Honor, at this time we move that
2 in for purposes of the motion hearing.

3 THE COURT: Any objection?

4 MR. SCHULTZ: For purposes of the -- this motion, no
5 objection.

6 THE COURT: Without objection.

7 (WHEREUPON, State's Exhibit No. 2 was received into
8 evidence for purposes of this hearing only at this time.)

9 SOLICITOR SMITH: Your Honor, we'd also like to move
10 state's Exhibit 1 in. I know Your Honor said he's reviewed
11 it. For just purpose of the motion hearing.

12 You recorded your interaction with Mr. Gary at the
13 Sheriff's Office?

14 A Yes, sir.

15 Q And it's on that disk?

16 A It is.

17 SOLICITOR SMITH: Your Honor, at this time we'd move
18 that in as well --

19 THE COURT: Any objection?

20 SOLICITOR SMITH: -- for the motion.

21 MR. SCHULTZ: For purposes of this motion, no
22 objection.

23 THE COURT: Very good. It's in.

24 (WHEREUPON, State's Exhibit No. 1 was received into
25 evidence for purposes of this hearing only at this time.)

Brad Newton - Direct examination
By Solicitor Smith

1 Q Can you describe Mr. Gary's appearance or behavior when
2 you made contact with him?

3 A When he came up I introduced myself, explained kind of
4 what was going on. He, he understood and, and wanted to
5 express his side of the story. He wanted to get as much
6 information out as, as he could from, from what I recall.

7 Q When you interviewed him, was his mother there or did
8 she stay in the lobby?

9 A I, I think I learned after the fact that I think she
10 was in the lobby for a period of time. I don't recall if I
11 knew -- I knew that she brought him there. I didn't know if
12 she remained in the lobby or not.

13 Q Did he ask you that he wanted her to be present or
14 anything like that?

15 A He did not.

16 Q All right. It was your impression that he had come in
17 to give his side of the story?

18 A Correct.

19 Q But, but prior to that, you did go over his Miranda
20 rights with him that he did not have any obligation to, to
21 share his side of the story?

22 A Yes, prior to any conversation about this case, this
23 pre-interrogation waiver, which covers Miranda, was, was
24 explained to him and he stated he understood.

25 Q And I think it's on State's Exhibit 2 but do you know

Brad Newton - Direct examination
By Solicitor Smith

1 how far he went in school?

2 A Says, says he finished 10 years in school.

3 Q All right. In your interaction, were you -- did you
4 find him to be articulate, well spoken, or somebody that has
5 a, a decent degree of intelligence?

6 A Yes, sir.

7 Q And he seemed to understand the matter itself?
8 He knew what he was there about?

9 A He did.

10 Q All right. Did you notice anything about him that
11 would give you an impression that he was under the influence
12 of anything?

13 A No.

14 Q No smells of marijuana --

15 A No, sir.

16 Q -- or bloodshot eyes?

17 A No, sir.

18 Q Did---

19 A His speech was clear.

20 Q Did he make any admissions to you about having consumed
21 any drugs or alcohol?

22 A No, sir.

23 Q All right. At, at the Sheriff's office, at -- would
24 you conduct an interview with somebody that you think is
25 grossly intoxicated --

Brad Newton - Direct examination
By Solicitor Smith

1 A No, sir.

2 Q -- or somebody who has -- doesn't know what they're
3 saying and doing?

4 A No.

5 Q All right. But you did not have that impression with
6 Mr. Gary?

7 A Did, did not.

8 Q All right. And you spoke both orally with him where he
9 provided details about the crime and then he also did a
10 written statement.

11 Is that correct?

12 A He did, yes, sir.

13 Q I'm gonna hand you State's Exhibit 3 and ask if you can
14 identify what that is.

15 A That is the written statement of Mr. Gary in which he
16 wrote in his own handwriting.

17 SOLICITOR SMITH: Your Honor, at this time we move
18 State's Exhibit 3 into evidence.

19 THE COURT: Any objection?

20 MR. SCHULTZ: For purposes of this motion, no
21 objection.

22 THE COURT: Without objection.

23 (WHEREUPON, State's Exhibit No. 3 was received into
24 evidence for this hearing only at this time.)

25 SOLICITOR SMITH: Can I hand it to Your Honor?

Brad Newton - Direct examination
By solicitor Smith

1 THE COURT: Yes.

2 Q Did you lie to Mr. Gary or try to deceive him during
3 the course of the interrogation?

4 A No, sir.

5 Q Would you describe what you had with Mr. Gary even as
6 an interrogation or, or how would you describe it?

7 A It, it was more of a -- it was more of a discussion. I
8 did ask a few questions, but I, I tried to do a lot of
9 listening, and -- but classifying as an, an interrogation, I
10 probably wouldn't do that.

11 Q Do you remember about how long it took in totality?

12 A I don't. Maybe, maybe a half an hour. Maybe a few
13 minutes shy of that.

14 Q All right. Did he ask to take a break or anything
15 during the time that you were talking with him?

16 A No, sir.

17 Q Do you recall if he was in handcuffs when you
18 interviewed him?

19 A He -- during the, during the actual interview, he was
20 not in handcuffs.

21 Q All right. Did, did you, did you tell him that he was
22 under arrest at, at -- prior to doing the interview?

23 A I don't, I don't recall that I did. I can't speak for
24 other officers.

25 Q And he, ultimately, was able to give you many details

Brad Newton - Direct examination
By Solicitor Smith

1 about this crime, correct?

2 A Yes.

3 Q And did the details that he gave you jive with
4 information that you had from the surveillance video and
5 pictures that you'd seen of the scene?

6 A Yes, sir.

7 Q So you believed that he had a good recollection of
8 these events both when he had done them and when he was
9 telling you about them?

10 A Yes.

11 Q And did you find him to generally be cooperative with
12 you, that he was not being evasive in terms of his answers?

13 A No, he was, he was cooperative.

14 Q And did you have any question that the statement he
15 gave you he was doing voluntarily?

16 A No, sir.

17 Q Please, please answer any questions that Mr. Schultz
18 has.

19 CROSS-EXAMINATION

20 BY MR. SCHULTZ:

21 Q Officer, how long have you been with the Spartanburg
22 County Sheriff's office?

23 A Since September of 2013.

24 Q And, in that time, suffice it to say you've done a lot
25 of interrogations of defendants, potential defendants?

Brad Newton - Cross-examination
By Mr. Schultz

1 A I -- yes, sir.

2 Q All right. And about how many have you done?

3 A That I couldn't -- I, I don't know. I mean I can't, I
4 can't place a number on it.

5 Q Is it in the hundreds?

6 A I would say it's in the hundred in interviews and
7 discussions and, and that type thing.

8 Q All right. And do you remember interviewing Mr. Gary?

9 A I remember -- I don't remember specific details of, of
10 that interview without listening to it, you know, without
11 going back and listening to the entire thing but I remember
12 that day.

13 Q We, we understand that.

14 A Right.

15 Q But do, do you remember specifically talking to
16 Mr. Gary by himself without his mother present?

17 A Yes.

18 Q Okay. And that was at the Sheriff's Office, correct?

19 A It was.

20 Q Okay. That wasn't at his house or at any other
21 residence?

22 That was at the Sheriff's Office, right?

23 A Yes, it was in an interview room in our investigations
24 division.

25 Q Was he -- was my client under arrest at that point that

Brad Newton - Cross-examination
By Mr. Schultz

1 you interrogated him?

2 A My, my understanding was I believe the warrant had been
3 served in the lobby or, or he had been placed under arrest
4 by other officers and then brought upstairs at which point
5 our conversation took place.

6 Q So, he was under arrest at the time you interrogated
7 him, correct?

8 A That's my understanding.

9 Q Okay. So, so suffice it to say, he was not free to
10 leave, correct?

11 A Yes, sir.

12 Q Okay. Again, just to confirm, he couldn't leave and go
13 talk to his mother or he couldn't leave and go home, right?

14 A Had he asked for his mother I would of allowed her to
15 be present during the conversation.

16 Q All right. You spoke at length about this with, with
17 Mr. Smith.

18 Do you remember if Mr. Gary was found with any drugs on
19 him or anything?

20 A My understanding he was not.

21 Q Did you smell anything on him?

22 A No, sir.

23 Q Knowing that marijuana has a fairly pungent smell, are
24 you positive that you did not smell anything on him at the
25 time?

Brad Newton - Cross-examination
By Mr. Schultz

1 A Yes, that -- we were in a confined space for
2 approximately a half an hour. I would have smelled alcohol
3 or marijuana or any -- anything of that sort.

4 Q Did you inquire as to Mr. Gary's age at that time?

5 A Yes, it's, it's notated on the pre-interrogation form
6 that he's 17.

7 Q All right. And you, you knew that he was 17 first and
8 then you continued to interrogate him, right?

9 A We had -- yes, we had a conversation.

10 Q Okay. Did you tell him what or I guess the better
11 question is at one point did you tell him he was going to be
12 charged as an adult?

13 A I don't remember.

14 Q Did you ever tell him that?

15 A I, I don't -- and I don't know that specifically he was
16 told that.

17 Q But, to your recollection, you never told him that,
18 correct?

19 A I, I don't recall.

20 Q Okay. You may have and you may have not.

21 A There -- it's a possibility.

22 Q All right. Now, Mr. Gary was not grossly intoxicated,
23 correct?

24 A I, I didn't get any sense that he was intoxicated at
25 all.

Brad Newton - Cross-examination
By Mr. Schultz

1 Q All right. Or grossly under the influence, correct?

2 A No, sir.

3 Q Okay. Now, detail to the Court what happened when
4 Mr. Gary came to the Sheriff's Office lobby.

5 He was with somebody, correct?

6 A My understanding he was with his mother. I did not go
7 to the lobby. So, I can't speak to that firsthand but I
8 understand he was -- she brought him there.

9 Q All right. So, to your recollection, somebody else,
10 some other officer or some other person, brought him from
11 the lobby into the interrogation room waiting for you,
12 right?

13 A That's correct.

14 Q Okay. And about how early in the morning was this?
15 was -- do you remember that?

16 Do you have any notation---

17 A I, I don't.

18 Q ---of the time?

19 A I don't know.

20 Q Okay.

21 A I know, I know our conversation, you know, with this
22 pre-interrogation says we're shortly after lunchtime.

23 Q Okay. So, you -- nearest of your recollection it was
24 some time in the afternoon, right?

25 A When my conversation with him took place it, it was.

Brad Newton - Cross-examination
By Mr. Schultz

1 Q Yes, sir.

2 A Yes.

3 Q okay. All right. Did he or did Mr. Gary know what
4 burglary in the first degree in South Carolina carries?

5 Did you alert him to that fact?

6 A No, sir.

7 Q okay. Would that have been a good practice when
8 interrogating a 17 year old at the time?

9 A My, my conversation with him was to find out the facts.
10 He had information that he wanted to share with us. So I, I
11 wanted to listen to his side of the story. I don't
12 typically go into what this carries, what that carries,
13 anything like that.

14 Q But you knew at that time that he was charged with
15 burglary first, the highest property crime that we have in
16 this state, correct?

17 A Yes.

18 Q okay. And you didn't see fit to tell a 17 year old
19 that this potentially carries a life sentence?

20 A He came in to discuss the case with me and, and I --
21 that was, that was my goal was to find out what happened and
22 his side of the story.

23 Q I understand that was your goal---

24 A So---

25 Q ---but---

Brad Newton - Cross-examination
By Mr. Schultz

1 A So, no, I don't---

2 Q I'm sorry.

3 A I don't go into the particulars of that very often.

4 Q And, and that's your practice is, when you're
5 interrogating 17 year olds, not to even discuss the
6 consequences of every -- everything that happened?

7 A I discuss the case with each individual that I talk
8 with.

9 Q okay. Do you remember how long the interrogation
10 lasted?

11 A Our discussion lasted approximately half an hour
12 from -- again, it may be give or take a few minutes from
13 what I recollect.

14 Q At anytime in that 30 minutes or outside of that 30
15 minutes did you talk to his mother?

16 A Not, not inside that 30 minutes, no, sir.

17 Q All right.

18 A Oh, I did later.

19 Q okay. You did later?

20 A Yes.

21 Q okay.

22 A And, and that would of taken place in your office.

23 Q All right. Did, did she -- well, I'm not talking about
24 in my office.

25 A okay.

Brad Newton - Cross-examination
By Mr. Schultz

1 Q I'm talking about the day of the interrogation,
2 August 2nd, did you talk to my client's mother at any
3 point during that day?

4 A I, I don't remember talking with her that day.

5 MR. SCHULTZ: All right. Your Honor, could I approach?

6 THE COURT: Yes, sir.

7 Q You've seen the pre-interrogation waiver right there
8 referring to State's Exhibit 2?

9 A Yes.

10 Q Okay. I'm also going to show -- well, do, do you
11 remember the, the statement that Mr. Gary wrote out?

12 Was, was that in his, in his handwriting or your
13 handwriting?

14 A It was his handwriting.

15 Q Okay. Do you remember that statement or --?

16 A I remember him giving a statement. Without it being in
17 front of me, I, I can't recall all of the details.

18 Q All right.

19 MR. SCHULTZ: Beg the Court's patience.

20 THE COURT: Yes, sir.

21 (Pause.)

22 Q When my client gave that statement there, did he
23 seem the -- well, I, I guess to your -- in, in your opinion,
24 you -- you've -- and you've done hundreds of these
25 interviews by this point.

Brad Newton - Cross-examination
By Mr. Schultz

1 Did he seem concerned about his actions?

2 A Concerned?

3 He, he seemed eager to get his side of the -- to
4 explain his side of the story.

5 Q And what was his side of the story?

6 A Well, again, I -- if I could refer back to the
7 statement?

8 That way I could make sure I don't misquote anything.

9 MR. SCHULTZ: Your Honor, has that, has that, that been
10 entered?

11 THE COURT: Yeah.

12 MR. SCHULTZ: Okay. All right. I apologize. Thank
13 you.

14 I apologize. I'm sorry. I was looking for the
15 statements there.

16 A Well, thank you.

17 Q State's Exhibit 3, can you read the last three
18 sentences in that statement?

19 A Do you have a starting point?

20 I'm trying to locate --?

21 MR. SCHULTZ: May I approach, Judge?

22 THE COURT: Yes, sir.

23 Q Just, just start right about there --

24 A Okay. All right.

25 Q -- please.

Brad Newton - Cross-examination
By Mr. Schultz

1 A so she, she told me her brothers had went in before me
2 and that's how she knew about them. Me and my brothers went
3 in and got them but only to sell for money to help get
4 ourselves together cause of our problems we were facing at
5 home.

6 After selling the guns, we left and was dropping people
7 off. During the drop-off I was robbed by three men wearing
8 red flags on their faces. Nothing was done to me. So, I
9 went home. I never knew anybody stayed there. Never knew
10 how bad this was bound to turn out but I can get the guns
11 back.

12 Q At that -- so, at that time, did, did, did you believe
13 that my client thought that this didn't seem like a big
14 deal?

15 A At that time, knowing the information that I knew,
16 knowing that he had armed himself prior to going into the
17 house, I believe he knew the seriousness of what he was
18 doing because he took the, the time and thought out the fact
19 that he would need a weapon to enter into this house.

20 Q But at the time that you interviewed him, did he seem
21 very concerned that he could be spending a lot of time in
22 prison or jail for this?

23 A The best way I can answer that question, he seemed
24 eager to get his side of the story out.

25 Q All right. And you said that he would -- you

Brad Newton - Cross-examination
By Mr. Schultz

1 interrogated him for 30 minutes, correct?

2 A No, sir, we had a discussion for 30 minutes.

3 Q A discussion.

4 Okay.

5 A It was more of an interview. An interrogation, I, I

6 wouldn't classify it as an interrogation.

7 Q well, what would you classify it as?

8 A More of a discussion or an interview.

9 Q Okay.

10 A I did more, I did more listening than I did, than I did
11 talking.

12 Q All right. well, it's, it's, it's still -- you're
13 still an officer of the, the state, right?

14 A Uh-huh. (Affirmative).

15 Q And, and Mr. Gary, at that time, was somebody that was
16 under arrest, right?

17 A He was.

18 Q So do -- this is not you going on for a, a, a bite to
19 eat. I mean this, this is a -- an action brought against my
20 client by an officer of the state of south carolina,
21 correct?

22 A Yes.

23 Q Okay. So, that's a little bit more than a discussion
24 wouldn't you say or no?

25 A All right. What's your definition of interrogation?

Brad Newton - Cross-examination
By Mr. Schultz

1 Q My definition of interrogation is, is the defendant or
2 the client is not free to leave as -- after apprehension or
3 arrest by an officer of the law.

4 A Okay. So, he -- yes, we had a discussion for
5 approximately half an hour.

6 Q Okay. And then after that discussion, as you say, was
7 there interrogation or did it cease?

8 A No, that was at which point in time the -- Mr. Gary
9 gave his voluntary written statement.

10 Q Okay. After he gave the voluntary statement, was he
11 escorted into custody or was he taken to jail?

12 A He was.

13 Q Okay. And, again, his mother was out in the lobby
14 during this time, right?

15 A I don't know at what point in time she was there or
16 when she left.

17 MR. SCHULTZ: Okay. That's all I have for this
18 witness, Your Honor.

19 THE COURT: Thank you.

20 Anything at all?

21 SOLICITOR SMITH: Nothing further.

22 THE COURT: Sir, you may step down. Please be careful.

23 THE WITNESS: Thank you.

24 SOLICITOR SMITH: The State doesn't have any further
25 witnesses for this motion hearing.

Jaden Gary - Direct examination
By Mr. Schultz

1 THE COURT: Thank you.

2 Yes, sir.

3 MR. SCHULTZ: Defense would call Jaden Gary, Your
4 Honor.

5 THE COURT: All right. Mr. Gary, come on up and be
6 sworn.

7 JADEN GARY, being first duly
8 sworn, testified as follows:

9 THE WITNESS: May I move my mask down?

10 THE COURT: Yes, sir, you may lower your mask and I'm
11 gonna ask you to speak louder. You have a soft voice, sir.
12 So, she's recording.

13 okay?

14 THE WITNESS: Yes, sir.

15 THE COURT: Thank you, sir.

16 Tell us who you are and spell your last name please.

17 THE WITNESS: I'm Jaden Gary. G-A-R-Y, last name.

18 THE COURT: Thank you.

19 DIRECT EXAMINATION

20 BY MR. SCHULTZ:

21 Q Mr. Gary, how old are you right now?

22 A I'm 19.

23 Q All right.

24 A Nineteen.

25 Q And how far did you go school?

Jaden Gary - Direct examination
By Mr. Schultz

- 1 A I, I passed to the tenth grade.
- 2 Q You passed the---
- 3 A Tenth grade.
- 4 Q ---tenth grade?
- 5 A Yes, sir.
- 6 Q Okay. So, is, is it safe to say that you've only had a
- 7 tenth grade education?
- 8 A Yes, sir.
- 9 Q Okay. Do you ever get an IQ test or anything?
- 10 A No, sir.
- 11 Q Okay. Did you ever receive individual -- an
- 12 Individualized Education Program or Plan?
- 13 A What, what, like a GED or anything after that?
- 14 Q No, sir.
- 15 A No, sir.
- 16 Q Were you ever put in special tutoring classes or
- 17 anything?
- 18 A No, sir.
- 19 Q Okay. When you -- so, you dropped out of the eleventh
- 20 grade or did you just -- what, what happened with that?
- 21 A I, I got kicked out of school in eleventh grade.
- 22 Q Okay. You got kicked out of school because of what?
- 23 A An incident occurred with a teacher. I, I really can't
- 24 remember it. It wasn't really big but they say I was on a,
- 25 a, a behavioral probation since the eighth grade. Eleventh

Jaden Gary - Direct examination
By Mr. Schultz

1 grade -- so when you get in trouble that one time was what
2 they needed to kick me out.

3 Q All right. And when you were 17, what grade were you
4 in?

5 A The eleventh grade.

6 Q All right. And what school did you go to?

7 A James F. Byrnes---

8 Q All right.

9 A ---High School.

10 Q All right. And did you make good grades there?

11 A Yes, sir.

12 Q Okay.

13 A I --.

14 Q All right. And when this -- this happened in July of
15 2019 and you were interrogated by the officers in August of
16 2019.

17 Do you remember that?

18 A Yes, sir.

19 Q Okay. Detail to the Court what happened on that day.
20 Do you remember that August 2nd---

21 A Yes, sir.

22 Q ---specifically?

23 A Yes, sir.

24 Q Tell us, tell us what happened and be as detailed as
25 possible about what happened that day when you woke up.

Jaden Gary - Direct examination
By Mr. Schultz

1 A I woke up to a whole bunch of phone calls from
2 different people, friends, family members -- well, friends
3 and my mother.

4 Q And I'm sorry to stop you there, Jaden, but where were
5 you living at that time?

6 A With my grandmother --

7 Q Okay.

8 A -- in Duncan, yes, sir. Like was [REDACTED]
9 street, and I -- okay. I woke up to a whole bunch of phone
10 calls. Answered the phone. It was my mother. She had told
11 me that someone in the, in the -- Spartanburg County wanted
12 to talk to me down at the sheriff's office. She said that
13 it wasn't gonna be anything serious. She was like they just
14 want to talk to you.

15 So I came down. I, I told -- that was when she came
16 and picked me up. She came for work I believe around
17 lunchtime or a little bit before lunch I think she got off.
18 She came. She picked me up, took me down -- downtown.

19 Q Before your mother picked you up, do you remember doing
20 anything specifically?

21 A Yes, sir, I was, I was staying with a friend. So I was
22 packing a lot of stuff. I remember I had smoked before I
23 had left with my mama. That was really all. I, I smoked
24 until she got there.

25 Q And, and when you say smoke, I'm, I'm, I'm assuming

Jaden Gary - Direct examination
By Mr. Schultz

1 you're not re -- referring to cigarettes.

2 what are you referring to---

3 A No, sir, weed.

4 Q ---Jaden?

5 A Marijuana, yes, sir.

6 Q All right. Do you believe that, that you were under,
7 under the influence of marijuana that day?

8 A Yes, sir.

9 Q All right. How do you know you were under the
10 influence of marijuana?

11 A Cause I smoked, yes, sir. I re -- I remember smoking
12 and being high. So I'm remembering that I was under the
13 influence.

14 Q All right. well, let me ask you this.

15 what -- when you, you -- you learned from your mother
16 that you could be placed into some kind of a -- placed under
17 arrest, you began smoking.

18 Is that your testimony?

19 A Yes, sir.

20 Q Okay. And what -- why did you make that decision to
21 smoke marijuana?

22 A Because I really -- I didn't know what was gon happen
23 and I had a lot of marijuana on me, and I didn't know how to
24 get rid of it. Didn't want to just throw it away or
25 anything. So, I, I -- in my head, smoking it was the best

Jaden Gary - Direct examination
By Mr. Schultz

1 way to go about it.

2 Q And how many grams approximately did you smoke at that
3 time that morning?

4 A I'm really not sure but it, it, it -- it couldn't of
5 been nothing under 14 grams.

6 Q Fourteen grams?

7 A Yes, sir.

8 Q Okay. Is that a lot?

9 A Yes, sir.

10 Q Okay. And did you feel that you were sufficiently
11 under the influence?

12 A Yes, sir.

13 Q Did you feel that you could not drive your car or
14 operate a motor vehicle?

15 A I couldn't.

16 Q Okay. Did you clearly understand what was going on at
17 the time?

18 A Not, not until I got inside the interrogation room and
19 then started talking. On the way up there, no, I didn't
20 know what was going on.

21 Q Okay. So, on the way up there you didn't know what was
22 going on?

23 A No, sir.

24 Q Okay. Were -- well, let me ask you this.

25 were you still under the influence, and maybe you

Jaden Gary - Direct examination
By Mr. Schultz

1 already answered this, were you still under, under the
2 influence when you talked to this officer --

3 A Yes, sir.

4 Q -- officer Newton?

5 okay. Thank you.

6 Now, do you remember how long this interview lasted?

7 A No, sir, I don't.

8 Q Okay. Do you, do you remember being placed under
9 arrest?

10 A Yes, sir.

11 Q Okay. Do you remember signing a pre-inter --
12 interrogation waiver form?

13 A Yes, sir.

14 Q Did anybody tell you at the time that this potentially
15 carries a life sentence?

16 A When, when I was on the way to the county getting
17 booked in, yeah, they told me---

18 Q Okay.

19 A ---what I could get.

20 Q But that was after the---

21 A Yeah, when I got to the county -- nah, they didn't say
22 nothing.

23 Q Okay.

24 A They just told me what, what the charges were, put
25 handcuffs on me, and took me upstairs.

Jaden Gary - Direct examination
By Mr. Schultz

- 1 Q officer Newton never told you that, right?
- 2 A No, sir.
- 3 Q Did you ever request your -- that your mother come with
- 4 you to the interrogation room?
- 5 A No, sir, I didn't know I could do that in all honesty.
- 6 Q okay. Did they ever say hey, you're 17 years old, do
- 7 you want your mother here?
- 8 A No, sir.
- 9 Q okay. Did your mother ever request -- to your
- 10 understanding, did your mother ever request to come back
- 11 there?
- 12 A Not that I know of.
- 13 Q okay. Looking back on it, would you want your mother
- 14 there?
- 15 A Yes, sir.
- 16 Q Looking back on it, would you have given her -- a
- 17 pre-interrogation waiver form knowing the consequences of
- 18 everything?
- 19 A No, sir.
- 20 Q okay. And you were only in the tenth -- in the
- 21 eleventh grade, correct?
- 22 A Yes, sir.
- 23 Q In two -- in the middle of the---
- 24 A I had -- nah.
- 25 Q ---in the middle of 2019?

Jaden Gary - Direct examination
By Mr. Schultz

1 A I had just, I had just turned 17.

2 Q You had just turned 17?

3 A Yes, sir.

4 Q Okay. So, when is your birthday, Jaden?

5 A May 8, 2002.

6 Q May 8th?

7 A Yes, sir.

8 Q Okay. So, 90 days prior to this you were 16 years old,
9 correct?

10 A Yes, sir.

11 MR. SCHULTZ: Beg the Court's patience.

12 THE COURT: Yes, sir.

13 (Pause.)

14 Q A couple more follow-up.

15 Did you understand the consequences of this when you
16 talked to officer Newton?

17 A No, sir.

18 Q Why do you think that was?

19 A Why didn't I understand the consequences?

20 Q Yes.

21 A I had never been in trouble before with the law. I
22 didn't, I didn't know anything about anything. I never
23 broke in no houses or anything before this or nothing. So,
24 I never knew anything about the charges here.

25 Q You, you never have, have -- were interrogated by a

Jaden Gary - Direct examination
By Mr. Schultz

1 sheriff in the sheriff's office, right?

2 A No, sir.

3 Q Okay. Were you ever interrogated by the, the city
4 police, the city police in Spartanburg?

5 A Interrogation like I don't know cause he said it's---

6 Q At, at the---

7 A ---definition was---

8 Q At a department -- at -- inside a arresting officer's
9 office.

10 A No, sir.

11 Q Okay. All right. Did -- let me ask you this.

12 Were you ever in DJJ trouble, Department of Juvenile
13 Justice trouble?

14 A No, sir.

15 Q Were you ever interrogated by a Department of Juvenile
16 Justice officer?

17 A No, sir.

18 Q Okay. So this is your first time ever getting
19 interrogated by a police officer with a tenth grade
20 education, correct?

21 A Yes, sir.

22 Q And you had dropped out in the eleventh grade at that,
23 at that time?

24 A Yes, sir.

25 Q Because of disciplinary infractions?

Jaden Gary - Direct examination
By Mr. Schultz

1 A Yes, sir.

2 Q Okay. By yourself in the interrogation room, correct?

3 A Yes, sir.

4 MR. SCHULTZ: All right. That's all I have, Your
5 Honor. Thank you.

6 THE COURT: Thank you.

7 solicitor.

8 CROSS-EXAMINATION

9 BY SOLICITOR SMITH:

10 Q You stated today that you did not know why you were
11 going down there?

12 A No, I said I knew why I was going down there. I didn't
13 know what was like going on exactly. Like I didn't know I
14 was going to jail that day. I---

15 Q You knew that your codefendant, Tyquez McKinney, had
16 been arrested, right?

17 A Yes, sir.

18 Q So you knew about exactly what incident this was?

19 A I, I---

20 Q Right?

21 A ---knew -- yeah, I knew about the incident, yes, sir.

22 Q All right. I mean there's not -- I don't know if
23 you've have other incidents where Mr. McKinney and you may
24 of been arrested---

25 A No.

Jaden Gary - Cross-examination
By Solicitor Smith

- 1 Q ---together?
- 2 A Never.
- 3 Q So you -- so you knew exactly what this was about,
4 right?
- 5 A No, I knew what it could be about.
- 6 Q All right.
- 7 A You never know until you get there until you --.
- 8 Q Is, is it ultimately your position that, if you had
9 known this carried 15 to life, you wouldn't have confessed
10 and you're upset now that you did confess?
- 11 A If I knew it carried 15 to life, I would never do what
12 I done.
- 13 Q You would of not done the original crime?
- 14 A Yes, sir.
- 15 Q Okay. What about the confession?
16 That's what we're here for.
- 17 Is, is your position basically that everything you said
18 is true but you just wished that you hadn't of said it?
- 19 A Yes, sir.
- 20 Q You stated that you smoked 14 grams of marijuana and I
21 know in the last time you said that that's what you smoke
22 every single day.
- 23 A Yes, sir.
- 24 Q Is that right?
25 And in the prior hearing you said that you didn't know

Jaden Gary - Cross-examination
By Solicitor Smith

1 who you got the weed from but that he gave it to you for
2 free.

3 Is that right?

4 A Yes, sir.

5 Q You still don't recall that, that individual's name?

6 A No, sir.

7 Q So, do you function normally when you smoke 14 grams I
8 mean if that's what you do every single day?

9 A No, sir.

10 Q Are you just stoned all the time?

11 A Yes, sir.

12 Q Is that---

13 A I, I was young and out of school. That was all I was
14 doing was smoking.

15 Q All right. But the reason you smoked the 14 grams was
16 just to get rid of the evidence before you went to the
17 sheriff's office, right?

18 A No, sir, I -- it was, it was a part of me wanting to
19 get rid of my, my marijuana before I got in the car with my
20 mother, and then there was a part of me not knowing what was
21 gonna happen and being worried.

22 Q All right. Did you tell the officer that you had
23 smoked any marijuana when you were talking with him?

24 A I actually believe I did. I believe he asked me if I
25 had smoked before I committed my crime and I told him yes,

Jaden Gary - Cross-examination
By Solicitor Smith

- 1 and then he asked if I was under the influence now and I
2 told him yes.
- 3 Q Okay. And he didn't seem to care about that?
- 4 A Not that I know of. I was still sent to jail.
- 5 Q All right. But you're certain, certain that you told
6 him that you were too intoxicated to talk with him?
- 7 A I'm not sure but I do -- I, I recall a conversation
8 about marijuana during, during that interrogation.
- 9 Q All right. How did you smoke the, the 14 grams and who
10 was assisting you in doing that?
- 11 A Me and my codefendant, Zion Miller.
- 12 Q All right. And y'all smoked blunts?
- 13 A No, we -- it -- to -- it was a blunt but it's a certain
14 kind of blunt.
- 15 Q All right. A big one or what, what do you mean?
- 16 A Yes, sir, it was a -- if you know anything about
17 cigars, it was a Backwood.
- 18 Q All right. I don't know a Backwood.
19 What is that?
- 20 A A Backwood is a type of cigar. It's not like a, a
21 regular cigar that you break down and it only fits a gram.
22 You can fit like 7-grams --
- 23 Q Okay.
- 24 A -- 8-grams if you wanted to.
- 25 Q So you rolled a Backwood---

Jaden Gary - Cross-examination
By Solicitor Smith

- 1 A I rolled two---
- 2 Q ---blunt?
- 3 A I rolled two of them. One for me. One for Zion.
- 4 Q All right. And y'all both smoked one?
- 5 A Yes, sir.
- 6 Q Do you recall your mom saying it took about 15 minutes
- 7 for when she talked with you to getting over to your place?
- 8 A You mean the last time we were here?
- 9 Q When she went -- yeah, when she went to pick you up,
- 10 that it was about 15 minutes from her work to pick you up.
- 11 A I mean I don't know exact -- the exact time but I --
- 12 that's my estimate.
- 13 Q All right. And in that time you smoked a half an ounce
- 14 of marijuana?
- 15 A Yes, sir.
- 16 Q But you don't remember who gave it to you?
- 17 A No, sir.
- 18 Q And you never paid for weed?
- 19 A No, sir.
- 20 Q What was the nature or the arrangement that allowed you
- 21 to get a half an ounce of weed a day without --?
- 22 A The arrangement?
- 23 Q Yeah. I mean that's not typical in the drug world---
- 24 A Yeah.
- 25 Q ---I don't think.

Jaden Gary - Cross-examination
By Solicitor Smith

1 A I mean I don't know too much about what drug dealers do
2 but a dude saw me, asked me if I wanted some, and I told him
3 yeah, and he gave it to me.

4 Q And he did that everyday?

5 A Yeah --

6 Q For how long---

7 A -- pretty much.

8 Q ---before this happened?

9 MR. SCHULTZ: Your, Your Honor, I object to this line
10 of questioning. I think it's irrelevant.

11 THE COURT: Overruled.

12 Go ahead.

13 Q I don't -- how long before this incident happened were
14 you getting a half an ounce of weed from a guy for free
15 everyday?

16 A I mean I, I only started like when I got kicked out of
17 school. So it had to be for a good month or two until the
18 incident.

19 Q All right. So those two months he'd given you---

20 A But---

21 Q ---30 ounces of weed for---

22 A But he don't, he don't---

23 Q ---nothing?

24 A He -- nah, cause he doesn't have to give it to me every
25 single day literal. It's more of like whenever I see him.

Jaden Gary - Cross-examination
By Solicitor Smith

1 He -- he's at a gas station. So, if I see him there, he go
2 oh, what's up, man, I remember you, stuff like that.

3 Q And he just gives you a half ounce?

4 A Exactly.

5 Q That was quite the arrangement, wasn't it?

6 A (WHEREUPON, the witness shrugs his shoulders.)

7 Q No.

8 Was, was it your intention when you were speaking with
9 officer Newton just to tell your side of the story that you
10 thought that this was a vacant house and you'd been set up?

11 A It was -- I didn't come there to tell my side of the
12 story because, in all honesty, if I -- my side of the story
13 didn't matter.

14 Why would I just voluntarily come up just to talk about
15 something that I've never thought I had no part of, I, I was
16 never involved in?

17 What had -- the, the reason for me coming up there to
18 talk to Newton is because he had left a card at my
19 grandmother's house and he said to come down there and talk
20 to him, that he wanted to try to help me, and that's what I
21 went down there to see what the whole conversation was
22 about.

23 Now, when I found out that they had Tyquez, I kind of
24 figured what they had -- what the situation was about and
25 that's when I went down there.

Jaden Gary - Cross-examination
By Solicitor Smith

1 Q Do you remember saying that if I really did something
2 like that I would of run, I wouldn't of have stayed here?

3 So, you, you were there with the intention of, of
4 clearing up the situation, right?

5 A You said what?

6 Q You told officer Newton at 7:35 into your interview
7 that if I really did something like that I would of run. I
8 wouldn't have just stayed here. I feel like the whole thing
9 was a setup.

10 A Yeah, I, I told him, I told him that if, if I were
11 really going to commit a crime like intentionally to --
12 what, what my -- what I told you was, the girl, she told me
13 that nobody stayed there. If I thought somebody stayed
14 there, which I probably would of never went in the house if
15 I thought someone stayed there, if I would of went in the
16 house and done all that, and knowing that the police was
17 looking for me, I probably would of tried to leave. Being
18 young, most definitely. Not knowing what was gonna happen,
19 never been in jail before, most definitely.

20 Q So, you didn't.

21 You chose to come in and tell your side of the story
22 because you thought it would clear things up, right?

23 A Because -- yes, sir.

24 Q So you gave your story voluntarily cause you thought it
25 would help you?

Jaden Gary - Cross-examination
By Solicitor Smith

1 A No, because -- I wouldn't -- voluntarily is me just
2 going up there because I heard somebody was looking for me.
3 when he called saying come down to -- what would you do if
4 the police called you saying come down to, to the county and
5 talk to you?

6 would you just stay, stay at home, never come or would
7 you show up?

8 You show up.

9 You listen to the police.

10 Q So you run---

11 A would you not?

12 That -- that -- that's if I knew that they were
13 looking -- that's if I knew if they were just looking for me
14 like I was out on the run. I was never on the run.

15 So, why, why I had -- why would I have any reason to
16 leave?

17 He called me telling me to come up there.

18 Okay. I was gon come up there cause I knew what I -- I
19 knew what I had going on.

20 Q Right.

21 And then you told him what happened, right?

22 A Yeah.

23 Q voluntarily?

24 A No.

25 Q No?

Jaden Gary - Cross-examination
By Solicitor Smith

1 A No.

2 Q What part was not voluntary about it?

3 A The part when he -- when they put me in handcuffs and
4 took me upstairs to interview me. That was the part. By
5 then I already knew -- thought I was going to jail.

6 Q All right. Did you listen to him tell you that you --
7 he -- you don't have to answer any questions?

8 A No, I didn't. I wasn't paying attention to that.

9 I --.

10 Q Okay.

11 A Everybody know that's -- when they read your Miranda,
12 that just something they do. They just read it. You just
13 listen to them and you sign off on your papers and you do
14 what you do.

15 Q All right. But you signed it anyway?

16 A Yes, sir.

17 Q So you just signed it because that's what everybody
18 does?

19 You just thought he was playing---

20 A Nah, I ain't said---

21 Q ---even though you were in handcuffs?

22 A I never said he was playing. I just thought that it's
23 the police. You do what they say do.

24 Q You wrote the handwritten statement there?

25 A Yes, sir.

Jaden Gary - Cross-examination
By Solicitor Smith

1 Q Do you normally have such good handwriting when you're
2 under the influence?

3 A Yes, sir, I actually do. When it come down to cursive.
4 I can't write regular script writing.

5 Q Okay. So you wrote a one page cursive statement while
6 you were half a ounce of weed in and --

7 A Yes, sir.

8 Q -- out of your mind?

9 A I'm gonna write -- I make a lot of music. So, I write,
10 I write a lot. I did -- I was -- like I say, I was good in
11 school. I, I -- when it came down to writing, I was good at
12 writing.

13 Q Would you, would you admit that you gave a lot of
14 details about the crime, the types of weapons that were
15 taken, who was first in?

16 A Only what I could remember and I, I knew what, what was
17 first. I knew everything like to say because he was showing
18 me a video while I was asking him questions. It's not, it's
19 not hard to forget what you looking at.

20 Q All right. But you didn't have any memory loss is what
21 I'm getting at?

22 You, you were---

23 A No.

24 Q ---able to tell him about what happened?

25 A No, he -- still to this today, it's still part of it

Jaden Gary - Cross-examination
By Solicitor Smith

1 that you won't be able to remember that. I can, I can
2 barely remember everything. But the watching video, I can
3 come and remember some stuff that happened or how it came to
4 come.

5 Q Did, did the officer do anything to, to trick you or
6 are you just saying that you, because of the marijuana that
7 you were under the influence of, that you just didn't fully
8 appreciate what was going on?

9 A It -- nah, I think it was a mixture of weed, being
10 intoxicated, and being young, you just do what you want to
11 do like that. It was, it was never that. I don't, I don't,
12 I don't know if it's what he do to trick people. I don't
13 know if he, he was suppose to trick me or I don't know.
14 Everything -- I just listened to what he said and took it.

15 Q And you did not go to any special classes or whatever
16 in -- up until you got kicked out of school?

17 A No, sir.

18 Q Did you -- when you got kicked out of that school, did
19 you continue on anywhere else or you were totally out of the
20 school?

21 A I was just out. That was it.

22 Q And did -- have you ever worked a job?

23 A Yes, sir.

24 Q What jobs have you done?

25 A I worked at Chipotle. I worked at Trego. I don't know

Jaden Gary - Cross-examination
By Solicitor Smith

1 if you know what Trego is. I have worked at Formyl D. I
2 worked at Sonic. I had a couple jobs.

3 Q All right. Do you have like bank accounts and, and
4 things like that?

5 A Yes, sir.

6 Q Checking account?

7 A Yes, sir.

8 Q When you applied for those jobs, did you fill them out
9 and give the proper paperwork to those jobs?

10 A Yes, sir.

11 Q Like bring them maybe your social security card or
12 whatever type things?

13 You did that on your own?

14 A Nah, not on my own. I mean I do everything with the
15 help of my mama.

16 Q All right. Me too.

17 All right. I don't, I don't have any further
18 questions.

19 REDIRECT EXAMINATION

20 BY MR. SCHULTZ:

21 Q Jaden, where are you working right now?

22 A Right now I'm working at Big -- well, I was working at
23 Big Time in Fairfield Inn, in Duncan.

24 Q In Duncan?

25 A Yes, sir.

Jaden Gary - Redirect examination
By Mr. Schultz

- 1 Q Okay. You said Big Time?
- 2 A Big Time Balling (phonetic), yes, sir.
- 3 Q All right. What, what, what kind of, of things do they
- 4 sell at Big Time?
- 5 A They sell overstock. They sell return items and
- 6 unclaimed packages from different companies, Amazon, so and
- 7 so forth.
- 8 Q All right. And let me take you back to August 2nd,
- 9 2019.
- 10 You, you were, again---
- 11 A Uh-huh. (Affirmative).
- 12 Q -- I think we established this but you were 17 years
- 13 old, correct?
- 14 A Yes, sir.
- 15 Q Were you working at Big Time or did you have a job at
- 16 that time?
- 17 A No, sir.
- 18 Q Okay. Do you feel that, in the last two years or
- 19 almost, almost exactly two years, do you, do you feel that
- 20 you've matured?
- 21 A Oh, yes, sir.
- 22 Q Do you feel that you were very immature on
- 23 August 2nd, 2019?
- 24 A Yes, sir.
- 25 Q Do you understand the consequence of what you did when

Jaden Gary - Redirect examination
By Mr. Schultz

1 you were -- when you just turned 17?

2 A No, sir, not at the time.

3 Q All right. And you were clearly, again, under the
4 influence, correct?

5 A Yes, sir.

6 MR. SCHULTZ: All right. That's all I have, Judge.

7 Thank you.

8 THE COURT: Sir, you may step down. Please be careful.

9 THE WITNESS: Yes, sir.

10 THE COURT: Anything at all?

11 MR. SCHULTZ: Yes, sir.

12 The, the defense would call the defendant's mother to
13 the stand.

14 THE COURT: Okay. Ma'am, come up and be sworn please.

15 MORIAH WILLIAMS, being first duly
16 sworn, testified as follows:

17 THE COURT: Has she been sworn?

18 THE CLERK: Yes, sir.

19 THE COURT: Okay. Ma'am, if you, if you would, adjust
20 the microphone just a little bit there and tell us who you
21 are and spell your last name please.

22 THE WITNESS: Moriah Williams. Williams,
23 W-I-L-L-I-A-M-S, and James mother.

24 THE COURT: Thank you.

25 Yes, sir.

Moriah Williams - Direct examination
By Mr. Schultz

1 MR. SCHULTZ: Thank you, Judge.

2 DIRECT EXAMINATION

3 BY MR. SCHULTZ:

4 Q Ms. Williams, you obviously know my client, Jaden Gary?

5 A Yes.

6 Q And how -- you have to speak up a little bit more.

7 A Yes.

8 Q Okay. And how do you know Mr. Gary?

9 A That's my son.

10 Q All right. And how old is your son now?

11 A He's 19.

12 Q At the time in August of 2019, how old was your son?

13 A Seventeen.

14 Q All right. You've obviously known him his entire life,
15 correct?

16 A Correct.

17 Q All right. He's doing good now, correct?

18 A He is.

19 Q Okay. He's got a job, correct?

20 A He does.

21 Q Okay. When he was 17, approximately, approximately two
22 years ago, did he have a job?

23 A No.

24 Q Was he in school?

25 A He was in school and they could give me no explanation

Moriah Williams - Direct examination
By Mr. Schultz

1 as to why he was being put out. Prior to that, December,
2 2018, was when he lost his father and he got put out the
3 following year.

4 Q All right. He lost his father.

5 Could you---

6 A He did.

7 Q Could you detail to the court how he lost his father?

8 A His father was killed by a man. He was out I guess
9 wrong place, wrong time. They were body -- nobody -- and he
10 was killed. At that time that's when I noticed changes in
11 Jaden. He obviously turned to friends instead of family or
12 me.

13 Q Did you feel that he had a positive male role model in
14 his father?

15 A Yes, he was with his father every weekend, every
16 holiday. Anytime he was out of school he was always with
17 his father all the time.

18 Q And when that was taken away -- when his father was
19 taken away from him, did you notice his change in demeanor
20 with your son?

21 A I sure did. I sure did and the -- what I can remember
22 my son saying all the time it was no point, no point, no
23 point and I'm guessing he was saying no point in living no
24 more.

25 Q And how, how did you take that?

Moriah Williams - Direct examination
By Mr. Schultz

1 A It was hard to take that coming from your son at this
2 point in time. You don't know what to do as a mother but
3 obviously I still have two other kids also that I have to
4 still take care of and raise.

5 Q How old are those kids, Moriah?

6 A At -- right now they are 14 year olds. I have a
7 daughter that's 14 and a son that's 12.

8 Q And you're doing the best job as you can as a mother,
9 correct?

10 A Yes.

11 Q All right. That was a yes, correct?

12 A Yes.

13 Q Okay. Do you remember August 2nd, 2019?

14 A I do.

15 Q Okay. Could you detail to the court what happened on
16 that day?

17 A Yes, I was at work and I was working at Magna at the
18 time, which is on the far end of 290 located in Moore. I
19 received a phone call from my mother saying the police is at
20 my front door, my back-door. I'm upset because my other two
21 kids are there right now at this time.

22 I -- she said officer Newton left his card with his
23 name and number on it. Here it is. You need to call him.
24 Get off the phone with her, my phone rings again with his
25 other grandmother saying police's at my front door and back

Moriah Williams - Direct examination
By Mr. Schultz

1 door. Now I'm really upset.

2 So I called Officer Newton. He tells me what's going
3 on. I said okay, I will come down. He told me to come to
4 the Sheriff's office. I went to the Sheriff's office.
5 Picked up Jaden. Don't remember how long it took because I
6 was not timing myself but it could of took anywhere from 15
7 to 25 minutes to get from Moore to Lyman to pick up Jaden.

8 Q And, and Lyman is where Jaden was at the time, correct?

9 A He was.

10 Q And you were working in Moore, right?

11 A Yes.

12 Q Go on.

13 A Picked up Jaden and also Zion because Zion was with
14 him.

15 Q And, and Zion is a friend of Jaden?

16 A Yes, Zion I had just met probably two months prior to
17 this incident.

18 Q Do you remember your son smelling of marijuana at the
19 time that you picked him up in Lyman?

20 A I don't smell -- I didn't smell anything but I notice
21 his eyes are red. I know my child. So I know what that
22 means.

23 Q And this -- go, go ahead, Moriah. I don't---

24 A So---

25 Q ---mean to cut you off.

Moriah Williams - Direct examination
By Mr. Schultz

1 A So I, I, I looked at him and I said so I mean y'all
2 smoking, you know, and he said yes, ma'am. But, of course,
3 he didn't want to get in the car smelling like that because
4 he didn't want to hear my mouth. So, I asked him, I said,
5 well, I'm gonna take y'all down here. Do y'all want me to
6 stop and get y'all something to eat. They said no, ma'am.
7 Got on the highway and came straight to the Sheriff's
8 office.

9 Q And they were respectful to you, right?

10 A Always.

11 Q Did you know or have reason to believe that he was
12 under the influence when he was at the Sheriff's Office
13 talking to them?

14 A Yes, cause I, I, I suspected he had been smoking. So,
15 I'm pretty sure he was.

16 Q All right. But your testimony here is you, you didn't
17 smell it. You just know your son and he had bloodshot eyes.
18 Correct?

19 A Yes.

20 Q Okay. And you said that in a prior hearing, correct?

21 A Yes.

22 Q All right. Did, did you believe that he was grossly
23 inebriated or intoxicated or under the influence of
24 marijuana?

25 A I really wasn't paying him no attention at the time

Moriah Williams - Direct examination
By Mr. Schultz

1 because I'm -- so many thoughts were going through my head
2 at the time. I -- I'm just trying to get him to where he
3 need to be at the time.

4 Q And so you complied with what the officer, officer said
5 and you brought him down to the sheriff's office, right?

6 A Yes.

7 Q Did you say to the officer, to the arresting officer,
8 either Newman or somebody else, I want to go back there with
9 my son?

10 A I---

11 Q He's only 17 years old.

12 A I did not because seeing that he has never been in
13 any -- to any trouble and I'm not aware of his -- any,
14 any -- of any of a thing, I didn't know I could at the time
15 until afterwards people was telling me oh, he's only 17.
16 Then I know but I did not know at the time.

17 Q All right. And did, did you stay---

18 A I---

19 Q ---at the sheriff's office, Moriah?

20 A I did for a little while.

21 Q Okay.

22 A Officer Newton came out. I spoke with the officer when
23 I got there, asked to speak to him. He came out. And soon
24 as he came out, I guess -- don't even -- I didn't even
25 realize what the gang unit was at the time but I -- they

Moriah Williams - Direct examination
By Mr. Schultz

1 come in, looked like a SWAT team, I don't know, and they put
2 the boys in handcuffs.

3 Q All right. And, and boys, who, who do you mean boys?

4 A Jaden and Zion.

5 Q All right. And there was another person that was
6 arrested too.

7 was that person there?

8 A I don't know. I was called -- told that he was
9 arrested already and I don't know.

10 Q Okay. And did officer Newton or any other officers,
11 Spartanburg County, tell you at anytime during this
12 interrogation that or did they ask you to come back?

13 A No.

14 Q Did you realize he was being charged as an adult?

15 A I did not.

16 Q Did you realize that a burglary first -- well, actually
17 did you realize the charges --

18 A I did.

19 Q -- in the lobby of the Sheriff's office?

20 A When the SWAT team came in or gang unit, whatever you
21 call them, they came in and I could overhear them saying --
22 they wasn't speaking to Jaden nor me. They was talking
23 amongst they selves saying something about 15 years and
24 burglary first. That's what I heard, and, at that time, I
25 remember sitting down and I remember crying and I remember

Moriah Williams - Direct examination
By Mr. Schultz

1 my son looking back at me, seeing tears in my eyes as he
2 walked back in handcuffs.

3 Officer Newton talked to me for a little while. Asked
4 me a couple of questions about Zion that I really don't know
5 cause I don't know the little boy, and he, he told me -- I
6 asked him what would happen next. He told me that they were
7 going to be taken down to the county and that they would
8 have to wait there to see a judge and get a bond and, at
9 that moment, I left.

10 Q And, that day, did you ever talk to Officer Newton or
11 any other officer at the Spartanburg County Sheriff's Office
12 about your son?

13 A Be -- prior to me going to there, yes, and when I---

14 Q I'm---

15 A ---bring him.

16 Q I'm not talking prior, Moriah.

17 During that day, August 2nd, 2019, did any officer
18 request that you come back and talk to the officer?

19 A Oh, no.

20 Q Okay.

21 A No.

22 Q So, your brief recollection or your recollection is
23 that you had a brief conversation with the officer right
24 before Jaden was put back in interrogation, correct?

25 A Yes.

Moriah Williams - Cross-examination
By Solicitor Smith

1 MR. SCHULTZ: All right. That's all I have, Judge.

2 Thank you.

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY SOLICITOR SMITH:

6 Q In the last hearing you said that when you described
7 the part where the gang unit had said what the charge
8 carried, and that you were crying, that Jaden looked back at
9 you and said -- told you not to cry or something like that
10 --

11 A Yes.

12 Q -- or it will be okay?

13 A Yes.

14 Q Was it your understanding that he had heard what the
15 charge carried?

16 A I'm pretty sure he did.

17 Q All right. So before he went up to the confession, you
18 believe he knew that this was something that carried 15 to
19 life?

20 A Yes, because that's what they was saying amongst
21 themselves. He heard it just like I did.

22 Q All right. Was Jaden a good student prior to being
23 kicked out?

24 A Yes, he was.

25 Q All right.

Moriah Williams - Cross-examination
By Solicitor Smith

1 A Jaden always made the honor roll. They could not give
2 me an explanation as to why he was being expelled. I went
3 to the school and no one could tell me as to why. So, there
4 I went and Jaden got his GED while he's been on house
5 arrest.

6 Q Okay. So he's smart or --?

7 A Jaden is very smart --

8 Q Okay.

9 A -- and he writes very well in cursive.

10 Q He definitely -- a lot better than me for sure.

11 I -- at, at the last hearing you said that you knew
12 that Jaden was a frequent smoker of marijuana.

13 Were you around him when he was under the influence
14 from time to time?

15 A No, because, as a child and his mother, he don't want
16 to hear my mouth. So, I'm pretty sure he don't want to be
17 smoking around me because I don't smoke or drink and I don't
18 approve of any of that.

19 Q Okay. Did you notice anything about his behavior other
20 than the, the red eyes?

21 Like in the conversation with you, did he seem spaced
22 out or, or anything out of the ordinary?

23 A He seemed spaced out and nervous and scared all at the
24 same time.

25 Q Did you and him have any discussions about what had

Moriah Williams - Cross-examination
By Solicitor Smith

1 happened, why it was, was -- why he was going to the
2 Sheriff's office?

3 A No.

4 Q Or about to not talk to law enforcement or to talk to
5 law enforcement or anything like that?

6 A My thing is tell them whatever they need to know. I
7 don't know. That's how I feel.

8 Q Okay.

9 A Comply with the police.

10 Q Did you tell him that or --?

11 A No, I didn't.

12 Q Okay.

13 A But that's how both of us feel.

14 Q All right. Did, did he tell you that he was going to
15 tell them what happened?

16 A I didn't, I didn't ask him.

17 SOLICITOR SMITH: All right. I, I don't have any
18 further questions, Your Honor.

19 THE COURT: Ma'am, you may step down. Please be
20 careful.

21 THE WITNESS: Okay.

22 MR. SCHULTZ: That would be my presentation on the
23 motion.

24 THE COURT: Okay. Anything from the state?

25 SOLICITOR SMITH: Your Honor, just to, to argue, we

1 believe, under State v. Parker, we've shown that the
2 statement was freely, knowingly, and voluntarily made. I --
3 my opinion of what happened here is, although the recent
4 testimony says that he did know that it was 15 to life, that
5 perhaps he did not know exactly what he was testifying to.
6 But the police are not -- or what the charge would carry.

7 The police are not required to tell him that. That
8 would probably not be a good way to start off a murder or a
9 criminal sexual conduct that if you say that you did this
10 you're gonna go to prison for the rest of your life. But
11 they were -- but he did understand what he was talking
12 about.

13 Your Honor's heard his writing. It's almost immediate,
14 after they're done with the Miranda, that they get down to
15 the nitty gritty where they start talking about a house in
16 Startex. Starts talking about liking guns. He gives many,
17 many details about the incident that do match up to the
18 other evidence in this case.

19 Parker says to look at the totality of the
20 circumstances, police coercion. There's no evidence in the,
21 in the interview or through any of the testimony that there
22 was anything coercively done to him. I believe Officer
23 Newton's being accurate when he describes it as more of a
24 discussion than interrogation though it, it certainly fits
25 the custodial interrogation definition.

1 I think he's, you know, he means he's not showing him
2 fingerprint, printouts, and, and other things that the
3 police might do to try to sway a defendant to tell the
4 truth. The length of the interrogation, the recorded
5 interview's about 21 minutes. I guess there could of been
6 some other -- Officer Newton said about 30 minutes. That's
7 certainly not long when you compare it to other cases even
8 with children that are like in the 11 and 12 year old age
9 statements have been admitted that are cited in the State v.
10 Parker case.

11 The location, it was at the Sheriff's office but I
12 think it's important that he arrive with his mother. He was
13 not brought in, you know, after being pulled out of a house
14 at three o'clock in the morning. It was a reasonable hour
15 right after lunchtime.

16 Mom had offered to get him some food before he came in.
17 They decided to not do that. So, he should of been
18 comfortable, at least as comfortable as you can be in a
19 situation like this.

20 It talks about the continuity of the interrogation. It
21 was one sole interrogation but it was, you know, less time
22 than a class period would take in high school.

23 The defendant's maturity and education should be
24 considered.

25 Your Honor, his mother stated he's very bright.

1 obviously they dispute why he got kicked out of school but
2 he's been able to finish his not getting his high school
3 diploma but getting his GED. He's held job. He has
4 accounts.

5 we certainly think that, when it's compared to some of
6 the other ones where you're talking about people with IQ's
7 in the 70s that have been found inadmissible, we don't think
8 that this is the case. His, his cursive handwriting is like
9 I was taught in third grade. It's very well done. I, I
10 think that cuts both towards his education and the fact that
11 he wasn't under the influence at the time.

12 obviously we have competing witnesses as far as the
13 under the influence issue. We do have Investigator or
14 Detective Newton who has previous experience in Highway
15 Patrol. Did not notice any of the factors that they're
16 talking about, and certainly, even, even if it was, just the
17 fact that you have consumed some amount of a substance does
18 not automatically make your statement involuntary. It would
19 have to overcome your, your will and I don't think that the
20 evidence supports that.

21 On cross-examination of Mr. Gary I think I got close to
22 the truth that basically he thought he could explain his way
23 out of it. And when he found out that he didn't, and he's
24 on trial today, he now wishes that he hadn't made that
25 statement. I certainly can understand that but that's not a

1 basis to exclude the statement, Your Honor.

2 I think the other factors have largely been covered as
3 well. They're a bit repetitive throughout the case but I
4 think that the jury should at least be able to determine
5 whether the statement was freely, knowingly, and voluntarily
6 made.

7 THE COURT: Yes, sir.

8 MR. SCHULTZ: Thank you, Judge.

9 May it please the Court.

10 We are arguing that the, under Jackson v. Denno, that
11 this statement is involuntarily and not freely made. Under
12 Jackson v. Denno the defendant is entitled to a reliable
13 determination as to the voluntariness of his statement by a
14 tribunal other than the jury charged with de -- deciding his
15 guilt or innocence.

16 As we know, South Carolina -- and you make that initial
17 determination of voluntariness. Mr. Smith -- I, I, I do
18 agree with Mr. Smith that the, the Court has to take into
19 account the totality of the circumstances. Statements of
20 especially a 17 year old, my understanding and our review,
21 just like in statements of an adult, they've got to be
22 reviewed again under the totality of the circumstance.

23 Factors that the Court has to determine there, the
24 valuation of the, of the juvenile's age. Seventeen years
25 old at the time. He was not in school at the time.

1 At, at the very best he was maybe taking some online
2 classes apparently and this is well before the Coronavirus.
3 So, virtual schooling was not an option at this time.

4 His experience, he was not working. I don't, I don't
5 believe that up until very recently that he had a very good
6 job. Now he's working at Big Time in Mauldin. He's got a
7 good job. He's matured in his last two years, and, in, in
8 fact, I've noticed the maturation in him.

9 This is the second time that we've, we've attempted to
10 try this case and I've met with him several times, and I,
11 I've been impressed by his maturity every time I come talk
12 to him. But, at the time before I got to know him, he was
13 very immature. His education at that time, as I said
14 before, was only up to the tenth grade. He had dropped out
15 in the eleventh grade or was kicked out of school at Byrnes
16 for some kind of disciplinary infraction.

17 That's some of the, the totality that I'm asking the
18 Court to consider. The length of the interrogation, that
19 was of 30 minutes but the officer made it seem like it was
20 just a discussion. It was anything but a discussion. It
21 was a attempt to get a young man to confess to something
22 that happened that carries a life or carries a life
23 sentence.

24 It's location. This wasn't at a restaurant. This
25 wasn't at his house. This was at the Sheriff's Office and

1 he was not free to leave. He was under arrest.

2 It's continuity. He was not allowed to leave. Again,
3 he walked in the lobby of the sheriff's office. He walked
4 back in, in -- into the interrogation room. He, he wasn't
5 in cuffs at the time of the interrogation.

6 But, anyways, what happened is he didn't walk out of
7 the sheriff's office like he walked in. He was booked into
8 spartanburg County Detention Facility. So, it was in the
9 lobby, in the interrogation room, and right to jail, and
10 that's when I picked up that case.

11 Again, the defendant's maturity. He didn't have a job
12 at the time. Now he's very mature, but at the time, he was
13 not.

14 His physical condition. We've heard testimony from not
15 only my client but also his -- my client's mother that he
16 was under the influence of drugs and, and this is no
17 reason -- and here's, here's the thing. He's admitting to a
18 crime that, that occurred.

19 He, he possessed 14 -- at least 14 grams of marijuana
20 at the time. That's still a crime in this state. So, I
21 believe that, that testimony is, at the very least, very
22 persuasive.

23 His mental health. His father was a tremendous role
24 model for this young man and, unfortunately, he, he passed
25 away. He died and leaving this young man with -- without a

1 positive male role model. So, taking that all into the
2 totality of the circumstances, I believe that this
3 statement, under Jackson v. Denno, is involuntary.

4 Thank you.

5 THE COURT: Thank you.

6 MR. SCHULTZ: Yes, sir.

7 THE COURT: The defendant and his mother came to the
8 sheriff's office on their own accord and they believed that
9 warrants were served in the lobby prior to spending some
10 time with Detective Newton. The question and answer period
11 lasted approximately one-half hour. The defendant provided
12 a written statement as Exhibit 3 in his own handwriting.
13 It's written in cursive and it's very legible. The time is
14 listed as 1:38 or 13:38 hours.

15 This Court has listened to the recording, which is
16 approximately 23 minutes and change, 24 minutes. The
17 interview took place at a room at the Sheriff's Office. He
18 was 17 years of age at the time and his mother was not
19 present in the room. He was kicked out of school. He was
20 in the eleventh grade. He made good grades. He was not in
21 special education classes.

22 He says he was kicked out of school over a teacher
23 involved incident but, without more, the Court doesn't know
24 what happened on that. Detective New -- Newton is an
25 experienced law enforcement officer trained to detect

1 alcohol and marijuana. He did not smell either during the
2 interview.

3 The interview was relatively short. The defendant was
4 not deprived of basic needs such as food, water, or a
5 restroom. He never asked for his mother or a lawyer. He
6 did not have bloodshot eyes and his speech was clear as is
7 clear on the audio recording that we -- I listened to this
8 morning.

9 Defendant contends he was intoxicated by weed yet he
10 provided details of the crime, good cursive handwriting, and
11 clear speech on the recording or clear evidence that he was
12 not intoxicated. There is no evidence he was under the
13 influence except his statement.

14 The issue is voluntariness of the statement and this
15 court finds, by the greater weight of the evidence, the
16 statement was freely, voluntarily, and intelligently made to
17 law enforcement evidence -- law enforcement officers. There
18 is no evidence of coercion or persuading. The statement
19 will come in.

20 Anything further from defense?

21 MR. SCHULTZ: No, sir.

22 THE COURT: All right. Are we ready for the jury?

23 SOLICITOR SMITH: Unless you want to --.

24 THE COURT: We can take a quick 10 -- we can take a
25 quick 10 minutes but we can't waste -- we -- I've got them

1 waiting.

2 MR. SCHULTZ: I'm, I'm ready to go, Judge.

3 THE COURT: Anybody---

4 THE DEFENDANT: We're ready.

5 THE COURT: Anybody ready -- everybody ready?

6 All right. We'll have the jury.

7 MR. SCHULTZ: Your Honor, how does the Court want us to
8 handle the, the face mask issue?

9 THE COURT: I am fine with you not wearing one at the
10 table if you choose to do so. That's a personal preference.
11 I want, I want everyone else in the courtroom back there to
12 have it. Certainly, when you're speaking, I want -- at
13 least lower it and I'm gonna ask the witnesses to lower
14 their masks too because court reporters have a difficult
15 time hearing through the masks.

16 MR. SCHULTZ: Yes, sir.

17 THE COURT: When you're talking to the jury, gentlemen,
18 if you'll be kind enough to observe the blue line.

19 MR. SCHULTZ: Yes, sir.

20 THE COURT: And stay again about 6 or 8-feet from the
21 witness.

22 MR. SCHULTZ: Yes, sir.

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE COURT: Madam Clerk, will you swear this jury to

1 try this case?

2 (WHEREUPON, the jury panel was placed under oath at
3 this time.)

4 THE COURT: Thank you. Please, please lower your hand.
5 You may be seated.

6 (WHEREUPON, the jurors comply.)

7 THE COURT: Ladies and gentlemen, you are now the jury
8 in this case and I want -- and I'm gonna take a few moments
9 to tell you something about your duty as jurors and provide
10 some instructions. At the end of this trial I will provide
11 more detailed instructions, and those instructions will
12 control your deliberations.

13 This criminal case has been brought by the state of
14 South Carolina. I sometimes refer to the State as the
15 prosecution or the government. The State is represented by
16 Assistant solicitor spenser smith. The defendant, Jaden
17 Gary, is represented by his lawyer, Josh schultz.

18 The defendant is charged by the state with grand
19 larceny, burglary, and possession of a weapon during a
20 violent crime. The charges against Mr. Gary are contained
21 in the indictments.

22 I tell you, and I've told you earlier, the indictments
23 are simply the description of the charges made against him.
24 It is not evidence of anything.

25 The defendant has entered a plea of not guilty to the

1 charges and denies committing the crimes. He presumed
2 innocent and he may not be found guilty by you 12 unless all
3 of you unanimously find the state has proven his guilt
4 beyond a reasonable doubt.

5 South Carolina law makes the jury the finder of facts.
6 You 12 alone will decide from the evidence what the facts
7 are. You will hear the evidence, decide what the facts are,
8 and apply those facts to the law that I give you at the
9 close of this case and that is how you will reach a verdict.
10 In doing so, you must follow the law whether you agree with
11 it or not.

12 The evidence will consist of testimony of witnesses,
13 documents, and other things received into evidence as
14 exhibits, and any facts on which the lawyers agree or
15 stipulate.

16 The same state law that makes you 12 the finders of
17 facts makes me the judge of the law. Our rules of evidence
18 control what can be received into evidence. And when a
19 lawyer asked a question or offers an exhibit into evidence,
20 and a lawyer on the other side thinks it is not permitted by
21 one of the rules of evidence, that lawyer may object. I'm
22 talking about rules of evidence, this book right here.

23 okay. This simply means that the lawyer's requesting
24 that I make a decision on a particular rule of evidence.
25 South Carolina law forbids a trial judge from making a

1 comment to a jury about a fact in a case. Therefore,
2 because it may be necessary for me to make a comment on a
3 fact in applying our rules of evidence, it may be necessary
4 for me to talk with the lawyers outside of your hearing by
5 having a bench conference while you are present in this
6 courtroom or by excusing you from the courtroom. The
7 purpose of my conference is to decide how certain evidence
8 is to be treated under the rules and to avoid confusion and
9 error.

10 Now, ladies and gentlemen, a bench conference would be,
11 and you would see me, I would do like thus, bringing the
12 lawyers up here, and I would then move my microphones so as
13 for you not to hear what we're talking about on one of these
14 rules because, again, the, law -- the rules, the law is up
15 to me to decide. You are to decide the facts and only the
16 facts in this case.

17 Certain things are not evidence. Statements made by
18 the lawyers and questions and comments by the lawyers
19 representing a party are not evidence in a case. Objections
20 are not evidence. Lawyers have a duty to, to their client
21 to object when they believe something is improper under the
22 rules of evidence.

23 You should not be influenced by an objection. If I
24 sustain an objection, you must ignore the question or the
25 exhibit and you must not try to guess what the answer might

1 have been or what the exhibit might have contained. If I
2 overrule an objection, the evidence will be admitted but do
3 not give it special attention because it drew an objection.

4 Testimony that I strike from a record or tell you to
5 disregard is not evidence and must not be considered by you,
6 and anything you see or hear about this case outside of this
7 courtroom is not evidence.

8 Finally, some of you have also heard the terms direct
9 evidence and circumstantial evidence. Direct evidence is
10 testimony by a witness about what that witness personally
11 saw or heard or did. Circumstantial evidence is indirect
12 evidence. It is proof of one or more facts from which one
13 can find or infer another fact.

14 You may consider both direct and circumstantial
15 evidence. The law of this state permits you to give equal
16 weight to both but it is for you to decide how much weight
17 to give any evidence.

18 In deciding what facts are, you may have to decide what
19 testimony you believe and what testimony you do not believe.
20 You may believe everything a witness says or only part of
21 what that witness says.

22 In deciding what to believe, you may consider a number
23 of factors including, but certainly not limited to, the
24 witnesses ability to see or hear the things about the --
25 which the witness testifies, the quality of the memory of

1 that witness, the witnesses manner while testifying, whether
2 the witness has an interest in the outcome of this case, or
3 a motive, bias, or prejudice, whether the witness is
4 contradicted by a fellow witness, and how reasonable the
5 testimony is when considered in light of all evidence that
6 you believe.

7 Again, it is my responsibility to rule as a matter of
8 law as to whether certain testimony is admissible. But once
9 the testimony is admitted, whether or not you believe it is
10 in your wheelhouse.

11 To ensure fairness, you, as jurors, may not talk among
12 yourselves about this case or about anyone involved with it
13 until the case is ended or when you go to the jury room to
14 decide your verdict. Do not talk with anyone about the case
15 until the trial is ended and you have been, been discharged
16 as jurors.

17 Ladies and gentlemen, anyone includes members of your
18 family and friends. You may tell them you are a juror but
19 you are not to tell them anything about this case until
20 after you have been discharged as a juror. Then you can
21 talk about it as much as you like.

22 Do not let anyone talk to you about the case or at --
23 someone that has anything to do with it. You should try --
24 if someone should try to talk to you, please report that to
25 me immediately.

1 During the trial, do not talk or speak with the
2 parties, the lawyers, or the witnesses. It is important not
3 only that you do justice but that you also give the
4 appearance of doing justice. If a person from one side of
5 the -- of this case sees you talking with a person from the
6 other side, even if it's simply to pass the time of day, an
7 unwarranted and unnecessary suspicion about your fairness
8 might be aroused. If a lawyer, party, or witness does not
9 speak to you in the hallway or on the elevator, it is
10 because they are not suppose to speak with you.

11 Do not read any news stories or articles about this
12 case or anyone involved in it or listen to any radio or
13 television report about this case if any. I haven't seen
14 any of -- one from the press here.

15 Do not do any research on the in -- on the Internet or
16 any -- about anything in this case or consult a blog, a
17 dictionary, or any reference materials. Do not make any
18 investigation about this case on your own. Do not make up
19 your mind about what the verdict is until you have gone to
20 the jury room to discuss this case with fellow jurors.

21 Ladies and gentlemen, I am often asked about note
22 taking. You are not to take notes during the trial and the
23 reason is we want you to pay close attention to each witness
24 as he or she testifies and not be fixated on taking copious
25 notes.

1 The first step in this trial will be opening
2 statements. The state, in its opening, will tell you about
3 the evidence it intends to put before you so that you will
4 have an idea about what the case is about. Just as the
5 indictment is not evidence, neither is the opening
6 statement. Its purpose is only to help you understand what
7 the evidence will be and what the state will try to prove.

8 After the state's opening statement, the defense
9 attorney may, if he chooses, make an opening statement.
10 Next the state will offer evidence it says will support the
11 charges it -- made against this defendant. The state's
12 evidence will consist of testimony of witnesses and it may
13 include documents and exhibits.

14 I remind you that the defendant is presumed innocent
15 and the state must prove his guilt beyond a reasonable
16 doubt. He does not have to prove his innocence. After you
17 have heard all of the evidence on both sides, the state and
18 defense will each be given time to make a final statement or
19 argument before you. I just told you that the opening
20 statements by the lawyers are not evidence and the same
21 applies to the closing statement.

22 In their closing statements, the lawyers will attempt
23 to summarize and help you understand what evidence has been
24 presented and the final part of the trial occurs when I
25 instruct you about the rule of law that you are to use in

1 reaching a verdict. After hearing my instructions, you will
2 leave the courtroom together to make your decision.

3 Juror Number, Number, 127, Mr. Patel, where are you,
4 sir?

5 (WHEREUPON, the juror raises their hand.)

6 THE COURT: I'm not requiring this but would you serve
7 as a juror -- as the jury foreperson?

8 (WHEREUPON, the juror nods negatively.)

9 THE COURT: No, you don't want to do that?

10 THE JUROR: No.

11 THE COURT: Okay. Very good.

12 How about Juror Number 106, Mr. McGriff, where are you,
13 sir?

14 (WHEREUPON, the juror raises their hand.)

15 THE COURT: Will you serve as the jury foreperson?

16 THE JUROR: I, I will.

17 THE COURT: You will?

18 THE JUROR: Yes, sir.

19 THE COURT: Thank you so much.

20 I try very hard to, to alternate between a foreman and
21 forelady. I try to go back and forth and I, I need a, a, a
22 gentleman today. So thank you for, for serving.

23 okay. Mr. Foreman, it will be your job to be the
24 spokesperson for the jury. So, if the jury has an issue, as
25 a -- there's something, whatever it might be, that -- you

1 would be the person to write a note and pass that to me in
2 open court.

3 okay. Everything we do would be in open court. And
4 if -- the verdict, at the end of the case, you will also be
5 the person that will write the verdict on the verdict form
6 that I will provide in, in this case, the jury's verdict,
7 okay, and sign that.

8 All right. Anything from the state?

9 SOLICITOR SMITH: No, Your Honor.

10 THE COURT: Anything from defense?

11 MR. SCHULTZ: Other than opening, Judge.

12 THE COURT: Mr. Foreman, ladies and gentlemen, give
13 your attention to the lawyers.

14 SOLICITOR SMITH: The reason we're here is that, on
15 July 22nd of 2019, Mr. Williams had gone to work. He lived
16 in the startex community on Church Street in a house that
17 he'd been in for several years. He went to work, and while
18 he was at work, the defendant, Jaden Gary, and two other
19 men, Zion Miller and Tyquez McKinney, came into his house
20 for the purposes of stealing firearms.

21 Not only did they come in to steal firearms, Mr. Gary
22 had a firearm on himself and the reason I can tell you that
23 is because there's a video of him walking through
24 Mr. Williams living room with a handgun out. As he tiptoes
25 through his living room, motions to his accomplices to be

1 quiet so they're not heard, and they proceed to go into his
2 bedroom and steal every firearm that he has and all of his
3 gun related equipment. They actually make, not Mr. Gary but
4 Mr. Miller, actually comes back in a second time to take
5 some more stuff because he left a bag behind.

6 You'll also see on video that the two behind him arm
7 themselves with kitchen knives. They didn't bring them in.
8 They pulled them out of his knife block in the kitchen and
9 then they left those in the bedroom in the process of taking
10 away their haul of weapons.

11 So, there's a video that's gonna show Mr. Gary and then
12 that video was used to send out about to try to get tips on
13 who these individuals might be. They got a tip that the
14 first person in, the person with a handgun, was Jaden Gary
15 and they ultimately were able to get Mr. Gary to come down
16 to the sheriff's office.

17 He -- family members found out that Mr. -- law
18 enforcement was looking for him, contacted him, and he came
19 down to the sheriff's office, and he spoke with officer
20 Newton who's sitting -- seated here and he was read his
21 Miranda rights. He said he understood them. He signed a
22 document saying he understood them and then he began to tell
23 his story about what happened in this case and he admits
24 that he went in for the purposes of stealing guns, that he
25 had a gun, and that they left, sold the guns, and

1 Mr. Williams never got his guns back even though they were
2 arrested -- he was arrested on August the 2nd, 2019. So,
3 about a week, 10 days later.

4 That's it. Like he said, my words are not evidence.
5 So I'm not gonna belabor the point but one of the weird
6 things I think about jury trials is you're asked to accept
7 all this evidence in before you necessarily know what the,
8 the charges are.

9 He's charged with burglary first, possession of a
10 weapon during a violent crime, and grand larceny. Burglary,
11 when I was a kid and I would come in after work with my mom,
12 I would sometimes cut the lights off and say oh, we've been
13 robbed before she could see. That's actually not robbed.
14 If you're not there, that's a burglary.

15 So, what -- in this instance it's a burglary first
16 because it's a dwelling. It's a place that a person lives.
17 They went into his bedroom, stole guns out from under his
18 bed. That's a burglary. It's entering into a dwelling with
19 the intention to commit a crime inside. And, in this case,
20 entered into Mr. Williams dwelling with the intention of
21 stealing guns, and it becomes a burglary first opposed to
22 lower level burglary if you're armed either while you enter,
23 while you're inside, or while you leave with firearms.

24 He was armed in all three. He only had to be in one.
25 But we know that he had a gun when he entered, when he was

1 in, and when he left. That's the main enhancer that he
2 displayed a firearm. That's what makes this a burglary
3 first.

4 Possession of a weapon during a violent crime simply
5 means he had a weapon while committing a violent crime and
6 the judge will tell you that burglary in the first degree is
7 a violent crime. So, if you believe that he committed a
8 burglary and he had a weapon or his codefendants had weapons
9 and he knew about it, he's guilty of possession of a weapon
10 during a violent crime.

11 Grand larceny is -- larceny is a theft. It's a lawyer
12 term for a theft. It's the taking of something that doesn't
13 belong to you with the intention of not returning it or
14 making it yours. And, in this case, they stole firearms,
15 armored plates, Mr. Williams military career, and left, and
16 then sold those items.

17 That's what the evidence is gonna show, and, at the
18 end, I'll ask for a guilty verdict.

19 Thank you.

20 THE COURT: Thank you.

21 Yes, sir.

22 MR. SCHULTZ: Thank you, Judge.

23 May it please the Court?

24 THE COURT: Yes, sir.

25 MR. SCHULTZ: Counsel.

1 My name's Attorney Joshua Schultz and it is my pleasure
2 to represent Mr. Gary in this case.

3 This has been a very challenging 18 months for
4 everybody. You're all wearing face masks and we have to
5 comply with all the social distancing things. So I can not
6 cross this line. So, I'm not gonna cross this line. If you
7 see me cross this line, somebody yell at me please.

8 But anyway, we're gonna comply with all that, all that
9 stuff and all the requirements because of the social
10 distancing and the coronavirus.

11 So, be that as it may, the defendant, myself, the
12 state, court, everybody really thanks you for, number one,
13 being here today, having to deal with these requirements,
14 and also serving as jurors. The reason why that is is that
15 being on a jury, other than voting, is the most important
16 part of what we can do here as citizens of this state and
17 citizens of this country. It's, it's, it's one of the most
18 important things you can do. Men and women fought and died
19 for your right to sit where you are right now. Very
20 important. I can not emphasize that enough.

21 Now, what we're doing here is we are -- all of y'all
22 are going to arrive at what is known as the verdict and
23 perhaps today, perhaps tomorrow morning. I don't know.
24 We're gonna see how the case goes.

25 But a verdict means, and Judge Kelly's gonna instruct

1 you on this perhaps today, perhaps tomorrow, on what that
2 means. That means -- a verdict means to speak the truth.
3 Veritos, that's what, that's what it is in Latin. And what
4 that means is to speak the truth about what happened on this
5 day in question.

6 Now, the State is gonna present their evidence. They
7 are going to present officers, police officers working for
8 the Spartanburg County, County Sheriff's Office. They're
9 gonna present the person that was a homeowner there.
10 They're gonna present people that may be affiliated with
11 this case, may not be affiliated with this case. But
12 they're gonna attempt to prove that my client did this on
13 such and such date.

14 Now, you don't have to accept anything I'm saying right
15 now nor do you have to accept anything that the State just
16 said a couple minutes ago. The reason why that is, is it,
17 it ain't evidence. It's, it's nothing to do with something
18 that you're looking at, something that you're assessing the
19 credibility at. You, you can just ignore everything that he
20 said and I said as far as opening statements go because it's
21 not evidence.

22 The reason why I'm talking to you here, here today is
23 that I want to tell you what to expect because some of you
24 may have served as jurors before. Some of you may have not
25 served as jurors before, and when you're here, you're kind

1 of like thinking what am I doing here, oh, my God, I'm
2 missing work, all that stuff.

3 so, you're, you're certainly concerned where is this,
4 where is this going. But I'm gonna tell you where it's
5 going right now.

6 The State goes first. Mr. Smith, he goes first. And
7 the reason why they go first, these, these folks at the
8 table here, is that it is their burden of proof in order to
9 present evidence that my client did this on such and such
10 date.

11 Now, the reason why they're doing that is, is that they
12 have the burden of proof. They have to prove my client
13 guilty beyond a reasonable doubt.

14 Now, you've heard those words before probably. I
15 assume that y'all have. Probably on TV, movies. If, if
16 anybody has watched courtroom dramas, well, let me tell you
17 what. This ain't -- I, I think there will be some exciting
18 moments in this, in this trial but certainly won't last an
19 hour including commercial breaks.

20 okay. It's not gonna, not gonna be that long, okay,
21 whereas -- excuse me. It's not gonna be that short. It is
22 gonna be rather longer. So, what's gonna happen is the
23 state's gonna go first. They're gonna present their
24 witnesses.

25 Now, I may not even present a case.

1 Now, you think why is he not gonna put up a case?

2 why is he not gonna put up any evidence?

3 why is he not gonna put up a, a client?

4 Here's, here's, here's the deal with that. I don't

5 have to present anything. I don't have to present a case.

6 I don't have to say well, this, this did not happen or, you

7 know, whatever by witnesses. It's the State's job to do

8 that. Not my job.

9 Okay. I don't have to do anything except cross-examine

10 the State's witnesses. That's my job and you're wondering

11 what's, what's the defense attorney's job. That's my job in

12 this case.

13 Okay. So, the State's gonna go first. As you know,

14 the Judge is gonna instruct you. I think you know he

15 already has. Give him your attention and then what I'm

16 gonna do is I'm gonna stand over there. I'm gonna ask what

17 are known as cross-examination questions cause -- and

18 cross-examination is what we call the greatest thing of

19 truth in the history of jurisprudence or whatever fancy

20 word's there.

21 But what it is is I'm gonna ask them questions upon

22 what I believe is our defense and you're gonna find that

23 out. The State's gonna prove or attempt to prove what

24 happened. I'm gonna poke holes in that over time. So --

25 and then the judge will instruct you again. But, before

1 that, I'm gonna speak again in my closing statement.
2 state's gonna go again in their closing statement and then
3 you're gonna go back in your juror deliberation room and
4 then render a verdict, which again is to speak the truth
5 after hearing from these witnesses.

6 So, again, I thank you for your time. I thank you for
7 your diligent efforts in maintaining all the social
8 distancing, face masks, and everything else. It's wonderful
9 that y'all are doing that.

10 So, thank you again for being here and I look forward
11 to this case.

12 THE COURT: solicitor.

13 SOLICITOR SMITH: The state calls Jason Williams.

14 JASON WILLIAMS, being first duly
15 sworn, testified as follows:

16 THE CLERK: Thank you. Be seated.

17 THE COURT: sir, if you, if you will adjust the
18 microphone and use your outside voice and tell us who you
19 are and spell your last name please.

20 THE WITNESS: My name is Jason Williams.

21 W-I-L-L-I-A-M-S.

22 THE COURT: Thank you.

23 solicitor.

24 DIRECT EXAMINATION

25 BY SOLICITOR SMITH:

Jason Williams - Direct examination
By solicitor Smith

1 Q Mr. Williams, where were you living on July 22nd of
2 2019?

3 A [REDACTED] Street in Startex.

4 Q Is that in Spartanburg County?

5 A It is.

6 Q How long had you been residing there?

7 A At that time, over three years.

8 Q All right. Who else lived at you or lived with you at
9 that residence?

10 A No one else.

11 Q All right. Where were you working at that time?

12 A At Greenville Spartanburg Airport.

13 Q All right. And what do you do there?

14 A I'm an operations manager.

15 Q All right. What was your normal shift at those -- at
16 that job?

17 A It's about 10 hour shifts. So, it's 13:00 to closing.
18 So about midnight.

19 Q All right. You did military time.

20 Do you have military experience---

21 A I do.

22 Q ---as well?

23 Can you describe that?

24 A I was a infantryman in mortars. I served with the U.S.
25 Army different tours.

Jason Williams - Direct examination
By Solicitor Smith

1 Q Where, two different tours?

2 A Twice in Afghanistan and one in Iraq.

3 Q All right. Did -- had you had -- prior to this
4 incident on July 22nd, did you have an incident where guns
5 were taken out of your house?

6 A I did, yes.

7 Q Can you describe what happened in that situation?

8 A Had some neighborhood kids found a unlocked window to
9 my fault and came in and liberated all my firearms.

10 Q All right. How did you find out about that?

11 A I had an alert on my, my phone for that particular
12 thing. I had -- no. Yes. So -- and that's when I notified
13 the police.

14 Q Do you mean like a security system or, or what do you
15 --?

16 A I had one -- no, I'm sorry. I'm, I'm -- told you
17 wrong. The first incident is I came home and discovered it
18 --

19 Q All right.

20 A -- after my shift. The second incident was after I
21 installed cameras.

22 Q Okay. So after the first incident, you got a security
23 camera installed at your house?

24 A Yes.

25 Q Did you ultimately find out who the, you referred to

Jason Williams - Direct examination
By solicitor Smith

1 them as kids, who had taken those guns?

2 A I did. They -- the mother had turned them in on it.

3 Q All right. And do you remember how old they were?

4 A They were around eight years old.

5 Q All right. And did you choose to not press charges in
6 that situation because of their age?

7 A Right. I was advised that seeking law en -- a trial
8 wouldn't be the best. So counseling would be better.

9 Q All right. But you did install a security camera in
10 your house as a result of that?

11 A Yes.

12 Q And where did you place that security camera?

13 A In my living room. So it has a vantage point facing my
14 two entrances.

15 Q All right. And one looks into the bedroom and the
16 other towards the kitchen area?

17 A Right. So at, at the third -- nine o'clock you want to
18 say to my -- into my bedroom and back to three o'clock it's
19 the bedroom -- kitchen.

20 Q All right. How did you find out about the incident --
21 this -- the second incident?

22 How did you find out about it having occurred?

23 A That came out on a notice on my phone, which is on my
24 desk when I was working.

25 Q All right. Is that like a motion sensor or something

Jason Williams - Direct examination
By Solicitor Smith

1 that's --?

2 A It's motion and voice activated.

3 Q Okay. And do you remember when you got that
4 notification on the 22nd?

5 A It was in the afternoon. I had -- was working outside
6 during the day doing flights and then, when I came back in,
7 I had a notification on my phone.

8 Q All right. When you had left your house that day, was
9 it locked as far as you know?

10 A Yes, due to the first incident I made sure, you know,
11 all my entry points were locked.

12 Q All right. And -- you have two doors that go into the
13 house?

14 A One primary, the front, and then one at the rear
15 entrance.

16 Q All right. And then some windows that could also
17 access --?

18 A Yes, one side of the house was accessible from the
19 ground.

20 Q All right. Do you know the defendant, Jaden Gary?

21 A I do not.

22 Q Have you ever seen him in your life before July 22nd

23 --

24 A No.

25 Q -- 2019?

Jason Williams - Direct examination
By solicitor Smith

1 And, and what about the other two individuals?

2 Did you know them when you looked at the security
3 footage?

4 A No.

5 Q All right. Had -- you had not given any of them
6 permission to come to your house---

7 A No, I did not.

8 Q ---and take weapons?

9 All right. I'm gonna show you -- so, did you notify
10 law enforcement once you got the notification about motion
11 and sound inside of your house?

12 A Yes, I called 9-1-1 and then I met up with the law
13 enforcement or right afterwards.

14 Q Were you able to view on your phone what had happened
15 inside of your house from remotely or --?

16 A Yes, I actually watched the -- them break-in. well,
17 watched them enter through my kitchen into the living room
18 into the bedroom and then sort -- searched through each room
19 with a handgun drawn and then took my weapons.

20 Q Okay. So law enforcement would of known initially that
21 it was three individuals and---

22 A Uh-huh. (Affirmative).

23 Q ---they were all black males.

24 Is that right?

25 A Yes.

Jason Williams - Direct examination
By Solicitor Smith

1 Q okay. Did you ultimately end up responding to the
2 scene of your house?

3 A I did. I -- cause there's a bit of delay. So, when I
4 called them, law enforcement's already on scene. I got
5 clear from work.

6 Q All right. Did they have anybody in custody or the
7 people left?

8 A The people had left.

9 Q Did you go around your house or in, in conjunction with
10 law enforcement and look at items that may of been taken or
11 points of entry or anything like that?

12 A Yeah, cause we -- I went into -- with the
13 investigators, the forensic gentlemen that was from the
14 sheriff's, Sheriff's Department, where -- showing where the
15 backdoor was kicked -- which was kicked in and then walked
16 through the interior of the house where I was showing where
17 I stored them, and then that's when I kind of noticed that
18 the -- my kitchen knives were on the floor next to my bed on
19 the bedstand.

20 Q And that's because the police don't know what your
21 house looked like before?

22 So, you were assisting them and that's how it was
23 placed, that's --

24 A Yes.

25 Q -- been moved and things like that?

Jason Williams - Direct examination
By Solicitor Smith

1 Were their other items in your bedroom that had been
2 moved?

3 A I see that through the -- my drawers had kind of been
4 ransacked and some of that other stuff from underneath my
5 bed.

6 (WHEREUPON, a group of photographs was marked as
7 state's Exhibit Nos. 4 through 17 for identification
8 purposes only at this time.)

9 Q All right. I'm gonna show you --.

10 MR. SCHULTZ: Thank you.

11 Q I'm gonna show you State's Exhibit 4 through 17 and ask
12 you if you can tell what they're pictures of.

13 A So the residence I was living at the time on [REDACTED]
14 Street that got broken into.

15 Q All right. And it's the, the pictures taken the day of
16 the, the burglary?

17 A Yes. So you got the front of the house, living room.
18 Shows the vantage point going from the living room into the
19 kitchen. Some more pictures around the living room.

20 Q We're gonna go through them but have you reviewed those
21 prior to your testimony here today---

22 A Yes.

23 Q ---right?

24 And those are all pictures accurately of how the house
25 looked on July 22nd?

Jason Williams - Direct examination
By Solicitor Smith

1 A Yes, sir.

2 SOLICITOR SMITH: Your Honor, at this time we'd move
3 State's 4 through 17 into evidence.

4 THE COURT: Any objection?

5 MR. SCHULTZ: Could I see that -- the 4 through 17?
6 Is that the front of the house?

7 SOLICITOR SMITH: Yes, four's the, the front.

8 MR. SCHULTZ: Okay. Beg the Court's patience.

9 THE COURT: Yes, sir.

10 (Pause.)

11 MR. SCHULTZ: No objection at this time.

12 THE COURT: Without objection they're in.

13 (WHEREUPON, State's Exhibit Nos. 4 through 17 were
14 received into evidence at this time.)

15 Q This is State's Exhibit 4.

16 That's the front of your house?

17 A Yes.

18 Q All right. This is the entry door that you're talking
19 about and obviously these two windows you could get in as
20 well?

21 A That's the front door. Yes, that's the two windows on
22 the porch and then off to the right you see the
23 cinderblocks. That's a, a walk right there that has access
24 to some windows --

25 Q Okay.

Jason Williams - Direct examination
By Solicitor Smith

1 A -- and then the back of the house.

2 Q Okay. Would -- obviously you're, you're not a --
3 Mr. Gary but would you think it was apparent at the time
4 that somebody lived inside of this house?

5 A Yes.

6 Q All right. This is State's Exhibit 5.
7 Is this from your living room?

8 A That is my living room.

9 Q All right. And, and in this we have a pair of work
10 boots I think, is that right, in front of the couch?

11 A Yes.

12 Q I believe you had xbox controllers sitting on the, the
13 sofa?

14 I don't know if you can see it.

15 A Yes.

16 Q Looks like a Ginger ale sitting out on the coffee
17 table.

18 Is that correct?

19 A That's correct.

20 Q All right. And I think you've got -- you had a record
21 player off to the right of this picture here on the --?

22 A Yeah, that viewpoint, I had two decks, and a mixer, and
23 then the coffee table you see my MacBook.

24 Q Is that your laptop and maybe some external hard drive
25 or something like that all --?

Jason Williams - Direct examination
By Solicitor Smith

1 A Yes.

2 Q All right. This is State's Exhibit 6.

3 This is taken from in the living room but can you first
4 off describe what this room to the left with the shirts
5 hanging --?

6 A So---

7 Q Where does that go?

8 A That goes into my studio at the time. And so it has
9 all my art supplies in there, easels, MacBook, my, my
10 McIntosh computer. It's -- behind where the shirts is is
11 the laundry room and this is from the living room into the
12 kitchen.

13 Q And when you're talking about art, did you have a side
14 job where you did --?

15 A Right. My primary occupation before I moved down here
16 was a visual artist. So really I'm a fine arts craft that
17 I'm classically trained in.

18 Q All right. But you had another laptop inside of that
19 room?

20 A I know I had a brand new iMac desk top 26-inch.

21 Q All right. And what about if I went to the right in
22 this picture like---

23 A That's go there -- that's basically the kitchen. It
24 was a one level house. So you had a kitchen table, right,
25 sink on that. That's where that back entrance was where

Jason Williams - Direct examination
By Solicitor Smith

1 they got kicked in.

2 Q All right. This is State's Exhibit 7.

3 That's just more items in your living room?

4 A Yes, you got some antique cameras, books, and stuff
5 like that.

6 Q All right. State's Exhibit 8, that's the, the mixers
7 and the record player you referred to?

8 A Yes.

9 Q All right. State's Exhibit 9, can you tell the jury
10 where this picture is taken?

11 A So that's the -- my bedroom at the time. So, from the
12 living room, that which would be off to the left. That's
13 where I had everything stored.

14 Q All right. What about this kitchen knife?

15 Is that normally --

16 A No, that was---

17 Q -- on the nightstand?

18 A As you previously said, that was in the -- in my
19 kitchen on that -- on the counter in the block.

20 Q All right. This is State's Exhibit 10. This is again
21 from your bedroom looking back.

22 This is in the living room here?

23 A That is the living room, yes.

24 Q All right. But this is the chest of drawers or
25 whatever the appropriate furniture term is?

Jason Williams - Direct examination
By Solicitor Smith

- 1 A Yes, that was a dresser that, as you can see, it's been
2 gone through.
- 3 Q All right. So the -- you -- this is not how you left
4 it you're saying --
- 5 A No.
- 6 Q -- with the doors slightly opened?
- 7 A No.
- 8 Q What is this wooden picture frame?
9 What -- what's in that?
- 10 A That's my picture of myself and my niece.
- 11 Q All right. This is State's Exhibit 11.
12 What room is this?
- 13 A So that's the kitchen.
- 14 Q All right. This is where you're saying that they
15 entered?
- 16 A Yes, you can see that, on the left right, it's right --
17 for the frame, wherever you're pointing, that's the doorknob
18 to the back door.
- 19 Q All right. What about these items that are on the
20 ground, the LaCroix and looks like some cereal?
- 21 A They were waiting -- they're trash that's getting --
22 the cardboard that's going to be recycled. So they were up
23 against the door --
- 24 Q All right.
- 25 A -- when it was closed.

Jason Williams - Direct examination
By Solicitor Smith

1 Q So those were, when the door went opened, those were
2 moved to where they're seen---

3 A Yes.

4 Q ---in this picture?

5 This is State's Exhibit 12.

6 Is that the desktop that you were referring to?

7 A Yes.

8 Q And none of these items that I'm showing you were, were
9 taken?

10 These were here when you got back in the house?

11 A Those, those are all still present, yes.

12 Q All right. This is State's Exhibit 13.

13 what is this a picture of?

14 A So that's the back porch that you previously saw the,
15 the slide before this of the -- leading into the kitchen.

16 Q All right. Can you describe what this area is that's
17 at the bottom of this picture?

18 Like it's---

19 A So, on the back of the house, rear of the house,
20 there's a porch, elevated porch. So you go upstairs to get
21 to this porch to get into the door.

22 Q All right. And there, there is a window that looks
23 into the kitchen.

24 Is that right?

25 A The door has a, a nine panel window. It's an exterior

Jason Williams - Direct examination
By Solicitor Smith

1 door and then that would -- what is a window up at the top
2 to the left that you can't reach from the ground --

3 Q All right.

4 A -- and then walk right.

5 Q And, and this door was locked you're saying?

6 A Yes, sir.

7 Q All right. This is State's Exhibit 14.

8 Do you know what that is?

9 A That was part of the door jam and then the -- part of
10 the locking system for that.

11 Q That -- I've heard it referred to as strike plate?

12 A Yes.

13 Q Okay. All right. And then you're saying this is a
14 part of this white piece.

15 Next to it is a part of the door?

16 A That was part of the door jam that, that was part of
17 the -- that striking plate was attached to on the left. so
18 that was where the deadbolt and the lock from the handle,
19 right.

20 Q And you can actually see that in State's 13 here in
21 front of the Lacroixs and stuff, right?

22 It's just a---

23 A Yes.

24 Q ---closer up picture?

25 okay. This is State's Exhibit 15.

Jason Williams - Direct examination
By Solicitor Smith

1 Is that your back-door?

2 A Yes, that's where the, the striker plates and a part of
3 that door jam came off of. You can see where there's --
4 there -- had the deadbolt and then the lock for the actual
5 doors, the handle.

6 Q All right. Cause normally there would be metal pieces
7 that the --?

8 A That were in recessed for the different paint -- where
9 the unpainted parts are, yes.

10 Q Where the door would close essentially.

11 And your spice rack and other rack, did, did -- was
12 that how you left it or was that knocked over as a result?

13 A It was, it was -- yeah, from the impact of that cause
14 there -- you know, like you see in the picture but there's
15 some -- the drywall actually got pushed away, pushed forward
16 into the room, from the force of the kick. So -- but, yeah,
17 it's got disheveled.

18 Q All right. Did you notice anything on the door at --
19 itself?

20 A I -- yeah, there's a boot print on it.

21 Q Okay. And this is State's Exhibit 16.

22 I think this is back in your bedroom?

23 Is that correct?

24 A That's back in the bedroom, yes.

25 Q And I want to draw attention to this knife.

Jason Williams - Direct examination
By Solicitor Smith

1 Is that where that was when you left for work that day?

2 A No, that was in the kitchen in the knife block.

3 Q All right. And State's Exhibit 17 is the TV in the
4 living room?

5 A Yeah, the TV/living room, stereo equipment, and then
6 one of my paintings, and then up close.

7 Q All right. What was taken from you in this burglary?

8 A I got multiple long rifles, cases, ammunition, plate
9 carrier with plates, pouches. So, long rifles was two, two
10 Black Powder .50 caliber rifles, a AR 223, 5.56 assault
11 weapon. I had a 308 Marlin with scope that was taken, the
12 Pelican case, a secwood (phonetic) case. I also had
13 ammunition taken. Like I said, the plate carrier and all
14 pouches and everything was taken, a GPS.

15 Q Do, do you know what the value of those items taken
16 from you were?

17 A All together is over \$2,000.

18 Q All right. Did you ever recover any of the actual
19 items in this case?

20 A No.

21 Q Did you want them back?

22 A Yes.

23 Q Did you tell law enforcement that you wanted them back?

24 A Yes, I don't like the fact that they're out there on
25 the streets.

Jason Williams - Direct examination
By Solicitor Smith

1 Q All right. Was this all of the weapons that you had in
2 the house?

3 A No, luckily I had some other ones that were still -- at
4 least my, my handguns and whatnot that were in a different
5 location that -- from the -- I learned from the previous
6 break-in not to have them collectively. So I was trying to
7 save up for a gun safe.

8 Q Okay. Were, were they in your bedroom or were they in
9 another room?

10 A They were in a different room. The one that you can
11 see them -- well, the video that you can see them clearing
12 the first room but they, but they didn't actually sort
13 through cause I had, I had --.

14 Q Where were the guns when the first burglary happened?

15 A They were in my bedroom where the second one --.

16 Q When you watched the video, did it appear that they
17 knew where they were going?

18 A Yes, cause you -- if you watched, if you watched --
19 when you watch the video, you can see them enter through the
20 kitchen. They go to clear the first room with the handgun
21 out to come back to the second one, make a beeline straight
22 for my bedroom, go -- as the -- other, other ones were in
23 cases. So, they were under my bed tucked back away. So you
24 couldn't actually just see them when you get down on your
25 hands and knees. There's a 12-gauge shotgun as well that

Jason Williams - Direct examination
By Solicitor Smith

1 they took out of the closet which I purchased just before
2 the incident. So, I already knew -- with that one---

3 (WHEREUPON, the DVD was marked as State's Exhibit No.
4 18 for identification purposes only at this time.)

5 Q Okay. I'm gonna show you what's been marked as State's
6 Exhibit 18 and ask if you can tell me what that is.

7 A That was the -- it's the video -- surveillance video
8 that -- from my home security camera that I had given to the
9 police department. I viewed it last time and signed it.

10 SOLICITOR SMITH: Your Honor, at this time we'd move
11 State's Exhibit 18 into evidence.

12 THE COURT: Any objection?

13 MR. SCHULTZ: No objection.

14 THE COURT: Without objection it's in.

15 (WHEREUPON, State's Exhibit No. 18 was received into
16 evidence at this time.)

17 SOLICITOR SMITH: And permission to publish it?

18 THE COURT: Yes, sir.

19 (WHEREUPON, State's Exhibit No. 18 was played with the
20 following questions being asked during the playing of the
21 video.)

22 Q I don't know what happened to our other TV but this is
23 your bedroom here on the left of this video?

24 A That is, yes, and the other leads into the kitchen.

25 Q All right. That is going into the place where your

Jason Williams - Direct examination
By Solicitor Smith

1 desktop is?

2 A That's (sic) was at to the back room and the secure --
3 the iMac and all my, my studio.

4 Q All right. Is -- was your fan on at the time?

5 A Yes.

6 Q All right. And is that what you're referring to as a
7 handgun what's in this man's right-hand?

8 A Yes, it's right -- the pistol that he used to clear the
9 rooms.

10 Q Do you see him with a knife in his hand there?

11 A Yes.

12 Q Him as well?

13 A Yes.

14 Q And they're going down under your bed.

15 That's where some of the weapons were?

16 A Yes.

17 Q This first guy's got the shotgun and the pistol that he
18 came in with?

19 A Yes.

20 Q Are those the Pelican cases that you referred to?

21 The---

22 A Yes.

23 Q ---bag---

24 A They're multiple live rifle -- long rifles inside of
25 them, yes.

Jason Williams - Direct examination
By Solicitor Smith

1 Q Do you remember what you had -- did you have air
2 conditioning on at the time of this?

3 A Yeah, cause that's the -- they're, they're window
4 units.

5 Q Okay.

6 A I had one in the bedroom and you can see where they
7 turn the -- my bedroom light on.

8 Q Right.

9 obviously the house had power?

10 A (WHEREUPON, the witness nods affirmatively.)

11 Q All right. And that was the last movement of them
12 inside your house when he left the second time?

13 A Yes, sir.

14 Q All right. Did you -- do you still live at this house
15 in Startex?

16 A No, cause of this incident I had to relocate.

17 Q All right. Please answer any question Mr. Schultz has.

18 MR. SCHULTZ: Sorry, Judge.

19 May it please the court.

20 CROSS-EXAMINATION

21 BY MR. SCHULTZ:

22 Q Sir, did you -- you don't live there anymore --

23 A No.

24 Q -- in Startex?

25 okay. All right. And how long have -- had, had you

Jason Williams - Cross-examination
By Mr. Schultz

1 lived at that address for prior to this happening?

2 A About three years. A little over three years.

3 Q Three years.

4 okay. And you, you mentioned just a couple minutes ago
5 that there was another incident prior to this one?

6 A Yes.

7 Q Could you detail to the jury what happened with that
8 other incident?

9 A I had two minors found or rather an opportunity into
10 the house and I left a -- one of the windows unlocked. They
11 crawled through it and decided to take all my firearms.

12 Q All your firearms.

13 okay. And can you detail how many firearms you had at
14 that time?

15 A Taken or --?

16 Q Yes, taken.

17 A So I had about eight or nine.

18 Q Okay. Eight or nine what?

19 were they sidearms?

20 were they long guns?

21 A They had some Black Powder. You had some long rifles.
22 You had pistols and then that was probably it.

23 Q Oh.

24 A Magazines and such.

25 Q You, you made references to Black Powder. Maybe some

Jason Williams - Cross-examination
By Mr. Schultz

1 jurors are unfamiliar with what, what Black Powder is.

2 Can you detail what Black Powder is?

3 A It's the type of weapon, weapon platform that you can
4 take like revolutionary or muskets kind of style but
5 modernized. so they're using plates. They use a blasting,
6 a cap. But it's a -- loading a cartridge and you're doing
7 ball, wad, and powders. Yeah, you're taking revolutionary
8 kind of Davy Crockett and any of those kind of ones.

9 Q Okay. so, so, you had -- you're saying that you had
10 muskets in there?

11 Is---

12 A That is---

13 Q Am I repeating you correctly?

14 A Yes, they're, you know, you go deer hunting with them
15 and, and recreational.

16 Q All right. Are you a collector or are you a civil war
17 reenactor or Revolutionary War reenactor?

18 A No. Where I grew up, I got my -- one from my father.
19 It was a kit from Cabela's and we put it together. And so
20 it kind of infuses everything and I hunted with that.

21 Q Okay. And did, did -- I'm talking only about the first
22 incident, incident here, sir.

23 A Uh-huh. (Affirmative).

24 Q Did you report that to the police?

25 A Yes.

Jason Williams - Cross-examination
By Mr. Schultz

1 Q Okay. Do, do you know if anybody was prosecuted for
2 that?

3 A No, they did find the individuals that were responsible
4 for it. Like I said, they were minors and I was guided by
5 law enforcement to seek alternate remedies since -- due to
6 the age, you know, being that they were below 10 and then
7 that's with the, the mother turning them in and bringing
8 them to law enforcement.

9 Q All right. Do, do you know or you remember what kind
10 of alternate remedies that you took?

11 A They sought -- they had to do counseling with that.

12 Q And that was it?

13 A At, at the time, yes.

14 Q At the time.

15 Okay. At, at the time, do, do you know if anything
16 else happened after that?

17 A No, I didn't. That was at the -- an event. You know,
18 since I had recovered that would -- everything that was
19 stolen --

20 Q All right.

21 A -- I left it to law enforcement and the, the party.

22 Q In this first incident, did, did you know that the
23 doors were locked or sealed in this first incident---

24 A As---

25 Q ---with the children?

Jason Williams - Cross-examination
By Mr. Schultz

1 A Yes, the doors were locked. They side it's -- it was
2 a -- one of the windows that wasn't fully locked. They had
3 an opportunity to get into that way.

4 Q Okay. Now, when did you move out of this house in
5 Startex?

6 A So, it was -- since the second one was August. So it
7 was December of that year.

8 Q So, December of 2019?

9 A Yes.

10 Q All right. Now, in, in the back of your house you
11 had -- you noted that you had what is known as an elevated
12 porch?

13 A Uh-huh. (Affirmative).

14 Q Is that covered in kudzu and vines?

15 A No.

16 Q No, it's not?

17 A The porch itself is not, no.

18 Q Okay. What about the back of your home?

19 A There is some vegetation, some trees boarding the side
20 of the property but not -- it's clearly a house, a house
21 back there.

22 Q Could you -- approaching your, your house from not
23 Church Street, there's, there's -- you're at the corner of
24 --?

25 A I think it's Elm and Church, yes.

Jason Williams - Cross-examination
By Mr. Schultz

1 Q sir?

2 A I think it was Elm and Church.

3 Q Elm and Church, right.

4 A Okay.

5 Q Look -- looking at your house not from Church but from
6 Elm, could a, a reasonable person suspect that -- that that
7 was not a house or not?

8 A No, it's clearly a house.

9 Q Okay. I understand that but can you -- I guess from
10 Elm Street, from the back of the residence, could you --
11 could a reasonable person suspect, because of all the
12 foliage and all the vines and all the trees and everything
13 like that, could they see -- could, could a person clearly
14 see your house?

15 A Yes, cause you can, from the road, you can see, see the
16 house and vice versa from that house. You can see the road
17 and the existing -- the next property.

18 Q This is the front of your house, sir, right?

19 A Yes.

20 Q Okay. Now, the back of your house doesn't look like
21 that, right?

22 A It's -- how do you mean?

23 Q Well, the -- you clearly know that that's the front of
24 the house, right?

25 A Yes.

Jason Williams - Cross-examination
By Mr. Schultz

1 Q Okay. All right. But the back of your house is, is
2 covered in weeds and vines and everything, right?

3 A No, I'm -- can you clarify that cause I -- you make --
4 the way I'm interpreting that is that you're thinking the
5 back of the house is overgrown like you have ivy growing on
6 it like it's attached to the house?

7 Are you talking about from on the ground to the back of
8 the house?

9 Q Yeah, on, on the ground. Yeah, I'm sorry. I'm -- I, I
10 don't mean to confuse or anything. It's on, on the ground.
11 There's, there's Elm Street.

12 A Uh-huh. (Affirmative).

13 Q And then there's a, a small ditch.

14 A Uh-huh. (Affirmative).

15 Q And then there's foliage and then you get to the back
16 of your house, which is tough to see.

17 Is that correct?

18 A No.

19 Q That's all, that's all I'm trying to get at.

20 A Yeah. No, it's, it's -- you can -- visible from the
21 road.

22 Q Now, any of the parties here in this present case,
23 we're not talking about the first incident but the second
24 incident, did anybody go inside that window that I'm
25 pointing at right there?

Jason Williams - Cross-examination
By Mr. Schultz

1 A No.

2 Q Okay. Did anybody go inside that door right there that
3 I pointed at?

4 A I'm -- just to make sure I'm clear.

5 As in for the---

6 Q Sure.

7 A ---three individuals that broke in or subsequently
8 afterwards with law enforcement?

9 Q Subsequent afterwards.

10 A Yeah, I went through after I called the police and then
11 the police were -- came to the back-door. But then after --
12 with the investigation and the forensic that we went through
13 the front doors. But prior to me -- law enforcement getting
14 there, the front door was still in tact.

15 Q Okay. The, the front door was still in tact --

16 A Uh-huh. (Affirmative).

17 Q -- with this incident, correct?

18 A Yes, the second one. Yes.

19 Q Okay. The, the second one. The -- that window was
20 still in tact. Nobody crawled through this window.

21 Right?

22 A No.

23 Q Nobody crawled through this window, correct?

24 A No.

25 Q Okay. And I refer to State's Exhibit 4 here.

Jason Williams - Cross-examination
By Mr. Schultz

1 All right. This is the back of your residence,
2 correct?

3 A Yes.

4 Q Okay. Now, that -- just looking at that, no offense,
5 it looks messy.

6 A Sure.

7 Q Okay. There's garbage around. There's garbage on the
8 floor, things like that.

9 A Like I had previously stated, that was pushed against
10 the door awaiting for me to take it to a recycling place.

11 Q Okay. This is the same door, different angle, right,
12 sir?

13 A Yes.

14 Q Okay. All right. Again, kind of messy. Kind of
15 disorganized.

16 Correct?

17 A Because of the force of the door break -- being kicked
18 in.

19 Q Now, now you noticed, when you were on direct
20 examination, you noticed that there was a boot mark.

21 A Yes.

22 Q Is, is that correct?

23 A Yeah, they -- cause when the law enforcement was on
24 scene, they put the -- I don't know what the technical term
25 is but it's a measuring tape so they can get the measure --

Jason Williams - Cross-examination
By Mr. Schultz

1 the dimensions of it. So that was on -- it's actually
2 physically on the door. So they took, they took pictures
3 and all that.

4 Q Did the State ever go over the picture of that boot
5 mark --

6 A I, I---

7 Q -- just now?

8 A No.

9 Q okay. Did you ever take a picture of that boot mark?

10 A Did I ever take a picture of the boot mark?

11 Q Yeah.

12 A I might have. It, it's, it's -- I -- you know.

13 Q Do you know if any law enforcement officers took a
14 picture of that boot mark?

15 A I would believe so cause of the indications.

16 Q Now, State's Exhibit 18 -- beg the Court's patience.

17 THE COURT: Yes, sir.

18 (Pause.)

19 Q Now, going back to State's Exhibit --

20 A 18.

21 Q -- 18, we have, for the, for the first couple seconds
22 here, do you see that, sir?

23 A Yes.

24 Q Do you see the video?

25 okay. Now, at about the 35 second mark you see an

Jason Williams - Cross-examination
By Mr. Schultz

1 individual in your house, correct?

2 A Yes.

3 Q And that, that individual's obviously not you, correct?

4 A Yeah, it's not me.

5 Q okay. And did you see that clearly there?

6 A Did I see them go into the---

7 Q That video right there.

8 A Yes.

9 Q Did you see that clearly?

10 Do you, do you see any signs on this video of any
11 enforced entry?

12 A From the angles for this?

13 Q Yeah.

14 A No.

15 Q okay. Do you know why, referring to the second -- the
16 first incident, why those minor child -- children tried
17 going or went inside your house?

18 Do you know why that was?

19 A No, I don't know that -- the, the motivation for that.

20 Q All right. Now, referring again -- excuse me.

21 Referring to State's Exhibit 11 here, this is your
22 office here or, excuse me, that's the kitchen, right?

23 A That's the kitchen.

24 Q Kitchen?

25 A Yes.

Jason Williams - Cross-examination
By Mr. Schultz

- 1 Q Okay. And, again, kind of messy, right?
- 2 No offense.
- 3 A I -- by definition, yes.
- 4 Q Okay. And this is your bedroom, sir?
- 5 A Yes.
- 6 Q Okay. And, again, kind of messy, right?
- 7 A From this picture with them after their going through
- 8 it, yes.
- 9 Q Okay. All right. Was it messy beforehand or messy
- 10 after the --
- 11 A I --
- 12 Q -- this incident?
- 13 A Messy afterwards.
- 14 Q Okay. This is a close-up of your -- the -- this door I
- 15 guess or --?
- 16 A The, the remnants of it, yes.
- 17 Q The remnants of it.
- 18 Okay. And do you see anywhere where there's a boot
- 19 mark or footprint or anything?
- 20 A From that, no.
- 21 Q Okay. All right. How about here?
- 22 Do you see a footprint or a boot mark or anything?
- 23 A From this particular angle, no.
- 24 MR. SCHULTZ: That's all I have, Your Honor.
- 25 THE COURT: All right. Anything, solicitor?

Jason Williams - Redirect examination
By Solicitor Smith

1 SOLICITOR SMITH: Your Honor, I got to get a picture
2 printed and then we'll be done shortly.

3 THE COURT: okay.

4 SOLICITOR SMITH: But I'm gonna get that done right now
5 and ask him a few questions.

6 (Pause.)

7 REDIRECT EXAMINATION

8 BY SOLICITOR SMITH:

9 Q Mr. Williams, did you know that people were coming over
10 to your house that day and you needed to be even clean and
11 you were gonna be asked about the cleanliness of your house
12 in front of 14 strangers?

13 A No.

14 Q If you'd known that, would you have picked up a little
15 bit more maybe?

16 A I'm -- no. But I'm a little bit confused on the
17 definition of messy. Like give you an example. I look at
18 the desk over here, all the -- how the papers is organized,
19 that would be considered messy or is it organized. I don't
20 think my house was messy to, to my standards.

21 Q All right. And you're an artist and we talked about
22 you have works of arts or projects around the house?

23 A I do. Yeah, was, was classically trained domestically
24 and overseas.

25 Q And you did witness the -- I think it's called scaling

Jason Williams - Redirect examination
By solicitor Smith

1 to show the picture.

2 You witnessed that yourself while law enforcement was
3 taking pictures?

4 A Yes.

5 You mean of the -- for -- yes, cause that's when they
6 were doing the fingerprinting and everything else around the
7 house.

8 Q All right. Do you think, since it was asked multiple
9 times, do you think it's remotely possible that somebody
10 would not have known that this was a house?

11 A Not -- no.

12 Q And that somebody not only that is in a house designed
13 for somebody to live in but that somebody was actually
14 living in it?

15 A Yes, it was definitely clearly occupied and lived in
16 since it was messy.

17 Q Just to be clear cause I have some that -- when you
18 look out the back of your house, you look at a road?

19 Is that --?

20 A It's -- if you're looking out the back of the house
21 from the porch or the -- from that door, you have a bit of a
22 backyard. There's some trees and such vegetation. The road
23 that's (sic) the gentleman was talking about on the left,
24 and you can see the house across the street, and then the
25 house right behind it.

Jason Williams - Redirect examination
By Solicitor Smith

1 Q All right. So despite the fact that there's some
2 leaves on the porch, it -- you can still see?

3 There's not things blocking you or there's not --?

4 A No, it's not like you're -- it's an overgrown or
5 reclaimed backyard or that has tall standing vegetation on
6 it. The leaves are from -- you can see on top. That puts
7 you right there. You have a large tree that goes over the
8 top of the house in the front yard. That's the drop in.

9 Q All right. And, again, this is State's Exhibit 15.

10 Is this -- is this how the door was prior to you coming
11 back on July 22nd?

12 Was that how it appeared?

13 A That's how I -- yeah, I found it.

14 Q Okay. But I mean before this---

15 A Oh.

16 Q ---burglary---

17 A When I left---

18 Q ---was that---

19 A When I left for work that day, no, it's not how I left
20 it.

21 Q All right. Would those two white pieces have been
22 flush against each other?

23 A Yes, cause that's, that's where it's bowed out. It
24 was -- the strike plates -- the top one's for the deadbolt.
25 The one on the bottom just to lock the door and then -- no,

Jason Williams - Redirect examination
By Solicitor Smith

1 that's, that's separation between that cause you can see
2 sheet rock on the other side of the -- but you can't see it
3 on the shelf. It's pushed out.

4 Q And I think that's a nail it looks like --

5 A Yes.

6 Q -- and another nail and another nail.

7 Those would of been holding the two items together --

8 A Yes.

9 Q -- right?

10 okay.

11 All right. One second. I got to get some exhibits
12 marked.

13 (WHEREUPON, a photograph was marked as State's Exhibit
14 No. 19 for identification purposes only at this time.)

15 Q I'm gonna hand you what's been marked as State's
16 Exhibit 19 and ask you if you can tell me what that is.

17 A That's the boot mark we're talking about before it and
18 then the scaling tape as you call it on the back-door from
19 the law enforcement or the forensics.

20 Q And that boot print was not there before you had ever
21 kicked or no---

22 A No.

23 Q ---and---

24 A Yeah, that was not there.

25 Q And the previous people did not kick the back-door in

Jason Williams - Redirect examination
By Solicitor Smith

1 some---

2 A Previous to --?

3 Q The previous incident, that didn't involve your
4 back-door being---

5 A No.

6 Q ---kicked in?

7 A No.

8 Q So, this is from this incident as far as you know?

9 A Yes.

10 SOLICITOR SMITH: Your Honor, at this time we'd move
11 State's Exhibit 19 into evidence.

12 MR. SCHULTZ: No objection.

13 THE COURT: Without objection, it's in.

14 (WHEREUPON, State's Exhibit No. 19 was received into
15 evidence at this time.)

16 Q Let me see how it shows up on here.

17 This is what you, you would call -- I call it scaling
18 tape. I think that's what law enforcement calls it but
19 that's what you're talking about measuring the --

20 A Yes.

21 Q -- size?

22 Did you watch them apply that?

23 A I -- yeah, cause they were going around the -- from the
24 previous thing, the officer was going around dusting it
25 and---

Jason Williams - Redirect examination
By Solicitor Smith

- 1 Q All right.
- 2 A ---taking photographs.
- 3 Q Okay. And, and those are tread marks from a shoe?
- 4 A I, I believe so, yes.
- 5 Q All right. All right. Was that door sturdy as far as
- 6 you know?
- 7 A Yeah, cause there's no real im -- damage cause it's a
- 8 steel exterior door. The chip -- the door jam from the,
- 9 from the other pictures took the damage.
- 10 Q Okay. So the door was fine basically?
- 11 Just the---
- 12 A Yes.
- 13 Q ---the jam.
- 14 All right. I don't have any further questions. Thank
- 15 you.
- 16 THE COURT: Anything as to that picture?
- 17 MR. SCHULTZ: No, sir.
- 18 THE COURT: Thank you.
- 19 Sir, you may step down. Be -- please be careful and
- 20 thank you for your military service.
- 21 SOLICITOR SMITH: Your Honor, he had some work issues.
- 22 Can he be excused?
- 23 THE COURT: Any objection to him being released?
- 24 MR. SCHULTZ: No objection.
- 25 THE COURT: Sir, you may stay or go whichever you

1 choose.

2 Mr. Foreman, ladies and gentlemen of the jury, we're
3 gonna break for lunch at this time. It is almost one
4 o'clock. I will ask you to be back in place about 2:15,
5 2:15.

6 If -- that gives you just over an hour. Well, more
7 than an hour. About an hour and twenty minutes or so.

8 All right. Mr. Foreman, if you take your jury out and
9 be excused for lunch and I'll be looking for you at 2:15.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: Sir, your case has been called and, at this
13 time, you're in custody. Your bond has been extinguished.

14 MR. SCHULTZ: Your Honor, could I be heard on that?

15 THE COURT: Yes, sir.

16 MR. SCHULTZ: Mr. Gary has been my client, as the court
17 knows, for about the last two years now. I took it upon
18 myself, anticipating the court may potentially hold Mr. Gary
19 in custody, to contact his bondsman, Joshua Quick of Quick
20 Bail Bonding, and he wrote me back at 3:19 yesterday.

21 says I don't mind at all. Will stay on bond. Well, I
22 asked him, when Jaden's case is called for trial, do you
23 mind staying on the bond. Thanks, Josh. I don't mind at
24 all. Will stay on the bond. That's what Mr. Quick told me.

25 So, I would ask, because of his service on home

1 detention and also the fact that I've had no problem getting
2 in contact with him, I, I think we, we have scheduled about
3 a dozen appointments at this, at this point. He always
4 showed up to them. Always complied with everything that I
5 needed him to do, and other than for one violation of home
6 detention, I think that was a weed violation that Your Honor
7 actually heard, as the Court may remember, and the fact he
8 is on home detention and his family is here and they can
9 take good care of him, I would just ask, for lunch, that he
10 remain on bond.

11 THE COURT: solicitor, you want to be heard?

12 SOLICITOR SMITH: No, Your Honor.

13 THE COURT: Okay. He's in custody, Mr. Schultz.

14 MR. SCHULTZ: Thank you very much.

15 THE COURT: See everybody at 2:15.

16 MR. SCHULTZ: Yes, sir.

17 (WHEREUPON, Court was in recess for the lunch break.)

18 THE COURT: Now, do we need to put something on -- do
19 we need to proffer somebody or anything?

20 I don't want to bring the jury in and send them back
21 out.

22 MR. SCHULTZ: Yes, I, I, I think, at this time, that a
23 proffer is necessary for the testimony of Officer Shue.

24 THE COURT: Okay.

25 SOLICITOR SMITH: Sure.

Trevor Shue - Direct examination
By solicitor Smith

1 The state's next witness would be Investigator Trevor
2 shue.

3 THE COURT: Officer, come on up and be sworn.

4 TREVOR SHUE, being first duly
5 sworn, testified as follows:

6 THE COURT: Officer, if you will adjust the microphone
7 to suit yourself please and speak using an outside voice.
8 Tell us who are and spell your last name for Madam Court
9 Reporter please.

10 THE WITNESS: Trevor Shue, s-H-U-E, and I'm an
11 investigator with the Sheriff's office.

12 THE COURT: Thank you.

13 SOLICITOR SMITH: And, Your Honor, I'm gonna try to ask
14 the questions that I will ask in here and a few more
15 sentences -- additional things if that's fine.

16 THE COURT: Okay.

17 DIRECT EXAMINATION

18 BY SOLICITOR SMITH:

19 Q Investigator Shue, you're employed at the Sheriff's
20 office?

21 A Yes, sir.

22 Q And how long have you been an investigator at the
23 Sheriff's office?

24 A Approximately four years.

25 Q All right. And did you work the road before that?

Trevor Shue - Direct examination
By solicitor Smith

1 A Yes, sir.

2 Q All right. Do you remember Investigator Brad Newton
3 had a surveillance video from a burglary that occurred on
4 July 22nd of 2019 and asking for help in trying to identify
5 people in that?

6 A Yes, sir.

7 Q Did you watch the surveillance video or clips of it?

8 A It was clips.

9 Q All right. Were you able to identify any people off of
10 that video?

11 A Yes, sir.

12 Q Who, who were you able to identify out of the three?

13 A Jaden Gary and another individual that I knew who went
14 by Quez.

15 Q All right. Was, was Jaden Gary the, the first
16 individual that was holding a firearm?

17 A Yes, sir.

18 Q All right. And Quez was the third individual that had
19 like a, a Do-rag on and the Topgolf shirt?

20 A Yes, sir.

21 Q All right. Did you tell Investigator Newton about
22 somebody that may be able to assist him in continuing to
23 investigate his case?

24 A Yes, sir.

25 Q Was that Haley Hunsberger?

Trevor Shue - Cross-examination
By Mr. Schultz

1 A Yes, sir.

2 SOLICITOR SMITH: All right. That would be all that I
3 have, Your Honor.

4 THE COURT: okay.

5 MR. SCHULTZ: Thank you, Judge.

6 CROSS-EXAMINATION

7 BY MR. SCHULTZ:

8 Q This is on the proffer obviously, officer Shue.
9 officer, how long you been -- have you been with the
10 Spartanburg County Sheriff's office?

11 A Approximately seven years.

12 Q And, and, and is it okay if I call you officer or would
13 you like detective or --?

14 A (WHEREUPON, the witness shrugs his shoulders.)

15 Q okay.

16 A whatever you prefer.

17 Q All right. All right, officer. Do you know my client?

18 A Yes, sir.

19 Q okay. Do you know if he's had any the -- DJJ
20 involvement in the past?

21 A Not to my knowledge.

22 Q Do you know if he's ever been charged for a crime in,
23 in the past?

24 A Not to my knowledge.

25 Q Do you know if he's ever been convicted of a crime?

Trevor Shue - Cross-examination
By Mr. Schultz

- 1 A Not to my knowledge.
- 2 Q All right. And how do you know my client?
- 3 A It was from a previous traffic stop.
- 4 Q Okay. What was the result of that previous traffic
5 stop?
- 6 A I believe the passenger of that vehicle was placed in
7 custody for unlawful carry.
- 8 Q Okay. Was my client arrested?
- 9 A No, sir.
- 10 Q Okay. Was he ever investigated after that --
- 11 A No, sir.
- 12 Q -- for any, for any involvement with anybody in that
13 vehicle?
- 14 A No, sir, not --.
- 15 Q Was he written -- was, was he the driver or was he the
16 passenger?
- 17 A To be honest I can't even remember if he was the driver
18 or passenger in that vehicle.
- 19 Q Okay. Do you know who that individual was that was
20 arrested for unlawful carrying?
- 21 A Yes.
- 22 Q You do?
- 23 A You want his name?
- 24 Q Yes, I do.
- 25 A Memphis Black.

Trevor Shue - Cross-examination
By Mr. Schultz

- 1 Q Memphis Black.
- 2 Okay. Now, I'm, I'm assuming that Memphis is a
- 3 nickname or is that---
- 4 A That's his---
- 5 Q ---his name?
- 6 A That's his government name.
- 7 Q That's his what?
- 8 A His government name.
- 9 Q That's his government name.
- 10 Okay. So, his name is Memphis Black.
- 11 Okay. Memphis Black, was he charged with anything
- 12 else?
- 13 Do, do you know of the whereabouts of Memphis Black
- 14 right now?
- 15 A I don't know of his whereabouts right now. At the time
- 16 it was in reference to an investigation with a drive-by.
- 17 Q Okay. About how long did that traffic stop take?
- 18 A To be a hundred percent, I couldn't give you a hundred
- 19 percent answer on that one.
- 20 Q Okay. Less than 30 minutes?
- 21 A I would, I would imagine 30 minutes.
- 22 Q Do you know how long ago that was?
- 23 A It would of had to been at least a year or two.
- 24 Q And that's the only time you saw Jaden Gary?
- 25 A Yes, sir.

Trevor Shue - Cross-examination
By Mr. Schultz

1 Q The only time you saw Jaden Gary was at that traffic
2 stop --

3 A Yes, sir.

4 Q -- for something that you don't even know how long it
5 was, right?

6 A Uh-huh. (Affirmative).

7 MR. SCHULTZ: All right. That's all I have on proffer,
8 Judge.

9 THE COURT: Anything else?

10 SOLICITOR SMITH: No, Your Honor.

11 THE COURT: Thank you.

12 Sir, you may step down.

13 MR. SCHULTZ: I argue this in a -- if, if it please the
14 Court?

15 THE COURT: Yes, sir.

16 MR. SCHULTZ: I argued this in a previous hearing that
17 resulted in a mistrial with officer Shue, and this, this is
18 my concern and I want to place this on the record as far as
19 his testimony goes.

20 Identity I guess is the, the reason why they're putting
21 him up here. But my fear, and this is the objectionable
22 part, is that the jury could infer or intuit that my client
23 has had some deleterious involvement with law enforcement
24 because officer Shue works for the spartanburg county
25 sheriff's office.

1 Now I, I understand right now, unless something's
2 changed, that they're not gonna say that he was part of the
3 gang task unit or gang enforcement unit or whatever it's,
4 it's called. But my fear, and, and this is, this is my
5 objection, is that the jury could infer, intuit that the
6 officer knows him, knows, knows my client, and, and they
7 could rationalize that my client has had, has had prior
8 involvement with the law. He's a law enforcement officer.

9 It would be different if the state had presented a
10 friend of Jaden as far as identity goes. The State could
11 say to this friend hey, do you know Jaden Gary?

12 Yeah, I know him.

13 well where is he?

14 Oh, well, he's in the court, courtroom sitting --
15 seated next to that attorney over there.

16 Okay. And did you see that video?

17 Yeah, I saw that video.

18 And was that him?

19 Yeah, that was, that was -- he was, he was wearing the,
20 you know, whatever shirt.

21 okay. That would be less objectionable to me at least.
22 I -- obviously I, I don't think the state has a witness, a
23 friend of Jaden, that will be able to identify him. But the
24 identity by law enforcement officer could lead to, A, undue
25 confusion on the part of the jury and, the more dangerous

1 thing, is that the jury could -- one of the jurors or all of
2 them could infer or intuit that Mr. Gary's had -- has had
3 some prior involvement with law enforcement that he has not
4 been convicted for. That's -- that would be the nature of
5 my objection if the Court understands it.

6 THE COURT: Solicitor.

7 SOLICITOR SMITH: Your Honor, I -- identity is a
8 necessary element to proof of every crime. I think the
9 standard in this would be whether the potential prejudicial
10 value is -- substantially outweighs the probative value and
11 it, it is probative. We have no intentions of getting into
12 the specifics of why he knows him. Certainly Investigator
13 Shue knows more people than just people that he has arrested
14 or stopped on traffic stops.

15 I know there's law enforcement people that actually
16 have family members that have committed crimes that have
17 identified them off a video. I know that from a couple
18 prior cases I've had.

19 So, we don't think, given the state's questioning, that
20 this has the danger of getting into any sort of dangerous
21 areas and certainly, if Mr. Schultz asks certain questions,
22 it might be like he did during the proffer. But we don't
23 have any intention of getting into that at the state's
24 presentation.

25 MR. SCHULTZ: And, and that's sort of my, my issue and

1 Mr. Smith brought up a good point, and I didn't use this
2 word. It could be prejudicial and a, and I think it is
3 prejudicial.

4 If, if I'm on trial for something, for anything,
5 burglary -- let's just call it a burglary or something, and
6 Trevor Shue knows me, he gets up there and he says I know
7 Josh Schultz.

8 well, where do you know Josh Schultz from?

9 Oh, he's, he's a lawyer. He's cross-examined me and
10 I've worked with him on cases.

11 Okay. Nothing, nothing wrong there, but just by the
12 mere fact of him being an officer I think is prejudicial.
13 That's, that's my problem with it, with it.

14 THE COURT: Well, any witness the State calls is gonna
15 be prejudicial to the defendant. That's why they call them.
16 But, at this time, it's not, it's not overly prejudicial to
17 him because the officer says, in response to your question,
18 he doesn't know of any DJJ involvement. He doesn't know of
19 any arrest and he does -- certainly doesn't know of any
20 conviction and the only way he knows him was from the
21 traffic stop, and he did not even identify your client as
22 the driver of the vehicle.

23 He -- apparently he was not and, and no -- and nor was
24 he -- even a traffic citation written for your client. So,
25 he just knows him from a traffic stop. That's how he knows

1 him.

2 I'm gonna allow the testimony. I know the state will
3 caution the witness to be careful, stay within the bounds of
4 the question, and keep it clean.

5 SOLICITOR SMITH: Yes, sir.

6 THE COURT: Are we ready for the jury?

7 MR. SCHULTZ: Ready for the jury.

8 SOLICITOR SMITH: Yes, sir.

9 THE COURT: All right.

10 (WHEREUPON, the following takes place within the
11 presence of the jury.)

12 THE COURT: Thank you. Please be seated.

13 Good afternoon, Mr. Foreman, ladies and gentlemen.

14 I trust everyone got something to eat for lunch and
15 refreshed yourselves and we've been here for a few minutes
16 working on some other stuff. But nonetheless, we're ready
17 to go.

18 Mr. Foreman, anything for the jury?

19 THE FOREMAN: No, sir.

20 THE COURT: Everybody's good?

21 THE FOREMAN: They're good.

22 THE COURT: We're ready to go.

23 solicitor.

24 SOLICITOR SMITH: The state calls Investigator Trevor
25 Shue.

1 THE COURT: Come on up and be sworn, sir.

2 TREVOR SHUE, being first duly
3 sworn, testified as follows:

4 THE COURT: sir, tell us who you are. Adjust your
5 microphone and tell us who you are and spell your last name
6 for Madam Court Reporter please.

7 THE WITNESS: Trevor Shue. S-H-U-E.

8 THE COURT: Thank you.
9 solicitor.

10 DIRECT EXAMINATION

11 BY SOLICITOR SMITH:

12 Q Investigator Shue, where are you currently employed?

13 A In the investigation division of the sheriff's office.

14 Q All right. And how long have you been in the
15 investigation division?

16 A Four years.

17 Q Do you have any prior law enforcement experience before
18 going into investigations?

19 A I was in uniform patrol for three years.

20 Q All of that in the spartanburg county sheriff's office?

21 A Yes, sir.

22 Q All right. Do you know Investigator Brad Newton?

23 A Yes, sir.

24 Q Do you recall him looking for help from people in the
25 sheriff's office trying to identify some suspects from a

Trevor Shue - Direct examination
By solicitor Smith

1 burglary that had occurred in June -- July 22nd of 2019?

2 A Yes, sir.

3 Q You've been in here for previous testimony and you saw
4 state's Exhibit 18, the surveillance video?

5 A Yes, sir.

6 Q Is that the -- you, you didn't watch the entirety of it
7 or just a clip?

8 A It was a clip.

9 Q All right. But that's the, the video that was played
10 in court is the same video that you watched?

11 A Yes, sir.

12 Q Were you able to identify anybody off of that video?

13 A Yes, sir.

14 Q Who were you able to identify?

15 A Jaden Gary.

16 Q All right. And who was he in the order of the people
17 in -- as they walked through the living room?

18 A Walking through the living room, he was the first one
19 with the firearm.

20 Q All right. Were you able to identify anybody else in
21 that video?

22 A In -- the third subject, as they entered the living
23 room, I knew that he went by the name of Quez.

24 Q All right.

25 A But I was unable to identify his full name.

Trevor Shue - Direct examination
By solicitor Smith

1 Q And the middle suspect---

2 A Right.

3 Q ---you did not know?

4 A No, sir.

5 Q All right. And you passed this information along to
6 Investigator Newton?

7 A Yes, sir.

8 Q Is Jaden Gary in the courtroom today?

9 A Yes, sir.

10 Q Okay. Is he seated next to Mr. Schultz?

11 A Yes, sir.

12 Q All right. Did you give a name of a, a girl named
13 Haley Hunsberger to Investigator Newton?

14 A Yes, sir.

15 Q And what was the purpose of that?

16 A It was an associate at the time that I feel like if
17 he -- she might be able to help him in the investigation.

18 Q All right. Thank you. That's all I have.

19 CROSS-EXAMINATION

20 BY MR. SCHULTZ:

21 Q You, you said that you had a, a brief encounter with
22 Mr. Gary before?

23 A Yes.

24 Q Okay. And do you know if Mr. Gary was ever charged
25 with a crime before this?

Trevor Shue - Cross-examination
By Mr. Schultz

- 1 A No, sir.
- 2 Q Okay. And you're positive about that?
- 3 A Yes, sir.
- 4 Q All right. Do you know if Mr. Gary had any involvement
5 in any kind of Department of Juvenile Justice?
- 6 A Not to my knowledge.
- 7 Q Okay. Do you know if Mr. Gary or his family had any
8 part in Department of social services involvement or
9 anything?
- 10 A Not that to my knowledge.
- 11 Q Okay. You said you had a encounter with Mr. Gary
12 before, correct?
- 13 A Yes, sir.
- 14 Q How many years ago was that?
- 15 A Approximately two years ago.
- 16 Q Okay. And how long was that encounter?
- 17 A I would say no longer than an hour.
- 18 Q Okay. And did you get, get a good look at Mr. Gary's
19 face?
- 20 A Yes, sir.
- 21 Q Okay. And is that the only, the only dealing that you
22 had with Mr. Gary?
- 23 A Yes, sir.
- 24 Q Okay. You, you weren't involved in the investigation
25 of this case, right, other than what you just said there---

Trevor Shue - Cross-examination
By Mr. Schultz

1 A Yes, sir.

2 Q ---right?

3 okay. You didn't take any pictures at the scene of
4 this incident?

5 A No, sir.

6 Q okay. You, you didn't go to that incident location or
7 anything?

8 A No, sir.

9 Q okay. You didn't file any incident reports --

10 A No, sir.

11 Q -- on this incident, right?

12 A No, sir.

13 Q okay. And so that's, that's the only thing you did in
14 regards to this case, right?

15 A Yes, sir.

16 Q okay. Thank you. That's all I have.

17 THE COURT: Anything at all?

18 REDIRECT EXAMINATION

19 BY SOLICITOR SMITH:

20 Q when you stated that the incident was two years ago,
21 the, the burglary itself was right at two years ago---

22 A Yes, sir.

23 Q ---correct?

24 so the, the incident you're referring to or the, the
25 occasion you had to meet Mr. Gary was relatively close---

Trevor Shue - Redirect examination
By Solicitor Smith

1 A Yes, sir.

2 Q ---to the time of that burglary?

3 A Yes, sir.

4 Q That's all I have.

5 THE COURT: Anything at all on that?

6 MR. SCHULTZ: No, sir.

7 THE COURT: Thank you, sir.

8 Investigator, you may step down. Please be careful.

9 SOLICITOR SMITH: The State's next gonna call

10 Investigator Brad Newton.

11 THE COURT: All right.

12 BRAD NEWTON, being first duly

13 sworn, testified as follows:

14 THE COURT: Investigator, adjust the microphone and
15 tell us who you are and spell your last name please.

16 THE WITNESS: Brad Newton. N-E-W-T-O-N.

17 THE COURT: Thank you.

18 Solicitor.

19 DIRECT EXAMINATION

20 BY SOLICITOR SMITH:

21 Q Investigator Newton, where are you currently employed?

22 A Spartanburg County Sheriff's office.

23 Q And how long have you been with the Sheriff's office?

24 A Since September of 2013. So right at eight years.

25 Q All right. And prior to that, what were you doing in

Brad Newton - Direct examination
By Solicitor Smith

1 law enforcement?

2 A I started my career in law enforcement in Greenville
3 Police Department in 2003 and was there from '03 to '05. I
4 joined the Highway Patrol from 2005 to 2010.

5 Q And then you've been at the sheriff's office since
6 then?

7 A Since 2013.

8 Q Okay. In-between were you out of law enforcement?

9 A I was. I was in the private sector. I was a regional
10 manager for a private security firm in Greenville.

11 Q All right. And what is your current role at the
12 sheriff's office?

13 A My current role, I'm the sergeant over property crimes
14 of basically the northern half of Spartanburg County.

15 Q All right. And is a sergeant like a supervisory role
16 mostly---

17 A Yes.

18 Q ---or -- all right. Were you in that same role back in
19 July 22nd of 2019?

20 A No, at that point in time I was assigned -- I was, I
21 was an investigator. I was one of the investigators, field
22 investigators, assigned again to that northern part of
23 Spartanburg County.

24 Q All right. Can you explain how an investigator gets a
25 case?

Brad Newton - Direct examination
By solicitor Smith

1 How does it go from the 9-1-1 call to getting to your
2 desk?

3 A So essentially what happens is, when you make a 9-1-1
4 call or a uniform patrol deputy responds to your location,
5 they will document the incident, whatever that, whatever
6 that may be. Once that incident gets documented, then it
7 gets sent -- forwarded to the investigations division at
8 which point in time the supervisor assigns that to a field
9 investigator.

10 Q All right. So, certain situations perhaps you could
11 respond immediately but often times you're responding days
12 after an event or --?

13 A Most of the time it is after the fact.

14 Q All right. Were you assigned a burglary that occurred
15 in -- on Church Street in Startex in Spartanburg County on
16 July 22nd of 2019?

17 A Yes, sir.

18 Q All right. And that was Jason Williams residence, 17?

19 A It was.

20 Q All right. And what information did you have initially
21 when you were assigned to the case?

22 A Initially, as I read through the report, it -- I, I
23 knew that it was a burglary that had occurred. I knew that
24 the point of entry was the -- at the back of the residence.
25 It forced -- it had been forced open and I knew Mr. Williams

Brad Newton - Direct examination
By solicitor Smith

1 had a, a list of several guns and other firearms related
2 materials that were stolen from his residence.

3 Q All right.

4 A In, in addition to that, Mr. Williams was able to
5 provide the video that we saw earlier.

6 Q All right. And did you -- have, have you ever met
7 Mr. Williams before this happened?

8 other -- there's been talk about a prior incident.

9 Did you have any involvement---

10 A I, I did and I was the one that handled that incident
11 as well.

12 Q All right. And that's where the -- I believe he said
13 there were eight and nine year olds stole the guns out of
14 his bedroom?

15 A Yes, eight -- from -- best of my recollection, they
16 were eight year olds.

17 Q Eight year olds.

18 Okay. And you ultimately got him all of his firearms
19 back?

20 A Yes, with the cooperation of their, their mother and
21 other family members.

22 Q All right. And did -- was -- did those family initiate
23 contact with you that they had the weapons or --?

24 A I can't recall specifically. But during our encounter,
25 we had several encounters, they were always very cooperative

Brad Newton - Direct examination
By solicitor Smith

1 and, and assisted us in retrieving those, those items.

2 Q So you went to the house where those children lived?

3 A Yes, I met with them a few different times.

4 Q Okay. And there's been some talk that they were
5 referred to some counseling and things like that.

6 Did you have any involvement in, in that?

7 A I, I spoke with the mother and I was sort of the
8 liaison with Mr. Williams and the mother, and there were
9 several programs that were recommended to her. And I
10 believe she followed up with those, with those -- some of
11 those programs for, for her young children.

12 Q All right. And the burglary occurred on the 22nd.

13 Did you meet with Mr. Williams on the, the 26th out
14 at his actual residence?

15 A Yes.

16 Q All right. Did he, did he walk you through the, the
17 house and where different actions had taken place?

18 A He did. Obviously I had seen the video. So, he, he
19 walked me through the entire residence so that I could see
20 exactly what I'd seen on video in person.

21 Q All right. Do you recall if the back-door was -- what
22 condition it was in at that time?

23 A I don't recall. I believe he had fixed it but I can't
24 be a hundred percent sure.

25 Q okay. Did you notice anything about the residence,

Brad Newton - Direct examination
By Solicitor Smith

1 about if it appeared to be a place that somebody lived in?

2 A It, it was clearly someone or, or a residence of, or a
3 home that somebody was living in.

4 Q Okay. It had functioning power and---

5 A Yes, TV, TV was there, power, heating and air, all
6 things that you would expect in your home.

7 Q Well, and, and other electronics---

8 A Yes.

9 Q ---laptops and things like that?

10 A Yeah. And, and that was one of the things that I
11 noticed that there were several other electronics there,
12 laptops, other desktop computers, that kind of thing that,
13 that weren't -- didn't appear to be touched.

14 Q Did you think, given the, the previous involvement,
15 that those children could have some connection to, to this
16 incident?

17 Did you do anything in regards to that?

18 A It, it was -- it was something that entered my mind.
19 So, I did. I went across the street and I spoke with the
20 mother again who I had dealt with previously about this
21 incident.

22 Q Were, were those white people, black people, the --
23 mixed or do you recall?

24 A The -- to the -- I believe the mother was white. The
25 children were of mixed race.

Brad Newton - Direct examination
By solicitor Smith

1 Q All right.

2 A Again, I can't be a hundred percent sure but I believe
3 that's the dynamics.

4 Q Okay. But they were not the, the males that you'd seen
5 on---

6 A They---

7 Q ---Mr. Williams video?

8 A No, they were clearly not.

9 Q All right. And you spoke, you spoke with the mother.
10 Did you have her watch the video?

11 A I did and I also spoke with some of the children there
12 as well.

13 Q Okay. Were they able to provide you any leads as to
14 who those people in the video may be?

15 A No.

16 Q Mr. Williams, did he have serial numbers and other
17 information associated with his firearms?

18 A He did and what serial numbers he had he gave to the
19 reporting officer.

20 Q All right. And do you -- what do y'all do when you
21 have stolen items that are things like that have serial
22 numbers and may be higher value than just a piece of
23 clothing?

24 what do you do as a property crimes investigator?

25 A So the first thing I would do is I would take those

Brad Newton - Direct examination
By solicitor Smith

1 serial numbers and the item description, whether it be
2 electronics, yard equipment, or firearms, we have a program
3 called Leadsonline. Any reporting business that accepts
4 these items, whether it be pawnshops or other type things,
5 they will enter that item description or serial numbers into
6 that program and that alerts us if, if, if there were to be
7 a match or anything like that.

8 Q And is -- that's a program that is like a partnership
9 with law enforcement?

10 A Yes.

11 Q Is that -- so if, if a pawn shop were to come into
12 possession of a stolen item, the program's designed to
13 encourage them to report that information?

14 A That's correct.

15 Q Even, even though that item is gonna be seized from
16 them and they, they've paid for it?

17 A Right.

18 Q And, and does the sheriff's office cut like a voucher
19 for them and -- as a result of -- through their
20 participation in Leadsonline?

21 A That, that was a program that, that was suspended some
22 time around 2019 or 2020. We used to do that. We do not do
23 that any longer.

24 Q But the companies just participate in it?

25 A We do. We still have -- all of the pawnshops in

Brad Newton - Direct examination
By Solicitor Smith

1 Spartanburg County participate in this program.

2 Q All right. And when you ran these guns in Leadsonline
3 on the, the 26th, what showed up?

4 A Nothing. I, I received no matches found and still to
5 this day have not received any matches.

6 Q All right. Is it common for you to, if you have a
7 surveillance video or, or stills or anything like that, is
8 it common to try to spread it about the Sheriff's office or
9 even I know on social media to see if either a law
10 enforcement officer or somebody in the public is familiar
11 with these people?

12 A Yes. Obviously we can't know everybody that's involved
13 in a particular incident. So, personally the way I start
14 out, I, I initiate an inner office email or communication
15 with the -- either the video or the still photos before I go
16 outside to the general public, and, and that's what I did in
17 this case.

18 Q Is that to protect the integrity of the investigation?

19 A It is.

20 Q All right. And, obviously, if the person sees that
21 they're being investigated, perhaps they might flee or
22 something like that --

23 A Right.

24 Q -- I guess you're concerned about?

25 Did you speak with Investigator Shue about this

Brad Newton - Direct examination
By Solicitor Smith

1 incident?

2 A I did.

3 Q All right. And did you play the video for him or had
4 he seen it from whenever it was sent out?

5 A I don't, I don't know when he initially saw it but he
6 and I looked at it together. He may have seen it during the
7 initial email or, or correspondents that I sent out. But he
8 and I then watched it again together.

9 Q All right. And was he able to identify anybody off of
10 the video?

11 A He was. He identified the first gentleman that walked
12 in the, in the residence as Mr. Gary and then the third
13 individual who was wearing a Topgolf culinary team t-shirt
14 he identified as Quez.

15 Q All right. And he did not know who the, the second
16 person was?

17 A No.

18 Q Did he put you in contact with a lady named Haley
19 Hunsberger?

20 A Yes.

21 Q Did you make contact with her?

22 A I did. I met with her at the Sheriff's office.

23 Q All right. Did you show her the video in this case?

24 A I did.

25 Q After meeting with Ms. Hunsberger, what was the next

Brad Newton - Direct examination
By solicitor Smith

1 thing you did in terms of investigating the case?

2 A After meeting with her, and her looking at the video, I
3 was able to go and sign warrants on the three individuals
4 involved.

5 Q All right. And that's Jaden Gary, Tyquez McKinney, and
6 Zion Miller?

7 A Yes, sir.

8 Q okay. All right. And August 2nd is then after
9 the -- do you know when those warrants were signed?

10 Is it July 30th or July 31st I believe?

11 A Looks like July 31st.

12 Q All right. And, and in a case like this, would, would
13 people from the sheriff's office have actually -- actively
14 been going out and looking for those individuals or just
15 hoping that they turned up on a traffic stop?

16 A Once the -- are you asking once the warrants were
17 signed?

18 Q Yeah.

19 Once warrants were signed, were people actively going
20 out and looking for those three or --?

21 A Yes. So after the warrants were signed, we, we went to
22 some of the locations we believed they might have been.

23 Q All right. And on August 2nd you arrested Tyquez
24 McKinney, is that correct, who's the first of the three to
25 be arrested?

Brad Newton - Direct examination
By Solicitor Smith

1 A Yes.

2 Q Later in that day, what happened after arresting Mr.
3 McKinney?

4 A Well, I conducted an interview with him.

5 Q All right. I mean what happened after that in terms of
6 Mr. Gary and Mr. Miller?

7 A So, Mr. Gary and Mr. Miller were brought to the
8 Sheriff's Office by Mr. Gary's mother at which point in time
9 they were taken into custody and I was able to interview
10 Mr. Gary.

11 Q All right. So y'all did not have to go out and pull
12 them out of an attic or something like that?

13 You -- he -- his mom brought him in?

14 A That's correct.

15 Q But they did have warrants and they were arrested when
16 they got to the Sheriff's Office?

17 A Yes.

18 Q All right. Did you -- what was -- you interviewed
19 people up in the interview rooms outside?

20 You don't interview in the lobby of the Sheriff's
21 office, right?

22 A No, we have a separate -- at the end of the building we
23 have a, a -- the investigation division where all of our
24 offices are and then we have several interview rooms which
25 is where we conduct the interviews.

Brad Newton - Direct examination
By Solicitor Smith

1 Q All right. And, and you first interviewed Mr. Miller.
2 Is that correct?

3 A I believe that's correct.

4 Q All right. Or excuse me.

5 A No, no, no.

6 Q Mr. Gary?

7 A Yeah, I interviewed Mr. Gary first.

8 Q All right. Did, did you invite his mother to come with
9 him to do an interview?

10 A Not to my recollection.

11 Q Okay. Do you know how old he was at the time that this
12 happened?

13 A At the time he was 17.

14 Q All right. So Mr. Gary came up to you in a interview
15 room with -- do you know if he was handcuffed or anything
16 else like that, or shackled or --?

17 A He may have been handcuffed in the lobby, but once he
18 was brought upstairs and in that interview room, he was no
19 longer handcuffed.

20 Q All right. And when, when you're doing an interview
21 like this where somebody has, although they came
22 voluntarily, they're in your custody, do you issue them
23 Miranda warnings or rights?

24 A Yes, we have a pre-interrogation waiver that includes
25 the individual's name, the date, the time that it's

Brad Newton - Direct examination
By Solicitor Smith

1 occurring and it, it covers the entire Miranda warnings.

2 Q All right. I'm gonna hand you State's Exhibit 2 and
3 ask if you can tell me what that is.

4 A That's the pre-interrogation waiver that I covered with
5 Mr. Gary during that interview.

6 SOLICITOR SMITH: Your Honor, at this time we'd move
7 State's Exhibit 2 into evidence.

8 MR. SCHULTZ: No objection.

9 THE COURT: Without objection, State's 2 is in.

10 (WHEREUPON, State's Exhibit No. 2 was received into
11 evidence at this time.)

12 Q This is a standard form that sheriffs, investigators,
13 and road deputies sometimes conduct with defendants?

14 A Yes, sir.

15 Q All right. Who fills out this information at the, at
16 the top?

17 A That is my poor handwriting.

18 Q All right. And every -- everything else is your
19 handwriting except the signatures for Mr. Gary here and, and
20 here?

21 A Yes, sir.

22 Q All right. So do you begin by going over some
23 background information?

24 It's got his age, I believe the time that the interview
25 occurred, which was a little after lunchtime.

Brad Newton - Direct examination
By Solicitor Smith

1 Is that right?

2 A Yes.

3 Q All right. And that he was 17 and his address.

4 when you went over this, you were recording as well.

5 Is that --

6 A Yes, sir.

7 Q -- or audio recording?

8 A Yes, sir.

9 Q All right. And you go over each right.

10 Did he seem to have any trouble understanding what you
11 were saying?

12 A No, sir.

13 Q Did he ask any questions of you about tell me more
14 about what it means I can have a lawyer or I don't have to
15 answer questions, anything?

16 A No, sir, he did not.

17 Q Can you describe what Mr. Gary's appearance and
18 behavior was when you were interviewing him?

19 A He was eager to talk. He wanted to express his side
20 of, of the incident, his side of the story, and, and get
21 that information out there to us.

22 Q All right. So this -- filling out this form was not
23 difficult?

24 He wasn't hesitant---

25 A No.

Brad Newton - Direct examination
By solicitor Smith

1 Q ---at all?

2 A No, sir.

3 Q And then -- so there's two signatures that -- the, the
4 first is that he understands his rights and then the second
5 is that, understanding his rights, he wants to talk with
6 you?

7 A Correct.

8 Q All right. And he, he indicated yes to both of those?

9 A Yes.

10 Q Do you remember if there was anybody else in the
11 interview room when you did this?

12 A When, when I conducted the bulk of that interview, it
13 was, it was by myself.

14 Q All right.

15 A There may have been somebody step in just for a brief
16 moment in time, either at the beginning or potentially at
17 the end, but, for the most part, it was just he and I.

18 Q There wasn't anybody standing behind him---

19 A No.

20 Q ---or looming over him?

21 What about -- it's, it's around lunchtime.

22 Did you ask him if he wanted anything to drink or did
23 he mention anything about that or --?

24 A I, I did not. He -- however, he didn't, he didn't
25 mention wanting any water, food, or anything of that sort.

Brad Newton - Direct examination
By Solicitor Smith

1 Q All right. But he -- and he'd come there on his own as
2 well?

3 Not---

4 A Yeah.

5 Q ---snatched out in the middle of the night?

6 This is the---

7 A Correct.

8 Q ---middle of the day, correct?

9 A Yes, sir.

10 Q All right. Were -- did you discuss any schooling or
11 how far he'd been in school?

12 A Well, as you, as you see on the form there, the last
13 line is -- discusses the number of years in school.
14 Typically what I like to do, when I'm talking with
15 individuals, is find out how long were they in school, in
16 school and which school did they attend. A lot of times
17 I'll ask about sports and things of that sort, if they
18 participated in extra curricular activities, and that type
19 of thing.

20 But Mr. Gary indicated that he completed the tenth
21 grade. I think he had started the eleventh but didn't
22 finish at -- I think it was Byrnes High School.

23 Q All right. So, was -- did you ask him anything about
24 being in, in any special classes or, or did you have any
25 reason to think that there might be some sort of deficit

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1 with Mr. Gary or --?

2 A No, I didn't ask that and nor did I get the inclination
3 that that would be a question that needed to be asked.

4 Q Okay. So did he come off as bright and
5 understanding---

6 A He---

7 Q ---of what was going on?

8 A Yes, he did.

9 Q How about being under the influence of anything?

10 I know it was the middle of the day but did you -- you
11 have training and experience as a trooper.

12 Did you have any hint that he was intoxicated either by
13 alcohol or drugs or anything like that?

14 A No, sir.

15 Q If you did, if you did think he was intoxicated or
16 grossly intoxicated, would you have stopped the interview?

17 A We -- had I gotten that the, the, the inclination that
18 something else was going on, whether it be drugs or, or
19 alcohol impairment, then we certainly would of taken a step
20 back, analyzed that a little further. If we needed to, we
21 could delay the interview until a more reasonable time.

22 Q All right. But you stated it was your perception that
23 he wanted to talk to you?

24 A Yes, sir.

25 Q And was eager even as you're going through the rights,

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1 he's ready to, to talk?

2 A Right.

3 Q And acted like he knew, knew all of that?

4 A Yes.

5 Q Is that -- I mean it's on TV with everybody but -- all
6 right. And you said you audio recorded the interview,
7 correct?

8 A Yes, sir.

9 Q I'm gonna hand you State's Exhibit 1 and ask if you can
10 tell me what that is.

11 A That's a copy of the audio interview.

12 SOLICITOR SMITH: All right. Your Honor, at this time
13 we'd move State's Exhibit 1 into evidence.

14 MR. SCHULTZ: No objection.

15 THE COURT: Without objection, State's 1's admitted.

16 (WHEREUPON, State's Exhibit No. 1 was received into
17 evidence at this time.)

18 SOLICITOR SMITH: And to publish it to the jury, Your
19 Honor?

20 THE COURT: Yes, sir.

21 Q Did you explain to him what this was about or did you
22 think that he knew what this was about?

23 A I think he knew what it was about. I do believe I
24 briefly explained what it was but, for the most part, he, he
25 was very aware of what this discussion was that he needed to

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1 have.

2 Q All right.

3 (WHEREUPON, State's Exhibit No. 1 was published to the
4 jury at this time.)

5 Q Did you end up showing Mr. Gary the, the video from
6 this case?

7 Do you know?

8 A Yes.

9 Q How -- what happened when you did that?

10 A Essentially, once we're watching the video, he points
11 out who was who in the line and just kind of confirms
12 everything that he confirmed in the, in the interview.

13 Q From, from the interview that they just listened to,
14 you were -- you believed that he was the one with the gun in
15 this or --?

16 A Yes.

17 Q -- he said he was?

18 A He identified himself as the one with the pistol.

19 Q All right. Did he ultimately end up doing a written
20 statement as well?

21 A He did.

22 Q Is that after that video ended and after you showed him
23 the, the video?

24 A Yes, sir.

25 Q All right. I'm gonna hand you State's Exhibit 3. Ask

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1 if you can identify what that is.

2 A That's the written statement from Mr. Gary on that day.

3 SOLICITOR SMITH: Your Honor, at this time we'd move
4 State's Exhibit 3 into evidence.

5 MR. SCHULTZ: No objection.

6 THE COURT: No objections. Without objections it's
7 admitted.

8 (WHEREUPON, State's Exhibit No. 3 was received into
9 evidence at this time.)

10 Q Was there any new information in this or did it cover
11 just the -- basically the same details that were --?

12 A It's essentially what, what he stated in the, the audio
13 recording we just heard.

14 Q Did you -- was he -- were you standing there with him
15 when he wrote that or sometimes I think y'all leave the room
16 even?

17 A So, I, I can't remember. Sometimes I'll come in and
18 out but, for the most part, I either try to stay in the room
19 or close to the room just in case any questions arise or
20 anything of that sort.

21 Q All right. And I -- we talked about it earlier but
22 just now that the jury has heard that, you believe that
23 Mr. Gary was, was very, I guess, open with you in discussing
24 this matter with you?

25 A Yes, sir.

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1 Q He didn't deny it initially and then y'all meander---

2 A Right.

3 Q ---where he finally admitted it?

4 A No, sir.

5 Q Did you -- were you able to do anything in terms of
6 finding Bethany, the white girl across the street from
7 Snapchat?

8 A No. Like I say, I went across the street. I also
9 tried to talk with several other neighbors that would of
10 matched that description. At a later point in time I tried
11 to get additional information from Mr. Gary to try to track
12 down some of these people that either would of had some of
13 the firearms or to try to track her down to try to see if,
14 you know, what, what her involvement, if any, was but to no
15 avail.

16 Q All right. And if Bethany did exist, would you have
17 think that this excused the actions?

18 A No, sir.

19 Q All right. Would -- the details that were given in
20 that, were they consistent with what you had seen and, and
21 through your review of the case in terms of how they entered
22 the house and---

23 A Yes, sir.

24 Q ---what -- they, they went into the back-door and---

25 A Correct.

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1 Q ---that that led into the kitchen?

2 I think he confirmed that as well.

3 A Yes. And, and, again, you know, he confirmed that he
4 tried to -- that they initially tried to go in the front
5 door and then tried to go in the back-door. It was secured
6 and, and Mr. Miller forced their way in by, by kicking it.

7 Q All right. And there, there's -- it's somewhat
8 inconsistent. At the very end, to me, it sounded like he --
9 did he tell you that he thought that this person was a low
10 grade drug dealer like he's acknowledging that it was
11 somebody's house?

12 A He did. He -- and, and I think we heard it on the
13 video that he said -- I think that was verbatim what he
14 said. I thought the -- that was a low grade drug dealer's
15 house.

16 Q All right. But before he had said he thought it was
17 abandoned and what did you understand about this -- him
18 being set up, him and his guys being set up?

19 what did you --?

20 A I, I never really got a full grasp on that, on how he
21 thought they were being set up, or what the end game would
22 be for this -- the, the Bethany individual for setting him
23 up. There never really was a, a strong explanation for
24 that.

25 Q And he did confirm the other two people that you have

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1 arrested as being the participants in this?

2 He knew their names and---

3 A Yes, sir.

4 Q ---gave that up freely?

5 A Yes, sir.

6 Q All right. At anytime during your time with him did he
7 ask for a lawyer or a break or to talk to his mother or
8 anything?

9 A No, sir.

10 Q I know we've heard there's -- obviously you had a
11 little discussion afterwards but at no point during anything
12 did he ask for that?

13 A No.

14 Q After your interview with him, going over the video
15 with him, did you have any doubt that he is the, the first
16 person on -- seen on State's Exhibit 18, the surveillance
17 video, the man with the firearm out?

18 A No, sir.

19 Q Were you ever able to recover any of Mr. Williams
20 weapons?

21 A We were not.

22 Q And did -- you tried to do that?

23 A We, we made several efforts after the fact. Met with
24 Mr. Gary and his mother. They've had my personal cell phone
25 for the two years that we've been awaiting trial and have

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1 received only one communication from him just recently.

2 But, again, nothing ever -- nothing ever materialized from
3 attempting to get these firearms back.

4 SOLICITOR SMITH: Just one second.

5 (Pause.)

6 Q Oh, and the, the man you interviewed, Jaden Gary, is he
7 in the courtroom today?

8 A Yes, sir, sitting next to Mr. Schultz.

9 SOLICITOR SMITH: All right. That's all I have.

10 THE COURT: Okay. Hold, hold up just a second,
11 Mr. Schultz.

12 MR. SCHULTZ: Yes, sir.

13 THE COURT: We been running now for, with the jury, for
14 an hour, almost an hour and a half. We've been running
15 ourselves longer than that. So, we're gonna have to take --
16 we're gonna take our afternoon break. This is gonna be
17 about a 15 to 18 minute break.

18 Let me ask a question.

19 Is there a juror who smokes and wishes to smoke?

20 (WHEREUPON, there was no response.)

21 THE COURT: Very good. Thank you. Thank you.

22 These, these folks heard me say it plenty of times.
23 Smoking killed my sister, 48 years of age. So, I'm glad
24 nobody's smoking.

25 Okay. We're gonna take the afternoon break. So

1 they'll be coffee. They'll be water. Maybe some crackers
2 or something if you need something, restroom facilities.
3 This will be your afternoon break and then we'll come back
4 and finish for the day.

5 Mr. Foreman, if you'd take -- don't talk about the
6 case. It's not at an end.

7 Mr. Foreman, take your jury out.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: Investigator, you may leave the stand. If
11 you'd please be back there about four minutes after the
12 hour, refresh yourself, get some coffee, whatever you might
13 need to do. You can't talk to anybody about your testimony.

14 THE WITNESS: Okay. Thank you.

15 THE COURT: I'll be looking for you there about four
16 minutes after the hour.

17 THE WITNESS: All right. Thank you.

18 THE COURT: Thank you, sir.

19 Everybody, we'll be, be in recess until about five
20 minutes after.

21 (WHEREUPON, a short recess was taken at this time.)

22 THE COURT: Okay. We ready for the jury?

23 MR. SCHULTZ: Yes, sir.

24 THE COURT: okay. Very good.

25 SOLICITOR SMITH: We, we have found the actual

1 indictments. Sharon found them. So --.

2 THE COURT: okay.

3 SOLICITOR SMITH: All those that were very worried like
4 me, they've been, they've been found.

5 (WHEREUPON, the following takes place within the
6 presence of the jury.)

7 THE COURT: Thank you, ladies and gentlemen. You may
8 be seated.

9 Mr. Foreman, any matters for the jury?

10 THE FOREMAN: No, sir.

11 THE COURT: Everybody's good?

12 THE FOREMAN: Everybody is ready.

13 THE COURT: Ready to go.

14 Your witness.

15 MR. SCHULTZ: Yes, sir, Judge. Thank you.

16 CROSS-EXAMINATION

17 BY MR. SCHULTZ:

18 Q Officer Newton, how are you today?

19 A I'm good, sir.

20 How are you?

21 Q Very good.

22 officer Newton, you've been with the sheriff's office
23 now for how many years?

24 A Right at eight.

25 Q Right at eight?

1 A Yes.

2 Q Okay. And, and you've, in that time, you've done
3 probably hundreds of interrogations, correct?

4 A Yes, sir.

5 Q Okay. And before that you were actually in Greenville
6 City.

7 Is that not, not correct?

8 A Greenville Police Department and the Highway Patrol.

9 Q All right. Highway Patrol.

10 A Yes.

11 Q So you had a lot of experience in criminal matters,
12 correct?

13 A Yes, sir.

14 Q Okay. And you've been doing this for a long time,
15 correct?

16 A For a little while.

17 Q Yes, sir. I understand.

18 May I approach the witness, Judge?

19 THE COURT: Yes, sir.

20 MR. SCHULTZ: Thank you.

21 I'm referring to State's Exhibit 3 and this is
22 Mr. Gary's statement to you and you're obviously familiar
23 with that, officer, correct?

24 A Yes, sir.

25 Q All right. And you were in the room when Mr. Gary

1 signed and dated that, correct?

2 A Yes.

3 Q Okay. Did you also sign that and date that as well?

4 A I didn't not sign that. That's another -- that's
5 Sergeant Paul Norris's signature.

6 Q Paul Norris.

7 Okay. And was Officer Norris in the room when this,
8 this statement was given by Mr. Gary?

9 A He could of come in towards the end. I had an
10 independent person sign that.

11 Q All right. So what's the reason why you didn't sign
12 it?

13 I mean you took the statement.

14 A Just had an independent person come in and, and seen --
15 you know, signed it.

16 Q All right. That's fine.

17 A No, no reason.

18 Q All right. Thank you.

19 Now, and you've, you've read the statement before
20 today, correct?

21 A I have.

22 Q Okay. And this, this statement says and, and this,
23 again, is this Mr. Gary's handwriting and your handwriting
24 or your handwriting?

25 A That is -- that is his handwriting.

1 Q All right. Very good.

2 okay. And you weren't telling him what to say or
3 anything like that, right?

4 A No, sir.

5 Q You weren't compelling him or anything, coercing him?

6 A No, sir.

7 Q Okay. It, it says in Line 3 -- well, actually the --
8 probably be better for you to just read the last -- just
9 could -- officer, could you please start from there?

10 Right there---

11 A Where it says me?

12 Q ---where it says me, yes, sir.

13 A So me and my brothers went in and got them but only,
14 was capitalized and underlined, to sell for money to help
15 get ourselves together cause of our problems -- cause of
16 problems we were facing at home. After selling the guns, we
17 left and was dropping people off.

18 You want me to go to the end?

19 Q Yes, sir.

20 A Okay. During the drop-off I was robbed by three men
21 wearing red flags on their faces. Nothing was done to me.
22 So, I went home. I never knew anybody stayed there. Never
23 knew how bad this was bound to turn out but I can get the
24 guns back.

25 Q You said -- Jaden said in that statement he never knew

1 that anybody stayed there.

2 Is that correct?

3 A That's what the statement says.

4 Q What, what did he mean by that?

5 A If, if I'm assuming, I, I, I would say he didn't think
6 anybody lived there.

7 Q Okay. Do, do you -- did he tell you why he thought
8 that nobody lived there like at a later time or do you
9 remember that?

10 A I don't remember him explaining that any further.

11 Q Okay. What, what about the other two kids there?

12 Did, did they think that there was somebody living
13 there?

14 A I'll be -- I'd have to refer back to their statements.

15 Q Okay. What, what about -- well, let's, let's refer
16 to -- you were in the courtroom today or obviously, right?

17 A Yes.

18 Q Okay. Did you see the picture that the officers took
19 there of the, the house there?

20 A I did.

21 Q Okay. And I probably offended the, the homeowner
22 there. Certainly didn't mean to.

23 But, anyways, did you, did you think that house was
24 well cleaned or was it messy?

25 A I guess that's a -- objective. There was, there was a

1 lot of -- there were a lot of items kind of throughout the
2 house. My wife would not be happy if I kept the house that
3 way. But if my wife wasn't around for a week, it may end up
4 looking that way.

5 Q okay. About the same with me too. So -- okay. You
6 said that -- it's, it's sort of objective standard, right,
7 or is it subjective standard or is it objective standard?

8 A I, I guess it's up, up for one's interpretation.

9 Q okay. So, subjective, right?

10 A okay.

11 Q okay. Now, could you, could you reasonably think that,
12 just walking in the, the back-door there, that maybe, you
13 know, someone the age of Gary, Jaden, would of, would of
14 thought well, this is an abandoned house?

15 Do you think that would of been a reasonable assumption
16 to make?

17 A I wouldn't think so.

18 Q okay. All right. So, let me ask you this.

19 When, when you interviewed him, interviewed Jaden for
20 the first time, did you interpret with him or did you assume
21 with him that he didn't think this was a big deal?

22 A The interview or the actual incident?

23 Q Both.

24 A The fact that he armed himself and took a gun inside of
25 someone else's house tells me that he thought it was

1 serious.

2 Q okay. what about the interview?

3 A The interview he seemed eager to want to get his
4 information, get his side of the story out, and explain to
5 me what happened and why he did what he did.

6 Q okay. And one of the reasons why he wanted to get his
7 side of the story out is that he thought that the, the house
8 was abandoned, right?

9 A well, I don't know because he, he did say in his
10 interview that he thought a low level drug dealer lived
11 there.

12 Q But he also said the house was abandoned, right?

13 A I don't, I don't know that he said abandoned. But
14 no -- he said in his statement he didn't think anybody
15 stayed there.

16 Q okay. All right. He didn't think anybody stayed
17 there.

18 okay. Don't want to put words in your mouth, right?

19 A (WHEREUPON, the witness nods affirmatively.)

20 Q okay. Let me ask you this. He said a couple times or
21 Jaden said a couple times in his statement that he wasn't
22 sure if, if anybody was staying there or somebody moved out.

23 Do you remember that?

24 A I do.

25 Q okay. Do you also remember him saying they must be

1 moving out?

2 A Yes.

3 Q okay. Do you also remember him saying oh, there was
4 stuff everywhere?

5 A I do.

6 Q okay. Do you also remember saying there were trash
7 bags everywhere?

8 A I remember him saying that. I don't recall seeing that
9 in the photographs.

10 Q well, that's fine but do you recall him saying that?

11 A Yes.

12 Q okay. And he also said there was a bunch of junk
13 everywhere, right?

14 A He did. He said that.

15 Q okay. All right. Do you believe that the photographs
16 back up sort of what he said, that the house was in disarray
17 and messy?

18 A It, it may have been cluttered. I also recall him
19 saying that had he seen photographs of someone while they
20 were in the house, then they would of left and, as we saw in
21 the photographs from the crime scene, that there were
22 photographs in the gentleman's bedroom.

23 Q All right. what about in the, in the storage unit or
24 the, the entry way into the kitchen?

25 Sorry.

1 Were there any pictures there of anybody?

2 A Any pictures?

3 Q Yeah, pictures of family or --?

4 A I don't keep family photos in my kitchen either.

5 Q Right.

6 A But there was a kitchen -- there was several kitchen
7 utensils. There was recycling packed up there. There was,
8 you know, things that you would typically find in your
9 kitchen that were, some could say, cluttered. Some could
10 say, you know, I wasn't there prior there to. But I think
11 Mr. Williams described it well as saying that hey, things
12 were in an orderly fashion the way that he felt they were
13 orderly. They weren't after the door was kicked in.

14 Q But that -- that's -- that, that, again, is, is sort of
15 a -- well, let me ask you this.

16 I mean you, you saw the video, right?

17 A Uh-huh. (Affirmative).

18 Q Did these, did these people -- did the three gentlemen
19 there that came in, did they go around the coffee table just
20 like smashing things?

21 Did they -- did you see anybody like throw stuff up, up
22 against the wall or drop things or just, just create a whole
23 big, you know, storm of, of activity there?

24 A No, they were very cordial as they went in to steal his
25 firearms.

1 Q Okay. All right. But they didn't, they didn't mess up
2 the property that much other than what you saw in the video,
3 correct---

4 A Well---

5 Q ---cause they---

6 A Other than, other than Mr. Gary saying that one of his
7 codefendants kicked in the back-door and damaged the rear
8 door and then stealing the items.

9 Q That's another thing I wanted to ask you about.

10 Did you, did you take that picture of the door---

11 A I did not.

12 Q ---in the---

13 A No, sir.

14 Q That was another officer, right?

15 A It was one of our forensics officers.

16 Q Okay. Did you ever compare that with any known, I
17 guess for lack of a better word, boot, boot marks, marks or
18 sneaker marks with any of the people that were charged in
19 this?

20 A No.

21 Q Okay. All right. Would that have been a good, been a
22 good idea to?

23 A Well, I mean we're talking about what, 10 days later,
24 trying to find the exact pair of shoes after all three of
25 them have come in and openly discussed the case with me. I

1 didn't feel that that was, that that was necessary.

2 Q Did you walk around the, the, the entirety of the
3 house?

4 A Yes, sir.

5 Q Okay. And did you walk in the, the back where the
6 entry was made?

7 Did you do that?

8 A Yes.

9 Q Okay. Where did you -- did, did you walk from Elm
10 street or did you walk from church street if you remember?

11 A So -- well, so, obviously -- well, not obviously but I
12 parked in front of the house, which I believe is church
13 street --

14 Q Uh-huh. (Affirmative).

15 A -- and Elm Street would be the next intersection if I'm
16 remembering correctly. So, I parked in front of the house
17 or in the driveway, one of the two, and then would of walked
18 around, walked around the house but I, I did. I made a
19 couple of laps around the house and walked across the street
20 and, and even down the street. I believe it's Elm Street
21 that you're referring to, to, to talk with other neighbors
22 who may have seen or had information on this particular
23 case.

24 Q Did any other neighbors have any particular information
25 on it?

1 A No, sir.

2 Q Okay. All right. So when you walked to the back of
3 this house, did you, did you climb the ravine there?

4 A I, I don't recall. I don't, I don't remember climbing
5 anything.

6 Q All right. So, how, how did you -- when you, when you
7 responded, right, were you the first officer on the scene or
8 did you come later?

9 A No, I would of come a few days later.

10 Q Okay. A few days later or a few hours later?

11 A No.

12 Q Maybe I misunderstood you.

13 A If, if, if I'm -- and I don't have the initial report
14 here in front of me. My, my -- I went out there, responded,
15 met with him on July the 26th, which I think the initial
16 report was July 22nd, 21st, somewhere in that timeframe.

17 Q Okay. So, so, the first time that you actually
18 encountered the -- Mr. Williams was four days after the, the
19 break-in?

20 A No, it was actually several weeks prior to that during
21 the --

22 Q Okay.

23 A -- the first incident.

24 Q The first incident --

25 A Right.

1 Q -- with the eight year olds --

2 A Right.

3 Q -- parent?

4 okay. All right. And do you know how entry was gained
5 in the eight year old case?

6 A From what I recall, it was through an unsecured window.

7 Q okay.

8 A There was no forced entry.

9 Q All right. No forced entry.

10 okay. And in, in this case, was there any forced entry
11 through the front windows?

12 A No.

13 Q Was there any forced entry through the, the front door?

14 A No, sir, during the interview he said that it was
15 locked.

16 Q okay.

17 A That's why they went to the rear.

18 Q All right. So, by, by that assumption, you're, you're
19 also saying that Mr., Mr. Gary and the other people went to
20 the front door and couldn't get in there.

21 Is that what you're saying?

22 A That's what he said.

23 Q okay. Did you ever run that for fingerprints or
24 anything like that, the, the front doorknob?

25 A I don't recall if I, I -- again, our forensics people

1 would of responded out there prior to me. So, I, I don't
2 recall if they did or not.

3 Q But as far as you know there was not forensics analysis
4 done of the --?

5 A There, there may well -- there may well have been.

6 Q okay. All right. Mr. Gary was cooperative with you,
7 right?

8 A Yes, sir.

9 Q okay. And he never like raised his voice with you or
10 anything like that?

11 A No, not at all.

12 Q okay. All right. And after he was -- you know, nice
13 to you, right?

14 A Yeah. Yes, sir.

15 Q And you were nice to him as well?

16 A I tried.

17 Q okay. on that video -- were, were you here present
18 watching that video in the morning there?

19 A This morning?

20 Q Yes, sir.

21 A Yeah.

22 Q okay. on that video, did you ever see any incidents of
23 forced entry on that video?

24 A on the video, no, it doesn't cover the kitchen.

25 Q Right. I realize that but you, you don't see anything

1 like flying off the door, right, or --?

2 A No, sir.

3 Q I, I know the angle's different.

4 A Right.

5 Q But you can't---

6 A Right. Yeah, the, the -- I can't see it. It doesn't
7 cover the kitchen.

8 MR. SCHULTZ: Okay. Beg the Court's patience.

9 (Pause.)

10 MR. SCHULTZ: That's all I have, Your Honor.

11 THE COURT: solicitor, anything?

12 REDIRECT EXAMINATION

13 BY SOLICITOR SMITH:

14 Q Mr. Schultz asked you if you thought it'd be reasonable
15 to think that this house was abandoned and then you said no.

16 why do you think it's not reasonable?

17 A well, there, there were a lot of personal belongings
18 there. Again, each individual room had items that you would
19 expect to find in those rooms. The kitchen had utensils --
20 kitchen utensils, you know, a spice rack. The living room
21 had a couch, fully, you know, fully furnished bedrooms,
22 studio, xbox controllers, televisions. Everything you would
23 expect to see in a functioning home as well as if I were
24 moving, I would have several boxes packed up ready to move,
25 clothing bagged up or boxed up, as opposed to being in the

1 dresser and that type of thing.

2 Q I mean did you believe Mr. Gary that he thought that
3 the house was abandoned?

4 A No, sir, looking, looking at -- looking at that and,
5 and, and walking, you know, or retracing his steps through
6 that video, I, I don't believe that, that he thought that
7 house was vacant or abandoned or no one was staying there.

8 Q What about the fact that he had a gun out and was
9 creeping through the house?

10 what did that make you think?

11 A To, to me that tells me that you would potentially
12 expect someone to be there as you're methodically walking
13 through the house with a gun telling the other participants
14 to, to, to be quiet by motioning with the finger over their
15 mouth and, and, again, they, themselves, arming themselves
16 with kitchen knives from the kitchen.

17 Q Right.

18 And you said there was cutlery but you didn't mention
19 that it was taken out of the knife block and moved---

20 A Right.

21 Q ---inside that?

22 That's all. That's all I have, Your Honor.

23 THE COURT: Anything as to that little bit?

24 MR. SCHULTZ: No, sir.

25 THE COURT: Thank you.

1 officer, you may step -- investigator, you may step
2 down. Please be careful.

3 THE WITNESS: Thank you, sir.

4 SOLICITOR SMITH: Your Honor, the State does not have
5 any more witnesses.

6 THE COURT: State rests?

7 SOLICITOR SMITH: Yes.

8 THE COURT: Mr. Foreman, ladies and gentlemen of the
9 jury, the state has now rested and let me tell you what that
10 means.

11 It means that the state does not intend to call another
12 witness. It means the state does not intend to put in
13 another piece of paper or an exhibit or any recording or
14 whatever. They -- they're, they're, they're done presenting
15 their case known as the case in chief.

16 That brings us to one of those times where I have to
17 have you out of the courtroom for what's known as motions
18 because, under our rules here, they're certain motions that
19 have to be made. Those are matters of law and not matters
20 of fact, and, and jurors are not allowed to be in the
21 courtroom during that time period.

22 That's gonna take a good 15 to 20 minutes of, of time
23 and we are at 4:35PM this evening. I'm not gonna keep you
24 back there to bring you back out here and run 10 or 12 more
25 minutes till five o'clock or so. So we're not gonna do

1 that. It's late in the day.

2 So, at this time, Mr. Foreman, ladies and gentlemen, I
3 think that's rain that's hitting this courthouse that you
4 heard there. There are glass windows back here. We usually
5 can hear it hitting these windows.

6 I'm gonna release you for the evening with the
7 instructions that you're not to do -- talk about the case.
8 Don't do any research about the -- whatsoever about the
9 case. Don't bring a cell phone or a smart tablet or
10 anything back. You can use those at home but don't do it --
11 don't use it to try to learn anything about the case.
12 Again, you and I, under our law, have to learn in this
13 courtroom about this case and only in this courtroom.

14 So, but in -- encourage you to have a good evening.
15 Enjoy yourselves. You're working here. So when you go
16 home, the last thing you want to talk about is work anyway.

17 So, Mr. Foreman, if you'd take your jury out and be
18 excused. I want you to be back in the morning at 9:30, at
19 9:30. We're gonna be here at eight o'clock and we're gonna
20 talk about how the day's gonna go tomorrow so I can get an
21 idea time wise because remember I got the rest of your
22 brothers and sisters waiting on a phone call. They got to
23 call that number after 6:00. You don't have to call that
24 number. You know where you're suppose to be.

25 But I got to talk with the lawyers here in a little bit

1 and -- when you leave about what message to bring them back
2 and, right now, I'm anticipating bringing them back in the
3 early afternoon tomorrow.

4 I'll talk with you about that when I get, get them out
5 of here. But I got to leave a message for them cause they
6 want to have as much fun as you're having and I'm gonna give
7 them an opportunity to do that tomorrow.

8 With that, Mr. Foreman, if you'd take your jury out and
9 be excused for the evening.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: Okay. Any matters -- we've got a few
13 minutes here.

14 Any matters from the State?

15 SOLICITOR SMITH: Nothing from the State, Your Honor.

16 THE COURT: From the defense.

17 MR. SCHULTZ: Your Honor, at this time the State is
18 rested obviously and I will move for a directed verdict
19 based upon all the evidence that is admitted thus far.

20 THE COURT: Any -- you want to be heard on that,
21 solicitor?

22 SOLICITOR SMITH: Your Honor, I think there's ample
23 evidence to send it to the jury. There's an admission that
24 he was armed, that he entered. The, the behavior on the
25 video shows that he likely did not -- that he had an

1 intention to doing something wrong and explicitly said he
2 was going to steal guns. Mr. Williams told him he didn't
3 have permission and he did testify that the value of the
4 goods was a little bit over \$2,000.

5 Thank you.

6 THE COURT: All right. The motion for directed verdict
7 is denied. As everyone here knows, the Court does not weigh
8 the evidence. The evidence -- the Court looks at the, at
9 the evidence in the record in a light most favorable to the
10 nonmoving party, which is the State, and if there's any
11 evidence of questions of fact, it is to go to the finders of
12 fact who are the jurors.

13 So, motion is denied.

14 Anything else, Mr. Schultz.

15 MR. SCHULTZ: Not at this time, Your Honor.

16 would you like us back doing a conference at eight
17 o'clock tomorrow?

18 THE COURT: Well, I thought we would talk a little bit
19 right now about tomorrow and we can do that right back here
20 and let everybody else be released so they can lock the
21 courtroom and so forth. I'm not gonna have the colloquy
22 with your client at this point but I'm, I'm gonna do that in
23 the morning --

24 MR. SCHULTZ: Yes, sir.

25 THE COURT: -- and I'll let you talk to him about his

1 choice of testifying or not testifying.

2 MR. SCHULTZ: Yes, sir.

3 THE COURT: Okay. But we'll get off the bench and off
4 the record and nobody's in the jury room, are they?

5 THE CLERK: No, sir, Your Honor.

6 THE COURT: We'll just go right here. So -- and let's
7 just chat about time wise tomorrow cause I also got to
8 figure out -- that's where Sarah is. I left her talking to
9 the solicitor and the clerk about what time to bring the
10 jury back for the next case tomorrow.

11 So, let's, let's chat. Let's go back there and chat a
12 little bit.

13

14 (WHEREUPON, Court was in recess for the evening.)

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1 Wednesday, September 1st, 2021

2

3 THE COURT: Okay. We're back on the record of the
4 State versus Jaden Gary.

5 Mr. Schultz.

6 MR. SCHULTZ: Your Honor, I've had the opportunity to
7 talk to Mr. Gary several times in my representation of him.
8 This is the second time that we've tried this case. The
9 first case resulted in a mistrial due to lack of jurors but
10 I've had the occasion to talk to him about his right and his
11 ability to testify.

12 At this time, based upon my consultations with him, he
13 does not wish to testify, unless that's changed in the last
14 couple minutes, but he does not wish to testify at this
15 time.

16 THE COURT: Madam Clerk, will you swear Mr. Gary?

17 THE CLERK: Yes, sir.

18 (WHEREUPON, the defendant was placed under oath at this
19 time.)

20 THE COURT: Thank you.

21 Sir, you may lower your mask if you feel comfortable
22 doing so. That's a personal decision.

23 okay?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: At this time I'm gonna explain certain

1 rights that you have. If something I say you do not
2 understand, please stop me and I'll let you talk to your
3 lawyer.

4 okay?

5 THE DEFENDANT: (Nods affirmatively.)

6 THE COURT: We have reached the stage of this trial
7 where you may present a defense. You have the right to
8 claim the protections given to you by the Fifth Amendment to
9 the Constitution of the United States Constitution which
10 says, in part, no person shall be compelled in any criminal
11 case to be a witness against himself.

12 You have the right also to claim the protections given
13 to you by Article 1, Section 12 of the South Carolina
14 constitution which says, in part, no person shall be
15 compelled in any criminal case to be a witness against
16 himself. This means you can not be required to testify.
17 You have the right to testify but no one can make you
18 testify.

19 This is a personal right and no one can waive this
20 right except you. If you decide to testify, you'll be
21 subject to the same rules that govern other witnesses and
22 you may be examined and cross-examined on relevant issues in
23 this case.

24 Additionally, if you have any convictions involving
25 dishonesty or false statements or if a crime's punishable by

1 imprisonment for more than one year, and this court
2 determines the probative value of admitting the evidence
3 outweighs its prejudicial effect, the solicitor will be able
4 to introduce your record to attack your credibility. If you
5 decide to testify, the decision on your part must be freely,
6 intelligently, and voluntarily made with knowledge of the
7 protections given to you by the Constitutions of the United
8 States and the State of South Carolina and the consequence
9 of your decision.

10 If you decide not to testify, I will instruct the
11 jurors they can not give the fact that you did not testify
12 any consideration and there will be no prejudice to you
13 because you did not testify. The decision is entirely
14 yours, sir.

15 Do you understand what I have explained?

16 THE DEFENDANT: Yes, I do, Your Honor.

17 THE COURT: Do you have any questions about what I have
18 explained?

19 THE DEFENDANT: No, sir, Your Honor.

20 THE COURT: Have you discussed with your lawyer whether
21 you should or should not testify?

22 THE DEFENDANT: Yes, sir, Your Honor.

23 THE COURT: And do you wish to talk to your lawyer
24 anymore about this decision?

25 THE DEFENDANT: No, sir, Your Honor.

1 THE COURT: Do you wish to testify?

2 THE DEFENDANT: No, sir, Your Honor.

3 THE COURT: All right, sir. Thank you. You may be
4 seated.

5 MR. SCHULTZ: Thank you, Judge.

6 THE DEFENDANT: Thank you, sir.

7 THE COURT: All right. Mr. Schultz, will the State put
8 up -- I mean will the defense put up any other witnesses?

9 MR. SCHULTZ: Judge, if it please the Court, we are not
10 putting up any witnesses at this time. So, I'm, outside the
11 presence of the jury, the defense rests.

12 THE COURT: The defense has now rested.
13 okay. Anything from the state?

14 SOLICITOR SMITH: No, Your Honor.

15 THE COURT: Anything from the defense?

16 MR. SCHULTZ: No, sir.

17 THE COURT: Okay. Very good.

18 All right. Mr. Schultz, I'll bring the jury in and you
19 can rest in front of the jury and then we'll proceed to
20 argument.

21 MR. SCHULTZ: Judge, what I, what I would like to do is
22 argue for a jury instruction on the lesser included offense
23 of burg second.

24 THE COURT: All right, sir.

25 MR. SCHULTZ: All right. If---

1 THE COURT: Yes, sir.

2 MR. SCHULTZ: Would you like to hear from me now?

3 THE COURT: Yes, sir.

4 MR. SCHULTZ: The statute, and I'm referring to Title
5 16, crime and defenses, Chapter 11, offenses against
6 property.

7 Under section 16-11-10, dwelling house defined in the
8 case of burglary, arson, or other criminal offenses,
9 building -- excuse me. A dwelling house is defined under
10 the law. I think it's pretty clear that the state has
11 presented evidence that this, that this building was a
12 dwelling house.

13 However, if it pleases the Court, building is also
14 defined under 16-11-310 as any structure, vehicle,
15 watercraft, or aircraft. Obviously we don't have a vehicle
16 in this case. We don't have a watercraft. We don't have an
17 aircraft in this case at present.

18 However, it would be my argument that we do at least
19 have a structure. It goes on to Statute 16-11-310 goes, for
20 purposes of this section, 16-11-311, says building means any
21 structure, A, where any person lodges or lives. That would
22 meet, at least in this incident case, that would meet the
23 definition of a building. Dwelling, I've already covered
24 that. I think the state has met their burden as far as a
25 dwelling goes at least as far, far as an instruction goes.

1 Burglary in the first degree, under 16-11-311, is a
2 person's guilty of burglary in the first degree if the
3 person enters a dwelling without consent and with intent to
4 commit a crime in the dwelling and either, one, went in
5 effecting entry or while in the dwelling or immediate
6 flight, he or another participant in the crime, A, is or are
7 armed with a deadly weapon or explosives.

8 My understanding's the Court is, is going to instruct
9 the jury on that. I would ask that the Court also consider
10 an instruction for burglary in the second degree. At the
11 very least, burglary in the second degree violent. That
12 would mean, under section A, a person's guilty of burglary
13 in the second degree if the person enters a dwelling with --
14 without consent with intent to commit a crime therein.

15 My understanding, from the law and the statute, at
16 least 16-11-312, confuses me. I'm not the first lawyer to
17 be confused by the burglary statutes in this state. But
18 that subsection A that I've just read, that is a penalty
19 punishable by imprisonment for not more than 10 years. That
20 is the nonviolent sentence or nonviolent charge.

21 16-11-312(B), a person is guilty of burglary in the
22 second degree if the person enters a building without
23 consent and with intent to commit a crime therein, and
24 either, one, when effecting entry, while in the building, or
25 in immediate flight therefrom, he or another participate in

1 the crime is armed with a deadly weapon. we clearly have
2 that -- those set of circumstances and facts in this case.
3 That is the, and I want to be clear here, Your Honor, that
4 is 16-11-312 subsection B, that is burglary in the second
5 degree, which is the violent charge.

6 so I am asking that the Court charge the jury under
7 16-11-312(B) for burglary in the second degree violent
8 because a building is really anything. It -- the, the law
9 itself, and this is, this is where it gets into lenity and
10 everything, the, the law itself, I believe, and no offense
11 to the Legislature or anybody that was in the Legislature,
12 but is inartfully drawn. It -- I think my client should get
13 the benefit of that because what we have here is we have --
14 we clearly have some sort of structure. It's a dwelling. I
15 understand the State's position with that but it's also a
16 building.

17 So, I am asking for the lesser included offense
18 instruction on burglary second because it's a -- clearly a
19 building and I'm asking for that instruction to be read to
20 the jury other than just burglary first.

21 THE COURT: solicitor.

22 SOLICITOR SMITH: Your Honor, we think that the option
23 for the jury should be burglary first. I, I don't really
24 know if, under the defense's interpretation, how the jury
25 would decide between the two if -- because he's basically

1 saying that they're the exact same thing and I don't think
2 that that's the case.

3 Dwelling defines, in 16-11-10, defines many different
4 ways. I don't know exactly what this structure would be
5 that a person lives in that would not be a dwelling but --
6 and, in this case, it is a dwelling. That's -- the only
7 evidence is that it is. There may be a argument that
8 Mr. Gary perceived it to, to not be a dwelling and that it
9 was abandoned.

10 I think that, Your Honor, goes more to whether he had
11 an intent to commit a crime at the time that he entered into
12 the dwelling, not transforming the dwelling into a building.
13 And, Your Honor, although these are certainly lesser
14 included offenses of burglary first, not every trial does
15 every lesser included offense get charged, and, in an
16 attempted murder, it would certainly, if a jury were to
17 convict you of attempted murder, you would of also committed
18 an assault and battery third, an assault and battery second,
19 an assault and battery first, and, and more than likely an
20 assault and battery high and aggravated.

21 But it's only offenses which are -- there's a factual
22 basis to support that would be charged. And even though you
23 could be convicted on those, the only evidence is, you know,
24 in an attempted murder, that a firearm or a knife was used.
25 You would not get automatically all lesser included offenses

1 charged.

2 I think that's what the defense is trying to do here is
3 to just minimize the exposure to the defendant but, in this
4 case, it, it is a dwelling and that's clear and he even
5 admits that essentially in his argument to the court.

6 So, we think dwelling, the burglary first, should be
7 the, the issue before the jury.

8 MR. SCHULTZ: I think the state has presented evidence
9 that it is a dwelling. But, under our law, anything is a
10 building. If I'm looking, and hope -- hopefully I'm reading
11 this, interpreting this correctly, under 16-11-312, burglary
12 in the second degree, B, a person is guilty of burglary in
13 the second degree if the person enters a building.

14 Clearly there's been evidence presented that he entered
15 a building without consent. Clearly there's been evidence
16 that he went in without consent and with intent to commit a
17 crime therein and, not or, and either, when in effecting
18 entry while in the building or immediate flight during, he
19 or another participant in the crime, which we also have, is
20 armed with a deadly weapon.

21 A building can be anything and that is what I'm
22 arguing. A building can be anything and there's been at
23 least some evidence presented of the I, I -- statement that
24 Jaden made saying oh, somebody moved out. They must be
25 moving out. There was stuff everywhere, trash bags, a whole

1 bunch of junk.

2 There's, there's also been other evidence that the
3 state can hold thereto. But there's been some evidence that
4 at least this was a building. So, he should be granted at
5 least, because of the way the statute is inartfully drawn,
6 he should be granted the benefit of the doubt and get that
7 instruction for burg second violent.

8 And I'm not asking, as Mr. Smith is, is implying here,
9 that the court charge burglary second nonviolent or the
10 court charge petit larceny or the court charge burglary
11 third. I am merely asking for a one instruction on a burg
12 second violent because I believe there's been evidence that
13 has been presented and it's a lesser included offense.

14 That's the only thing I'm asking for.

15 THE COURT: Thank you.

16 The State's -- I'm sorry. The defense's motion for the
17 lesser included offense is denied. I refer you to State
18 versus Goldenbaum, that can be found at 294 S.C. 455, that's
19 a 1988 case out of our Supreme Court which says the
20 statutory law of burglary was substantially rewritten by Act
21 Number 159 in 1985 and codified the first degree burglary is
22 now defined as entry of a dwelling without consent and with
23 intent to commit a crime therein and the existence of an
24 aggravated circumstance.

25 Second degree burglary consists of entry of a dwelling

1 without consent and with the intent to commit a crime
2 therein but absent any aggravating circumstance or entry of
3 a building without consent and with the intent to commit a
4 crime and existence of an aggravating circumstance and then
5 it also defines third degree burglary.

6 Also state v. -- State versus Berntsen, 295 S.C. 52, as
7 discussed in State versus White, which can be found at --
8 looks like I only have a westlaw cite being 25436. That's
9 a 2002 case where Judge Jim Williams was affirmed, Justice
10 Waller writing for the Court, and also Abney, A-B-N-E-Y,
11 versus the State of South Carolina, also appellate case,
12 Gary Hill, my good friend, was a Circuit Court judge in
13 that, it's 2010-164906 where the Trial Court should refuse
14 to charge on a lesser included offense when there's no
15 evidence the defendant committed the lesser rather than the
16 greater offense. That's State versus Smith at 315 S.C. 547,
17 a 1994 case.

18 So, there is a -- evidence that the lesser offense was
19 committed under -- the request is denied.

20 Anything further from defense?

21 MR. SCHULTZ: Not at this time, Your Honor.

22 THE COURT: From the State?

23 SOLICITOR SMITH: No, Your Honor.

24 THE COURT: Okay. Are we ready for the jury?

25 SOLICITOR SMITH: Can I have just a printout of the

1 burglary statute I'm gonna show them?

2 I was gonna use it in the closing. Just gonna make
3 sure he's -- that's it's copy and pasted from the code book.

4 MR. SCHULTZ: That's what the statute says, Judge. No
5 objection.

6 SOLICITOR SMITH: And do we have the exhibits?

7 THE COURT: Ready, solicitor?

8 Defense is ready?

9 MR. SCHULTZ: Yes, sir.

10 THE COURT: We'll have the jury.

11 (WHEREUPON, the following takes place within the
12 presence of the jury.)

13 THE COURT: Thank you. You may be seated.

14 Mr. Foreman, any matters from the jury?

15 THE FOREMAN: No, sir.

16 THE COURT: Everything's good?

17 THE FOREMAN: Yes, sir.

18 THE COURT: All right. Very good.

19 Mr. Schultz.

20 MR. SCHULTZ: Thank you, Your Honor.

21 May it please the Court.

22 At this time the defense rests.

23 THE COURT: Defense rests.

24 Okay. Mr., Mr. Foreman, ladies and gentlemen, what
25 that means is the defense is not intending to put up any

1 witnesses or introduce any evidence whatsoever in this case.

2 We will now proceed to closing statements, and without
3 you putting anything up, you get the last argument.

4 MR. SCHULTZ: Yes, sir.

5 THE COURT: Yes, sir.

6 Solicitor.

7 SOLICITOR SMITH: Thank you, Your Honor.

8 Good morning.

9 I went over what burglary first is in my opening
10 argument. Now there's, there's two TVs to look at. So,
11 it's kind of confusing but I, I know some people are better
12 looking visually at something to understand it, and Judge
13 Kelly is gonna read it to you as well. This is word for
14 word out of the, the code book. This is what burglary first
15 is, which is one of the three charges against Mr. Gary, and
16 I just want to go over the elements and, and I'm gonna try
17 to narrow it down to you to what I think the issue in this,
18 in this case may be and obviously you get to determine what
19 the issues are and the facts are.

20 But a person's guilty of burglary in the first degree
21 if the person enters a dwelling. That's the first element.
22 We have to prove that they entered a dwelling. [REDACTED]
23 Street in Startex is Mr. Williams house. He lived there for
24 three years. Had been there earlier in that day. Left for
25 work. Had his personal items all over the house, bed, ties,

1 golf clubs, TVs, laptops, drinks, work boots, all kinds of
2 things. It is a dwelling.

3 The second element is it's without consent. He
4 testified he does not know Mr. Gary, doesn't know
5 Mr. Miller. He doesn't know Mr. McKinney. Didn't give
6 anybody permission to go inside of his house. That's
7 supported by the fact that the house was locked.

8 Mr. Gary, in his audio recorded statement, says they
9 first tried to go in through the front door. They tried to
10 go in through the windows and then they ultimately went to
11 the back-door. He says it was unlocked or that the bottom
12 lock was done. I don't believe that part's true when you
13 look at the, the strike plate being knocked off the door and
14 the drywall separated from the doorframe and the footprint
15 that was obviously taken off of the door.

16 So, there was no consent and then there -- the other
17 third element -- and this is -- they're all important. They
18 all have to be proven is that he had an intention to commit
19 a crime inside of the dwelling. I want to come back to that
20 one in a minute.

21 And so that then -- any one of these following things.
22 I don't want y'all to get confused. If -- we do not have to
23 prove that it was nighttime and that injury was done and he
24 was armed. We have to prove any of these A, B, C, D, two
25 and three and I, I bolded the ones that I think are present

1 and we haven't charged all these others in the indictment
2 cause, as we know, this -- the crime occurred during the
3 daytime in the early afternoon, which Mr. Gary stated and
4 the police stated about when the crime had occurred.

5 But it is when you're entering -- when, when gaining
6 entry, while inside or in immediate flight, any one of the
7 three. In this case we know that they entered with
8 firearms.

9 Mr. Gary stated he had a Highpoint pistol. He said he
10 had it on him. He doesn't remember where he got it. So,
11 when they entered, they had weapons.

12 While they were inside they also armed themselves and
13 it's also he or another participate. You can see on the
14 video the other two participates armed themselves with
15 kitchen knives from the kitchen and then left them in Mr.
16 Williams room.

17 And then also that they fled and we know that, again,
18 while inside, they armed themselves with -- Mr. Gary grabbed
19 a shotgun and walked. You see him very clearly walk over to
20 the couch and looks -- almost like he looks under the seat
21 to see if there's a pistol or something else to take. But
22 he's got a shotgun in one hand and a pistol in the other
23 hand that he entered in with, and then, of course, his
24 codefendants steal the Pelican cases that contained Black
25 Powder rifles, a hunting rifle, and an AR-15 as, as Mr. Gary

1 referred to them as big stuff.

2 Mr. Gary was looking for little guns, which I think is
3 he's referring to handguns, and the only thing he got out of
4 this was big stuff, and that's the type of weapons that
5 Mr. Williams described, rifles, hunting rifles, AR-15, two
6 muskets, and a shotgun.

7 So, I think that element is, is also clearly proven.
8 It's also obvious that they displayed it. You can see that
9 on the surveillance video.

10 So, what I think, and I don't know what the defense
11 says, they don't have to say anything, but what I think the
12 defense is, I guess in this case, is that, when he entered,
13 he did not intend to commit a crime. So, I want to
14 highlight the evidence that I think supports the idea that,
15 that he did intend to commit a crime, and the, the basis
16 ultimately of Mr. Gary's saying he wasn't intent on
17 committing a crime is because Bethany, the white girl on
18 Snapchat that he had met a few weeks before, had a picture
19 of a gun. He asked if he could buy it. She said no but
20 there's a, there's a house where the guy's just moved out
21 and he's got a bunch of guns in there and you can just go
22 and take them.

23 That is the basis of his belief that everything he's
24 doing is, is on the up and up and that he's basically going
25 to claim abandoned property. I think that's the only way

1 that he can be found not guilty is if you believe that and
2 these are the points that I think prove that that's not
3 true.

4 He's, he's armed with a pistol that he brings to the
5 house when he does this. That doesn't make sense.

6 If you're going in to an abandoned house that there's
7 nobody there, they've moved out, they've left items, why
8 would you arm yourself with a pistol?

9 Because you are intending on committing a crime and
10 you're gonna defend yourself from the homeowner who may be
11 there and that's what this was. He knew that this was a
12 house, a dwelling. And so he -- but he went in anyway.

13 Mr. Gary also says, in his interview, that they came in
14 for the expressed purpose of taking firearms. That's a,
15 that's another thing. He already was set on taking
16 firearms. It wasn't he was just gonna go into this
17 abandoned house and, and see if there was any, you know, old
18 motors that you could pull out of fans or something like
19 scrappers tend to do out in the country more so. That --
20 that's not the case here.

21 I think it's also important that he, he -- they go to
22 the front door first and it's locked, which is interesting.
23 They go to the windows and they're locked as well.
24 Presumably they would of gone down the, the side of the
25 house to get to the back since they started at the front.

1 As you can see, you know, Mr. Williams house looks like a
2 house. Looks like many of your houses probably look and my
3 house looks.

4 He's got furniture on the front porch. Looks like he's
5 got some, I don't know, weed killer or something, maybe
6 engine oil, that he's got sitting there on the front. It's
7 obviously a dwelling. It's obviously a house and it doesn't
8 have windows that are busted out. It doesn't have siding
9 that's falling off. It doesn't have paint that's dripping
10 off. It doesn't have tree limbs that have fallen on the
11 roof like you might see in some areas that have some older
12 delapidated houses.

13 It's, it's nothing like that. It looks like an every
14 day residence and we have to prove certainly that, when he
15 entered, he had the intention to commit a crime. But I
16 think you can actually look at what happens after he gets in
17 that actually can also support the idea that -- of what he
18 was planning on before he came in because, if he did really
19 think that this was an abandoned house, just based off of
20 what he saw on the outside, most of the blinds are down.
21 Certainly once they kicked the back-door in and get to the
22 spice rack, and the, the kitchen table, and, and these other
23 things, certainly I think that you would see in the kitchen
24 block they obviously used.

25 At that point he should of realized that this is not an

1 abandoned house. This is somebody's house. And if he had
2 gone home and said oh my, I made a terrible mistake, Bethany
3 set me up, I think it would be a different story but that's
4 not what he did. He continued on into the living room,
5 tiptoeing, and whispering to his codefendants to stay quiet
6 almost like he's worried that somebody's inside of the
7 house. Certainly not -- certainly not confident that nobody
8 is home.

9 The codefendants arm themselves with knives in the
10 kitchen. I think that would say, again, that, number one,
11 there's a knife block that's still sitting there. This is
12 not an abandoned house and they're worried about the
13 potential of confronting the victim. And so they're arming
14 themselves so they can handle it if they do come across
15 anybody. After all, they do know that they're coming to
16 steal firearms. So, if the man is home, it could turn into
17 a shootout.

18 And I think another point, and, and perhaps the most
19 important, is his story is, is inconsistent and I know he
20 talks very fast. I'm gonna go over and you're, you're gonna
21 have the ability to listen to his interview over if you need
22 to. But his story is inconsistent.

23 At first, Bethany tells him that somebody's moving out.
24 He then says that, once he tried the front door and the
25 window and the -- found that they were locked, he concluded

1 again that they were -- it was abandoned, which is different
2 than somebody in the process of moving out.

3 He also stated that he knows how girls are and that
4 they'll tell you anything, and he thought that something
5 wasn't right until he actually got into the house and then
6 he realized that everything Bethany had said was right
7 because it looked like an abandoned house. I don't think
8 that's reasonable.

9 Later he says that he thought it was potentially a
10 setup because him and his brothers, or his group I think he
11 calls them, are popular. I don't know exactly what that
12 means but it sounds like it might have to do something with
13 the people he said robbed him. The Rolling 20 Bloods is
14 what he said in his interview that robbed him after.

15 So, in that case, he's saying he thinks he's setup,
16 that somebody's gonna be waiting there to potentially ambush
17 them or rob them or kill them and he goes in any way. But,
18 of course, that's a different story again then it being
19 abandoned or it being somebody moved out or anything like
20 that.

21 And, at the very, very end, after Investigator Newton
22 has told him about who the man actually is whose house that
23 he violated and burglarized, he said I thought it was just a
24 low level drug dealer's house. I thought it was going to be
25 easy. So, five different versions of what the house was,

1 abandoned, moving out, drug dealer's house, setup by the
2 Rolling 20 Bloods, or a girl setting him up.

3 Like I said, if he really thought that the house was
4 abandoned, once he entered he should of realized he made a
5 mistake and he should of backed out but he didn't. He went
6 in directly to the bedroom.

7 And so, the judge is gonna instruct you on the
8 believability of witnesses. I think he actually did it in
9 the openings and he's -- but he's gonna do it in his, his
10 closing remarks to you.

11 He's gonna tell you that you can believe one witness
12 over many, many over one, and he's gonna tell you that you
13 can believe part of what somebody says and not believe the
14 other part, and that's what I think is going on in
15 Mr. Gary's confession.

16 Mr. Gary gives many, many details to prove that he is
17 the person seen with the firearm going into the house on
18 Church Street in Startex. He gives the location. In fact,
19 when Investigator Newton asked him if he's ever been in the
20 house in Startex, he, he kind of laughs like he already
21 knows that he's in that house.

22 He gets the time of day right, the mid afternoon. He
23 gets the point of entry right, that they came in through the
24 back-door. He talks about that the first room that they
25 entered into was a kitchen. That's also correct. He has

1 the number of individuals who did it correct being three.
2 He names them himself, Peso, which is Zion Miller, and Quez,
3 who's Tyquez McKinney, and actually the order of them, he
4 says I was first, Zion was second, Quez was third.

5 You heard Investigator Shue identify Jaden as the
6 first. Quez is the third. He did not know the middle but,
7 obviously, it's, it's Peso.

8 He -- the guns that were taken he confirms. He talks
9 about them being big. He refers to a rifle and a sniper.
10 Mr. Williams told you about the guns that were taken. They
11 would all classify as long guns and then also the part that
12 I think is very interesting is Bethany had mentioned that
13 this house had been broken into before and that guns were
14 stolen out of it and we know that that's also true about
15 Mr. Williams house.

16 So, we know with a hundred percent certainty that
17 Mr. Gary is the person on that video because it matches up
18 with all the details. But the part I think is where he's
19 lying is about what Bethany told him if Bethany exists if
20 that's even the name of the person that gave him. Of
21 course, Investigator Newton was never able to, to figure
22 that out.

23 But what's interesting about his, his statement to
24 police, I think it's at seven, excuse me, 11:30 in the tape,
25 he says I never thought it was someone's house. I didn't

1 know there were cameras and I think there's another time in
2 his confession he mentions cameras. And this is why I think
3 the story ends up this way.

4 Either his mom, who brought him, they'd had some
5 contact with the investigators, somebody told him, maybe
6 Investigator Newton, we know he ended up watching the video
7 and pointing himself out but he knew somehow that this
8 homeowner had cameras. He found that out by the time he'd
9 given this confession.

10 And so he knows that he didn't -- cause he did it. He
11 knows he didn't have a mask on when he committed the crime.
12 So, there's a very good chance that this camera's gonna show
13 him clearly inside of this house. So, he can't say it
14 wasn't me and he doesn't say it wasn't me. He says it was
15 me but the part he lies about is the part about the house
16 being abandoned to try to make it something less than what
17 it is. He's telling almost all of the truth but he's lying
18 about that part.

19 He knows that the house was not abandoned and you know
20 that because of what he did after he got in it, how he
21 immediately just goes through the living room. Of course,
22 he's being cautious because he's worried that somebody's
23 home cause it's a house but then, but then he continues on
24 into the bedroom.

25 He also says that if he'd seen a picture, we have, you

1 know, Mr. Williams said that his chest of drawers had been
2 rifled through. There's a picture of him and his niece on
3 top of the chest of drawers.

4 They knew what they were doing. You can tell when you
5 watch the video and that's what I'm gonna close with that,
6 that this was -- this was a straight up, they were either
7 gonna do a home invasion if he was home, which I'm sure they
8 were hopeful that he wasn't, and thank God for everybody
9 involved that he wasn't, or they were gonna do a burglary
10 and steal this man's guns cause they had some sort of tip
11 that he was for guns. But I don't think the tip said that
12 the house was abandoned.

13 I think the tip was just I know a house where you can
14 get a lot of guns, and Mr. Gary and his friends were in a
15 hard spot at the time. They needed guns. They didn't even
16 take the electronics. Guns is what he knows, is what he
17 likes, and it's what he knows how to get rid of and turn for
18 a profit and that's what he did.

19 He thought it was an easy mark. Probably thought it
20 was a drug dealer or something like that. Thought they
21 wouldn't even report it. He could sell the guns, make some
22 money, get back on his feet but it wasn't. It was
23 Mr. Williams house, an upstanding citizen, a veteran of the
24 Army who not only gets burglarized but then gets humiliated
25 by trying to make it out that his house is too messy to be

1 considered a house.

2 I'm gonna go play this again. I think, at the end,
3 once you deliberate, you will conclude, be firmly convinced,
4 which is what you have to be in this case, firmly convinced
5 that Jaden Gary entered the house with an intention to
6 commit a crime and just watch how he moves through this
7 house.

8 First going into the office, which we know there's a
9 Mac -- a desktop. He's got his gun out already. Just got
10 out of the kitchen. He's got his gun out. You can see it
11 right there against the white door and the other two
12 codefendants are already armed.

13 Oh, excuse me. Flip it over. There's him sneaking
14 into the office. You can see the gun against the, the white
15 door when he moves in.

16 Just to point out things, the fan is on. The power is
17 on. I mean the TV, lamp, laptop sitting on the coffee
18 table. There's no doubt this is somebody's house but he
19 doesn't back out because he never thought it was abandoned.
20 He knew it was a house.

21 There he is telling them to be quiet, tiptoeing. You
22 can see Mr. Miller there with a -- the knife in his
23 right-hand against his white shirt. Mr. McKinney has one in
24 his right-hand as well.

25 You can actually, if you watch closely, you can see

1 Mr. Miller place the knife on the, on the nightstand before
2 he gets down. Right there. He gets -- before he starts
3 getting down and trying to grab items. That's right where
4 they found it.

5 Just while we're watching this, the other two charges
6 are possession of a weapon during a violent crime. You're
7 gonna get a verdict form. It's gonna have two charges on
8 one of the indictments. That's the burglary and the
9 possession of a weapon during a violent crime. The Judge is
10 gonna tell you that burglary first is a violent crime.

11 So, if you believe that he possessed a weapon at any
12 point and used it in furtherance of the crime, he's guilty
13 of possession of a weapon during a violent crime. I'd
14 submit he has a pistol and a shotgun and his codefendants
15 have long rifles and knives. Knives would also be a basis
16 for the possession of a weapon during a violent crime and
17 the grand larceny is the taking of items.

18 Again, we know that Mr. Williams recovered just a
19 little bit over \$2,000. That's what makes it grand larceny.
20 The value has to be over 2,000. He did get a settlement
21 from homeowners on it for just over 2,000 and, the grand
22 larceny, you have to prove that he was permanently deprived
23 or they at least intended to permanently deprive him. And
24 as you know, both Investigator Newton and Mr. Williams told
25 you, they never got the guns back. They never showed up.

1 They're somewhere in spartanburg county or somewhere else
2 probably being used in violent crimes because that's what
3 people steal guns out of houses to do, to sell them to
4 people that can't get guns legitimately and it fuels violent
5 crime in our county and other counties.

6 so, I trust that y'all can use your common sense and
7 come to the conclusion that he did burglarize Mr. Williams
8 house, and he's guilty of all three charges, and you'll make
9 the right decision.

10 Thank you.

11 MR. SCHULTZ: May it please the Court?

12 THE COURT: Yes, sir.

13 MR. SCHULTZ: Counsel.

14 Ladies and gentlemen, thank you for being here the last
15 couple days. It's wednesday morning now as I anticipated.

16 I began arguing about 24 hours ago, or a little less
17 than that right now, that we would be reconvening here
18 wednesday morning talking to you about this case, talking to
19 you about the evidence that you've seen.

20 You've heard witnesses. You've heard a videotape or
21 you've seen, you heard, videotapes. You've heard audio
22 statements and everything.

23 It's been a short case. It hasn't been a long case.
24 And so you, when you were picked, may of thought oh, my God,
25 I'm gonna be, be here for six weeks and I'm gonna be

1 sequestered and like the O.J. Simpson trial and everything.
2 That, that obviously didn't happen.

3 So, we're, we're obviously thankful for that and
4 probably y'all are as well. But I hope it's been a good
5 experience for every one of you. We have to pick two, two
6 alternates and I hope it's been a good experience for them
7 as well.

8 But I talked to you yesterday and the solicitor talked
9 to you about terms that we use here, reasonable doubt,
10 burden of proof, things like that that Judge Kelly, in a
11 couple minutes, is going to talk about what burden of proof
12 means and what reasonable doubt means. And, again, I, I, I
13 want to emphasize this.

14 Reasonable doubt is a doubt that causes a reasonable
15 person some hesitation to act and that's why you 12 have
16 been chosen because you are all reasonable persons. You are
17 all reasonable people. And, looking at this case, I believe
18 that you should have some kind of reasonable hesitation to
19 act to find him guilty. And that's what I'm asking you to
20 do is to find him not guilty of the charges.

21 You've seen the video. You've seen who or you've heard
22 the audio taped statement. You've also heard a lot of
23 things about the condition of the house and Mr. Smith said a
24 couple minutes ago that I was intending to humiliate the
25 homeowner. It certainly wasn't my intention to humiliate

1 anything.

2 I am merely asking questions. I am merely asking
3 what's going on with this case. why is there -- why is the
4 house messy because that's what my client deserves. He
5 deserves a defense.

6 Yes, I mean you can look at the video. You can look at
7 the State's Exhibits, all the pictures there. I've tried to
8 get that started up there. But for suffice it to say, right
9 now, and, and, again, I, I didn't mean to cause anybody
10 offense or humiliate anybody. I was just asking questions.

11 This is a messy house. This is a dirty house.

12 Okay. When these kids went in there, oh my God, this,
13 this is probably abandoned just that person had said.

14 Okay. So, I want you to take that into account when
15 rendering a decision today and I talked to you yesterday,
16 about 24 hours ago, about what verdict means. It means to
17 speak the truth. It comes from veritos, Latin for truth.

18 So, let me go into these pictures a little bit.

19 All right. Look at that picture right there.

20 Okay. We have -- I guess a point of entry there.
21 These folks walk in there. They, they look and see okay.
22 It's messy. It's, it's -- looks like it's disturbed and
23 they find what is, you know, in there and they go in. They
24 do what they have to do.

25 But it could be, I, I believe, and, and this is why we

1 have y'all here, it could be a reasonable assumption to make
2 that this house was indeed abandoned. Somebody was moving
3 out. And when you go back in your jury deliberation room,
4 and you listen to the statement that my client said, and
5 I'm, I'm quoting verbatim here, my notes, at least what I
6 heard, "somebody moved out, they must be moving out, stuff
7 everywhere, trash bags, a whole bunch of junk."

8 And you can, you can listen to that statement again in
9 the jury deliberation room and I think it's State's Exhibits
10 1 I believe. We're gonna give you a computer where you can,
11 can hear this statement again.

12 Listen to it. That's reasonable doubt number one that
13 this house is not a dwelling, which is what they have to
14 prove in order to find my client guilty of burglary first.
15 So there's that.

16 Now, identity. Let's talk about the footprint on the
17 door there. I think I have this here. Here you go. Here's
18 the footprints.

19 Okay. Now it was measured. They obviously did some
20 kind of forensic analysis of this by measuring it.

21 was it ever compared with my client's footprint?

22 was it ever compared with any of the other, of, of the
23 other defendant's footprints?

24 No.

25 That wasn't done. In fact, the officer that sit --

1 seated right here at counsel table, I mean I hope I
2 understood him to say this, that he was there several days
3 later after this happened, after this incident happened. I
4 can't remember exactly how many days ago it was or how many
5 days it was between the, the incident and him actually
6 showing up but there's that too. Didn't come the day of.
7 He came several days later.

8 The intent to commit a crime therein, that's, that's --
9 the State keyed in on that and I want you to remember that
10 in a couple minutes when you go back there in, in the jury
11 deliberation room. These kids thought this was an abandoned
12 house, okay, and you can see why they would think that.

13 They came in. They got what they had to do and they
14 went out.

15 Okay. Now, State's made a, made a big deal about my
16 client, especially my client, going in and going like this
17 like whispering.

18 okay. Of course he did that. He was scared. He is 17
19 years old. He was scared. All of them were scared. I bet
20 I would be as well whether it's an abandoned house or
21 whether it's not -- it isn't an abandoned house.

22 Then it is okay, the State said it's -- the statement
23 is inconsistent. Of course his story is inconsistent. He's
24 17 years old. He -- it, it is -- you are gonna have
25 inconsistencies with any statement.

1 Okay. Is that reasonable to, to believe?

2 Yes, it is, that, that you're gonna have
3 inconsistencies in these statements. You have five
4 different versions, Mr., Mr. Smith said a couple minutes
5 ago. I didn't know it was someone's house. I didn't know.
6 There was trash everywhere and everything like that. of
7 course you're gonna have inconsistencies. This is why we
8 have jury trials.

9 what I'm asking you consider this is that they did not
10 know anybody was living in the house. If they did they
11 probably wouldn't have gone over there. There was a lot of
12 trash bags. There was a lot of garbage. They didn't know
13 it was a dwelling and you have to find my -- that it was a
14 dwelling first. You have to find that.

15 okay. You have to find that first in order to render a
16 fair and impartial verdict. You have to find that it was a
17 dwelling. I would present you, as we stand here right now
18 at 10:30, that you can not find that it was a dwelling.
19 That's the main reasonable doubt and that is a -- what would
20 cause a reasonable person some hesitancy to act.

21 so, take that into, into the totality of the
22 circumstances. There are three charges that you have to
23 consider here, possession of a weapon during a violent
24 crime, the burglary first, and also the grand larceny.

25 Okay. You have everything that you need now to find

1 him not guilty, not guilty, on all three charges, which is
2 exactly what I'm asking you to do.

3 Thank you.

4 THE COURT: Mr. Foreman, and ladies and gentlemen of
5 the jury, you have seen and heard the evidence presented as
6 well as the arguments of the lawyers and it is now my duty
7 and my obligation to instruct you on the law. It will then
8 be your duty and obligation to begin your deliberations
9 through which process you will decide the facts, apply the
10 law as I now instruct it, and render a fair and impartial
11 verdict.

12 It is your exclusive duty to determine what the facts
13 are in this case, and you will do that based on your common
14 sense evaluation and examination of the testimony and the
15 evidence received during the trial of this case. You 12
16 alone will decide what effect, value, and weight is to be
17 given to any particular testimony or evidence received.
18 Quite simply, ladies and gentlemen, your obligation as
19 jurors is to give both the state and the defendant a fair
20 and impartial trial based on the evidence presented and the
21 law in this case.

22 I remind you that, during this trial, you and I have
23 certain duties to perform. As the trial judge, it is my
24 responsibility to preside over the trial and, additionally,
25 I have the duty to rule on admissibility of evidence offered

1 during the trial.

2 You are to consider only ev -- only the evidence before
3 you. You are to consider only the testimony which has been
4 presented from the witness stand, the exhibits which have
5 been made a part of the record, and stipulations of the
6 lawyers.

7 Additionally, I have the duty to charge you on the law
8 applicable to this case. As the trial judge, I am the sole
9 judge of the law and it is your duty to -- as jurors, to
10 accept it and apply it as I now state it to you. If you
11 have any idea as to what the law is, what the law ought to
12 be or what the law should be, and it does not agree with
13 what I tell you, you must abandon your idea because you are
14 sworn to accept the law and apply it as I state it to you.

15 In every case tried in this courtroom before a jury,
16 you 12 become the sole and exclusive judge of the facts. A
17 trial judge can not comment or make a statement to a jury
18 about a fact in a case. You, the jury, are the sole judge
19 of the facts and you are not to infer from anything I have
20 said during the progress of this trial, in ruling on
21 admissibility of evidence or otherwise, that I have an
22 opinion about a fact in this case. The law of South
23 Carolina prohibits me from having an opinion about a fact in
24 this case. Facts are a matter solely for your
25 determination.

1 There are two types of evidence which are generally
2 presented during a trial and they are known as direct
3 evidence and circumstantial evidence.

4 Direct evidence is testimony of a person who asserts or
5 claims to have actual knowledge of a fact such as an eye
6 witness.

7 Circumstantial evidence is the proof of a chain of
8 facts and circumstances indicating the existence of a fact.
9 The law makes no distinction between the weight or value to
10 be given direct or circumstantial evidence nor is a greater
11 degree of certainty required of circumstantial evidence than
12 of direct evidence. You 12 should weigh all evidence, and
13 after doing so, if you are not convinced of the guilt of
14 this defendant beyond a reasonable doubt, then say so and
15 find him not guilty.

16 Now, the indictment ending in 5574 a1 -- charges and
17 alleges that this defendant -- charges this defendant with
18 the offense of burglary in the first degree. Specifically,
19 that Mr. Gary did, in the County of Spartanburg, State of
20 South Carolina, on or about July 22 of 2019, willfully and
21 intentionally enter a dwelling belonging to Jason Williams
22 located at [REDACTED] Street, Startex, South Carolina without
23 consent and with the intent to commit a crime. And when in
24 effecting entry or and while in the dwelling or and in
25 immediate flight therefrom, he or another participant in the

1 crime either armed himself with a deadly weapon and/or
2 displayed what was or appeared to be a knife, a pistol,
3 revolver, rifle, shotgun or other firearm.

4 Count 2 of that same indictment charges him with the
5 offense of possession of a weapon during the commission of a
6 violent crime. Specifically, that he did, in Spartanburg
7 County, South Carolina on July 22, 2019, possess a firearm
8 or what appeared to be a firearm during the commission of a
9 violent crime as defined by State Law.

10 The indictment ending in 5572 charges this defendant
11 with the offense of grand larceny. Specifically, that he
12 did, in the County of Spartanburg, State of South Carolina,
13 on or about July 22, 2019, feloniously take and carry away
14 goods of Jason Williams valued at more than \$2,000 but less
15 than \$10,000. That being seven firearms and/or ammunition
16 and/or body armor with the intent to deprive the owner
17 permanently of the property in violation of our law.

18 The defendant is charged with first degree burglary,
19 and the State must prove, beyond a reasonable doubt, that
20 this defendant entered a dwelling without consent. A
21 dwelling is any building or portion of a building in which a
22 person ordinarily sleeps. A building is a dwelling even if
23 the residents are temporarily absent from the building.
24 Additionally, the State does not have to prove that force
25 was used to gain entry.

1 Next the State must prove, beyond a reasonable doubt,
2 that this defendant intended to commit a crime, either a
3 felony or a misdemeanor at the time of entry.

4 Intent may be shown by acts and conduct of the
5 defendant and other circumstances from which you may
6 naturally and reasonably infer intent. And, finally, the
7 State must prove, beyond a reasonable doubt, that when
8 entering, while in the dwelling, or when fleeing, the
9 defendant or an accomplice was armed with a deadly weapon or
10 explosive.

11 A deadly weapon is any article, instrument, or
12 substance which is likely to cause death or bodily harm.
13 Whether an instrument has been used as a deadly weapon
14 depends on the facts and circumstances of each case. But
15 the following are examples of instruments which may be
16 defined as a deadly weapon:

17 A pistol, shotgun, rifle, dagger, knife, slingshot,
18 metal knuckles, razor, or a fire bomb. A gun may be a
19 deadly weapon even if it is not operational. When entering
20 the dwelling, while in the dwelling, or when fleeing, the
21 defendant or accomplice displayed what was or appeared to be
22 a knife, pistol, rifle, shotgun, or other firearm.

23 The defendant is charged with possession of a weapon
24 during the commission of or attempt to commit a violent
25 crime. The State must prove, beyond a reasonable doubt,

1 that this defendant was in possession of a firearm or
2 visibly displayed what appeared to be a firearm during the
3 commission of a violent crime. A firearm is defined as an
4 automatic rifle, revolver, pistol, or any weapon which,
5 which is designed to or may be readily converted to expel a
6 projectile.

7 In order to find him guilty of a possession of a weapon
8 during the commission of a violent crime, you must first
9 find the defendant guilty of either committing a violent
10 crime or attempting to do so but I tell you that burglary
11 first is a violent crime. The State must prove, beyond a
12 reasonable doubt, that the weapon further advanced or helped
13 in the commission of the crime.

14 He is also charged with grand larceny. The State must
15 prove, beyond a reasonable doubt, that this defendant took
16 and carried away property of another against the will or
17 without consent of the other person. The slightest removal
18 of property or the complete possession of property, even for
19 an instant by the defendant, is enough to show a taking and
20 carrying away.

21 The State must also prove, beyond a reasonable doubt,
22 that this defendant intended to permanently deprive the
23 owner of property and the State must prove that the value
24 was more than \$2,000.

25 Now, criminal intent is a necessary element of each

1 crime that must be proved by the State beyond a reasonable
2 doubt. Criminal intent is a matter that must be determined
3 by you, the jury, from the circumstances surrounding the
4 situation. There is no way to prove intent to a
5 mathematical certainty. Medical science can not dissect a
6 person's brain and determine what he had in mind.

7 so our law says that criminal intent may be inferred
8 from the circumstances shown to have existed. It is a state
9 of mind which operated -- when operated jointly with an act
10 is the commission of a crime.

11 Ladies and gentlemen, criminal intent is a mental
12 state. It is a conscience wrongdoing. So, it is up to you
13 12 to determine what this defendant intended to do based on
14 the circumstances shown to have existed. I tell you that
15 the State must prove criminal intent beyond a reasonable
16 doubt just as it must prove every element beyond a
17 reasonable doubt. It is not necessary to establish intent
18 by direct and positive evidence. It may be established by
19 inference the same way as any other fact by taking into
20 consideration the acts of the part -- person and all the
21 facts and circumstances.

22 Now, while the State may prove motive, it is
23 unnecessary for the State to do so but they must prove
24 criminal intent.

25 The defendant has pled not guilty to the indictments

1 and that puts the burden on the state of south carolina to
2 prove his guilt beyond a reasonable doubt.

3 A person charged with committing a criminal offense in
4 this state is not required to prove himself innocent. I
5 charge you that it is a cardinal, important, and vital rule
6 of law in a criminal trial, no matter what the seriousness
7 of the charge may be for which he stands charged, this
8 defendant is always presumed to be innocent of the crime for
9 which the indictment was issued unless guilt has been proven
10 by evidence satisfying you of his guilt beyond a reasonable
11 doubt.

12 The presumption of innocence does not end when you
13 begin your deliberations. It accompanies this defendant
14 throughout the trial until you reach a verdict of guilt
15 based on evidence satisfying you of guilt beyond a
16 reasonable doubt.

17 The presumption of innocence has been described as
18 being like a robe of innocence placed about the shoulders of
19 the defendant and it remains with him from the moment of his
20 arrest and continues until it has been stripped from his
21 shoulders by evidence satisfying you of guilt beyond a
22 reasonable doubt. The presumption of innocence, ladies and
23 gentlemen, is not a legal therapy nor is it a legal phrase.
24 It is a substantial right to which every defendant is
25 entitled unless you 12 are satisfied from the evidence of

1 his guilt beyond a reasonable doubt.

2 The state has the burden of proving his guilt beyond a
3 reasonable doubt, and that proof, beyond a reasonable doubt,
4 is proof that leaves you firmly convinced of his guilt.

5 There are very things in this world that we know with
6 absolute certainty and, in criminal cases, the law does not
7 require proof that overcomes every possible doubt.

8 A reasonable doubt may be described as the kind of
9 doubt that would cause a reasonable person to hesitate to
10 act. If you have a doubt as to the guilt of this defendant,
11 then say so and find him not guilty. Reasonable doubt may
12 arise from the evidence in a case or it may arise from the
13 absence or lack of evidence in a case. Based on your
14 consideration, if you are firmly convinced the defendant is
15 guilty of the crime charged, then say so and find him
16 guilty. You 12 alone must make the determination of whether
17 or not reasonable doubt exists as to the guilt of this
18 defendant.

19 Under our state law, you 12 are the finders of facts.
20 You must determine the credibility of witnesses who have
21 testified. Credibility simply means believability. It is
22 your duty to analyze and evaluate the evidence and determine
23 which evidence convinces you.

24 In determining believability of witnesses who have
25 testified, you may believe one witness over several or

1 several over one. You may believe part of a testimony of a
2 witness and reject the remainder. You may consider whether
3 the witness has any interest, bias, or prejudice, and you
4 also may consider any -- the manner or appearance in which a
5 witness testified. Whatever your good judgment and common
6 sense tells you is the credible testimony is the testimony
7 you should accept.

8 I instruct you and emphasize the fact that this
9 defendant did not testify is not a factor to be considered
10 by you in your deliberations on the question of guilt or
11 innocence. A defendant has a constitutional right to remain
12 silent and the assertion of his right must not be considered
13 by you during your deliberations. The burden of proof is on
14 the State. The defendant is not required to prove his
15 innocence. The burden of proof remains on the State to
16 prove guilt beyond a reasonable doubt.

17 You 12 have been selected as fair and impartial jurors
18 sworn to impartially try and determine the facts, and you
19 are to decide this case according to the testimony you have
20 heard along with the evidence introduced.

21 Often times I am asked by jurors, by sending a note to
22 me, for additional evidence. But, ladies and gentlemen, all
23 the evidence that, that is in this trial is in and it's
24 yours. I can not give you anything else because there's
25 nothing else to give you.

1 Your verdict must be a unanimous one.

2 Mr. Foreman, when the jury reaches a verdict, you will
3 indicate that in a verdict space on the verdict form that
4 I'm gonna explain momentarily, sign your name as the
5 foreperson of the jury, knock on the jury room door, and
6 inform the bailiff you have reached a verdict. At that time
7 we will return you to the jury room.

8 Now, Mr., Mr. Foreman, all 12 jurors have to be
9 together during the deliberations. So, if a juror needs to
10 excuse themselves, to refresh themselves, the jury
11 deliberations must cease at that time until that juror has
12 rejoined the 12. All 12 must be together and be
13 participating at that time.

14 This is the verdict form of which I speak, Mr. Foreman.
15 My law clerk whose joined me here makes this in every case
16 that I -- I've handled. It has the caption of the case and
17 it has the number that merely coincides with that particular
18 indictment that's laying there.

19 It says we, the jury, unanimously find the defendant,
20 Jaden Gary, on the charge of burglary in the first degree,
21 not guilty or guilty. I tell you that there is no
22 significance to one being above the other. It necessarily
23 has to be one above the other and I put them in this order
24 in every case.

25 Whatever this decision of the 12 is, sir, if you would

1 be sure to mark it. I don't care if you put an initial, an
2 X, a check mark. It does not matter as long as it is
3 unambiguous. The Court must be clear on what the verdict of
4 this jury is.

5 It says if the verdict for question one is not guilty,
6 stop here and sign your name below. But if the verdict is
7 guilty on the burglary first degree, answer number two. We,
8 the jury, unanimously find the defendant, on the charge of
9 possession of a weapon during the commission of a violent
10 crime, not guilty or guilty. So you have two questions to
11 answer. On -- if you find not guilty, stop, sign your name.
12 If you answer -- if the jury answers guilty on one, answer,
13 answer question two please before you sign your name.

14 The other verdict form is for the other indictment on
15 the grand larceny. We, the jury, unanimously find the
16 defendant, on the charge of grand larceny, not guilty or
17 guilty, whatever the verdict of the 12 is, and sign your
18 name.

19 Now, Mr. Foreman, ladies and gentlemen, I'm about to
20 send all 14 of you to the jury room, and when you leave, I'm
21 gonna ask the lawyers to come forward and make sure that all
22 of those exhibits are here. They're gonna come up to my
23 court reporter and -- cause she keeps up with them and make
24 sure that everything is there. I practiced law many years
25 in this courthouse and other courthouses across the State of

1 south carolina, it is so easy, before I came up here, it is
2 so easy to be making a closing statement, as these lawyers
3 have done, to pick up a piece of evidence, walk around, talk
4 to it -- the jury and then go back to my table and lay it
5 down and now it's missing.

6 so, I'm gonna ask the lawyers to ensure, with my court
7 reporter, that it's all there because it belongs to you.
8 once they confirm that it's all there -- and there's not
9 that much. Sometimes in a case, maybe a murder case, we
10 might have 200 exhibits. I'm gonna make sure that
11 everything is there.

12 When they do, my bailiff is going to bring these two
13 pieces of paper, Mr. Foreman, to you along with the
14 exhibits. When that happens, he's gonna leave with my two
15 alternates.

16 Okay. So you two then will come back to my courtroom
17 and you'll be excused from here.

18 Okay. Do not begin your deliberation process, Mr.
19 Foreman, Mr. Foreman, until you get this and the evidence.

20 All right. Take the jury out please.

21 (WHEREUPON, the following takes place outside the
22 presence of the jury.)

23 THE COURT: Anything from the state?

24 SOLICITOR SMITH: No, Your Honor. When we take a
25 little break I'm gonna run up and get the laptop but I think

1 I've got all the exhibits here in order.

2 THE COURT: Anything?

3 MR. SCHULTZ: No, sir.

4 THE COURT: Okay.

5 MR. SCHULTZ: I just want to make sure the laptop is
6 clean.

7 SOLICITOR SMITH: Yeah, I'm going to get that but he
8 can look at it.

9 THE COURT: okay.

10 (Pause.)

11 MR. SCHULTZ: Looks good to me, Judge.

12 THE COURT: Okay. Mr. Bailiff, give all that to them
13 and bring those two alternates back please.

14 (WHEREUPON, the two alternate jurors were dismissed at
15 this time.)

16 MR. SCHULTZ: Your Honor, on the record, I've inspected
17 the computer there.

18 THE COURT: okay.

19 MR. SCHULTZ: It meets my satisfaction and it's clean.

20 SOLICITOR SMITH: It's got a password here that I've
21 logged it into. So, it should stay but -- and it looks like
22 it's fully charged. So, three hours.

23 THE COURT: All right. You want to give that to the
24 bailiff and he'll deliver it to the jury if they need it or
25 do you need it to go back?

1 MR. SCHULTZ: Me, Your Honor?

2 THE COURT: Spenser, do you need that to go back?

3 SOLICITOR SMITH: We usually send it. I've sent it
4 back with them sometimes and let, let -- we can just wait
5 until they ask or whatever you want to do. Sometimes they
6 ask a question how do we play the video.

7 THE COURT: Do you want to give it to the bailiff and
8 he can give it to the jury?

9 SOLICITOR SMITH: That's fine with me.

10 (WHEREUPON, the jury began deliberations at 10:44AM and
11 returned with a verdict at 11:10PM.)

12 THE COURT: Okay. Before the jury comes in, I want to
13 caution -- Mr. Schultz, I know you've probably talked to
14 everyone, but I'm gonna say that this is not a time to
15 celebrate one way or the other. It's not gonna be any
16 outbreak in my courtroom.

17 MR. SCHULTZ: We understand that.

18 THE COURT: So, if you can not control your emotions,
19 please leave quietly now.

20 MR. SCHULTZ: I've cautioned the family about that.

21 THE COURT: They'll be in custody.

22 MR. SCHULTZ: They, they understand.

23 THE COURT: Everyone ready for the jury?

24 SOLICITOR SMITH: Yes.

25 MR. SCHULTZ: Defense is ready, Your Honor.

1 SOLICITOR SMITH: We're ready, Your Honor.

2 THE COURT: Well, we'll have the jury.

3 (WHEREUPON, the following takes place within the
4 presence of the jury.)

5 THE COURT: Mr. Foreman, has the jury reached its
6 verdict?

7 THE FOREMAN: Yes, we have, Your Honor.

8 THE COURT: If you would give that to the bailiff
9 please. You may be seated.

10 (WHEREUPON, the foreman complies.)

11 THE COURT: Madam Clerk will publish.

12 THE CLERK: In the State of South Carolina, in the
13 Court of General Sessions, the State of South Carolina
14 versus Jaden Imarion Gary, the jury unanimously finds the
15 defendant, Jaden Gary, on the charge of burglary first
16 degree, guilty.

17 We, the jury, unanimously find the defendant, Jaden
18 Gary, on the charge of possession of a weapon during a
19 violent crime, guilty. Signed by the foreperson this 1st
20 day of September, 2021.

21 In the State of South Carolina, in the Court of General
22 Sessions, Indictment Number 2019-GS-42-5573, we, the jury,
23 unanimously find the defendant, Jaden Gary, on the charge of
24 grand larceny, guilty. Signed by the foreperson on this 1st
25 day of September, 2021, in the county of Spartanburg.

1 Ladies and gentlemen of the jury, is this your verdict
2 and still your verdict, if so, please raise your right-hand.

3 (WHEREUPON, all jurors raise their hands at this time.)

4 THE COURT: Polling by the jury from the state?

5 SOLICITOR SMITH: No, Your Honor.

6 THE COURT: From the defense?

7 MR. SCHULTZ: Yes, sir.

8 THE COURT: Okay. Poll them please.

9 THE CLERK: Ladies and gentlemen of the jury, at this
10 time I poll your question. My question will be and is this
11 your verdict and still your verdict. When I call your jury
12 name and number, please stand and respond to the question.

13 Juror Number 1, Shianne Auletta.

14 THE JUROR: Yes.

15 THE CLERK: Juror Number 120, Kayla Olsen.

16 THE JUROR: Guilty.

17 THE CLERK: 164, Pamela Stoop.

18 THE JUROR: Yes.

19 THE CLERK: Juror Number 100, James Marlow.

20 THE JUROR: Guilty.

21 THE CLERK: Juror Number 48, Derek Finch.

22 THE JUROR: Guilty.

23 THE CLERK: Juror Number 40, Regina Desrochers.

24 THE JUROR: Guilty.

25 THE CLERK: Juror Number 127, Brijalkumar Patel.

1 THE JUROR: Guilty.

2 THE CLERK: Juror Number 105, Joseph McDowell.

3 THE JUROR: Guilty.

4 THE CLERK: Juror Number 155, Douglas Smit.

5 THE JUROR: Guilty.

6 THE CLERK: Juror Number 106, Benjamin McGriff.

7 THE JUROR: Guilty.

8 THE CLERK: Juror Number 65, Steven Gregory.

9 THE JUROR: Guilty.

10 THE DEFENDANT: Your Honor, the jury has been polled.

11 THE COURT: Okay. Anything from the state regarding
12 the jury?

13 SOLICITOR SMITH: Not from the state.

14 THE COURT: From the defense regarding the jury?

15 MR. SCHULTZ: No, sir.

16 THE COURT: Mr. Foreman, if you would meet Madam Clerk
17 at that podium right there. You have to sign the
18 indictments, sir.

19 (WHEREUPON, the foreman complies.)

20 (WHEREUPON, the jury was dismissed at this time.)

21 THE COURT: All right. Matters from the state?

22 SOLICITOR SMITH: Nothing from the state, Your Honor.

23 THE COURT: From the defense?

24 MR. SCHULTZ: Yes. Judge, Judge I know Mr. Gary's
25 signing the sentencing sheet right now.

1 could I be heard on mitigation?

2 THE COURT: Yes, sir.

3 MR. SCHULTZ: Thank you, Judge.

4 SOLICITOR SMITH: Was that what you were talking about
5 for sentencing purposes or posttrial motions?

6 THE COURT: Well, is there any post -- is there a
7 posttrial motion?

8 There doesn't have to, have to be.

9 SOLICITOR SMITH: I don't---

10 MR. SCHULTZ: Judge---

11 SOLICITOR SMITH: I don't have anything. We would --
12 we do have some stuff for sentencing. I just wanted to make
13 sure.

14 THE COURT: Sure.

15 SOLICITOR SMITH: Okay.

16 THE COURT: I'm gonna hear from the State on that.

17 MR. SCHULTZ: I, I wasn't sure what the Court was
18 asking but I do move for a new trial at this point based
19 upon all objections---

20 THE COURT: Okay.

21 MR. SCHULTZ: ---and rulings against.

22 THE COURT: Does the State desire -- does the, does the
23 state desire to be heard on that?

24 SOLICITOR SMITH: No, Your Honor.

25 THE COURT: Okay. Motion for a new trial is denied.

1 There was ample, ample evidence of questions of fact to go
2 to the jury, and, in fact, they have decided the case. So,
3 that motion is denied.

4 Anything else in mitigation?

5 MR. SCHULTZ: From the defense, Your Honor?

6 THE COURT: Yes, sir.

7 MR. SCHULTZ: Yes, sir.

8 Your Honor, as you've heard before, I represent
9 Mr. Jaden -- Mr. Gary on these charges. Unfortunately we
10 have come to the results here from this case.

11 Beg the Court's patience. He's signing the sentencing
12 sheets right now.

13 THE COURT: Yes, sir.

14 (Pause.)

15 MR. SCHULTZ: As the Court has heard before, he was 17
16 years old at the time.

17 Jaden, stand up.

18 Can I approach, Judge?

19 THE COURT: Yes, sir.

20 MR. SCHULTZ: Your Honor, Mr. Gary was 17 years old at
21 the time of this offense which happened in July of 2019. We
22 obviously are asking for leniency in this matter.

23 As the Court can see in the gallery here, we have, we
24 have a dozen people here in support of him here today. I've
25 met with not only his, his family several times, but also

1 Jaden several times. I've, I've -- I just can't say enough
2 good things about, about him as an individual. I think at
3 the Jackson Denno motion that or hearing that we did
4 yesterday, my prospective on it is that, when I first met
5 Jaden back in 2019 when the family first retained me on this
6 case, he was over there in the annex next door to my office,
7 and I, I was -- I will say that I was not very impressed
8 with his maturity at that point.

9 This is someone that I don't think realized exactly
10 what, what happened and what he, he did and the consequences
11 of everything. But back in I think it was August or
12 September of 2019, Judge Cole saw fit to grant a bond, a
13 reasonable bond, in this matter and he was on home
14 detention.

15 So, even during all the stuff that happened in 2020,
16 he's come to my office and, and I really, in these last two
17 years, I really watched him grow up and I don't have the
18 opportunity to really get to know clients real on a personal
19 level like this. I, I not only saw him, you know, get a
20 job, reestablish a good relationship with his mother, and
21 she's here today, and she's always been in support of him,
22 establish a good relationship with Victor, his, his
23 grandfather -- where's Victor?

24 Okay. But also his grandmother as well and they're,
25 they're all beautiful people. I love them and just

1 outstanding pillars of the community there.

2 So, I, I, I guess, Your Honor, I, I can, I can go on
3 for such a long time about the kind of family support that
4 he has, you know, here. I mean every time I've met with
5 him, it was not only Jaden coming in it, it was also his
6 mother. It was his grandfather and his grandfather's Victor
7 Gary and he worked, at some point, for the Department of
8 Corrections.

9 My understanding, unfortunately, the family can confirm
10 this, is, is that he's going through some pretty severe
11 medical difficulties at this, at this time. I think his
12 cancer re, remerged. So, I'm not sure how long he's gonna
13 be with us but he's a, he's a great person too and always
14 had a kind word to say about me, kind word to say about my
15 office staff. In, in this type of business, Your Honor, any
16 compliment that, that I get in this business is, is much
17 appreciated. So, I, I do appreciate the family here today.

18 But as far as what I said about Jaden, as I said,
19 Judge, I, I watched this young man grow up and I watched him
20 become a man in these last two years, prepare for trial,
21 going over everything.

22 And as far as the negotiations in this case goes,
23 spenser and I began negotiating with this case a while ago
24 and I, I think the state would acknowledge that I put him in
25 a difficult position, but it's not me in a difficult

1 position today, it's unfortunately Mr. Gary. I proposed an
2 offer or the counteroffer of some kind of parolable offense
3 that Jaden could be on, and I know the other attorneys that
4 represent the two other folks in this were trying to
5 negotiate a fair resolution in this case.

6 The reason why I asked for that is that Jaden has no
7 record whatsoever and he was 17 at the time. And for such a
8 young man -- for such a young man to be faced with a
9 potential 50 to life sentence, I don't -- I, I, I don't
10 consider that merciful and I know that's not the State's
11 job. I know that they're, they're concerned with crime and
12 punishment. I know that.

13 But there's, there's -- every sentence that we have in
14 this state, whether it be from a guilty plea or from trial,
15 has to be tempered with some sort of mercy. I know James
16 Cheeks talks about this, mercy and grace, and that's what
17 I'm asking for in the Court here today. I know there's
18 several family members that wish to speak on Jaden's behalf.
19 I know Jaden wishes to speak as well.

20 I could go on reading letters. I, I think I have a
21 little stack of -- but I think the best thing to do would be
22 to -- for the Court to hear from the family.

23 I'm not gonna readdress the Court after the family
24 talks but I am asking, Your Honor, that all the, all the
25 charges -- all the sentencing be run concurrent with

1 everything. He's been on home detention right now for quite
2 some time.

3 so he's either -- since he was arrested in --
4 August 2nd of last year, he's either been on home
5 detention or on -- or in jail to some extent.

6 You -- Judge Kelly, you actually heard his violation
7 report I believe this spring when he tested positive for
8 marijuana or admitted to smoking marijuana, I can't remember
9 which, but I think you kept him in jail 90 days. He, he has
10 not had any violations since then. So, we are asking for
11 all the -- all that credit since August 2nd, 2019, and I'll
12 figure that out as, as the family is talking.

13 So, I'm asking for the minimal sentence in this matter.
14 Obviously, you know, it's after a jury trial and that may be
15 a lot to ask but I'm asking for the minimal sentence just
16 because of his age, because of his lack of criminal record,
17 and support that he does have and I'm also asking for credit
18 for not only his house arrest, but also for his time that he
19 spent in jail.

20 And, Your Honor, my colleague, Mr. Smith there, just
21 notated that, at this point, he has 123 days in jail and
22 634, 634 days on home detention. That's a total, Your
23 Honor, of 757 days.

24 Thank you.

25 SOLICITOR SMITH: Yeah.

1 MR. SCHULTZ: Judge, where, where would you like the
2 family?

3 THE COURT: Wherever the officer asks them to stand.
4 Ma'am, if you'd tell me your name again please?

5 MS. WILLIAMS: My name is Moriah Williams. I am
6 Jaden's mother and he does -- excuse me.

7 You have no idea how hard these two years have been for
8 me, and not only for me, for Jaden and for my other two
9 children. Give me a second and I apologize.

10 I'm not trying to make you cry, Jaden.

11 Everyone know Jaden is a mama's boy. He love his mama
12 to death and he always make sure I'm okay. I always told
13 him that's not your job. My job is to take care of you.

14 I work two jobs, two, to take care of my children.
15 Jaden lost his father, which he was very close to, very
16 close to, and he has had to suffer with that for the last
17 year. It will be two years this year. He, he passed away
18 2018, Christmas of 2018.

19 But Jaden has, since then, have gotten his GED. He was
20 enrolled in Greenville Tech. He had to stop going to
21 Greenville Tech because of COVID. He has so many dreams. I
22 have to listen to my child tell me his dreams every single
23 day. He always has something new that he wants to do and
24 he's enthusiastic about it. And I'm so proud of the person
25 that he has come to be throughout these last few years.

1 Very proud of him.

2 He keeps a job. He works. He go to work. He come
3 home. He help me with my kids. It's not his job but he
4 help me. He make sure that they fed if I'm at work. He
5 DoorDash. He, he, he, he, he would do anything that he can
6 to help me and I appreciate him for that.

7 I just want him to be able to live his life. I mean at
8 17 years old, having to spend some time like that in jail
9 and not be able to continue on with your life and not be
10 able to do the things that you have -- that you dream of
11 doing is so hard. I lose many nights of sleep.

12 He come in my room throughout these last few years
13 laying on my bed crying. He realize he made a mistake and
14 it's nothing, you know, it's nothing he can do about it. I
15 know that he's sorry for what he done. I know that he is.
16 I just wish that he could of had a second chance at life, at
17 being so young.

18 I could not imagine going through what he's going
19 through right now at that age and how I feel right now. My
20 kids, last night, I don't, I don't include them on things
21 because I don't want them upset. They're too young to be
22 into this but, you know, they, they noticed that he wasn't
23 there. I didn't even say -- I, I got -- where's Jaden.
24 He's not here, you know. My baby boy, he got up with me and
25 prayed with me this morning with me. He realized that he

1 wasn't there this morning but he knew I was ironing clothes
2 and getting things ready. so he just prayed with me that
3 he'd be able to see his brother.

4 Like the, the -- they play sports. The fact that he's
5 not able to come to they game -- to his games and my
6 daughter run track. The fact that he's not there hurts
7 them, you know. Like this decision that's being made is not
8 only hurting him, he's being punished for it, but we all
9 have to deal with it.

10 I have to go home and deal with this. His brother and
11 sister have to deal with it. My mother has to deal with it.
12 His aunts and uncles and cousins have to deal with every --
13 all of this, you know, and I just -- nah, he -- I work
14 part-time at a, at a hotel, front desk check, and he told me
15 I want a job there. You know, I was like I don't know. I
16 mean, you know, we, we would talk and see and I end up
17 talking to the supervisor and he gave him a job and he was
18 so excited to be able to start that job which he suppose to
19 started on yesterday and he wasn't able to, you know.

20 I called the supervisor and let him know he wasn't
21 gonna be able to start. But I mean just enthusiastic part
22 of just being able to live his life is -- and I mean not
23 trying to say this. Different tragedies has happened. I
24 believe that losing his father was a big deal, a really big
25 deal, and then just a lot of things throughout life.

1 Just -- and I'm sorry and I mean I wish that I could have
2 done something different but my job was to, to work and take
3 care of them and just love them the way that I can.

4 Just -- I just don't have -- know anybody else feel the
5 way I feel. I don't know if you have children and like to
6 go and, and see them and hear about their goals and, and
7 spend time with them. But if you can just put yourself in
8 my shoes and just see how I feel.

9 He's not a murderer. He's not a killer. He's actually
10 a good kid. I'm not saying it because he's my child but he
11 really is and I'm, I'm just proud of the way he turned out
12 to be and that's it.

13 THE COURT: Thank you, ma'am.

14 Sir, tell me your name please.

15 MR. MIMS: My name is Steven Mims.

16 THE COURT: Yes, Mr. Mims.

17 MR. MIMS: I am Jaden's uncle and actually cousin.
18 I've known him well before he got here. He's actually my,
19 my first cousin's grandson who died early.

20 He's -- he comes from a, a, a, a line of people that
21 have suffered tragedies. He -- very intelligent young man.
22 I, I know that. Definitely deserving of a mark at this
23 point in his life. This is a, this is a crossroad moment.

24 I believe going the right way will, will, will benefit
25 us all. Going the wrong way is just gonna continue to, to

1 drive that, that wedge that, that, that thing that's going
2 to send him down, down the road even further.

3 So I, I know we, we -- we're, we're at a point and we,
4 we've all done our job, you know, and the defense and the
5 solicitors and all of that. And your job now is to, to
6 sentence and we know correction needs to be done. He needs
7 to pay for but I, I would just ask you, and, and appeal to
8 you, sir, that this not be one of those sentences that
9 step -- that just crush, and I don't want to go racial, but
10 crush another black man.

11 I mean he has, like so many of them I have seen and
12 we've witnessed it before, you know off to the wrong path,
13 single mother, just going through a lot, and we can go on
14 and on and paint a story and, and make a movie out of this
15 and it's been movies made. But we're -- this, this is --
16 he's unique. He deserves a, a -- another chance and I
17 really want him to owed -- and I want you to hear me and I
18 want you to know you have to pay for this but there's so
19 much, so much more you're gonna do.

20 Even if this man sends you to whatever length of
21 sentences you have to do, we know, and like I told your
22 mother, it doesn't change who you are. You're that same
23 young man God birthed you, and after this, you're gonna be
24 even better.

25 So, sir, it's on you.

1 THE COURT: Thank you.

2 MRS. MIMS: May I remove my mask?

3 THE COURT: Yes, ma'am, if you feel comfortable.

4 MRS. MIMS: Your Honor?

5 THE COURT: Your name please?

6 MRS. MIMS: Rita Mims.

7 THE COURT: Thank you, Mrs. Mims.

8 MRS. MIMS: And that was my husband, Steven. We are
9 both pastors and I just want to appeal to not only you but
10 to every, every ear that's listening.

11 First I want to thank God for his presence in this
12 courtroom because I know that he's here. I want to thank
13 his attorney for the fight that's in him and I also want to
14 thank the solicitor for doing his job. But what I want to
15 appeal to is grace today.

16 I have been, been inter -- been with intercessory
17 prayer every single day this week at 5:00AM. The scripture
18 comes from John, excuse me, Number 6 and it talks about
19 grace. It talks about God turning his face and showing his
20 grace and his mercy, and I have prayed that under my breath.
21 I even released it to every juror that walked off the stand
22 today because, ultimately, it is God's decision because we
23 are praying God's will over his life.

24 Not my will. Not your will be done and I know that you
25 have the rules and everything that you have to go by, the

1 state legislation and the regulations and all of that. But
2 I just want to give a little bit of history about this young
3 man because Jaden has been set aside since birth.

4 when he was two, he, he astonished everyone that he
5 came into their presence. He -- he's a very smart and
6 gifted child. Sometimes that does not benefit you because
7 you think you know everything. Sometimes it does not play
8 to your advantage when you feel that you already have the
9 answers and the outcome that you think you're going to have.

10 on the other hand, I feel like there has been a attack
11 on his life, mentally, physically, spiritually. I believe
12 that he has suffered an attack from the enemy meaning
13 spiritual attack. That's because, early on in his life,
14 even Satan knew that he was born from greatness, and it does
15 not, it does not shock me at all that Jaden is fascinated
16 with guns because the, the, the very tool that Satan has
17 used throughout his years where he has went through crisis
18 and trauma have all revolved around guns.

19 My sister, if she does not mind me saying so, suffered
20 a gunshot to the head. She's blind to -- right of both
21 eyes. That was from his paternal grandpa who she was
22 married to at the time. He committed suicide.

23 He has also seen his other paternal grandmother. She
24 was a victim of domestic violence. Another shunt -- a
25 gunshot to the head.

1 How does one that young process all of that?

2 That is a lot of onion peels to peel back to get to the
3 core of healing. One of my desires to see for Jaden and my
4 entire family is to be given the opportunity to heal, to
5 have counselors in place, to have mentors in place, to
6 continue to have people that love him in his life that can
7 directly continue to influence him to go in the right
8 direction.

9 As I listened to the Courts, and I'm not trying to be a
10 lawyer or in, inject my opinion, and I know that the jury's
11 gone now, but even to be put in handcuffs after your mother,
12 who I commend for bringing him to the jail, to be put in
13 handcuffs and not be given the opportunity for his mother to
14 be present does not sit well with me. That is because it is
15 not Jaden's place, as a minor, to decide if I have a right
16 to say I want my mother here. It -- it's, it's the
17 officer's job to say do you want your mother here and not
18 say oh, he didn't ask for his mother.

19 That's not Jaden's job. Jaden did exactly what he was
20 suppose to, did what he was suppose to in front of, in the
21 presence of the authorities, which is something he's always
22 had to work on. Respecting authority.

23 I feel that, in the last few years, even when we had
24 pulled him aside when we saw a change in him after his dad
25 died, it was even hard for my husband and I to counsel him.

1 That's because he was already in a mindset where he could
2 not hear us. He could not see us. He was reaching but he
3 was reaching in all the wrong directions for that attention
4 and support that he thought he needed to be the man that he
5 could not be at that time.

6 He lost his father. How am I gonna go over this bridge
7 from being a young man to becoming a man who does not have
8 to depend on anybody, I need this money, I'm gonna get it
9 however I can. So all it took was just a little bit of
10 influence from the enemy, Satan, whoever he decided to use
11 to draw him in and I do believe his story about this whoever
12 this Bethany person was that could have been a catfish, not
13 necessarily a true face, of a Bethany on Snapchat, however
14 you say call it, I call it snap chap cause I don't know, but
15 I believe that it could have been a setup.

16 He fell into the trap. That doesn't excuse him.
17 There's a house. It has guns. I know where you can get
18 them. How else would he have known how to go directly into
19 a bedroom and find exactly what he needed in that short
20 length of time if didn't have a plan that someone set up for
21 him and a -- maybe the plan was really to take it from him
22 once he got it but he just was the bait.

23 And so, ultimately, what I what would like to see is
24 the lesser sentence, whatever that could be, for Jaden's
25 own -- for Jaden on all the counts so that we, as a family,

1 will have the opportunity to continue to pour into him and
2 help him and that is really my only request.

3 THE COURT: Thank you, ma'am.

4 MRS. MIMS: Thank you.

5 THE COURT: Ma'am, if you'll tell me your name please
6 for my court reporter.

7 MRS. EARL: Thank you. My name is May Earl. I'm
8 probably the oldest -- can I remove my mask?

9 THE COURT: Yes.

10 MRS. EARL: I'm probably the oldest aunt in here but
11 Jaden is my nephew. His grandmother is my sister. That was
12 my baby sister that spoke. And just to say that I have went
13 through similar situations with my son at the age of 17.
14 This is something that you do not want to bring up. But I
15 feel it necessary because at -- he was 17 when he committed
16 his little crime due to, as my sister said, the devil
17 putting little things in your ear.

18 He got messed up with the wrong little guy. I told him
19 the guy was not a good influence on him at the time but he
20 continued to hang around the little guy. All of his good
21 friends flee and, all of a sudden, my son is in trouble.

22 But this was in Columbia, South Carolina. We stayed
23 there for 27 years. My son's 32 now. He was incarcerated
24 for 90 days because he was tried as a minor. He didn't have
25 a jury. He didn't have to have a jury. We did have a

1 lawyer but he was tried -- he went to jail, 90 days
2 incarceration.

3 I prayed. I prayed him up out of there. Some people
4 say oh, he's gonna be in there longer because he's gonna be
5 getting into all kind of little trouble. But no.

6 I prayed. My family prayed. They were up here. I was
7 down there but we prayed and we said he's coming out.
8 Ninety days my son was out of incarceration. This is one
9 thing that he said, that's no place for me.

10 I believe Jaden knows that is no place for him. He
11 knows that he made a mistake. He know he committed the
12 crime. He confessed to the crime and I believe he deserves
13 a second chance.

14 My son basically got a second chance because he could
15 of gotten 15 years but the judge saw fit to give him 90 days
16 incarceration and I thank the judge for that. My son spoke
17 professionally because he always a writer, a reader. He
18 always read. He always did. He always tried to enlighten
19 hisself with the library, the, the book stores. He loved
20 it.

21 But that one little young man that influenced him got
22 him, got him into trouble and it was like, it was like
23 something that was in his ear, constantly in his ear, and I
24 couldn't figure out what was going on until it actually
25 happened.

1 So, so, Judge, I'm just asking you to be lenient on my
2 nephew because I love him. I been loving him ever since he
3 was this, this, this high running around, smiling, and
4 saying I love you Auntie May.

5 His daughter -- his mother, I know she's not my
6 biological child but she's like my daughter. I love her
7 diligently and I love them all the same. But I'm just
8 asking you to show mercy and grace on my nephew.

9 THE COURT: Thank you, ma'am.

10 MRS. EARL: Thank you.

11 THE COURT: Ma'am, if you'll tell me your name please.

12 MRS. GARY: Hi, my name is Hazel Gary. I'm Jaden's
13 grandmother, excuse me, and I just want to say I always tell
14 my grandkids, and all, all kids really, that I know this in
15 Corinthians. I can't remember. I think it's the fifth
16 chapter of Corinthians 1 from 15. I always tell them that
17 bad influences follow you is what happens. But I, I always
18 pray that they'll listen to what I said.

19 I don't have that much to say because I get nervous
20 when I get in front of people a lot of times but I'm sorry.
21 I just want to ask you to have mercy on my, on my grandson.
22 That's all I'm gonna say. Please. Please, Your Honor.

23 THE COURT: Thank you, ma'am.

24 Mr. Gary, would you like to speak, sir?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Stay right there.

2 THE DEFENDANT: Yes, sir, Your Honor. I just want to
3 start by saying, even though the victim may not be here and
4 I, I do want to offer a sincere apology cause it was a
5 whole -- the whole two years I been going through this,
6 that's all I been hearing is I wasn't sincere enough and I
7 didn't mean it. And it seems like every action I put in it
8 to try to do better, to try to better myself, it, it wasn't
9 enough. I don't know if it's just me doing it wrong or if
10 it's just not what the world wants from me.

11 But I -- all I want to do is apologize. I want to do
12 everything I can to make everything right. Whether I,
13 whether I -- when I get sentenced or regardless, I just want
14 to make sure everything's all right cause I done moved on
15 from being the young person I was to the man I am now. Now
16 all I want to do is make everything better.

17 That's all I got to tell you, Your Honor.

18 THE COURT: Thank you, sir.

19 From the solicit -- from the state.

20 SOLICITOR SMITH: Your Honor, Mr. Williams had to go
21 back to work and obviously this is the second time we've
22 tried the case. He did state he wanted Your Honor and
23 Mr. Gary to know that he believes he's lucky that he wasn't
24 home cause he thinks Mr. Gary might be getting a life
25 sentence but in a, in a different way and possibly all three

1 of the young men that were involved.

2 He asks Your Honor to impose the maximum sentence
3 because Mr. Gary had a chance to do the right thing and to
4 plead, and instead he chose to keep doing the wrong thing.

5 I would also point out, in all three of these young
6 men's interviews, they stated they would get the guns back,
7 that they would do everything they could to get them back.
8 No efforts were made that I'm aware of. No sincere efforts.
9 Even once I got involved in the case, I contacted their
10 defense attorneys again trying to get the guns back.

11 As you heard, one of them had sentimental value with
12 Mr. Williams father. Nothing. Never set up an appointment
13 or anything with any of them to do that.

14 And, Your Honor, I don't want the family to think that
15 I didn't think a lot about this case and recognize that
16 Mr. Gary is a young man, and, unfortunately this is like a
17 lot of my cases, the person gets convicted and then you see
18 14 people come in. They all speak incredibly well. They're
19 well dressed. They probably have good jobs and, and it's
20 just -- it's puzzling to me why the defendant rejects those
21 people and goes off with other people and, and makes bad
22 decisions when they seemingly have, although he lost his
23 father, he seemingly has a, a ton of family support.

24 This is not some, some guy that doesn't have anybody
25 that he could rely on. It seems like he's got more than,

1 than many people have to rely on.

2 And, Your Honor, their -- the offer that the state made
3 was 15 years, which is the minimum for what this crime
4 carries. I ran it by my boss and some of the others in the
5 office, and, and Investigator Newton and Investigator or
6 Mr. Williams and, you know, the, the lingering issue that I
7 had is I think that if there was somebody home he would of
8 shot him and killed him. And that's the problem that I had
9 with this case.

10 My assessment, from looking at the written statements
11 from the other two, is that Mr. Gary is the ringleader.
12 Tyquez McKinney wrote one sentence in broken English. Zion
13 Miller wrote like three in broken English. He writes in
14 perfect cursive, a page. He talks better than them all.
15 He's the one that brought them into this in my opinion and
16 got the two of them caught up in it as well. He's the one
17 that brought the idea up from the Bethany.

18 So, I view him as the ringleader. Obviously he's the
19 first in. He's the one with the weapon while the other two
20 grabbed weapons inside and I don't think that the minimum
21 sentence is appropriate because he did not admit
22 responsibility. Although he did it to the investigator, he
23 made the state and Mr. Williams go through basically the
24 last trial, we were one witness away from finishing, two
25 different trials on a case where he confessed and is caught

1 on video.

2 so, he's not accepted responsibility. He could not
3 just admit what he had done and take punishment.

4 so, we do not think that the minimum sentence is
5 appropriate. Mr. Schultz gave you the breakdown.

6 Another thing that factored into my decision, Your
7 Honor, all three of the young men in this violated home
8 detention. Mr., Mr. Gary violated for marijuana use. So he
9 said it was a CBC. Mr. Miller violated by threatening Haley
10 Hunsberger over Snapchat. Ms. White was able to give him an
11 unredacted copy of her statement.

12 The reason we didn't call her and try to get around
13 that is because she got threats to her life. I'm not saying
14 from Mr. Gary but from people associated with people
15 interested in this case.

16 Mr. Miller put on Snapchat all rats must meet they fate
17 with a picture of her statement, with her home address, and
18 her phone number on it, and she was subject to many, many
19 threats, and then he later violated for marijuana. Mr.
20 McKinney violated for marijuana.

21 I think being released on home detention by Judge Cole
22 or Judge Kelly, whoever it was, after only being
23 incarcerated for a month for a charge like this was very
24 generous and a great opportunity to have two years to show
25 that you understood the seriousness of what had happened and

1 get on the straight and narrow, stop smoking marijuana,
2 stop, you know, doing criminal type things and they didn't.
3 And I, I mean I understand they appreciate it now. But that
4 was an opportunity and all that factored into the state's
5 decision to just keep it at the minimum and, and ultimately
6 that led to us having two different trials.

7 THE COURT: Okay.

8 SOLICITOR SMITH: Thank you.

9 MR. SCHULTZ: Judge, I'm sorry.

10 THE COURT: I heard enough.

11 Mr. Gary, you are indeed a very blessed and lucky man.
12 You broke into the house of a man who is a combat veteran
13 with three tours.

14 You understand?

15 THE DEFENDANT: (Nods affirmatively.)

16 THE COURT: Had he been there, he would of killed you
17 and your two friends that day. Your mother would be minus a
18 son right now. No doubts in my mind. None. You would be a
19 dead person.

20 That shotgun you took out, that's the one he had loaded
21 to stop people like you and the citizens of this county and
22 this state are tired of people like you breaking into their
23 houses. You didn't make a mistake. A mistake is where you
24 put too much salt on your food. You made a bad judgment.
25 That's what you did.

1 2019-GS-42 -- 42-5574, 20 years in the Department of
2 Corrections, concurrent, credit for time.

3 2019-5574-A, that's the weapon, the maximum five years,
4 concurrent, credit for time.

5 2019-GS-42-5573, that's the grand larceny, three years,
6 concurrent, credit for time.

7 You can overcome this, Mr. Gary. You're gonna be close
8 to 40 years old but you still got time to overcome this and
9 become the man that you want to be. Very best of luck to
10 you, sir.

11 MR. SCHULTZ: Thank you, Judge.

12 SOLICITOR SMITH: Thank you, Your Honor.

13 THE COURT: Thank you.

14 We're in recess.

15

16 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, official Court Reporter for the state of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 31st day of August and the 1st day of September, 2021.

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

November 10th, 2021

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

SEP 20 2019

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

GRAND LARCENY

That Jaden Imarion Gary, did in Spartanburg County on or about the
~~date of July 22, 2019, feloniously take and carry away the goods of Jason~~
Williams, valued at more than Two Thousand Dollars but less than Ten
Thousand Dollars, described as follows: seven firearms, and/or ammunition,
and/or body armor, with the intent to deprive the owner permanently of such
property, all in violation of Section 16-13-30 (B) (1), *THE CODE OF LAWS OF*
SOUTH CAROLINA, (1976, as amended).

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



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

SEP 20 2019

At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE-BURGLARY- FIRST DEGREE

That the Defendant, Jaden Imarion Gary, did in Spartanburg County, on or about July 22, 2019, willfully and intentionally enter the dwelling belonging to Jason Williams located at [REDACTED] Street, Startex, South Carolina without consent and with the intent to commit a crime therein, and when effecting entry, and/or while in the dwelling, and/or in immediate flight therefrom, he or another participant in the crime did either:

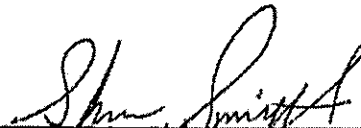
- (1) Arm himself with a deadly weapon; and/or
- (2) display what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearms,

in violation of Section 16-11-311, Code of Laws of South Carolina (1976) as amended.

**COUNT TWO-POSSESSION OF A WEAPON DURING
COMMISSION OF A VIOLENT CRIME**

That the Defendant, Jaden Imarion Gary, did in Spartanburg County on or about July 22, 2019, possess a firearm or what appeared to be a firearm, during the commission of a violent crime as defined in Code §16-1-60, in violation of Code §16-23-490. CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE

VS.

Jaden Imarion Gary

AKA:

Race: BLACK Sex: M Age: 19DOB: 2002 SS# [REDACTED]Address: [REDACTED] StCity, State, Zip: Duncan, SC 29334-9392DL#: 104881267 SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS4205573AW#: 2019A4210102436Date of Offense: 7/22/2019S.C. Code § : 16-13-0030(B)CDR Code #: 3420

SENTENCE SHEET

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

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Larceny / Grand Larceny, value more than \$2,000 but less than \$10,000In violation of § 16-13-0030(B) of the S.C. Code of Laws, bearing CDR Code # 3420☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

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

ATTEST:

[Signature]
SMITH, SPENSER H

SC101370

SC Bar#

[Signature]
DefendantSchultz, E. Joshua
Attorney for Defendant

SCB74618

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 3 days/months/years/Time-Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$ provided that upon the service of days/months/years/Time Served and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOP.252 days/months☒ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-66 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS Jaden Imarion Gary INDICTMENT/CASE#: 2019GS4205573

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years
And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol testing
☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with ☐ Domestic Violence Intervention Program
☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment 0 _____ days/hours☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.☐ Other: _____

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

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

Payment Term _____ ☐ Set by SCDPPPS

Recipient: _____

*Fines:

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

\$14-1-206 (Assessments 107.5 %)		\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$58-5-2995 (DUI Assessment)	\$12	\$
\$58-1-288 (DUI Breath Test)	\$25	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
\$60-21-114(BUI Breath Test Fee)	\$50	\$
\$58-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$
	TOTAL	\$ 128.75

Clerk of Court/ Deputy Clerk: _____

Court Reporter: _____

Presiding Judge: _____

Judge Code: _____

Sentence Date: _____

SCCA/217 (07/2021)

Page 2 of 2

A CERTIFIED COPY
Amy W. Cox
 CLERK OF COURT
 SPARTANBURG COUNTY
 BY: EC D.C.
 DATED 9/2/21

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE

VS.

Jaden Imarion Gary

AKA:

Race: BLACK Sex: M Age: 19

DOB: 2002 SS#

Address: St

City, State, Zip: Duncan, SC 29334-9392

DL#: 104681267 SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS4205574

A/W#: 2019A4210102435

Date of Offense: 7/22/2019

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

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

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Burglary / Burglary (After June 20, 1985) - First degree

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

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

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

 SC101370 SC Bar#  SCB74518 SC Bar#
 SMITH, SPENCER H Defendant SCHULTZ, E. Joshua Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 20 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years

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

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

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

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.

757 days/months

☒ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS Jaden Imarion Gary INDICTMENT/CASE#: 2019GS4205574

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol testing
☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with ☐ Domestic Violence Intervention Program
☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment 0 _____ days/hours☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.☐ Other: _____
☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Term _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

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

§14-1-206 (Assessments 107.5 %)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$
	TOTAL	\$ 128.75

Clerk of Court/ Deputy Clerk: T. CampCourt Reporter: P. GreenPresiding Judge: R. Keith KellyJudge Code: 2165Sentence Date: 1 September 2021

SCCA/217 (07/2021)

A CERTIFIED COPY

Page 2 of 2

Amy W. Cox
 CLERK OF COURT
 SPARTANBURG COUNTY
BY: TSC D.C.DATED 9/2/21

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE

VS.

Jaden Imarion Gary

AKA:

Race: BLACK Sex: M Age: 19
 DOB: 2002 SS# [REDACTED]
 Address: [REDACTED] St
 City, State, Zip: Duncan, SC 29334-9392
 DL#: 104681287 SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS4205574A

A/V#: 2019A4210102437

Date of Offense: 7/22/2019

S.C. Code § 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

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

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

Spencer H. Smith SC101370 Jaden Gary SCB74518
 SMITH, SPENSER H SC Bar# Defendant Schutz, E. Joshua SC Bar#
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 5 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years
 and/or to pay a fine of \$ provided that upon the service of days/months/years/Time Served and or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
252 days/months

☒ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-55
 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

A CERTIFIED COPY
Amy W. Cox
 CLERK OF COURT
 SPARTANBURG COUNTY
 BY: BC D.C.
 FILED 9/2/21

STATE VS Jaden Imarion Gary INDICTMENT/CASE#: 2019GS4205574A

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling☐ Completion of GED☐ Random Drug/Alcohol testing☐ Attend Voc. Rehab. or Job Corp☐ No Contact with☐ Domestic Violence Intervention Program☐ Mental Health Counseling☐ May serve W/E
beginning: _____☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430☐ Public Service Employment 0 _____ days/hours☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.☐ Other: _____☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

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

Payment Term _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

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

§14-1-208 (Assessments 107.5 %)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (If paid in installments)

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

	\$
	\$
\$100	\$
\$100	\$
\$12	\$
\$25	\$
\$25	\$
\$150	\$
\$41	\$
\$50	\$
\$40/ea	\$
TBD	\$
\$500	\$
TBD	\$
TOTAL	\$ 128.75

Clerk of Court/ Deputy Clerk: T. CampCourt Reporter: P. GreenPresiding Judge: A. Keith KellyJudge Code: 2165Sentence Date: 1 September 2021

SCCA/217 (07/2021)

Page 2 of 2

A CERTIFIED COPY
Amy W. Cox
 CLERK OF COURT
 SPARTANBURG COUNTY
 BY: TS D.C.
 DATED 9/2/2021

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF)

Spartanburg SC)

Full name and prison number (if any) of Applicant.)

Jaden Gary #385880)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2024-CP-42-03224

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Cor. Inst.
2. Name and location of Court which imposed sentence Spartanburg County
3. ~~Name(s) of co-defendant(s) (if any)~~ Tyquez McKinney; Zion Miller
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2019 GS4205574
 - (b) 2019 GS4205574A
 - (c) 2019 GS42055743
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Sep 1, 2021 - Comitted to the South
 - (b) Carolina department of corrections →

to serve 20 years, and given credit for 757 465
days to include time spent on monitored
house arrest prior to trial and sentencing.

5

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CLERK
CLERK

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. The judgment and convictions of
- ii. the lower court were affirmed.
- iii. _____
- (c) the date of each such result:
- i. November 8, 2023
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Ineffective Assistance of Counsel

CLERK OF COURT
 SPARTANBURG COUNTY
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- (a) _____
 (b) _____
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

unable to specify without attorney

- (a) _____
 (b) _____
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? _____

(b) ~~any petition in State or Federal Courts for habeas corpus or post-convictions~~
 relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. _____

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 CLERK OF COURT
 SPARTANBURG COUNTY
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iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

_____ No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

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SPRINGBURG COUNTY
NEW YORK

Revised 3/2003

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Elizabeth Franklin Best
3710 Landmark Dr Suite 113 Columbia, SC 29204
- ii. Joshua Shultz
184 N Daniel Morgan Ave Sptbg, SC 29303
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Joshua Shultz - Trial
- ii. Elizabeth Franklin Best - Direct Appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

New Trial

20. Are you now under sentence from any other court that you have not challenged?

No

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 CLERK OF COURT
 SPARTANBURG COUNTY
 SPARTANBURG, SC 29303

STATE OF SOUTH CAROLINA

County of

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jaden Gary

SWORN to and subscribed before me this 18
day of July, 2024.

[Signature]
Notary Public

(L.S.)

My Commission Expires:

8/30/2026

2024 AUG 13 PM 3:11
CLERK OF COURT
SPARTANBURG COUNTY
AUG 13 2024

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jaden Gary
Applicant

SWORN or affirmed to and subscribed before me this

~~10th~~ day of June July, 2024

J. Helberg

Notary Public

My Commission Expires:

8/30/2020

FILED
 2024 AUG 13 PM 3:
 CLERK OF DISTRICT COURT
 SPARTANBURG COUNTY
 S.C.

Revised 3/2003

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Jaden I. Gary, #385880,

Applicant,

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS FOR
) THE SEVENTH JUDICIAL CIRCUIT

) CASE NO. 2024-CP-42-03224

) **RETURN AND MOTION FOR A MORE**
) **DEFINITE STATEMENT**
) (Counsel Appointed)

In response to Jaden Imarion Gary's ("Applicant") action for post-conviction relief (PCR) filed August 13, 2024,¹ Respondent makes this Return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to the Spartanburg County Clerk of Court's orders of commitment. During its September 2019 term, the Spartanburg County Grand Jury indicted Applicant for grand larceny (2019-GS-42-05573), burglary first-degree degree and possession of a weapon during the commission of a violent crime (2019-GS-42-05574). E. Joshua Schultz, Esquire, represented Applicant. Assistant Solicitor Spenser Smith of the Seventh Circuit Solicitor's Office prosecuted the case. On August

¹ Respondent's return was due to be filed within ninety days of receipt of Applicant's instant post-conviction relief application. See Rule 12(a), SCRC ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

31 – September 1, 2021, Applicant proceeded to a jury trial before the Honorable R. Keith Kelly. Applicant was found guilty as indicted. Judge Kelly sentenced Applicant to a term of twenty (20) years' imprisonment for burglary first degree, five (5) years' imprisonment for the weapons charge, three (3) years' imprisonment for grand larceny, to be served concurrently.

Applicant filed a timely notice of appeal. Elizabeth Franklin-Best, Esq. perfected Applicant's appeal. On November 8, 2023, the South Carolina Court of Appeals denied Applicant's appeal and affirmed the lower court. State v. Jaden Imarion Gary, Op. No. 2023-UP-364 (S.C. Ct. App. Filed November 8, 2023). The Remittitur was returned on November 28, 2023.

FACTS GIVING RISE TO THE CONVICTION

At the time of trial in 2021, Jason Williams, a retired army veteran, had lived in Spartanburg County for over three years. (Tr. 106). Prior to 2019, an incident occurred in which some neighborhood children found an unlocked window in Williams' home and entered his residence and stole firearms from him. (Tr. 107). The mother of the children who stole the firearms turned them in to the police and the firearms were returned to Williams. (Tr. 108). No charges were brought due to the children's ages, however Williams installed a security camera system in his living room, which allowed both entrances to the residence to be seen. (Tr. 108).

While at work on July 22, 2019, Williams received a notification on his phone that there was motion and sound inside his home. (Tr. 110). Williams notified police, who responded to the scene, but the suspects were already gone. (Tr. 110). Williams' security camera recorded three black males entering the home through the kitchen. (Tr. 110). One of the males had a handgun drawn while the others armed themselves with steak knives once inside the residence. (Tr. 110).

Multiple long rifles, cases, and ammunition valued at over \$2000 were taken. (Tr. 121).

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The surveillance video was given to Investigator Brad Newton who was able to identify Applicant as the male holding the handgun in the video. (Tr. 146). The other males were also identified and arrest warrants were obtained. Applicant was brought into the station by his mother. (Tr. 171). At the station, Applicant was taken into custody, Mirandized and interviewed. (Tr. 171). In the interview Applicant said, a girl he knew from snapchat told him about an unoccupied house that had guns in it. (Tr. 171). He admitted to entering the residence and identified himself on the surveillance video as the individual who was armed with the handgun. (Tr. 179).

CURRENT APPLICATION

On August 13, 2024, Applicant filed this application for post-conviction relief, in which Applicant alleges he is being held in custody unlawfully based on the following (excerpts verbatim):

1. Ineffective Assistance of Counsel
 - a. "Unable to specify without attorney"

Applicant requests relief in the form of a new trial.

Attached to this return and incorporated by reference are the Spartanburg County Clerk of Court records regarding the subject's convictions and sentences, Applicant's records from the SCDC, Applicant's plea transcript, the records of Applicant's direct appeal, and the records of the current PCR action. Respondent reserves the right to amend this return upon receiving any relevant materials.

MOTION FOR A MORE DEFINITE STATEMENT

Recognizing this application was filed by Applicant without the benefit of counsel, Respondent hereby moves for a more definite statement of Applicant's claims. Applicant has failed

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SPARTANBURG COUNTY
CLERK OF COURT
JADEN I. GARY

to set forth sufficient information for Respondent to determine the facts on which his claims are based. The Uniform Post-Conviction Procedure Act requires Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (emphasis added). Therefore, Respondent requests Applicant, through appointed Counsel, be required to amend his application to set forth sufficient information for Respondent to respond to Applicant's claims. Respondent reserves the right to move to summarily dismiss this application should Applicant not file an amendment raising specific allegations.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Strickland v. Washington, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of that constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1)

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SPRINGFIELD COUNTY
CLERK OF COURT
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their attorney's performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). Id. at 690–95; Butler, 286 S.C. at 442, 334 S.E.2d at 814. The defendant's burden for proving both of these components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. Strickland, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Id. at 700.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it

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is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." Strickland, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and

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raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," *not* whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. Id. at 695.

Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial*." Id. at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Id. at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. Bannister

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v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

Finally, the performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Strickland, at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has retained an attorney, the attorney, not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. Id., 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from

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the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute, resulting in undue prejudice to the State. See Love, 428 S.C. 231, 834 S.E.2d 196.

CONCLUSION

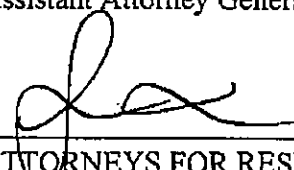
WHEREFORE, Respondent respectfully requests an evidentiary hearing be held on the claims of ineffective assistance of Trial Counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

SHAYLA J. FLORES
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

October 10th, 2024

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CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Jaden I. Gary #385880

Applicant,

vs

State of South Carolina,

Respondent,

IN THE COURT OF COMMON PLEAS

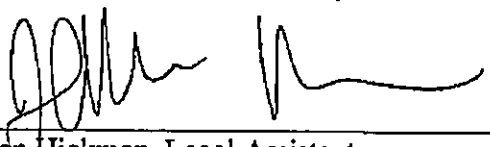
2024-CP-42-03224

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion for a More Definite Statement in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ms. Susannah Conyers Ross
Ross & Enderlin, PA
330 East Coffee St.
Greenville, SC 29601

DATED this 10th day of October 2024.



Jordan Hickman, Legal Assistant
For Respondent

AMY W. COX
CLERK OF COURT
SPARTANBURG COUNTY

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ALAN WILSON
ATTORNEY GENERAL

October 10, 2024

The Honorable Amy W. Cox
Clerk of Court - Spartanburg County
PO Box 3483
Spartanburg, SC 29304-3483

Re: Jaden I. Gary #385880 v. State of South Carolina
2024-CP-42-03224

Déar Ms. Cox:

Enclosed for filing please find Respondent's original Return and Motion for a More Definite Statement to the Application for Post-Conviction Relief of the above-captioned case. Please let me know if anything additional is needed at this time.

Sincerely,

Shayla J. Flores
Assistant Attorney General

SJF/jbh
Enclosure

cc: Susannah C. Ross, Esquire

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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

COURT OF COMMON PLEAS
2024-CP-42-03224

JADEN IMARION GARY,
APPLICANT,

VS.

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,
RESPONDENT.

June 16, 2025
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE WILLIAM C. MCMASTER, III JUDGE.

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

SUSANNAH C. ROSS, ESQ.
Attorney for the Applicant

MACKINNON WESTRAAD, ESQ.
Attorney for the Respondent

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

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All Exhibits were retained by the Clerk of Court for
Spartanburg County.

P R O C E E D I N G S

1
2 THE COURT: Okay. So we're going to go forward on --
3 starting with 2024-CP-42-03224. And if the parties will,
4 please, identify themselves and who they represent.

5 MS. WESTRAAD: May it please the Court.

6 MacKinnon Westraad on behalf of the State of South
7 Carolina.

8 That's not the case number I have for Jaden Gary. Is
9 that the same case you have?

10 THE COURT: I have 2024-CP-42-03224.

11 MS. WESTRAAD: Oh, never mind. I misheard you. I'm
12 sorry.

13 THE COURT: Okay. And, yes, ma'am.

14 MS. ROSS: I'm Susannah Ross here on behalf of Jaden
15 Gary.

16 THE COURT: All right. I'll be happy to hear from
17 you.

18 MS. WESTRAAD: This is the post conviction relief
19 matter of Jaden I. Gary vs. the State, case number
20 2024-CP-42-03224 out of Spartanburg County.

21 In September of 2019, the Applicant was indicted by
22 the Spartanburg County Grand Jury for one count of grand
23 larceny, that's case number 2019-GS-42-05573; burglary in
24 the first degree, that's case number 2019-GS-42-05574; and
25 possession of a weapon during the commission of a violent

1 crime, that's case number 2019-GS-42-05574A.

2 Applicant was represented by E. Joshua Schultz. The
3 State was represented by Assistant Solicitor Spenser Smith
4 of the Seventh Circuit Solicitor's Office. On August 31st
5 to September 1st, 2021, Applicant proceeded to a jury
6 trial before the Honorable R. Keith Kelly. Applicant was
7 found guilty as indicted. Judge Kelly sentenced Applicant
8 to a term of 20 years imprisonment for burglary in the
9 first degree, five years imprisonment for the weapons
10 charge, and three years imprisonment for grand larceny to
11 be served concurrently.

12 Applicant timely filed a notice of appeal. Elizabeth
13 Franklin Best perfected Applicant's appeal. Applicant's
14 appeal raised the following issues: The trial court erred
15 by, number one, refusing to instruct the jury on second
16 degree burglary as a lesser included offense of first
17 degree burglary. Number two, punishing him for exercising
18 his right to a jury trial by imposing a sentence greater
19 than the State offered during plea negotiations.

20 After briefing, the South Carolina Court of Appeals
21 issued an unpublished opinion affirming the convictions on
22 November 8th, 2023. The remitter was returned to the
23 lower court on November 28th, 2023.

24 On August 13th, 2024, Applicant timely commenced this
25 PCR action alleging ineffective assistance of counsel

1 unable to specify without an attorney. Respondent filed a
2 return and motion for a more definite statement on October
3 22nd, 2024.

4 On February 20th, 2025, Applicant amended his
5 application to include the following allegations: One,
6 failure to object to the Solicitor's arguments regarding
7 sentencing; two, failure to argue that the sentence
8 punished the Applicant for exercising his right to a jury
9 trial; three, failure to reconsider the sentence,
10 especially after the two co-defendants who were older than
11 the 17-year-old Applicant were allowed to plead guilty to
12 burglary second degree and received 15 year sentences;
13 four, failure to object to Investigator Trevor Shue's
14 identification of the Applicant from the video, for
15 bolstering and failing to argue the identification was a
16 factual question for the jury; five, misadvising the
17 Applicant of the law by telling him that the Judge could
18 charge burglary second when the Applicant admitted in his
19 confession that he [inaudible] a dwelling with a gun; and
20 six, failure to advise the Applicant to plead guilty after
21 his first trial with Judge Hayes.

22 Applicant, also, alleged he was denied due process
23 and fundamental fairness guaranteed by the Fifth, Sixth,
24 Eighth, and Fourteenth Amendments of the Constitution of
25 the United States and Article 1, Section 3 of the South

1 Carolina Constitution because the Judge sentenced
2 Applicant to 20 years after the Solicitor argued against
3 the minimum at sentencing stating that the Applicant had
4 not accepted responsibility for his actions.

5 Then the two similarly -- similarly situated
6 co-defendants were allowed to plead to burglary second
7 degree.

8 Applicant requests relief in the form of a new trial.

9 At this time, we would ask counsel to indicate which
10 allegations she intends to move forward on.

11 THE COURT: Yes, ma'am.

12 MS. ROSS: Thank you, Your Honor.

13 May it please the Court.

14 I'm -- I intend to go forward on all the allegations
15 and would move pursuant to Love vs. State to add any
16 allegations if it comes up during the testimony.

17 I, also, used a lot of the language of Elizabeth
18 Best's appellate briefings in my amended application. And
19 I just ask you to go and check out that case law. A lot
20 of it's, basically, Davis vs. State where Mr. Gary seemed
21 to be punished for asserting his Constitutionally and
22 protected trial rights.

23 And, at that point, I'll just go ahead and call
24 Mr. Gary to the stand.

25 THE COURT: That'll be fine.

1 Come right around here, sir.

2 Go ahead and have a seat, sir.

3 All right. Just raise your right hand.

4 WHEREUPON,

5 JADEN IMARION GARY,

6 after first having been duly sworn, testified as follows:

7 THE COURT: All right. You've got to speak up.

8 All right. Just leave that there.

9 What's your name?

10 THE WITNESS: Jaden Gary.

11 THE COURT: Okay. Go ahead.

12 DIRECT EXAMINATION

13 BY MS. ROSS:

14 Q Hi there, Mr. Gary.

15 Now, we talked about this a little bit, you're at a
16 PCR. Do you understand what that is?

17 A Yes, ma'am.

18 Q Okay. And do you understand what happens if you're
19 granted post conviction relief?

20 A Yes, ma'am.

21 Q What happens?

22 A I start over.

23 Q Basically.

24 A Yes, ma'am.

25 Q And do you realize that burglary first carries up to

1 life and you could face that?

2 A Yes, ma'am.

3 Q Okay. And how do you want to proceed? Do you want
4 to go forward with the --

5 A I want to go forward, yes, ma'am.

6 Q Okay. Now, Joshua Schultz was your trial attorney;
7 is that correct?

8 A Yes, ma'am.

9 Q And was he retained?

10 A Yes, ma'am.

11 Q You understand in a PCR, you're alleging he was
12 ineffective in some way. What ways do you feel that he
13 was ineffective?

14 A I feel because he -- he led -- he led me to believe
15 that I was eligible for a second degree and I wasn't.
16 I -- I went in there with only one choice, one option, and
17 that was burglary first, which resulted in me getting more
18 time when I could have got less time.

19 Q Okay. But you were offered a plea offer of burglary
20 first and you -- for 15 years, but you didn't take that;
21 right?

22 A No.

23 Q And you didn't take it because that's what your
24 lawyer --

25 A Yeah. My lawyer led me to believe that I could get

1 second degree.

2 Q Okay. Can you give the Court a little background on
3 this case? Had this case been tried once before?

4 A Yes. It had been tried once before and I had a
5 mistrial.

6 Q All right. Do you remember the Judge on that?

7 A I believe it was Hayes.

8 Q All right. Did he make any comments to you after
9 that trial regarding what he thought your sentence should
10 be, or what would be fair in the case?

11 A Hayes didn't mention anything about my sentence.

12 Q Okay. And then you just waited for -- for it to be
13 tried again?

14 A Yes, ma'am.

15 Q Okay. Now, let's talk a little bit about the trial
16 itself. The -- Investigator Shue testified about you; is
17 that correct?

18 A Yes, ma'am.

19 Q And do you know how he identified you in the video?

20 A He told me that he -- he took the video to an
21 acquaintance, which is his exact words, an acquaintance of
22 his and she identified me.

23 Q And --

24 A But, see, during -- during -- on my data [phonetic],
25 it says something different. It says he identified me

1 from a situation.

2 Q What situation was that?

3 A He said -- he said he identified me from an incident
4 that happened in 2018, a drive by, or something. But I've
5 never been involved in none of those.

6 Q Do you have any prior record?

7 A No, ma'am.

8 Q And -- and so as he's identifying this video, he
9 says, oh, I recognize this kid from a drive by?

10 A Yeah. He said where he investigated -- where he
11 interrogated me, or interviewed me, or something like
12 that.

13 Q And that had never occurred?

14 A No, ma'am.

15 Q And did your lawyer object to that?

16 A No, ma'am.

17 Q Now, there was, also, some suggestion by him that
18 someone from the gang unit recognized you?

19 A Trevor Shue is -- he was part of the gang unit at the
20 time. That's what it was.

21 Q All right. Were you involved in gangs?

22 A No, ma'am.

23 Q How far had you gone in school when this charge
24 happened?

25 A Eleventh grade.

1 Q Were you still in school?

2 A No, ma'am.

3 Q Okay. Now, did your -- when the -- Investigator Shue
4 was testifying about the video and watching the video, did
5 your lawyer object to when he made statements that he
6 recognized you from this video?

7 A No, ma'am.

8 Q Did -- and your lawyer asked for an instruction on
9 burglary second during your trial; is that correct?

10 A Yes, ma'am.

11 Q And was that instruction ever given?

12 A No, ma'am.

13 Q But you were led to believe that it could have been?

14 A (There was no verbal response.)

15 Q So when you went to trial, you were thinking this
16 could be a burglary second?

17 A That I wouldn't be found guilty on the first, that
18 I'd be found guilty on the second. I didn't know that I
19 couldn't be found on the second because the second was
20 never mentioned.

21 Q So you were never told you had no chance for a second
22 because that video showed you with a gun?

23 A No, ma'am.

24 Q All right. Now, when you were sentenced, the
25 Solicitor -- this is around Page 279 of the transcript.

1 The Solicitor made a lot of statements about how you
2 weren't remorseful, you'd been smoking marijuana, you were
3 the leader. Did your lawyer object to any of those
4 statements prior to your sentencing?

5 A No, ma'am.

6 Q And then you were sentenced to -- instead of -- you
7 were sentenced to, basically, 20 years, instead of the 15
8 for non-violent that your co-defendants got?

9 A Yes, ma'am.

10 Q And did your lawyer ever do a motion to reconsider?

11 A No, ma'am, not that I know of.

12 Q Do you know the context of the co-defendants being
13 offered a reduced charge?

14 A No, ma'am.

15 Q Did your co-defendants help out the State by
16 testifying against you?

17 A No, ma'am, not that I know of.

18 Q Did the Solicitor tell the Judge that he intended to
19 give the co-defendants a better deal of burglary second?

20 A You said did he tell me that?

21 Q Did -- did -- did he tell -- did the Solicitor tell
22 the Judge that he intended to give your co-defendants a
23 deal for burglary second?

24 A No, ma'am.

25 Q Now, tell me about the co-defendants, their position

1 with you. How did you know them?

2 A We were best friends. All of us were close friends
3 from middle school.

4 Q Okay. And who was the oldest?

5 A Zion.

6 Q Okay. And you were the youngest; is that correct?

7 A Yes, ma'am.

8 Q Were you the ring leader for those guys?

9 A No, ma'am.

10 Q Well, unless you have anything else to say, I have no
11 more questions.

12 A No, ma'am.

13 THE COURT: All right. Yes, ma'am. Cross.

14 CROSS-EXAMINATION

15 BY MS. WESTRAAD:

16 Q Good morning, Mr. Gary.

17 I just have a few quick questions. You recall that
18 you were charged with burglary first degree; is that
19 right?

20 A Yes, ma'am.

21 Q Not burglary second degree?

22 A Yes, ma'am.

23 Q Okay. I understand that you're alleging you were
24 punished for exercising your right to a jury trial. Your
25 sentence was within the sentencing range for the crime

1 that you were convicted of; is that right?

2 A Yes, ma'am.

3 Q Okay. And so why do you feel you were punished for
4 exercising your right to a jury trial, other than the
5 Solicitor's arguments during your sentencing?

6 A That's the only reason I do feel that way. The
7 Solicitor said out of his mouth that he felt that I wasted
8 their time by making them go through two trials. And that
9 he thought I deserved the maximum.

10 Q So during your sentencing, the Judge didn't say
11 anything about you exercising your right to a jury trial,
12 or your choice to not plead guilty?

13 A No, ma'am.

14 Q And do you recall that your lawyer did object to
15 Investigator Shue's identification of you on the video?

16 A I don't recall.

17 Q Okay. And the last couple of things. Would you
18 agree that the video evidence from the trial shows you
19 leading your co-defendants through the home?

20 A Yes, ma'am.

21 Q Okay. And in your interview with the police, you
22 identified yourself and your co-defendants in that video?

23 A I didn't identify my co-defendants, just myself.

24 MS. WESTRAAD: Just yourself.

25 Okay. No further questions.

1 THE COURT: All right. Any redirect?

2 MS. ROSS: No, Your Honor.

3 THE COURT: All right. Thank you.

4 You may step down.

5 Thank you, sir.

6 All right. Call your next witness, please.

7 MS. ROSS: I think that's our case.

8 THE COURT: All right. Anything further?

9 MS. WESTRAAD: Your Honor, the State would call
10 Joshua Schultz to the stand.

11 WHEREUPON,

12 E. JOSHUA SCHULTZ,

13 after first having been duly sworn, testified as follows:

14 THE CLERK: All right. Please have a seat.

15 And state your name.

16 THE WITNESS: Attorney E. Joshua Schultz.

17 DIRECT EXAMINATION

18 BY MS. WESTRAAD:

19 Q Good morning, Mr. Schultz.

20 A Good morning.

21 Q I have a few general questions first. How long have
22 you been practicing law?

23 A Now, at this point, about 20 years.

24 Q Has a lot of that time been criminal law?

25 A The vast majority of it has been criminal law.

1 Q Okay. And how long before this trial in 2021 were
2 you retained?

3 A How long was I retained?

4 Q Yes. Before the trial.

5 A It was -- it was years, I believe, several months.

6 Q How many times did you meet with Mr. Gary?

7 A I can't remember, specifically, but I met with him
8 several times in my office, along with the family as well.

9 Q During those meetings, did you discuss the charge and
10 what the State was required to prove?

11 A I had.

12 Q Did you review discovery?

13 A I did.

14 Q What was the State's evidence in this case against
15 Mr. Gary?

16 A The State's evidence was statements given by
17 Mr. Gary. There was a video of the actual break-in that
18 was, obviously, very persuasive, incident reports. Some
19 analysis was done of the incident reports by other
20 officers, things of that nature.

21 Q Okay. So I'm just going to move through each of the
22 allegations starting with the arguments the Solicitor made
23 at sentencing. Do you recall the arguments that he made?

24 A Yes.

25 Q Was there anything objectionable, in your opinion?

1 A I -- I don't believe so, no.

2 Q Okay. Was there any indicator that Judge Kelly
3 sentenced Mr. Gary the way he did to punish him for taking
4 the case to trial?

5 A No. Judge Kelly did make a comment. And I think the
6 transcript reflects this as well. He said something to
7 the extent, to my recollection, of folks are tired of
8 having their homes broken into, or something to that
9 extent.

10 Q So did you think that you could succeed on an
11 argument about the Judge punishing him for his right to
12 take it to trial?

13 A No, I do not.

14 Q Do you know when the co-defendants pled guilty?

15 A I know one co-defendant, I think, went on or around
16 that same week that Mr. Gary was sentenced in his second
17 trial.

18 Q And you don't know about the other co-defendants?

19 A I don't know, specifically, off the top of my head
20 when those other co-defendants were sentenced. But
21 every -- I believe every case has been disposed of now.

22 Q Could you have moved to reconsider the sentence on
23 the basis of the co-defendants pleas?

24 A Yes, I could.

25 Q Why didn't you?