

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Steven H. John, Circuit Court Judge

Appellate Case No. 2015-000184

RECEIVED
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SC Court of Appeals

The State, ... Respondent,

v.

Derek Vander Collier, ... Appellant.

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT 1 – DVD of Interviews

STATE'S EXHIBIT 17 – CD Interview of Defendant from January 30, 2013

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2014-GS-26-01540 and 01541

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

December 8, 2014

DEREK VANDER COLLIER,)

Defendant.)

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

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

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Taken by:
Dixie C. Eubank
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Transcribed by:
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Circuit Court Reporter

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1 form that the Court provides to you and the Foreperson will
2 check the appropriate block or, you know, write out the
3 appropriate word, thereafter sign their name as the Foreperson
4 indicating that that verdict is, indeed, the unanimous verdict
5 of each and every member of the jury. So, with that, I'm
6 going to ask that you go back to the jury room, select your
7 Foreperson, knock on the door, let the Bailiff know or Deputy
8 know who that Foreperson is. Now, Ms. Carpenter, as the
9 alternate, you can't be the Foreperson. Obviously, you can
10 vote on the foreperson but being the alternate you can't be
11 the Foreperson. Everybody else is eligible. So, with that,
12 if you would please go to the jury room, select your
13 Foreperson, knock on the door and let me know who that is,
14 please. Thank you.

15 (REPORTER'S NOTE: Jury exits courtroom. The following takes
16 place outside the presence of the Jury.)

17 THE COURT: All right, gentlemen. We will come back at 2
18 o'clock and start the motions at that time.

19 MR. DEBUSK: Briefly, Your Honor.

20 THE COURT: Yes, sir.

21 MR. DEBUSK: I have partial transcripts for the motions
22 we're going to do this afternoon.

23 THE COURT: All right, sir.

24 MR. DEBUSK: I only have one copy. Would you like me to
25 make an extra copy before ---

1 THE COURT: Yes, make copies and make sure the Defense
2 has copies of those before we get started.

3 MR. DEBUSK: I'll provide them to the Court and the
4 Defense before ---

5 THE COURT: Yes, sir. Very good. All right. Thank
6 y'all. I'll see y'all at 2 o'clock then.

7 MR. HOLFORD: Yes, Your Honor.

8 THE COURT: All right. Thank you.

9 (RECESS)

10 *****OFF THE RECORD*****

11 (On the Record.)

12 (REPORTER'S NOTE: The following takes place outside the
13 presence of the Jury.)

14 THE COURT: All right. Solicitor and Mr. Holford, y'all
15 are ready to go forward with the motions? Well, we need the
16 Defendant.

17 (REPORTER'S NOTE: Mr. Collier enters courtroom.)

18 THE COURT: All right. As I understand it, gentlemen,
19 there is a Jackson v. Denno matter regarding two, two
20 statements; is that correct, Solicitor?

21 MR. DEBUSK: Yes, Your Honor.

22 THE COURT: All right, very good.

23 MR. HOLFORD: Your Honor?

24 THE COURT: Yes, sir, Mr. Holford.

25 JACKSON V. DENNO MOTION:

1 MR. HOLFORD: Just for the Defense, I believe based on
2 Jackson v. Denno in determining the totality of circumstances
3 of whether the statements were given freely and voluntarily,
4 there is a statement in between that was made and I would
5 argue that that probably needs to be listened to as well.

6 THE COURT: All right. So, what starts -- what is the
7 first statement. What is the date and who was it to?

8 MR. DEBUSK: It was on January 30th of this year, given
9 to Detective Truex.

10 THE COURT: Okay. All right. And so what was the next
11 statement then?

12 MR. DEBUSK: There was another statement given later that
13 day, same date, January 30th to Detective Allen, who is
14 present in the courtroom. That one we're not going to present
15 because we did not hear anything the Jamaican in there.

16 THE COURT: Okay.

17 MR. DEBUSK: And then there was a third statement given
18 on the next day when the Defendant called for the detective,
19 Detective Allen returned and took the third statement on 31st
20 of January.

21 THE COURT: All right. Okay. Do you have whatever the
22 second statement is that Mr. Holford's referring to, do you
23 have that?

24 MR. DEBUSK: I have it on the computer, Your Honor.

25 THE COURT: All right.

1 MR. DEBUSK: I don't have it on a disk but I wasn't going
2 to put it into evidence, so I have it on my computer.

3 THE COURT: All right. So, it could be played?

4 MR. DEBUSK: Yes, Your Honor.

5 THE COURT: All right. Very good. All right, anything
6 else, Mr. Holford?

7 MR. HOLFORD: No, Your Honor, will reserve our motions
8 for after the ---

9 THE COURT: Okay. All right. Do you want to start with
10 the first one then, Solicitor?

11 MR. DEBUSK: Yes, Your Honor. I have handed you a
12 partial transcript of this one labeled 1/30/14.

13 THE COURT: Okay.

14 MR. DEBUSK: Your Honor, the State calls detective Brian
15 Truex.

16 THE COURT: All right, sir. Please come around and be
17 sworn, sir.

18 MR. HOLFORD: Your Honor, just for the record, this
19 transcript was written or typed by whom?

20 MR. DEBUSK: Oh, Laura ---

21 THE COURT: Well, I'm not receiving the transcript in
22 evidence ---

23 MR. DEBUSK: No, we're not ---

24 THE COURT: I'm assuming he was giving it to the Court
25 just for the Court's assistance and for Defense counsel's

1 assistance regarding the recording. What's going into
2 evidence is the actual recording. This was just for
3 informational purposes as I understand it.

4 MR. HOLFORD: Thank you, Your Honor.

5 MR. DEBUSK: It's to help us keep track of the
6 redactions, Your Honor.

7 THE COURT: Very good. All right. Good deal.

8 DETECTIVE BRIAN TRUEX, HAVING BEEN SWORN, TESTIFIES
9 AS FOLLOWS:

10 CLERK: State your full name and spell your last name for
11 the Court, please.

12 MR. TRUEX: Brian Carl Truex, T-R-U-E-X.

13 DIRECT EXAMINATION OF BRIAN CARL TRUEX BY MR. DEBUSK:

14 Q: Special Agent Truex, who is your employer?

15 A: State Law Enforcement Division.

16 Q: How long have you been working for them?

17 A: About four months.

18 Q: Okay. What are your duties at this time?

19 A: Right now, I do violent fugitive apprehension with SLED.

20 Q: What area?

21 A: The Pee Dee Region.

22 Q: Who was your employer and what were your duties in January
23 of this year?

24 A: I was a violent crimes detective with the Myrtle Beach
25 Police Department.

1 Q: Okay. What were your duties?

2 A: Violent crimes detective, covered any crimes against
3 persons of robbery, murder, burglary, those kinds of things.

4 Q: Did you participate in an investigation of the burglary of
5 the Jamaican Motor Inn on November 21st, 2013?

6 A: Yes, sir.

7 Q: What was your role?

8 A: The night of the 30th, I was involved in the ---

9 Q: The 30th of which month?

10 A: Of January. I was involved in the apprehension of Mr.
11 Collier, at which time I conducted an interview with him.

12 Q: But who was the chief investigator for that incident at
13 the Jamaican?

14 A: If I remember correctly, it's Todd MacPherson.

15 Q: Detective MacPherson here in the courtroom today?

16 A: Yes, sir.

17 Q: Okay. And I think you've answered this already but you
18 encountered the Defendant Mr. Derek Vander Collier that day?

19 A: Yes, sir.

20 Q: And you were conducting an arrest. Did you do an
21 interview?

22 A: Yes, sir.

23 Q: When and where did that interview take place?

24 A: At the Myrtle Beach Police Department jail immediately
25 after his arrest.

1 Q: Who was present for that interview?

2 A: Initially, it was just myself and Mr. Collier and
3 Detective Carol Allen entered the interview probably a third
4 of the way in.

5 Q: Now, did you or Detective Allen threaten or coerce Mr.
6 Collier in any way to get him to give his statement?

7 A: No, sir.

8 Q: Did you or Detective Allen make any promises or issue any
9 threats to get him to give a statement?

10 A: No, sir.

11 Q: Did you or Detective Allen deprive him of anything he
12 needed to get him to give a statement?

13 A: No, sir.

14 Q: Did you inform him of his Miranda Right?

15 A: Yes, sir.

16 Q: Is that on the tape?

17 A: It is.

18 Q: This was a recorded interview?

19 A: Yes, sir, it was recorded interview.

20 Q: And his Miranda Rights are on this recording?

21 A: It is, sir.

22 Q: Okay. Was it into the influence of drugs when he gave a
23 statement?

24 A: He stated that he had smoked crack about forty-five
25 minutes prior to the interview, however, he stated that it did

1 not influence him, he wasn't affected by the drug and he
2 understood what was going on and that he wanted to make a
3 statement.

4 Q: So, and questioned him in detail. Did you offer to come
5 back later if you wanted to way?

6 A: Yes, sir.

7 Q: Did he accept that offer?

8 A: No, he said he wanted to talk now and it didn't affect
9 him.

10 Q: Did he seem to your knowledgeable eyes to be under the
11 influence when you talked to him?

12 A: Not at all.

13 Q: Did he appear physically uncomfortable in any way?

14 A: No, sir.

15 Q: Once again, you recorded the statement, right?

16 A: Yes, sir.

17 Q: I'm showing you what's been marked as State's Exhibit One
18 and ask if you recognize this?

19 A: It's the statement of Mr. Collier burned to a disk.

20 Q: One of the files on there is your statement you recorded?

21 A: Correct.

22 Q: Is that a fair and accurate recording of the statement?

23 A: It is.

24 MR. DEBUSK: Your Honor, I would like to publish this to
25 the Court for the purposes of the Jackson v. Denno hearing.

1 THE COURT: All right. And that would be State's One for
2 the motion?

3 MR. DEBUSK: Yes, Your Honor.

4 THE COURT: Any objection to State's One for the motion?

5 MR. HOLFORD: No, Your Honor.

6 THE COURT: You may go ahead and publish it. It is in
7 evidence.

8 STATE'S EXHIBIT ONE

9 ADMITTED INTO EVIDENCE FOR MOTIONS ONLY

10 MR. HOLFORD: Your Honor?

11 THE COURT: Yes.

12 MR. HOLFORD: Would you allow us to ask two questions
13 before we play that interview?

14 THE COURT: Sure, absolutely.

15 MR. HOLFORD: Or would you rather ---

16 THE COURT: No, go ahead, I mean, I was gonna let you do
17 afterwards that if you would like to do it now, I'll be glad
18 for you to do so.

19 MR. HOLFORD: Your Honor, I would like to reserve the
20 right to ask questions afterwards but just two questions right
21 now.

22 THE COURT: Sure, go ahead.

23 CROSS EXAMINATION OF DETECTIVE BRIAN TRUEX BY MR. HOLFORD:

24 Q: Detective Truex, when Mr. Collier said he was under the
25 influence of drugs, did you offer to do the interview later;

1 is that correct?

2 A: Correct.

3 Q: You did do a follow-up interview, correct?

4 A: I did not, other detectives did.

5 Q: But you did for it necessary to do a follow-up interview?

6 A: I was not involved in any of the cases, I was solely
7 involved in his arrest and so I conducted the interview with
8 him based on the limited knowledge I had of the cases involved
9 with Mr. Collier, and the information that have been forwarded
10 to me. I called Detective Allen to come up so she could
11 contribute what knowledge she had of the incidents is to
12 corroborate information in his interview and the other
13 detectives that were involved in the other cases were notified
14 for those purposes and I won't speak for any other detective
15 but I same that that was probably while follow-up interviews
16 were done. I was not involved in any of those.

17 Q: And knowing that he had smoked crack you did still conduct
18 an interview?

19 A: Correct.

20 Q: No further questions at this time.

21 THE COURT: All right, sir. Go ahead, Solicitor.

22 MR. DEBUSK: Thank you, Your Honor.

23 *****OFF THE RECORD*****

24 (REPORTER'S NOTE: State's Exhibit One [first statement]
25 played for the Court - not transcribed herein.)

1 (On the Record.)

2 CONTINUATION OF DIRECT EXAMINATION OF DETECTIVE TRUEX BY MR.

3 DEBUSK:

4 Q: Special Agent Truex, I just have a couple of quick
5 questions.

6 A: Yes, sir.

7 Q: At the beginning, he was apologizing for giving you the
8 runaround or something, what was that about?

9 A: When I stopped him on the side of the road, he gave a
10 false name and attempted to conceal his identity and he was
11 apologizing for giving us the runaround on that.

12 Q: And it was soon after that that you took him to the
13 interview room.

14 A: Yet, within ten minutes.

15 Q: Okay. So, there wasn't a discussion before this, this was
16 the discussion on the tape?

17 A: Correct.

18 Q: Thank you. Please answer any questions the Defense might
19 have.

20 THE COURT: Cross examination.

21 MR. HOLFORD: Yes, Your Honor.

22 CROSS EXAMINATION OF DETECTIVE TRUEX BY MR. HOLFORD:

23 Q: Detective Truex, we went over this just a minute ago but
24 Mr. Collier stated he was under the influence of drugs; is
25 that correct?

1 A: Yes, sir.

2 Q: He admitted to smoking crack?

3 A: He said he had smoked crack forty-five minutes prior, yes,
4 sir.

5 Q: Was it forty-five or four to five?

6 A: Forty-five.

7 Q: Forty-five? Do you believe that he had the ability to
8 waive his rights while under the influence of crack?

9 A: Yes, sir.

10 Q: And you believe he was able to understand you?

11 A: Correct.

12 Q: If you were to smoke crack, would you be able to perform
13 your abilities?

14 A: I have no idea; I have never smoked crack before and I
15 wouldn't know what that feels like.

16 Q: You believe he was able to understand you?

17 A: Yes, sir.

18 Q: Do you normally ask people questions if they are under the
19 influence of drugs or alcohol?

20 A: I have before, based on my evaluation of their person,
21 they are -- how they are articulating things, how they are
22 speaking to me, whether it appears that they are under the
23 influence. Over my career in law enforcement, being in
24 traffic, dealing with impaired drivers, both drugs and
25 alcohol, I've been exposed to lots of people under the

1 influence and their abilities to -- what they appear like when
2 they appear intoxicated. Based on his statement, he was very
3 articulate and the incident that he was giving, all of the
4 burglaries that he was confessing to and I had a piece of
5 paper there that was matching up the actual numbers of TVs
6 that were missing from each hotel and he was within one TV on
7 each hotel. He was giving articulable facts to each
8 circumstance, like the Blu-ray player at the South Beach
9 Resort and that was the only place that a Blu-ray player was
10 removed from. And so he was giving specific facts from memory
11 of those incidents which indicated to me that he had the
12 cognitive ability to speak with me.

13 Q: Do you know how crack affects one's mind?

14 A: I don't personally, no..

15 Q: Would you say you know how crack affects the ability to
16 make rational decisions?

17 A: I -- it can impair your decisions, yes.

18 Q: Before the tape began, did you say that there were
19 warrants for pointing and presenting, aggravated assault,
20 first degree burglary and possession of a weapon during a
21 violent crime against him?

22 A: I'm aware of a burglary warrant and I believe a possession
23 of a weapon charge. I'm not -- without having them in front
24 of me, I wouldn't be able to tell you exactly what warrants
25 existed on him at the time. I knew there was a burglary

1 warrant and a possession of a weapon related to the Jamaican.

2 Q: And at the time there's no question that Mr. Collier was
3 in custody?

4 A: Correct.

5 Q: Was he handcuffed?

6 A: Yes, sir. During the interview, no. During the interview
7 he was not. He was in the jail in a secure facility in an
8 interview room.

9 Q: What time was this, did the interview take place?

10 A: I couldn't tell you. I know it was in the evening, late
11 evening. I would say -- I would be guessing to say 9 o'clock.
12 When he was stopped on the side of the road, it was late.

13 Q: It wasn't 1:00 a.m.?

14 A: It could've been. Like I said, I know it was late but I
15 don't -- I couldn't tell you without seeing my report.

16 Q: So, it could've been the morning of the 30th?

17 A: Correct, it could've been, yes.

18 Q: After midnight?

19 A: Uh-huh (affirmative response).

20 Q: How long was he in detention before you took him to the
21 jail cell?

22 A: Maybe, five minutes from the time he was stopped on the
23 side of the road ---

24 Q: Right.

25 A: Yes, five minutes on the side of the road.

1 Q: And what was he stopped on the side of the road for?

2 A: Because he was Derek Collier and he had warrants for
3 burglary. I recognized him based on his warrants.

4 Q: Do you remember in the portion where Mr. Collier asked you
5 if he was facing life and if there was a burglary first
6 warrant?

7 A: Correct.

8 Q: Did you at any time before the take began say he would go
9 to jail for life without the possibility of parole?

10 A: No.

11 Q: Did you, before the tape recorder started at any time say,
12 that he needs to make up a story and make it believable or he
13 wouldn't see the streets again?

14 A: Not that I remember.

15 Q: Before the tape recorder started, there was some
16 discussion about possession of a weapon?

17 A: Like I said, you are hearing recorder turn on with me in
18 the interview room. You can hear me actually go and him and
19 ask the jailers, are you guys done with him, and I bring him
20 from the booking room into the interview room. So, there was
21 no interaction between me and Mr. Collier prior to you hearing
22 me turn the recorder on.

23 Q: Was anyone else with Mr. Collier before or was it just
24 you?

25 A: There was some jailers in the jail during the booking

1 process.

2 Q: And you said that Detective MacPherson is the lead on this
3 investigation?

4 A: I believe so for this specific case related to the
5 Jamaican. There's about five detectives involved in multiple
6 cases, though.

7 Q: Was he present at this interview?

8 A: No, sir.

9 Q: Okay. Detective Allen was because we he heard her on the
10 ---

11 A: Correct, she came in mid-interview.

12 Q: Okay. Was she involved with the Defendant beforehand?

13 A: No. I was the only one that had interaction with him
14 prior to being in the interview room, myself and a different
15 officer.

16 Q: There was an arrest warrant for pointing and presenting of
17 a gun or at least a possession of a firearm during ---

18 A: There was some sort of weapons charge related to what this
19 victim's statements were at the Jamaican from what I recall.

20 Q: He did not have a gun on him?

21 A: No, sir.

22 Q: And before the -- before the interview started, did you at
23 any time say we didn't find the gun on you but one can
24 magically and mysteriously appear on you. I'm pretty sure you
25 know how it goes when we want somebody bad enough and with

1 your history of violence, a firearm recovered with these kind
2 of charges pending will end your days as a free man?

3 A: Absolutely not.

4 Q: Before you turned the recorder on did you say the choice
5 is yours, sink or swim?

6 A: No, sir. You hear the recording as it is.

7 Q: At any time were you or Detective Allen mouthing the names
8 of hotels or a number of TVs?

9 A: No, sir. His answers are immediate. You can hear in the
10 recording, his answers are immediate to those questions.

11 Q: And you would agree that he stated he had a tenth grade
12 education?

13 A: Yes, sir.

14 Q: You agree he stated he's been in jail before?

15 A: I would have to review it but I believe I remember him
16 making a reference to getting out of prison in Virginia,
17 whether that's true or not I don't know.

18 Q: He is twenty-eight years old, is that correct -- or
19 twenty-nine now; twenty-eight at the time? Is that what he
20 said on the recording?

21 A: I would have to look back -- do you mind if I look back at
22 this for recollection? He said he is currently twenty-eight,
23 yes.

24 Q: And you said on that -- on the recording that we just
25 listen to that it is important for him to put all his cards on

1 the table, for him and for you?

2 A: Correct.

3 Q: There was a lot of discussion about the County narcs or
4 narcotics officers ---

5 A: DEU.

6 Q: --- DEU, the Solicitor's office assisting. It was clear
7 that my client wanted to assist in trying to resolve some of
8 these charges against him; is that correct?

9 A: Correct.

10 Q: And there was some conversation on behalf of you and maybe
11 some other detectives about the possibility of him being able
12 to do that?

13 A: Correct, he asked about it and wanting to make buys. I
14 believe he made reference to making buys are going back into
15 the houses and locating TVs for us and he was asking about it
16 and I answered his questions about that. He also -- you hear
17 at the end of that recording how I asked about his criminal
18 history and anything that would preclude him, that would be so
19 that I could make a reference to the DEU as to whether or not
20 they would get the approval from the Solicitor's office to do
21 that with that was a possibility or not.

22 Q: And in general, when people make buys for DEU there is
23 some leniency given in their -- for their criminal charges?

24 A: They work with the Solicitor's office, I'm not familiar
25 with how they work that or what the process is. I know that

1 they do work in conjunction with the Solicitor's office in
2 relating to the charges.

3 Q: Typically, if someone who is arrested is cooperative with
4 the State, either willing to testify or willing to work for
5 DEU, that's taken into consideration in for their plea
6 negotiations?

7 A: I assume so, yes.

8 Q: Did you also say that it could be of benefit to him if he
9 was able to work for DEU and that could pay off?

10 A: I don't remember those words specifically but his
11 cooperation -- I did make the statement that his cooperation
12 can benefit him.

13 Q: And that he can maybe help himself by being truthful?

14 A: Sure.

15 Q: Did you also say that one lie could screw everything up?

16 A: Yes, sir.

17 Q: And the only way to get this behind him was to be honest
18 but the other ones are who you are really interested in?

19 A: Yes, sir.

20 Q: And the other ones were ---

21 A: I was speaking about the other participants involved, the
22 people that he was making statements about as assisting him or
23 forcing him to do this robberies and if he was being truthful
24 about that circumstance that that would be important to the
25 case or it would be important to our prosecution of the people

1 that were stealing the TVs.

2 Q: And finally there was a lot of discussion about people
3 forcing him to commit these alleged crimes ---

4 A: That's what he said, yes.

5 Q: --- either at gunpoint. Did you at any time feel that Mr.
6 Collier felt threatened for his life?

7 A: He said that he did. There were also statements in there
8 where he did burglaries on his own and when we clarified
9 that's, you know, he went to I think it was the Best Western,
10 don't quote me on that, but there was one in there where I
11 asked him if he was -- who is partner was with that one and he
12 said no, I did that on my own. And I asked him if it was part
13 of the debt and he said yes.

14 Q: As to the voluntariness of this statement, if he's locked
15 up and believes there are heavy hitters out there, as he
16 refers to them, and big-time drug dealers in the area who have
17 forced him to smoke crack at gunpoint, who have forced him to
18 maybe enter hotel rooms at gunpoint, could that influence his
19 decision to make a statement to you?

20 A: I wouldn't speculate as to what he thinks based on that.

21 MR. HOLFORD: No further questions, Your Honor.

22 THE COURT: Anything on redirect?

23 MR. DEBUSK: Very briefly, Your Honor.

24 REDIRECT EXAMINATION OF DETECTIVE BRIAN TRUEX BY MR. DEBUSK:

25 Q: I just want to clarify something. He was not at J. Reuben

1 Long Detention Center, was he?

2 A: No, he was at the Myrtle Beach Police Department jail.

3 Q: So, when you arrested him, was it near that jail?

4 A: Yeah, less than a half-mile.

5 Q: So, it took a very short time to get into that jail?

6 A: Correct.

7 Q: As soon as he was booked, that's when the -- you got him
8 and turned -- or you already had the tape on when you got
9 them?

10 A: Right. When I entered the jail I would go into the
11 interview room, put my stuff down in the interview room and
12 start the recorder like I normally do and then walk out and
13 see where they were in the middle of the booking process,
14 which is where you can hear me ask them, hey, are you guys
15 done with him, and brought him into the interview room.

16 Q: Okay. Basically, you arrested him, transport him half a
17 mile and ---

18 A: I didn't transport -- I didn't transport him, a patrol
19 officer would've.

20 Q: Okay. So, you weren't in the car with him?

21 A: No.

22 Q: You just recognized him walking down the street?

23 A: Correct.

24 Q: From the -- was there a BOLO for him?

25 A: Wanted -- yeah, a wanted poster.

1 Q: No further questions.

2 THE COURT: Anything on those few questions asked by the
3 Solicitor?

4 MR. HOLFORD: Nothing, Your Honor.

5 THE COURT: All right. Very good. You may step down,
6 sir.

7 A: Thank you, Your Honor.

8 THE COURT: All right. You want to proceed -- I'm sorry,
9 is this the point, Mr. Holford, that you wanted some other
10 statement played before the next one the State wanted to
11 proffer?

12 MR. HOLFORD: Your Honor, would you like to hear motions
13 on this particular interview or would you like to wait until
14 all the interviews were concluded. I believe there are ---

15 THE COURT: Well, is it -- maybe I misunderstood your
16 argument. I thought your argument was that all of it was --
17 should be considered together and all of it shows that he was
18 forced or coerced or promised or in some way it was not a free
19 and voluntary statement. Normally, I would take them one at a
20 time but maybe I misunderstood your argument. So ---

21 MR. HOLFORD: I'm sorry, Your Honor, if I can clarify.

22 THE COURT: Sure.

23 MR. HOLFORD: As to the first statement, anything said
24 after that could not be, could not be thought to have coerced
25 this first statement. In saying that, I was leaning towards

1 the third statement. Anything that was said during this first
2 one or second one could've gone into the mental state of Mr.

3 ---

4 THE COURT: All right. Very good. I'll be glad to hear
5 your motions or arguments on this first statement then.

6 MOTIONS:

7 MR. HOLFORD: Yes, Your Honor. As far as -- we would
8 make a -- the Defense would make a motion to suppress based on
9 Jackson v. Denno for voluntariness, also a state case, State
10 v. Parker, that's a Court of Appeals case from South Carolina,
11 it's 671 S.E.2d 620. And further, State v. Miller, a Court of
12 Appeals case in South Carolina, that is 652 S.E.2d 446.

13 Your Honor, Jackson v. Denno is an evidentiary hearing.
14 The State has the burden of proof, they have to prove beyond
15 the preponderance of the evidence all of the questions. Your
16 Honor, I would sum up the questions as, did the defendant make
17 the statement; was he given Miranda warnings; did he
18 understand those Miranda warnings; three, did he knowingly and
19 intelligently waive any constitutional rights he may have,
20 that being the right to cancel, the right to remain silent and
21 did he know that he had the right to an attorney, even if you
22 can afford one; and fourth, and I think most importantly in
23 this case is was the statement voluntary. That is based on
24 case law, it's a totality of the circumstances. Some of the
25 factors that can be taken into account are education, a lack

1 of advice of the consequences, the lack of advice from an
2 attorney, the length of detention, the prolonged nature of
3 questioning, location of the interrogation, police
4 misrepresentations, deceit, any promises of leniency whether
5 direct or implied, and whether the Defendant's will was
6 overborn.

7 Your Honor, it doesn't depend on just one factor but it's
8 the totality of the circumstances. In this specific case I
9 think one of the strongest arguments that Mr. Collier did not
10 knowingly, intelligently waive any of his constitutional
11 rights, nor did he knowingly and intelligently understand the
12 consequences that would come from him giving any type of
13 confession and that his statement was not voluntary was the
14 fact that he admitted on tape to smoking crack just prior,
15 whether it was four to five minutes prior to being detained or
16 forty-five minutes prior to being detained, I don't think
17 necessarily has any bearing on it. I would argue that
18 anywhere up to forty-five minutes prior to being detained and
19 questioned, someone who had smoked crack would certainly be
20 under the influence, it would impair judgment, it would impair
21 one's ability to understand the seriousness of the charges.
22 It would impair one's ability to understand the constitutional
23 rights. It would impair one's ability to understand the
24 consequences of waiving any of those rights. While the
25 Prosecution may argue that Mr. Collier appeared knowledgeable

1 about the events, I believe that being under the influence of
2 crack cocaine, having smoked within an hour prior, would
3 certainly impair the ability to make sound decisions. Whether
4 that impairs one's ability to recall events of the past ---

5 THE COURT: Go ahead, sir.

6 MR. HOLFORD: It is not the same as one's ability to be
7 able to make a sound decision at the time. I think that based
8 on the totality of those circumstances, Mr. Collier's state of
9 mind, he wasn't able to make a rational and reasonable
10 decision as to the waiver of his constitutional rights.

11 Further, as to his education, Your Honor he admits that
12 he only has a tenth grade education. He was not advised of
13 any counsel, he did not have the ability of having a lawyer
14 present, although he was advised that that was his right, he
15 just did not have an attorney present. The length of the
16 detention and the prolonged nature of the questioning, this
17 went on for about an hour, there was a lot of jumping back and
18 forth from one hotel to the other. I believe that in this
19 particular case the Jamaican was mentioned maybe two, three
20 times and that was at the prompting of the detectives in this
21 case.

22 Your Honor, the location of the interrogation, he had
23 already been arrested, was placed in handcuffs, already had
24 warrants. Mr. Collier thought he was facing something up to
25 life imprisonment with the burglary first. That would

1 certainly weigh on his decision to make a statement and
2 whether that statement was voluntary or not. I believe there
3 were some at least implied promises of leniency. I believe
4 the record is clear that Mr. Collier thought he was helping
5 himself, that he would be able to work for DEU, that he would
6 be able to have these charges lowered or taken care of in a
7 different manner if he were only to be completely open and
8 honest. I think there were a lot of situations where the
9 police themselves may or may not have already known about,
10 certainly did not suspect Mr. Collier at the time. And, I say
11 that to say that Mr. Collier's state of mind at the time
12 seemed to be that he thought there would be some type of
13 leniency coupled with detective's statements like it's
14 important to put all the cards on the table and speaking about
15 County narcotics officers, DEU, telling him to help himself
16 and that one lie could screw everything up. Your Honor, I
17 think based on the totality of the circumstances and the
18 evidence presented here that the State has failed to meet its
19 burden to prove beyond a preponderance of the evidence that
20 the statements were voluntary, Your Honor.

21 THE COURT: All right, sir. Solicitor?

22 MR. DEBUSK: Your Honor, this is not a case where the
23 Defendant's will was overborn. It's a case where the
24 Defendant's will was given in to. He wanted to talk. He did
25 not fear burg first. He stated specifically to the detective,

1 before he was even read Miranda, he says I want you to
2 understand I never broke into nobody's houses, you know, I
3 figured I wouldn't get no burglary first, you know. I'm
4 saying I get a life sentence or something. The detective
5 responded, I got you. You know, that's not me, I just stuck
6 to hotels. He knew he wasn't facing a life sentence because
7 he said he carefully avoided that. He clearly wanted to talk.
8 When the officer said I can come back later and talk to you if
9 you feel like you're impaired at this point. He said, no, I
10 want to talk now. He was clearly an anxious and eager
11 participant in this interview. Ask for the intoxication by
12 crack, Your Honor, it's clear in this case he was not under
13 the influence of crack. You can hear the detail he gave in
14 his statements. He was able to answer about his education,
15 about his background. He was clearly making rational
16 decisions and he was explaining that he didn't have any burg
17 first. This is not, again, a case where his will was overborn
18 pay anything the officers said. The officer never made a
19 promise of leniency and never even mentioned the DEU until
20 after he had already said he broke into the Jamaican, Your
21 Honor. There is no overbearing of his will. If anything, the
22 officer went along with his desire to talk. It was clearly
23 his desire after hearing his Miranda rights, acknowledging his
24 Miranda rights, given the opportunity to talk later, he said,
25 no, I want to talk now. Your Honor, again, this is not a case

1 that falls under Jackson v. Denno, this was a free and
2 voluntarily given statement.

3 RULING BY THE COURT AS TO MOTIONS:

4 THE COURT: All right. Very good. At the beginning,
5 obviously, the State bears the burden of establishing the
6 voluntariness of the confession. And regarding this hearing,
7 it is the duty of the Court to determine if the Defendant was
8 in custody, first. No question, clearly he was in custody, so
9 Miranda warnings were required. And, then, to see whether or
10 not the Miranda warnings were properly given. The Court so
11 finds that the Defendant was made aware of his constitutional
12 rights and that, knowing these rights, that he voluntarily
13 decided to waive them. The issue about whether or not he was
14 under the influence of crack cocaine, there is only the
15 Defendant's statement, there is no other evidence presented of
16 any kind that would establish the Defendant had smoked crack
17 cocaine at all. There was no independent test, there was
18 nothing, there was no paraphernalia found on him, no residue,
19 nothing to show that he was and had smoked crack cocaine.
20 Even if he had smoked crack cocaine, as he said, the Defendant
21 clearly indicated that he understood everything that was going
22 on, that he stated to the officers that he was not under the
23 influence of the drug at that time. He said he, and in his
24 own words saying I am understanding exactly what's going on
25 right now. The officer indicated if you want me to come back

1 and talk to you at a later time or later date, he would. The
2 Defendant refused to that, indicated that he wanted to go
3 forward and give a statement, which he did, and he gave an
4 extremely detailed and interconnected story that, as pointed
5 out by the Defense, he went back and forth several times and
6 the Defendant was never confused. He did not indicate at any
7 point that he didn't understand what the officers were talking
8 about, even when they went back and forth between different
9 hotels and different things that happened or what people did.
10 The Defendant was extremely clear about what he did, what
11 others did. There is no question at all, none, that he made a
12 voluntary statement that he wanted to give this statement,
13 that he understood his Miranda warnings, he voluntarily gave
14 them up, and he voluntarily made a statement to the police.
15 There were no promises given to the Defendant in any way, even
16 assumed to entice the Defendant to make a statement. He
17 certainly was not coerced in any way, no evidence of any kind
18 that his will was overborn in any manner. It was not a
19 lengthy interview. It was in comparison to many that the
20 Court sees, a very short straightforward interview and did not
21 take any kind of extraordinary length of time. There were no
22 threats made to the Defendant, he wasn't deprived of anything,
23 there's just no indicia of any kind that indicates that this
24 was anything other than the complete and voluntary statement
25 of the Defendant knowing his constitutional rights and

1 knowingly having given them up. Therefore, I am gonna allow
2 the statement in evidence in this matter. I'm assuming we'll
3 have some discussion about redaction if the State and the
4 Defense cannot agree -- I'm gonna ask y'all to work on it
5 first. If y'all cannot agree, of course, the Court will rule
6 on it, but it may be that certain redactions need to be made
7 but y'all can work on that. And only if you have a problem or
8 an issue, then you can bring that to me.

9 Yes, sir, Mr. Holford?

10 MR. HOLFORD: Yes, Your Honor.

11 BY THE COURT:

12 THE COURT: Anything else on this particular statement?

13 MR. HOLFORD: On this particular statement, no, Your
14 Honor.

15 THE COURT: All right. Very good.

16 MR. DEBUSK: Your Honor, may Detective -- Special Agent
17 Truex be excused from court for today?

18 THE COURT: Is there any reason that -- for today, that
19 Detective -- I'm sorry.

20 MR. DEBUSK: Truex.

21 THE COURT: No, I was -- now Agent Truex can be excused?
22 Mr. Holford?

23 MR. HOLFORD: No objection from the Defense, Your Honor.

24 THE COURT: All right, sir. He is excused, obviously, to
25 come back tomorrow during the course of the proceedings. All

1 right?

2 MR. TRUEX: Thank you.

3 MR. DEBUSK: Your Honor, the next witness the State would
4 call would be Detective Allen but there's that intermediate
5 statement. I don't know if you want to hear it in order ---

6 THE COURT: Well, we might as well hear them in order if
7 -- I mean, you know, you are wanting me to hear it; is that
8 correct, Mr. Holford?

9 MR. HOLFORD: Your Honor, the Defense certainly doesn't
10 want to waste the Court's time but ---

11 THE COURT: Well, I appreciate that but, I mean, I'm
12 here, where having the hearing, if you want me to hear it -- I
13 don't know how long it is but if you want to hear the whole
14 thing or you want -- there are parts of it that you think I
15 need to hear, then I'm here to do that.

16 MR. HOLFORD: Your Honor, I believe the third one which
17 the State wishes to introduce is a follow-up to the second
18 one, so that I think it's necessary to have the ---

19 THE COURT: All right. Very good. So, you've got the
20 second one, Solicitor?

21 MR. DEBUSK: I do, Your Honor. For the purposes of the
22 record, the State will stipulate because we don't intend to
23 produce it, if he'll stipulate to it, it was taken by
24 Detective Allen on January 30th after the one taken by
25 Detective Truex. And I have to play it off of my hard drive

1 because it's not on State's Exhibit One.

2 THE COURT: Since you did not and do not intend to
3 introduce it into evidence.

4 MR. DEBUSK: Yes, Your Honor.

5 THE COURT: All right. Very good. Any objection to
6 that, Mr. Holford?

7 MR. HOLFORD: No, Your Honor.

8 THE COURT: All right. Very good.

9 MR. DEBUSK: Publish it?

10 THE COURT: Yes, sir. Can you tell me approximately how
11 long ---

12 MR. DEBUSK: Thirty-eight minutes and forty-three seconds.

13 THE COURT: All right. Very good.

14 *****OFF THE RECORD*****

15 (REPORTER'S NOTE: Statement by Detective Allen played for the
16 Court - not transcribed herein.)

17 (On the Record.)

18 MR. DEBUSK: Your Honor, once again, that was off my hard
19 drive and it is not part of the record in this case other than
20 it being published to the Court.

21 THE COURT: All right. Very good. So, that's the second
22 one?

23 MR. DEBUSK: Yes, Your Honor.

24 THE COURT: All right. Very good. Let's take about five
25 minutes and will start the third one. Thank you.

1 (RECESS)

2 *****OFF THE RECORD*****

3 (On the Record.)

4 THE COURT: All right. You want to go forward?

5 MR. DEBUSK: Yes, sir.

6 THE COURT: Okay. Very good. All right. I need to tell
7 you, gentlemen, I've got a meeting in Myrtle Beach at 5:30, so
8 we may have to stop before the tape is over with and we'll
9 resume tomorrow morning at 8:30. Go ahead, Solicitor.

10 MR. DEBUSK: The State calls Detective Carol Allen.

11 THE COURT: Please come around and be sworn, ma'am.

12 DETECTIVE CAROL ALLEN, HAVING BEEN DULY SWORN,
13 TESTIFIES AS FOLLOWS:

14 CLERK: State your full name and spell your last name for
15 the Court, please.

16 DETECTIVE ALLEN: Carol Ann Allen, A-L-L-E-N.

17 DIRECT EXAMINATION OF CAROL ANN ALLEN BY MR. DEBUSK:

18 Q: Detective Allen, who is your employer?

19 A: Myrtle Beach Police Department.

20 Q: How long have you been with them?

21 A: Twenty-one years.

22 Q: What are your duties at this time?

23 A: I am assigned to the Property Crimes - Financial Crimes
24 Division.

25 Q: You are an investigator, Detective?

- 1 A: Yes, sir.
- 2 Q: Okay. How about in January of this year, was it the same?
- 3 A: Yes, sir.
- 4 Q: Okay. Did you participate in the investigation of a
5 burglary at the Jamaican Motor Inn that occurred in November
6 21st of 2013?
- 7 A: I did.
- 8 Q: What was your role?
- 9 A: Follow-up interview.
- 10 Q: Who is the chief investigator in that case?
- 11 A: For this particular case, it was Detective MacPherson.
- 12 Q: Now there were a number of cases involving a similar mode
13 of operation, did you have a larger role those cases?
- 14 A: Yes, I did.
- 15 Q: But you were sort of a coordinator for a number of
16 investigations?
- 17 A: That's correct.
- 18 Q: Now, did you encounter the Defendant Derek Vander Collier
19 during this investigation?
- 20 A: Yes.
- 21 Q: In fact were you present at an interview that then
22 Detective Brian did?
- 23 A: Yes, I was.
- 24 Q: Okay. Did you do a second interview that same day?
- 25 A: I sure did.

1 Q: Did you encounter Mr. Collier again on the next day?
2 A: I did.
3 Q: Why?
4 A: I received a message from one of our jailers that Mr.
5 Collier wanted to speak to a detective.
6 Q: Okay. And what you two in response to that message?
7 A: I went straight to the Police Department and we got Mr.
8 Collier out of his jail cell, put him back in the interview
9 room and ---
10 Q: Where was he?
11 A: I'm sorry. He was at the Myrtle Beach Police Department
12 still.
13 Q: Is that on 10th Ave?
14 A: Yes.
15 Q: And Oak Street?
16 A: Yes.
17 Q: Okay. Now, he had asked for this meeting but did you
18 again inform him of his Miranda rights?
19 A: I did.
20 Q: Had you informed him of his Miranda rights the previous
21 day when you interviewed him?
22 A: Yes, I did.
23 Q: To your knowledge, did Detective Truex inform him of his
24 Miranda rights?
25 A: Yes.

1 Q: So, this was at least the third time he had heard them in
2 this two day period?

3 A: That's correct.

4 Q: Okay. Was anyone else present during that interview?

5 A: The follow-up being on the 31st?

6 Q: The January 31st interview?

7 A: No, I was the only one in that interview.

8 Q: You and Mr. Collier?

9 A: That's correct.

10 Q: Did you threaten or coerce Mr. Collier in any way to give
11 his statement?

12 A: No, I did not.

13 Q: Did you make any promises or issue any threats to make him
14 give his statement?

15 A: No, I did not.

16 Q: In fact, you were invited to take that statement, were you
17 not?

18 A: That's correct.

19 Q: Did you deprive him of anything he needed to give that
20 statement?

21 A: No, I did not.

22 Q: And again, you informed him of his Miranda rights, asked
23 if he was under the influence of alcohol and drugs?

24 A: Yes, I did.

25 Q: Was he?

1 A: He said he was not.

2 Q: Did he appear to be physically uncomfortable in any way?

3 A: No.

4 Q: Did you record the statement?

5 A: I sure did.

6 Q: I show you State's Exhibits Number One and ask you is this
7 your statement that you recorded January 31st one of the two
8 statements on that recording?

9 A: Yes, it is.

10 MR. DEBUSK: Your Honor, at this time, we would like to
11 publish this statement to the Court.

12 THE COURT: What number is it?

13 MR. DEBUSK: It's still State's One, Your Honor.

14 THE COURT: Still State's One, all right.

15 MR. DEBUSK: State's One contains both statements on one.

16 THE COURT: All right. Very good. Is there any
17 objection to that for the purposes of this hearing?

18 MR. HOLFORD: Not for the purposes of this hearing.

19 THE COURT: All right. It's in evidence.

20 *****OFF THE RECORD*****

21 (REPORTER'S NOTE: Statement by Detective Allen played for the
22 Court -- not transcribed herein.)

23 (On the Record.)

24 BY MR. DEBUSK:

25 Q: Can I ask you, Detective Allen, whose picture where you

1 showing him?

2 A: His actual name is, I believe it's David Henry, if I'm not
3 mistaken.

4 Q: And you're showing him a photo of David Henry at that
5 time?

6 A: Yes.

7 *****OFF THE RECORD*****

8 (REPORTER'S NOTE: State's Exhibit Number One [1-31-13]
9 statement played for the Court -- not transcribed herein.)

10 (On the Record.)

11 THE COURT: All right, Solicitor. We need to stop.

12 MR. DEBUSK: Your Honor, for the record, that's at thirty
13 minutes and forty-eight seconds.

14 THE COURT: All right. Very good. All right, we'll
15 reconvene tomorrow morning at 8:30.

16 Thank you very much.

17 MR. DEBUSK: 8:30; yes, Your Honor.

18 MR. HOLFORD: Thank you, Your Honor.

19 (RECESS - 5:00 P.M.)

20 *****OFF THE RECORD*****

21 END OF DAY ONE.

22

23

24

25

1 DECEMBER 9, 2014

2 (REPORTER'S NOTE: The following takes place outside the
3 presence of the Jury.)

4 CONTINUATION OF MOTION HEARING:

5 MR. DEBUSK: Yes, Your Honor.

6 THE COURT: Go ahead.

7 *****OFF THE RECORD*****

8 (REPORTER'S NOTE: State's Exhibit Number One [1-31-13]
9 statement played for the Court -- not transcribed herein.)
10 (On the Record.)

11 MR. DEBUSK: That's the State's showing, Your Honor.
12 Please answer any questions the Defense might have.

13 THE COURT: All right. Cross examination?

14 MR. HOLFORD: Thank you, Your Honor.

15 CROSS EXAMINATION OF DETECTIVE CAROL ANN ALLEN BY MR. HOLFORD:

16 Q: Detective Allen, do you have a copy of the Miranda form
17 that Mr. Collier signed?

18 A: Not on me. It's in the case file.

19 Q: Do you have them -- did he sign a Miranda form on this
20 last interview that we just listened to?

21 A: Yes, he did.

22 Q: On January 31, 2014?

23 A: Yes, sir.

24 Q: Did you turn the Miranda form over to the Solicitor's
25 office?

1 A: Yes, I did.

2 Q: From the 31st?

3 A: Yes. There should have been at least three Miranda forms
4 all signed by detectives and Mr. Collier that were turned
5 over.

6 Q: Do you have it in your file with you today?

7 A: No, I do not.

8 Q: Is there any way we could get a copy of it?

9 A: Sure.

10 Q: What would we have to do to do that?

11 A: I'd have to call back to the police department and they
12 can probably fax one over.

13 MR. HOLFORD: Court's indulgence, Your Honor. May we
14 approach?

15 THE COURT: Yes, sir.

16 (REPORTER'S NOTE: A bench conference was held off the
17 record.)

18 THE COURT: Y'all see if you can do something about that.

19 (RECESS)

20 *****OFF THE RECORD*****

21 (On the Record.)

22 THE COURT: Solicitor?

23 MR. DEBUSK: Yes, Your Honor, we're working on it.

24 THE COURT: All right. Do you want to wait on that, Mr.
25 Holford, or do you -- could you continue while it's on its

1 way?

2 MR. HOLFORD: Your Honor, I -- certainly, for the
3 purposes of this Jackson v. Denno hearing we can continue
4 while it's on its way.

5 THE COURT: Okay. That's great. And so we'll just make
6 sure it gets here before the detective testifies at trial.

7 MR. HOLFORD: Yes, Your Honor.

8 THE COURT: All right. Very good.

9 MR. HOLFORD: Thank you.

10 THE COURT: All right. Good deal. Continue on, please,
11 sir.

12 BY MR. HOLFORD:

13 Q: Detective Allen, you sat in with the detective Truex on
14 the first interview; is that correct?

15 A: That's correct.

16 Q: And did you hear the part where Mr. Collier said that he
17 had just smoked crack prior?

18 A: Yes.

19 Q: Did you also know that he had a tenth grade education?

20 A: Yes.

21 Q: And during what we'll call, for the purposes of this
22 hearing, the second interview, the one that won't be admitted,
23 did you interview Mr. Collier in that time as well?

24 A: I did.

25 Q: And do you remember asked him if he remembered yesterday's

CAROL ALLEN - CROSS BY HOLFORD

1 conversation? And I believe you were referring to the one
2 with detective Truex.

3 A: Yes.

4 Q: Do you remember saying that this could make or break you
5 to the Defendant?

6 A: Yes, I did.

7 Q: Do you remember Mr. Collier saying I hope this helps me
8 out and you replying it will, it sure can't hurt, you're doing
9 the right thing?

10 A: Yes.

11 Q: Do you remember Mr. Collier saying, let them put that
12 charge on me and I'm not trying to lose my life, in talking
13 about putting these guys away for you and talking about
14 testifying against some of the other people?

15 A: Yes, I believe so.

16 Q: In general, did it seem like Mr. Collier's understanding
17 was that he was implicating himself in order to either help
18 DEU or help your office in the prosecution of other people?

19 A: Yes, I -- yes.

20 Q: And he was certainly looking for some leniency on his
21 charges?

22 A: Of course, sure.

23 Q: In this interview that we just listened to, it was a
24 follow-up interview; is that correct?

25 A: That's correct.

1 Q: And although we don't have the Miranda form it does appear
2 on the recording that Miranda was read?

3 A: Yes, that's correct.

4 Q: And Mr. Collier says by self-admitting to thirty-three
5 crimes, does that really helped me; is that correct?

6 A: That's correct.

7 Q: So, again, he was looking for some type of leniency?

8 A: Of course.

9 Q: You responded later in the interview about giving him some
10 aspirin; is that correct?

11 A: Yeah.

12 Q: Did he have a headache or was he ---

13 A: I believe that's what he mentioned, he had a headache,
14 yes.

15 Q: And had he been provided any food or drink up to that
16 point?

17 A: I'm trying to think of when the interview was. I believe
18 it was later on that night. Dinner would have been around,
19 you know, 6 o'clock P.M. so he, I would assume, the jail had
20 said him at normal eating hours.

21 Q: Do you remember Mr. Collier talking a lot about the stone
22 cold killers in reference to Little D or David Henry?

23 A: Yes.

24 Q: And he was scared for his life?

25 A: Yes, sir.

CAROL ALLEN - CROSS BY HOLFORD

1 Q: I believe he said, you know how scared I am.

2 A: I remember him saying that, uh-huh (affirmative response).

3 Q: And did you respond you are doing everything right in
4 reference to saying what he was saying to you?

5 A: Sure, yes.

6 Q: Did you also at the end of the interview say, we'll put a
7 good word in for you?

8 A: Yes.

9 Q: Did you put a good word in for him?

10 A: I passed all the information on to Detective Truex, I
11 don't think I was able to attend the bond hearing but in my
12 report and everything I mentioned everything that he told us
13 and, I mean, helping him out.

14 Q: Do you recall what Mr. Collier's bond is?

15 A: Not offhand, no, I don't.

16 Q: Would it be fair to assume it's somewhere above 400,000?

17 A: I don't remember right off hand.

18 Q: If a bond was around 400,000 or 10,000 on each individual
19 charge, do you think the Magistrate Judge took into account
20 that he helped Myrtle Beach Police?

21 A: I don't know what to say to that question.

22 Q: Have you seen a bond that high with someone who helps the
23 police and works with the police on charges?

24 A: I can't say for sure.

25 MR. HOLFORD: No further questions, Your Honor.

1 THE COURT: Any redirect?

2 MR. DEBUSK: Briefly, Your Honor.

3 THE COURT: All right.

4 REDIRECT EXAMINATION OF DETECTIVE CAROL ANN ALLEN BY MR.

5 DEBUSK:

6 Q: Detective Allen, at that point, Mr. Collier was facing
7 literally dozens of counts of burglary, wasn't he?

8 A: That's correct.

9 Q: And you would expect a highball and even if they
10 cooperated when he had dozens of burglaries?

11 A: That's correct.

12 Q: Thank you.

13 THE COURT: Anything on those questions, Mr. Holford?

14 MR. HOLFORD: No, Your Honor.

15 THE COURT: You may step down, ma'am.

16 Further witnesses on behalf of the State?

17 MR. DEBUSK: No, Your Honor.

18 THE COURT: Any testimony on behalf of the Defendant
19 regarding the statements?

20 MR. GARDNER: May we have one more moment to discuss that
21 with him?

22 THE COURT: Yes, sir.

23 MR. GARDNER: I'm just trying to make sure he
24 understands. I apologize for the delay.

25 THE COURT: I appreciate that. That's all right. It's

DEREK VANDER COLLIER - DIRECT BY HOLFORD

1 not a problem, Mr. Gardner. Y'all go ahead and do that.

2 MR. HOLFORD: Your Honor ---

3 THE COURT: Yes.

4 MR. HOLFORD: For purposes of the Jackson v. Denno only,
5 without waiving Mr. Collier's right to not testify against
6 himself in the trial, the Defense would like to call Mr.
7 Collier to the stand for purposes of voluntariness of the
8 statement.

9 THE COURT: Solicitor, what's your position?

10 MR. DEBUSK: I suppose it's their right, Your Honor, if
11 they wish to.

12 THE COURT: Very good, sir. All right. Come around.

13 DEREK VANDER COLLIER, HAVING BEEN DULY SWORN,
14 TESTIFIES AS FOLLOWS:

15 CLERK: Please be seated. State your full name and spell
16 your last name for the Court, please.

17 MR. COLLIER: My name is Derek Vander Collier, Collier is
18 spelled C-O-L-L-I-E-R.

19 DIRECT EXAMINATION OF DEREK VANDER COLLIER BY MR. HOLFORD:

20 Q: Mr. Collier, we're here to talk about the voluntariness of
21 the statements we just heard. Were you in court the whole
22 time?

23 A: Yes, sir.

24 Q: And did you hear the statements?

25 A: Yes, sir.

DEREK VANDER COLLIER - DIRECT BY HOLFORD

1 Q: Detective Truex, before the first one, he asked you if you
2 had smoked crack. Can you tell me about that?

3 A: I had smoked like four to five minutes before they
4 arrested me. He pulled up on me -- it was real cold that day,
5 I remember it, I want to say it was the 30th ---

6 Q: Let's just -- try and just answer the questions and --
7 because we want to limit it to whether it was voluntary or
8 not. We don't need a whole lot of discussion. All right?

9 A: All right, sir. Can you re-ask the question?

10 Q: I believe you answered that one. As far as -- was there
11 anything that Detective Truex found on you?

12 A: A crack pipe.

13 Q: Was that before or after the interview?

14 A: That was before the interview.

15 Q: There was some discussion, it sounded like -- was there
16 any discussion before the tape started?

17 A: Yes.

18 Q: And what was that?

19 A: It was -- I got like seven to eleven warrants on you but
20 ---

21 Q: Who said that?

22 A: Brian Truex. He said but I don't want these guys -- I
23 mean, he said I don't want you, I want the guys. And I'm like
24 what guys and he said will show you the pictures when we get
25 to the jail. And when he took me to the jail, I mean, there

1 was a discussion before that but when he took me to the jail,
2 they showed me a picture of David Harry, Catrisha Brandenburg
3 and Kendrick Pringle.

4 Q: And why did you agree to give a statement to the police?

5 A: Because I thought that he said that he was gonna help me,
6 he told me he was gonna let me go, he didn't want me.

7 Q: What did you think you were facing at the time? What was
8 gonna happen if you didn't testify?

9 A: He told me when we was out, before we got to the jail, he
10 said -- because I tried to give him the runaround. He said,
11 listen, you are facing pointing and presenting a firearm,
12 aggravated -- I got warrants on you for pointing and
13 presenting a firearm, aggravated assault, first degree
14 burglary and weapon during the commission of a violent crime.
15 And if you don't help us with these charges and your violent
16 history, these will end your days as a free man.

17 Q: And, why would you say that you gave the statement you
18 did?

19 A: Because I was scared for my freedom and I was also scared
20 for my life because these guys are some real dangerous guys.

21 Q: Did the police, Myrtle Beach Police do anything to get you
22 to give this statement?

23 A: They told me they was gonna help me.

24 Q: Were you represented by a lawyer at that time?

25 A: No, sir.

DEREK VANDER COLLIER - DIRECT BY HOLFORD

1 Q: Did you understand the rights that you had and the
2 consequences of waiving those rights?

3 A: I didn't understand the consequences of waiving those
4 rights. I thought by me talking to them I would help myself.

5 Q: And did the -- did they promise or threaten you in any
6 way?

7 A: They told me that was gonna help me. And if I -- before I
8 went to the jail, like I said, Truex told me that if I didn't
9 help him it would in my days as a free man. But they told me
10 that they would help me.

11 Q: Did -- was everything that they said to you truthful?

12 A: No.

13 Q: Did they represent anything?

14 A: What you mean by that?

15 Q: Did they misrepresent anything that they said to you?

16 A: Yes, they told me that they was gonna help me and they
17 ain't nobody helped me. Nobody put a word in for me on my
18 bond reduction on my bond hearing, nobody let me go like Truex
19 said he was gonna do.

20 MR. HOLFORD: I have no further questions Your Honor.

21 THE COURT: Solicitor, cross examination?

22 CROSS EXAMINATION OF DEREK VANDER COLLIER BY MR. DEBUSK:

23 Q: By your admission on the stand this morning, before you
24 started talking to Brian Truex you lied to him, you told him a
25 false name; that was a lie, wasn't it?

DEREK VANDER COLLIER - CROSS BY DEBUSK

1 A: I -- he told -- no, I didn't tell him a false name, I just
2 gave him the runaround.

3 Q: Okay. So, you're denying that you lied about your name to
4 him?

5 A: I did not lie to you him about my name to him.

6 Q: Okay. You've got a little bit of a criminal record, don't
7 you?

8 A: Yes, sir.

9 Q: You've got a possession with intent to distribute
10 marijuana from 2012, right?

11 A: Yes, sir.

12 Q: Shoplifting from the City of Myrtle Beach from 2012?

13 A: I was never taken to court on that charge.

14 Q: You weren't found guilty on that?

15 A: No, I was in prison and they told me -- I guess they did
16 it my absence but I was locked up, I got proof of being locked
17 up in SCDC.

18 Q: Okay. In Virginia in 2013, you had identity theft, didn't
19 you?

20 A: Yes.

21 Q: Okay. And then in New York in 2002, assault third degree?

22 A: Yes, I was seventeen.

23 Q: And 2002, menacing with a weapon, second degree?

24 A: Yes.

25 Q: 2005, possession of marijuana, fifth degree?

1 A: Yes.

2 Q: And then in North Carolina, 2005, common law robbery and
3 conspiracy to commit robbery with a deadly weapon?

4 A: Yes, sir.

5 Q: And 2008, assault on a female?

6 A: Yes, sir.

7 Q: Thank you. No further questions, Your Honor.

8 THE COURT: All right. Any redirect?

9 MR. HOLFORD: No, Your Honor.

10 THE COURT: You may step down, sir. Further testimony on
11 behalf of the Defendant?

12 MR. HOLFORD: Nothing further, Your Honor.

13 ARGUMENTS OF COUNSEL:

14 THE COURT: All right. Very good. I'll be glad to hear
15 your arguments then regarding the next statement, I guess we
16 can call it the third statement that the State wishes to
17 introduce. Obviously, I have listened to what we've called
18 the second one regarding your arguments but the State only
19 wants to introduce part of the third so I'll be glad to hear
20 your arguments about that.

21 MR. HOLFORD: Yes, Your Honor. On behalf of the
22 Defendant, we would raise a motion for suppression of that
23 statement based on its voluntariness under Jackson v. Denno as
24 well as State v. Parker, 381 S.C. 68, and State v. Miller, 652
25 S.C.2d 444.

ARGUMENTS OF COUNSEL

1 Your Honor, this is an evidentiary hearing held before
2 Your Honor. State bears the burden of proof by preponderance
3 of the evidence to all the elements. Your Honor, I believe in
4 Parker they listed out four questions was: Did the defendant
5 make a statement; were Miranda warnings read and understood;
6 and, three, did the Defendant knowingly and intelligently
7 waived all his constitutional rights, those being rights to
8 counsel, right to remain silent, et cetera; and fourth, was
9 his statement voluntary. Your Honor, the Defense would take
10 issue with the third and fourth prong. Under the third one,
11 as you heard, Mr. Collier state that he did not -- Your Honor,
12 we would show that he did not knowingly and intelligently
13 waive his constitutional rights. He has a tenth grade
14 education.

15 Your Honor, I don't believe that he understood the
16 consequences and the ramifications. I don't believe that he
17 was able to make a rational, knowing and intelligent decision
18 about whether he should waive his constitutional rights or
19 not. I don't believe that he completely understood what those
20 rights were in what he was giving up when he decided to make
21 his statement.

22 Furthermore, as to was his statement voluntary, this is
23 based on the totality of the circumstances. Your Honor, some
24 of the factors include his education and knowledge. Again, he
25 has a tenth grade education. Your Honor, the lack of advice

ARGUMENTS OF COUNSEL

1 of the consequences to waive, the length of detention. At
2 this point he had been in, he had been for at least a couple
3 of days. He had been interviewed at 2:00 A.M. one night, got
4 some amount of sleep and then gave another interview later
5 that day on the 30th, remained in jail and then had an
6 interview at 11:00-something, 11:30-something on the 31st.
7 Your Honor, the prolonged nature of the questioning, this
8 third interview as we'll call it reiterated, you know, the
9 previous about hour and a half of the other interviews. It
10 was just going over the same stuff. Your Honor, I would
11 suggest that this third interview was just a prolonged and
12 cumulative interview based on the prior ones. The location of
13 the interrogation was obviously in the jail cell. Mr. Collier
14 was already under arrest, he was already detained.

15 As far as police misrepresentations, as you heard Mr.
16 Collier believed that -- he thought that he was helping
17 himself. It certainly sounded from the interviews that the
18 police said they were gonna help them out, they said they were
19 gonna put a good word in for him. I believe that these were
20 misrepresentations. I do believe that they included the
21 statements in the file when they sent it to the Solicitor's
22 office but I don't think there was any help for Mr. Collier.
23 I don't think that they attempted to help Mr. Collier with all
24 the information that he gave them against big-name drug
25 dealers, against the other people that have since been locked

ARGUMENTS OF COUNSEL

1 up, specifically, including the codefendants that are now
2 testifying against him.

3 Your Honor, there were a number of cases that Mr. Collier
4 helped in that I don't believe he received any benefit of and
5 it certainly sounds to me from his interview that he expected
6 something, that there was some type of leniency he was
7 expecting from the police and which he certainly didn't get.
8 Your Honor, I would suggest that there is some level of deceit
9 used by the police. Certainly, we understand that the
10 question is whether the Defendant's will was overborne by all
11 of this. I think that based on the totality of all that, not
12 one individual thing that the totality that the Defendant's
13 will was overborne, that promises of leniency can be implied.
14 Your Honor, the test takes into account both characteristics
15 of the Defendant as well as the details of the investigation.
16 And as stated in the previous argument for suppression of the
17 first one, Your Honor, I believe that I would again renew that
18 objection to the first statement. I respect and understand
19 the Court's ruling on that one but as far as the voluntariness
20 based on his admission of smoking crack, that this third
21 statement would not have even been given had the first one not
22 been had pursuant to that. I believe that had Mr. Collier not
23 already under the influence of drugs given a statement, he
24 would not then have now being in his right mind clear, sober,
25 drug-free and alcohol-free mind given a subsequent statement

ARGUMENTS OF COUNSEL

1 but since they brought up the fact that he had already
2 implicated himself and already had these charges, then making
3 this third statement not voluntary because it was based on the
4 fact that he had already given the first one, Your Honor.

5 THE COURT: All right, sir. Thank you very much.
6 Solicitor?

7 MR. DEBUSK: Your Honor, you have two different versions
8 of what happened on the 30th when Detective Truex arrested the
9 Defendant. Detective Truex, an officer with many years of
10 service both in Myrtle Beach and with SLED has given you one
11 version. The Defendant has given you a completely different
12 one. The Defendant has the record for multiple crimes
13 including crimes of falsehood, like identity theft and
14 shoplifting. I would say that his account where it differs
15 from Brian Truex' should be discounted.

16 You've already heard the facts of the first statement and
17 found it voluntary. The second statement the Defendant
18 actually asked to give this statement. He called for a
19 detective, a detective went there at his request and took his
20 statement. You heard the statement, through most of it, the
21 detective was quiet and the Defendant was just talking. Did
22 he expect help? Yes. That's why people give statements, the
23 think they can help themselves by giving statements against
24 others. His motivation doesn't mean his will was overborne
25 but that he was trying to help himself doesn't mean his will

RULING AS TO MOTIONS

1 was overborne and this was not a voluntary statement. This
2 was the very epitome of a voluntary statement when he called
3 the detectives to him to give the statement. Thank you, Your
4 Honor.

5 RULING OF THE COURT AS TO MOTIONS:

6 THE COURT: All right, sir. Again, in this particular
7 matter, the Court is called upon to determine whether the
8 confession was voluntary and it's -- whether it's admissible.
9 Certainly, the Defendant was in custody and Miranda warnings
10 were given. From the statement that was played, it's clear
11 that the Miranda warnings were given. The Defendant indicated
12 that he understood them and waived them, was willing to waive
13 them. I understand there's a question about the form
14 regarding the 31st, I believe, but as I understand it, it does
15 exist and will soon be forthcoming and will be here before the
16 trial. Be that as it may, it's clear that on the oral version
17 that was played in court that the detective went over each of
18 the Miranda warnings, the Defendant indicated that he
19 understood them and was waiving them. It is also clear that
20 the Defendant was making the statement in an effort to help
21 himself in an effort to get some type of help regarding all of
22 the charges that he was facing at the time. That, in and of
23 itself, does not render a statement involuntary. I do not
24 find that there was any specific or detailed promises or quid
25 pro quo, you know, something for something regarding the

RULING AS TO MOTIONS

1 Defendant's statement. Certainly, the detectives encouraged
2 the Defendant to give his statement, nothing wrong with that.
3 Regarding this, the -- again, does not affect the
4 voluntariness of the statement.

5 I do not find that his will was overborne, that there was
6 any agreement by the State that if he made the statement they
7 would do certain things. Again, they encouraged him to tell
8 the truth and to say what he had done, which the Defendant
9 indicated that he was willing to do. Statements by the
10 detective that -- to the effect that he was doing the right
11 thing or things of that type, again, does not invalidate the
12 statement by the Defendant.

13 From all indications, the officers put the information in
14 the report. Now, they cannot make, as far as the bond
15 hearing, they can't make the Magistrate do anything or City
16 Judge do anything regarding the bond. So, that was clearly in
17 the province of the judge to set the bond; it is not in the
18 province of the detectives to set the bond.

19 As to whether or not the Defendant had expected help,
20 again, the State, number one, is under no obligation to offer
21 a plea bargain. They have offered a plea bargain to the
22 Defendant, which the Defendant has found unacceptable but
23 considering the large number of charges, the State first, in
24 this Court's estimation, made a good-faith offer to the
25 Defendant but the Defendant decided to reject, which is his

RULING AS TO MOTIONS

1 right, and he wants to exercise his constitutional rights and
2 have a jury trial and have the matter tested before them as to
3 the voluntariness of the statement, then he is welcome to do
4 so and we certainly will do that. But, again, I don't find
5 anything in the record that would indicate that this was
6 anything but a voluntary statement by the Defendant. With
7 knowledge of his constitutional rights, he waived them, gave
8 them up. In one of the statements he asked of his own accord
9 to speak to a detective, it's not that they came to him, he
10 wanted to speak to them, further indications of his wish to
11 give a statement, a voluntary statement. I find that the
12 State has shown by the greater weight of preponderance of the
13 evidence that the statement was the voluntary statement of the
14 Defendant, given freely without force, coercion, promises of
15 any kind and that it should be, when properly redacted,
16 allowed into evidence in this case. Now, obviously, it will
17 be up to the Jury to decide ultimately the voluntariness of
18 the statement and the standard that the State has in that
19 case, obviously is different, that's beyond a reasonable doubt
20 but that's not my standard. All right. So, with that, I'm
21 going to allow it, again, with the suitable redaction.

22 All right. Are there any other statements, Solicitor?

23 MR. DEBUSK: No, Your Honor.

24 BY THE COURT:

25 THE COURT: All right. And, so, have you shown to the

BY THE COURT

1 Defense counsel -- have y'all talked about the portions of the
2 first and the third statement that you wanted to introduce?

3 MR. DEBUSK: Your Honor, we did talk about it last night
4 and I have prepared or have had prepared for me the redacted
5 copies, we have not had a chance to listen to them and confirm
6 that they are correct.

7 THE COURT: All right. So, well, obviously we need to
8 make sure we do that before we play them to the Jury.

9 MR. DEBUSK: We could probably do that in the midmorning
10 break, Your Honor, or the afternoon break.

11 THE COURT: All right. Very good.

12 Yes, sir, Mr. Holford?

13 MR. HOLFORD: Nothing, Your Honor, I was just ---

14 THE COURT: All right. Just make sure that you get with
15 the Solicitor regarding the redacted statements and make sure
16 that you -- understanding your objection and noting your
17 objection but, with that, that there are not any of other
18 objections that you might have as to mentions of, you know, of
19 other crimes or something like that. So, just make sure we
20 cover that with him. Okay?

21 MR. HOLFORD: Yes, Your Honor.

22 THE COURT: Any other motions that the Defense would have
23 at this time?

24 MR. HOLFORD: Your Honor, the only other motion Defense
25 would have at this time is to sequester our witnesses except

1 for the lead detective, MacPherson.

2 THE COURT: All right. Any issue with that?

3 MR. DEBUSK: No, Your Honor.

4 THE COURT: And who would be the main detective or lead
5 detective that you would retain in the courtroom?

6 MR. DEBUSK: Agent McCullough, Your Honor.

7 THE COURT: I'm sorry.

8 MR. DEBUSK: Detective MacPherson, I'm sorry, MacPherson,
9 Your Honor. It appears, I think we have three of the
10 witnesses in the courtroom and I'll ask them to step into the
11 waiting room.

12 THE COURT: All right, sir. Okay. Very good. So, with
13 that, just so we're clear, I'm going to grant the
14 sequestration except for the lead detective. Regarding the
15 statements to be played, we're gonna have time for you and Mr.
16 Holford and Mr. Gardner to listen to those before they -- you
17 would proffer those to the Jury.

18 MR. DEBUSK: Yes, Your Honor. The redacted statements or
19 less than ten minutes a piece, so ---

20 THE COURT: Okay. Great. All right. Good deal. All
21 right. Anything else then from the State before we would call
22 the Jury in?

23 MR. DEBUSK: Just a moment to finish pre-numbering my
24 exhibits.

25 THE COURT: Right. I mean, we're gonna take a short

BY THE COURT

1 break but I'm just saying this or anything else that we need
2 to cover?

3 MR. DEBUSK: No, Your Honor.

4 THE COURT: Anything from the Defense that we need to
5 cover?

6 MR. HOLFORD: Nothing, Your Honor.

7 THE COURT: All right, gentlemen, if y'all can, you know,
8 work on the exhibits and make sure, Mr. Holford, if you would
9 look at these so that if you have got some objections or
10 something like that, let me know, and we're just take a short
11 break and then we'll get started with the trial. All right?

12 MR. HOLFORD: Yes, Your Honor.

13 THE COURT: Thank y'all very much.

14 (RECESS)

15 *****OFF THE RECORD*****

16 (On the Record.)

17 BY THE COURT:

18 THE COURT: All right. Is the State ready for the Jury
19 to come in?

20 MR. DEBUSK: Yes, Your Honor.

21 THE COURT: And the Defense?

22 MR. HOLFORD: Yes, Your Honor.

23 THE COURT: All right. Ask the Jury to come in, please.

24 Gentlemen, if I didn't tell you, I'm sorry, Juror Number
25 152, they selected Juror Number 152 as the Foreperson, 152, as

MEGAN MECHANIC - CROSS BY HOLFORD

1 A: I wouldn't know that.

2 Q: Thank you. No further questions, Your Honor.

3 THE COURT: Any redirect?

4 MR. DEBUSK: No, Your Honor.

5 THE COURT: Do you wish the witness to be excused?

6 MR. DEBUSK: Yes, please, Your Honor.

7 THE COURT: Any objection to that?

8 MR. HOLFORD: No, Your Honor.

9 THE COURT: All right. Ma'am, you are released from your
10 subpoena and may go back to your regular duties.

11 A: Thank you.

12 MR. DEBUSK: The State would call Justin Kirkman.

13 THE COURT: All right, sir, if you would, come all the
14 way around, right up here and you meet the Clerk right up
15 here, sir.

16 JUSTIN KIRKMAN, HAVING BEEN DULY SWORN, TESTIFIES AS
17 FOLLOWS:

18 CLERK: State your full name and spell your last name for
19 the Court, please.

20 MR. KIRKMAN: Justin Kirkman, K-I-R-K-M-A-N.

21 THE COURT: All right, sir. Mr. Kirkman, if you could,
22 could you scoot up just a little bit closer to the microphone
23 so that everybody can hear you.

24 MR. KIRKMAN: Sorry, I didn't know how loud I was.

25 THE COURT: Sometimes -- go ahead, Solicitor.

1 MR. DEBUSK: Thank you, Your Honor.

2 DIRECT EXAMINATION OF JUSTIN KIRKMAN BY MR. DEBUSK:

3 Q: Mr. Kirkman, who is your employer?

4 A: I was subcontracting to Ron Pittman who was the main

5 contractor for ---

6 Q: At this time?

7 A: Huh?

8 Q: At this time?

9 A: Oh, at this time. I'm a realtor and also work at River

10 Oaks Golf Course as a professional there.

11 Q: So, you're a golf pro and real estate agent?

12 A: Correct.

13 Q: Licensed for real estate?

14 A: Yes.

15 Q: Okay. Now, you've had a little bit of trouble with the

16 law before, haven't you?

17 A: I have.

18 Q: What was it?

19 A: It was about five years ago or six and a half since I went

20 to court. I plead guilty to two crimes, burglary and non-

21 aggravated robbery and they sentenced me to ten years

22 probation.

23 Q: Okay. Are you still serving that probation?

24 A: I am.

25 Q: When will it end?

JUSTIN KIRKMAN - DIRECT BY DEBUSK

1 A: I have the opportunity to get off this coming June.

2 Q: So, you get off in half the ---

3 A: Correct.

4 Q: Let's talk a little bit about what you've done since. How
5 long have you been in Myrtle Beach?

6 A: About four years now.

7 Q: How long have you been a golf pro?

8 A: Just recently. I played -- I helped them out with carts
9 and things for a while and then they upgraded me to the pro
10 shop when an opening came up, it was about -- I don't know --
11 six months ago.

12 Q: And about how long have you been licensed in real estate?

13 A: Since May, the State officially licensed to me.

14 Q: So, you're working two jobs?

15 A: Correct.

16 Q: Are you married?

17 A: I am not.

18 Q: And on November, 2013, who was your employer?

19 A: Ron Pittman.

20 Q: What did you do for Mr. Pittman?

21 A: He was a contractor for a group of hotels, Brittain Resort
22 Management, basically did contracting work and there was just
23 him so he hired subcontractors to do pretty much anything they
24 needed to remodel hotels. So, we painted, redid the floors,
25 tile work, plumbing; anything they wanted done, we did.

1 Q: Let me take you back to November 20th of 2013. Were you
2 at the Jamaican Motor Inn?

3 A: That's correct, yes.

4 Q: Is that part of the Caribbean Resort?

5 A: Yes.

6 Q: Okay. What were you doing at the Jamaican?

7 A: We started early that morning, myself and another
8 subcontractor, Nick, we started painting doors for them. They
9 wanted to all the doors painted throughout the whole room --
10 or the whole Jamaican Hotel. And so, we painted all day long.
11 They ended up bringing some other subcontractors later that
12 day to help us paint and -- yeah, that was it. We were just
13 painting doors.

14 Q: Did you get all the doors painted?

15 A: We did.

16 Q: Now, once the doors were painted, did you close them?

17 A: We could not. It was an oil-based paint and so I know it
18 was pretty cold that day and so, unfortunately, they were
19 taking quite some time to drive.

20 Q: What did you do to take care of that?

21 A: Ron suggested that he wanted me to stay behind and they
22 rented out the -- or they blocked, obviously, all these rooms
23 but the fifth floor was a penthouse. He just wanted me to
24 stay up there and then every thirty minutes or so come down
25 and double check all the doors and close them as they dried.

1 Q: So, as a reward for staying there the night, you got to
2 stay in the penthouse?

3 A: Correct, but I was in and out a lot.

4 Q: Were you gonna sleep there?

5 A: Huh?

6 Q: Were you gonna sleep there at the hotel?

7 A: No, no, no, no, that was not for -- because there wasn't
8 enough time because I had to go down so much. It was just
9 mostly say I didn't have to stand in the cold.

10 Q: Did you close the doors at the time as they dried?

11 A: I did. I started doing checks -- they actually had -- you
12 know, the Caribbean and the Jamaican have their own security
13 that would come by occasionally and so I discussed with them
14 but they weren't coming by a lot, that's why I was there. So,
15 I did several rounds and as they started drying, I shut the
16 ground floor and the second floor first because I thought that
17 would be the obvious place if someone were going to, you know,
18 a homeless person or somebody was going to steal something or
19 anything of that nature.

20 Q: Now, how about about midnight, how far along had you
21 gotten, how many doors -- how many floors of doors had you
22 closed?

23 A: It was at two. First, the ground floor, the first two
24 that we did, they started drying after the first couple of
25 checks. And by about midnight, I had one and two done but the

JUSTIN KIRKMAN - DIRECT BY DEBUSK

1 third floor was still a little tacky and so I didn't want to

2 shut them all the way in, so they were still ---

3 Q: Now, were you going up to the penthouse occasionally to
4 rest and relax?

5 A: Yeah, basically, I would just leave, I'd go down to the
6 ground floor -- when I first started, I go down to the ground
7 floor and I would just go through and just gently checked all
8 the doors and if I felt they were dry enough, I would go ahead
9 and shut them and lock them. And then, once I got done, I
10 would just go wait for another, you know, twenty or thirty
11 minutes and go back down.

12 Q: Now, let's go back to -- let me ask you a quick question.
13 State's Exhibit Two, does this accurately reflect the location
14 of the Jamaican?

15 A: Yes, it does.

16 Q: And do you know what County that's in?

17 A: Horry.

18 Q: Horry County. Now, just past midnight, where were you --
19 how are you dressed?

20 A: Well, when it got -- after I closed the first and second
21 floor, my pants were obviously a little dirty, sweaty and
22 paint filled, so I brought some PJs to where as it got later
23 so I changed my pants bottom into pajama bottoms.

24 Q: So, you were wearing pajama bottoms?

25 A: Pajama bottoms and then just a jacket when I was going in

JUSTIN KIRKMAN - DIRECT BY DEBUSK

1 and out and then I still had my work boots on, that's what I
2 was using to go back and forth with.

3 Q: What happened about that time?

4 A: I just finished another check and I went back upstairs to
5 the house and I was prepping some dinner Ron had brought me
6 earlier that night and I had the TV on. And probably about
7 five or ten minutes passed and I heard a door shut, which I
8 thought was weird because nobody was supposed to be there.
9 And so I immediately went back to the elevator, took the
10 elevator down to the third floor and I saw a light was on in
11 the room across from the elevator to the right.

12 Q: Do remember that room number?

13 A: 309.

14 Q: Okay.

15 A: And so -- I know I didn't turn the light on, so I thought
16 that was weird, so I went over and walked in the room and I
17 saw him with his hands on the TV with black gloves trying to
18 dismount it from the wall.

19 MR. HOLFORD: Objection, Your Honor. As to him ---

20 THE COURT: Well, let's -- I'm going to allow the answer
21 but I'm going to ask you to be more specific in your
22 questions, Solicitor.

23 BY MR. DEBUSK:

24 Q: Do you recognize the individual you saw in the courtroom,
25 that day -- that day in the courtroom?

MOTIONS

1 A: I do.

2 Q: Who is it?

3 A: The gentleman over here (indicating) ---

4 MR. HOLFORD: Your Honor, I object.

5 A: I don't know his name. Derek, I believe.

6 THE COURT: All right. Yes sir, Mr. Holford?

7 MR. HOLFORD: Your Honor, I believe we have an issue
8 outside the presence of the Jury.

9 THE COURT: All right. All right. Hold on. Y'all --
10 I'm going to just excuse the jury for right now. All right.
11 Ladies and gentlemen, if you would go to the jury room for a
12 little bit, I need to talk to the lawyers. Thank you very
13 much.

14 (REPORTER'S NOTE: Jury exits courtroom. The following takes
15 place outside the presence of the Jury.)

16 MR. DEBUSK: Your Honor, I apologize. I just realized I
17 asked for and in-court identification. We didn't have a Neil
18 v. Biggers. I would ask that that testimony be stricken and a
19 corrective instruction issued.

20 THE COURT: Yes, sir, Mr. Holford.

21 MOTION:

22 MR. HOLFORD: Your Honor, I would object. Never, up
23 until this point, and even including Your Honor, the State
24 said there would not be an in-court identification. That's
25 the sole reason we didn't do a Neil v. Biggers before. Mr.

RULING AS TO MOTIONS

1 Kirkman has never stated before and it has never been
2 presented to the Defense that he could identify Mr. Collier.
3 He certainly couldn't a month or two after the fact and so
4 this is news to the Defense that he would be able to identify
5 Mr. Collier here today. I believe it's news to the State as
6 well as they said there would not be an in-court
7 identification. Your Honor, I believe that it certainly would
8 prejudice the Jury. I have already told the Jury there
9 wouldn't be an identification, that no witness would be able
10 to. Now, it looks like I'm being misleading to the Jury.
11 Your Honor, based on this, I believe I'm required to ask for a
12 mistrial.

13 THE COURT: All right, sir. Very good. All right. We'll
14 take a short break and we'll come back in just a second. All
15 right? Thank y'all very much.

16 MR. DEBUSK: Thank you, Your Honor.

17 (RECESS)

18 *****OFF THE RECORD*****

19 (On the Record.)

20 RULING OF THE COURT AS TO MOTION FOR MISTRIAL:

21 THE COURT: All right. Regarding the matter for the
22 mistrial, Solicitor, did you want to make any arguments to the
23 Court about that?

24 MR. DEBUSK: Yes, Your Honor. I apologize for that. I
25 should've asked to have the Jury taken out and requested a

RULING AS TO MOTIONS

1 Neil v. Biggers hearing. All I could think about was
2 qualifying the testimony instead of the implications of it.
3 It was a moment's misthought, Your Honor. I would ask for a
4 corrective instruction and a Neil v. Biggers hearing to
5 determine the admissibility of the identification.

6 THE COURT: Very good. And, Mr. Holford, anything you
7 would like to add to your motion?

8 MR. HOLFORD: Your Honor, I would just -- I would just
9 add from the Defense standpoint that a curative instruction
10 would not be sufficient in this case, unfortunately, and that
11 a mistrial, although unfortunate, is necessary from Defense's
12 standpoint based on openings and representations made by the
13 Defense as well as this just newly being discovered.

14 THE COURT: All right, sir. Very good. All right.
15 Regarding the motion for a mistrial, the case law indicates
16 that while it is in the Court's discretion, this obviously is
17 a power that the courts indicates needs to be used with the
18 greatest of caution and under urgent circumstances and for
19 very plain and obvious causes. They go on to say a mistrial
20 should be, should not be granted unless it's absolutely
21 necessary or sometimes called manifests necessity, that's
22 sometimes the language in the case is manifests necessity or
23 absolutely necessary. The normal situation when there is the
24 introduction of evidence that either was not disclosed or
25 potentially incompetent evidence would be that the Court would

1 give a curative instruction to the Jury to disregard that
2 testimony. That it is not part of the case and cannot be
3 considered by them. I have to take this motion in light of
4 what the Court told the Jury, and which is obviously what I
5 always do and what their job is to be the judges of the facts
6 and to judge the credibility and believability of the
7 witnesses. In the Defense's opening statement, the Defense
8 made a point based upon the available evidence and knowledge
9 that they had from the Solicitor's office that there would be
10 no in-court identification of the Defendant as the person who
11 committed the crime. When we had a pretrial or status
12 conference about this case before it started, the Court
13 inquired about motions and the State indicated that a Neil v.
14 Biggers hearing would not be necessary based upon the
15 information available to the State that approximately a month
16 or so after the incident in question the witness had looked at
17 a photo lineup. When pressed, picked out a -- apparently,
18 picked out a picture but could not be a hundred percent the
19 picture being that of the Defendant but could not be a hundred
20 percent certain and the position of the State was that there
21 would be no in-court identification, that would not be asked
22 of the witness because approximately a month after the
23 incident he was not and could not be a hundred percent certain
24 that the person he saw was the person he picked out of the
25 lineup. Based upon that, and that was also the Defense's

1 understanding and the Defense agreed that because there would
2 be no in-court identification, a Neil v. Biggers hearing was
3 not necessary and the Court proceeded with that. We come to
4 the second witness -- the first witness being very short,
5 about ten minutes or so, you know, a short witness. The
6 second witness in the trial does give an in-court
7 identification of the Defendant as the person who committed
8 the crime, who was in the room where he clearly should not
9 have been. Now, we didn't get further as to, you know, what
10 things were missing or whether or not a weapon was pointed but
11 he clearly identifies the Defendant as the person who was at
12 the Jamaican Inn in the room on the third floor where he had
13 no business being, he had no authority to be there, it was
14 improper for him to be there. Based upon that, and again,
15 just so that it's clear, the Appellate courts indicate that
16 the factors to be considered in determination of the motion
17 for a mistrial, based upon inadmissible testimony, is the
18 character of the testimony, circumstances under which the
19 testimony was offered, the nature of the case, other testimony
20 in the case. In this particular matter, I see no option but
21 to declare a mistrial. I believe it is absolutely necessary
22 -- if we're gonna use the language of older cases, manifests
23 necessity -- there is no available option to the Court to tell
24 the Jury to disregard this testimony which is the essential
25 part of the case, identification of the Defendant that

RULING AS TO MOTIONS

1 committed the crime, especially when the Defense has couched
2 its argument to the Jury that it would not happen. And
3 obviously that was based upon a good faith statement by the
4 State. I am not in any way indicating that the State misled
5 purposefully the Court or the Defense. I truly believe the
6 State was as surprised as the Court and the Defense when the
7 in-court identification happened. This was not something that
8 the State knew about, planned or had any idea was going to
9 occur but it did occur. And I cannot now just ask the Jury to
10 disregard it. I do not think it is possible especially when
11 the prejudice to the Defendant is so severe when their
12 attorney, who is trying to gain credibility with the Jury,
13 makes a blanket statement to them which almost the very first
14 witness says is not true. And that it's, in the Court's mind,
15 I believe, has destroyed the Defense attorneys credibility
16 with this Jury based upon that. And, again, I'm not casting
17 blame on the State here. I do believe this was unintentional
18 by the State, it was not planned, it was something that came
19 up that the State did not know was going to happen and was a
20 complete surprise to the State. I see no other alternative
21 and I believe it is absolutely necessary in this matter, there
22 being no alternative proper to the Court than to declare a
23 mistrial. And, the Court so declares a mistrial in this
24 matter.

25 MR. GARDNER: Thank you, Your Honor.

RULING AS TO MOTIONS

1 MR. HOLFORD: Thank you, Your Honor.

2 THE COURT: Yes, Solicitor?

3 MR. DEBUSK: Your Honor, I understand your ruling. I
4 would ask leave to draw a new jury and call the case again
5 tomorrow excluding these jurors from the pool and conduct a
6 Neil v. Biggers hearing this afternoon.

7 THE COURT: All right. Well, let's kinda set that to the
8 side for a moment. Okay? What I want to do first is -- well
9 ---

10 MR. DEBUSK: I would ask for purposes that we separate
11 these from the remainder of the panel.

12 THE COURT: I understand that. I understand what you're
13 saying. Well, the panel -- first, if the panel is available
14 to come back tomorrow, there is still a panel available, of
15 jurors. Civil Court has ended. We told the jurors to call
16 back tonight after 6 o'clock. So, the panel, not including
17 these twelve people is available for a trial. Well -- 'cause
18 I got to tell these twelve people something, so -- Mr.
19 Gardner, Mr. Holford, what's your position on the selection of
20 a jury panel that does not include these thirteen people?

21 MR. HOLFORD: Your Honor, I just asked Mr. Collier. The
22 only concern we would have about starting in the morning would
23 be that this is a new piece of evidence if Mr. Kirkman can
24 identify Mr. Collier as being present, this is something that
25 we'd have to evaluate in, in moving forward.

1 THE COURT: And I appreciate that. I think what I'll do
2 is -- we don't have to tell the jury pool to come back because
3 they're gonna call back tonight after 6 o'clock; is that
4 correct, ma'am?

5 CLERK: Yes, sir.

6 THE COURT: All right. So, I mean, we could wait till
7 later on this afternoon to put an instruction on the recording
8 for them for whatever we need for them to do. So, that would
9 give us time to conduct, first, a Neil v. Biggers hearing and
10 then some time for the Defense to consider what they heard at
11 the Neil v. Biggers hearing and to consider what they -- what
12 you would want to do in this particular matter. So, I'm not
13 -- and I appreciate the concern of the Defense and I'm not
14 foreclosing what we're going to do in this matter, but I'm
15 going to excuse this panel -- I'm gonna excuse them, I guess,
16 to -- let's find out real quick how many do we have altogether
17 -- So, I could probably let these thirteen -- I mean, if we
18 have ninety, I let these thirteen go for the week, I can
19 probably let them go. I mean, I've got another short trial
20 after this one that I was hoping I could get to but still -- I
21 can still, out of ninety, do that.

22 MR. GARDNER: My position would -- I would ask that we do
23 this another term of Court. We've been here for two days and
24 I have a law practice to run.

25 THE COURT: Well, and I appreciate that, Mr. Gardner and

BY THE COURT

1 I understand that and I -- but it's gonna take time, no matter
2 what, and I appreciate that. It's gonna take available time.

3 Anyway, bring the Jury in and let me let them go, we'll
4 talk about the Neil v. Biggers and we'll decide later if we --
5 -

6 MR. GARDNER: Your Honor, may I go to the second floor
7 ---

8 THE COURT: Yes, sir. Please, you go right ahead.

9 MR. DEBUSK: Your Honor, should I take the witness off
10 the stand?

11 THE COURT: Yes, sir. You can -- yes, sir, go ahead.

12 MR. DEBUSK: Please return to the sequester room.

13 THE COURT: Yeah, just go outside. That'd be great.

14 (REPORTER'S NOTE: Jury enters courtroom.)

15 BY THE COURT:

16 THE COURT: Mr. Foreman, ladies and gentlemen of the
17 Jury, something unusual happened in this case. And it was a
18 surprise to the State and the Defense. There was an
19 identification of the Defendant by the witness which had never
20 happened before in the evidence in this case. There were
21 opportunities for the witness to so identify the Defendant
22 prior to trial and he was unable to do so and that is how the
23 case proceeded to trial. That was the State's understanding
24 and it was the Defense's understanding. So, when Mr. Holford
25 told you in the opening statement that there would be no in-

BY THE COURT

1 court identification of his client, all were proceeding on
2 that basis. Because this is absolutely brand new, a surprise
3 to the State and the Defense, the Court has no choice and find
4 it to be absolutely necessary to declare a mistrial in this
5 matter. We cannot proceed because of what has occurred. It
6 means it will happen again at some later date, but it cannot
7 happen now because of what has occurred.

8 So, with that, I have been informed by Judge Dennis that
9 his civil matter has resolved itself. There is one other case
10 for trial in criminal court and I'm gonna summon the other
11 balance of the jury and select a jury from their numbers for
12 that trial. So, because I have inconvenienced y'all and used
13 up your time, I'm gonna excuse you for the balance of the
14 week. We have sufficient numbers that we can pick another
15 jury from so I don't need to inconvenience y'all further.
16 I'll just tell you this is something unusual. I've been a
17 trial judge since 2001 and I can count on one hand how many
18 times this has happened. So, it's very unusual but, with
19 that, it did happen and I had to declare a mistrial. I
20 apologize for any inconvenience to you. Sorry for that but
21 with that you are excused from your jury service for the week.
22 Thank you very much.

23 MR. DEBUSK: Your Honor, before they leave, may we
24 approach briefly?

25 THE COURT: Yes, sir. Go ahead. Ladies and gentlemen,

1 could you stop for just one second. If you happen to know
2 anybody on the jury panel for some reason, you knew somebody
3 else that was on the other portion that's not here, don't talk
4 about it this week. Okay? Thank you very much.

5 (REPORTER'S NOTE: Jury exits courtroom.)

6 THE COURT: All right. Solicitor, you indicated you want
7 to do a Neil v. Biggers, did you want to do it now or you want
8 to do it later, what do you want to do?

9 MR. DEBUSK: We've got two witnesses here for the Neil v.
10 Biggers hearing and one who will be here at 12:15, Your Honor.
11 We can do it now or we can do it after lunch, at your
12 convenience, Your Honor.

13 THE COURT: Mr. Holford, what do you want to do?

14 MR. HOLFORD: Your Honor, if I could have ten minutes to
15 print out the case law, I'd be ready proceed.

16 THE COURT: All right. Let's -- why don't we -- we might
17 as well go ahead and I guess get started on it. Who else is
18 necessary? I mean, obviously, Mr. Kirkman, who else?

19 MR. DEBUSK: The lead investigator who prepared the
20 lineup and Detective Lester Cook who is on his way is the one
21 who showed him the lineup.

22 THE COURT: All right. Very good.

23 MR. DEBUSK: And, Your Honor, we would also ask that
24 because a jury has not be sworn that the Jackson v. Denno
25 hearing be adopted for any future trial before Your Honor.

BY THE COURT

1 THE COURT: It's -- well, let's cover the Neil v.
2 Biggers.

3 MR. DEBUSK: Yes, sir.

4 THE COURT: If we're gonna start this trial tomorrow with
5 a brand new panel, then, Mr. Holford, I would see no necessity
6 for redoing the Jackson v. Denno hearing. Would you agree
7 with that?

8 MR. HOLFORD: Yes, Your Honor. If it's necessary to
9 start the trial tomorrow I would not see it necessary to redo
10 in front of Your Honor what we've already done.

11 THE COURT: All right. Very good, sir. All right. So,
12 we'll take a short break and then we'll get started with the
13 Neil v. Biggers hearing. All right? Thank y'all very much.

14 (RECESS)

15 *****OFF THE RECORD*****

16 (On the Record.)

17 (REPORTER'S NOTE: The following takes place outside the
18 presence of the Jury.)

19 BY THE COURT:

20 THE COURT: All right.

21 MR. DEBUSK: Your Honor, the ---

22 THE COURT: Yes, sir.

23 MR. DEBUSK: Earlier the Defense requested a Miranda form
24 from January 31st, 2014 from Carol Allen and the Defendant. I
25 placed a copy on their table.

1 THE COURT: All right. So, do you have that, Mr. Holford,
2 then?

3 MR. HOLFORD: Yes, Your Honor.

4 MR. DEBUSK: Your Honor, Mr. Holford has just pointed out
5 to me, we may've gotten the wrong one. We'll check on it and
6 ---

7 THE COURT: All right. Is that the same one y'all
8 already had?

9 MR. DEBUSK: No, Your Honor. It's -- it appears to be
10 for a different Defendant.

11 THE COURT: Great. All right. We'll have to get
12 somebody to work on that then.

13 All right. We are now back on the record in 2014-GS-26-
14 1540 and 1541 regarding the State of South Carolina versus
15 Derek Vander Collier, burglary second degree violent,
16 possession of a weapon during the commission of a violent
17 crime. Regarding these matters, it's already been on the
18 record that the Court declared a mistrial in the first -- the
19 first time this was called this week. And it now appears that
20 the Court needs to conduct a Neil v. Biggers hearing. Is the
21 State ready for that?

22 MR. ERVIN: We are, Your Honor.

23 THE COURT: And the Defense?

24 MR. HOLFORD: Yes, Your Honor.

25 THE COURT: All right. Very good. All right.

TODD MACPHERSON - DIRECT BY ERVIN

1 Solicitor, you want to commence?

2 NEIL V. BIGGERS HEARING:

3 MR. ERVIN: Your Honor, the State would call Investigator
4 Todd MacPherson.

5 THE COURT: All right, sir. I you would please come
6 around and be sworn by the Clerk.

7 TODD MACPHERSON, HAVING BEEN DULY SWORN, TESTIFIES
8 AS FOLLOWS:

9 CLERK: Please be seated, state your full name and spell
10 your last name for the Court, please.

11 MR. MACPHERSON: Todd Christopher MacPherson, M-A-C-P-H-
12 E-R-S-O-N.

13 DIRECT EXAMINATION OF TODD MACPHERSON BY MR. ERVIN:

14 Q: Detective MacPherson, how long have you been with Myrtle
15 Beach Police Department?

16 A: A little over sixteen years.

17 Q: What are your duties here currently?

18 A: I'm a violent crimes detective.

19 Q: What were your duties November 21st of 2013?

20 A: I was also in the violent crimes unit.

21 Q: All right. Did you have an occasion ---

22 THE COURT: I'm sorry. If you could, could you scoot up
23 just a little bit closer.

24 A: Absolutely.

25 THE COURT: All right. Very good, sir.

TODD MACPHERSON - DIRECT BY ERVIN

1 All right. Go ahead, solicitor.

2 Q: Did you have occasion to conduct a or develop a
3 photographic display in the case that we are here for?

4 A: I did.

5 Q: Do you remember what date you did that?

6 A: I believe -- I've got my notes on the chair but I believe
7 it was the 17th of -- do you mind if I refer to my notes?

8 THE COURT: Yes, I mean -- is there any objection to him
9 refreshing his memory by the use of his notes?

10 MR. HOLFORD: No, certainly not, Your Honor. Your Honor,
11 I just noticed that Mr. Kirkman is in the courtroom and I ---

12 MR. DEBUSK: Oh, I'm sorry.

13 THE COURT: I'm sorry. Very good.

14 MR. HOLFORD: But no objection to the Detective
15 refreshing his memory.

16 THE COURT: All right, sir. You need to stay in the
17 witness chair.

18 A: I'm sorry.

19 THE COURT: Do you know where they are? Are those the
20 notes? Okay. And Mr. Holford, if you want to look at that
21 also. Do you have a copy of them? You want to look at them
22 and make sure that you've got a copy of that?

23 All right. Very good.

24 MR. HOLFORD: Sorry. No objection, Your Honor.

25 THE COURT: All right. Thank you.

1 All right, sir. Go ahead and just tell the Solicitor
2 when you're done looking at your notes.

3 A: May I see the photo lineup as well?

4 THE COURT: The photo lineup. He wants to look at the
5 photo lineup.

6 A: Okay. I believe it was December 17th, 2013.

7 BY MR. ERVIN:

8 Q: All right. And how long -- so, the crime occurred on
9 November 21st and you conducted this lineup December 17th?

10 A: Yes, sir.

11 Q: A little less than a month. How many photographs were
12 displayed in the lineup you prepared?

13 A: A total of six.

14 Q: And can you describe the general nature of those
15 photographs?

16 A: Full headshots, not much anything showing past shoulder
17 level, all similar in appearance in facial features.

18 Q: So, all the persons in those photographs were similar in
19 physical description?

20 A: That's correct.

21 Q: How were the photographs displayed?

22 A: There was three photographs on the top line and three
23 photographs on the second line. There was ---

24 Q: Was the picture of this Defendant included in the lineup
25 you conducted?

TODD MACPHERSON - DIRECT BY ERVIN

1 A: It was. It was Number 2.

2 Q: Did the Defendant's picture have any markings or anything
3 to make it stand out or otherwise suggest that Number 2, this
4 Defendant's picture, was the suspect in this case?

5 A: No.

6 Q: What did you do after the lineup, with the lineup after
7 you prepared it?

8 A: When you print in our database, it gives you an
9 opportunity to print out however in chronological order that
10 you developed the lineup or you can print it out in random
11 sequential order. I chose random. Printed the lineup in
12 black-and-white or gray scale. We put it in a manila
13 envelope, staple it inside the manila envelope and then on the
14 outside of the manila envelope, we have a disclaimer that we
15 put that the officer that shows the lineup reads to the person
16 viewing the lineup that tells them that hairstyles change, the
17 person may or may not be within the lineup, complexions
18 change. And then they are usually instructed to hand the
19 lineup as it is closed so that it's not suggestive.

20 Q: And then so once you did all of that, who did you give it
21 to?

22 A: I gave it to Detective Lester Cook.

23 Q: And did that conclude your portion of your role in this?

24 A: It did.

25 Q: Okay. I'm gonna hand you what's been marked for ID

1 Fourteen and Fifteen. Is Fourteen an accurate depiction of
2 what you composed December 17th, 2013?

3 A: It is.

4 Q: And can you explain for the Court what Exhibit Fifteen is?

5 A: That would be an identification that IDs the photographs.

6 Q: Okay. Does it correlate the names with the ---

7 A: Exactly. It correlates the photographs with the
8 identification of the people in the photographs.

9 Q: Okay. And is Fifteen an accurate depiction of what you
10 composed December 17th, 2013?

11 A: That's correct.

12 MR. ERVIN: All right. Your Honor, I move to admit
13 State's Fourteen and Fifteen for purposes of this hearing.

14 THE COURT: Any objection to that?

15 MR. HOLFORD: Can I just see them to make sure it's what
16 I have.

17 THE COURT: Yes, sir.

18 MR. HOLFORD: No objection for purposes of this hearing.

19 THE COURT: All right. Very good. They're in evidence
20 for the hearing.

21 STATE'S EXHIBIT NUMBER FOURTEEN AND FIFTEEN

22 ADMITTED INTO EVIDENCE FOR NEIL V. BIGGERS HEARING.

23 BY MR. ERVIN:

24 Q: That's all I have, Detective MacPherson. Thank you.

25 THE COURT: All right. Cross examination, Mr. Holford.

1 MR. HOLFORD: Yes, Your Honor.

2 CROSS EXAMINATION OF TODD MACPHERSON BY MR. HOLFORD:

3 Q: Detective MacPherson, in formulating these -- how did you
4 go about formulating these six pictures?

5 A: We have an in-house database with numerous mixtures and I
6 just went through and picked out people with the same similar
7 features as the suspect.

8 Q: And the one picture that you knew that was gonna be in
9 there was Number 2 ---

10 A: Correct.

11 Q: --- of Mr. Collier, my client?

12 A: Correct.

13 Q: And then the other people are just from a database?

14 A: Correct.

15 Q: Where did you get the picture of Mr. Collier?

16 A: I believe it was from -- they're all arrest pictures.
17 People that are in our database that have been arrested in our
18 in-house system.

19 Q: And are any of these people Mr. Collier's codefendants?

20 A: No.

21 Q: So, none of the other people are people who could've been
22 identified as being at the scene?

23 A: They weren't -- they weren't suspects at the time and they
24 haven't been charged since. Their names are ---

25 Q: Codefendants haven't been charged?

1 A: I'm sorry?

2 Q: His codefendants have not been charged?

3 A: No, I'm saying that -- I mean -- it's possible that they
4 were involved somehow but their name has never come up in this
5 investigation, any of those five people.

6 Q: Oh, any of the other five people?

7 A: Correct.

8 Q: Did you show this lineup to anyone?

9 A: Just Detective Cook.

10 Q: And has anyone identified that Mr. Collier was in fact the
11 person based on this lineup to you?

12 A: No, I didn't show it to anybody.

13 Q: Are there any circles on this lineup that you see?

14 A: I don't see any.

15 Q: And what is -- what is Mr. Collier wearing in that
16 photograph?

17 A: A t-shirt and a hooded sweatshirt it looks like.

18 Q: Is anyone else wearing a hoodie in this six-pack?

19 A: No.

20 MR. HOLFORD: I have no further questions, Your Honor.

21 THE COURT: All right. Very good. Any redirect?

22 MR. ERVIN: Just one.

23 REDIRECT EXAMINATION OF TODD MACPHERSON BY MR. ERVIN:

24 Q: Detective MacPherson, at the time you composed this lineup
25 did you have any information on any of the codefendants in

1 this case?

2 A: No.

3 Q: Physical features or any implications that they were
4 involved in this incident?

5 A: No, I had very little information about the case until we
6 had a AFIS hit on a TV stolen from the Caribbean and that's
7 what developed Mr. Collier as a suspect.

8 Q: Thank you.

9 THE COURT: Anything on those questions?

10 RECROSS EXAMINATION OF TODD MACPHERSON BY MR. HOLFORD:

11 Q: Was that AFIS hit before or after this lineup was created?

12 A: It was before. Three days before.

13 Q: No further questions.

14 THE COURT: All right. You may step down, sir.

15 A: Thank you.

16 THE COURT: All right. Next witness, Solicitor.

17 MR. ERVIN: The State calls Justin Kirkman.

18 THE COURT: All right. Could we get Mr. Kirkman, please?

19 Thank you.

20 THE COURT: Yes, sir, Mr. Kirkman, just come right up
21 here and be placed under oath, please.

22 JUSTIN KIRKMAN, HAVING BEEN DULY SWORN,

23 TESTIFIES AS FOLLOWS:

24 CLERK: State your full name and spell your last name for
25 the Court.

JUSTIN KIRKMAN - DIRECT BY ERVIN

1 MR. KIRKMAN: Justin Kirkman, K-I-R-K-M-A-N.

2 THE COURT: Go ahead, Solicitor.

3 DIRECT EXAMINATION OF JUSTIN KIRKMAN BY MR. ERVIN:

4 Q: Mr. Kirkman, were you the victim/witness in this case that
5 occurred November 21st of 2013?

6 A: Yes.

7 Q: Did you have an occasion to view the photographic display
8 in this case at some point after this crime?

9 A: Yes.

10 Q: Do you remember what date you viewed that lineup?

11 A: I do not. It was -- if I recall it was about a month
12 afterwards, maybe a little over that.

13 Q: Who showed you the lineup?

14 A: I believe it was -- I know the first detective; I didn't
15 recognize the second gentleman that came in the room with me.

16 Q: If I told you it was Detective Cook would that refresh
17 your recollection?

18 A: Possibly. I'm not too good with names.

19 Q: Were you told anything prior to or while you were viewing
20 this lineup?

21 A: No. I just was told -- they brought me in, they said that
22 we were gonna be doing a photo lineup and they brought me into
23 a room and that was it, sat me down.

24 Q: Was anyone else present or did anyone else view these
25 photos with you at that time?

1 A: There was an officer in the room.

2 Q: How many photographs were displayed?

3 A: Six.

4 Q: Can you describe the nature of the photographs you viewed?

5 A: They were -- by any means, I wouldn't say high definition,
6 you know a little fuzzy and black-and-white.

7 Q: Were the persons in those photographs all similar in
8 physical description?

9 A: Yes.

10 Q: And do you remember how the photos were displayed?

11 A: What do you mean? There was one -- yeah, there was 1, 2,
12 3 and then next row 4, 5, 6.

13 Q: Okay. So, there was three on one row and three on the
14 other?

15 A: Yes; that's correct.

16 Q: Did the officer that was present with you suggest to you
17 which photograph to select as far as the Defendant were a
18 suspect in this case?

19 A: No, sir. He said, take your time; that's all he said to
20 me.

21 Q: Did you view a physical lineup prior to seeing these
22 photos?

23 A: In person?

24 Q: Yes.

25 A: No.

1 Q: Were the photographs of any of the six suspects
2 individually shown to you prior to this lineup being shown to
3 you?

4 A: No.

5 Q: Did you have an opportunity to observe the person who
6 committed this crime against you in the Jamaican?

7 A: Yes.

8 Q: How long a period of time would you estimate you had to
9 see him?

10 A: I would say when I went in the room, he didn't have a hood
11 up or anything, so I mean it was a good fifteen, twenty
12 seconds looking right at his face.

13 Q: How close were you to him?

14 A: Maybe, approximately like here to that table-ish, your
15 table right here, from here to that table.

16 Q: Okay. So, we'll let the record reflect maybe thirty to
17 thirty-five feet; does that sound fair?

18 A: Somewhere in that area, yeah.

19 Q: All right. And what did you observe?

20 A: When I went in the room?

21 Q: Yes

22 A: I observed his hands around the TV when he was trying to
23 pull it off and that's when I actually saw him doing that and
24 then when I asked him what he was doing in there, that's when
25 he took his hands down away from the TV and then looked

JUSTIN KIRKMAN - DIRECT BY ERVIN

1 directly at me.

2 Q: Okay. What happened after that?

3 A: After that, he said he was -- I asked him what he was
4 doing in the room. I had a pretty good idea but I was just,
5 you know, asking questions. He said he was looking for, I
6 believe he said his name was Todd or something, I believe
7 that's who he said. And he then started kind of looking down
8 and I asked him, Todd who? I was like, you know, you're not
9 supposed to be in here. And then he was faced a little with
10 his left-hand side and he reached around to his -- you want me
11 to keep going with the whole thing?

12 Q: Uh-huh (affirmative response).

13 A: He reached around towards his right-hand side and pulled
14 out a black, it looked like semiautomatic gun and I
15 immediately was out the door and then he ran past me down the
16 stairway with his hood up, gloves still on and then I followed
17 him down to the north public beach access parking lot and I
18 was kinda staying a little behind. And once I heard the door
19 close, I sprinted to the parking lot and caught him driving
20 past me, going out of the parking lot and he was right in
21 front of me. And I saw him and a TV in the back and then I
22 chased him down the road trying to get his license plate
23 number but he made a right-hand turn and then a left on 32nd
24 and that's when I called the police.

25 Q: Let's go back for a second. Your encounter with him

JUSTIN KIRKMAN - DIRECT BY ERVIN

1 initially in the hotel room was, you said, fifteen seconds?

2 A: I would say, you know, like a really good look at
3 somebody's face, yeah.

4 Q: Okay. And then when you followed his vehicle out the
5 parking lot, did you have an opportunity to view his face
6 clearly?

7 A: I did. I mean, it was not like it was tinted or, I mean,
8 it was dark but I could tell it was the same person driving
9 the car.

10 Q: Now, did you -- was this Defendant wearing any sort of
11 hoodie or sweatshirt or anything to conceal his face in your
12 initial encounter with him in the room?

13 A: No, not the initial encounter. He had his hoodie down.
14 When he went out of the room and down the stairs, he had his
15 hoodie up.

16 Q: Okay. Did you select a photograph of this Defendant when
17 you viewed the lineup?

18 A: I did, yes.

19 Q: What caused you to select that photo?

20 A: Just familiarity.

21 Q: Do you remember indicating what number the Defendant's
22 picture was?

23 A: I do.

24 Q: And what was that?

25 A: 2.

1 Q: Okay. And is that Photograph Number 2, the person
2 responsible for the crime against you in the Jamaican?

3 A: Yes.

4 Q: I'm gonna show you what's been marked for purposes of this
5 hearing as State's Fourteen. Do you recognize that?

6 A: Yes, that's the exact lineup that I saw.

7 THE COURT: You have to state ---

8 A: I'm sorry. It was the exact same lineup that they gave
9 me.

10 Q: Okay. How are you able to recognize that lineup?

11 A: I was -- oh, I don't know, it's the same one -- you're
12 talking about the whole piece of paper?

13 Q: Yes, sir.

14 A: It's just the same one I looked at from before.

15 Q: Is that in essentially the same condition as it was
16 presented to you on -- what date did you say it was, I'm
17 sorry.

18 A: I didn't say the date.

19 Q: Okay. Is it in the same condition as it was presented to
20 you?

21 A: Yes, sir, yes, that's very similar.

22 Q: Were there any material alterations or deletions made to
23 it?

24 A: No, sir.

25 Q: All right. Please pick out the photograph of the person

1 responsible for this crime. The record will reflect that you
2 picked out what number?

3 A: 2.

4 Q: Okay. After you picked Number 2 out, did you communicate
5 your identification to the officer in the room with you?

6 A: I did. He basically -- I told him that -- do you want me
7 to tell you my conversation with him, what I had with the
8 detective?

9 Q: Yes.

10 A: Okay. I told him that I was pretty sure -- I've forgotten
11 my exact wording but I was basically saying that was I fairly
12 pretty sure that that was the correct one but I couldn't give
13 him a hundred percent just because I didn't feel comfortable
14 -- you know, I didn't want to get anybody innocent in trouble
15 and that was hard to -- but if I saw him in person, I remember
16 telling him if I saw him in person again, I would a hundred
17 percent know who he was.

18 Q: Okay. So, you admitted to the officer that you were not a
19 hundred percent correct?

20 A: Yeah, I said, this is the one I think it is and -- and
21 then he asked me, he said, a hundred percent and I was like,
22 well, that's -- basically, I think this is the one but I can't
23 give you a hundred percent until I saw the person in person.

24 Q: Did you pick out another photograph in that lineup as
25 someone who may have committed this crime?

1 A: I did. At first, I -- first what I did was I eliminated
2 several of them. I believe it was 1, 6 and there might've
3 been one other one. And then I narrowed it down to 2 and 3
4 and then I kept going back to 2 throughout the process and
5 that's when I told him that I was pretty sure it was 2 but I
6 didn't want to give a hundred percent answer.

7 Q: Did you select any other person in any other photographic
8 display as the one who committed these crimes?

9 A: No, I did not. That was the only time.

10 Q: That's all I have. Thank you.

11 THE COURT: Cross examination?

12 MR. HOLFORD: Yes, Your Honor.

13 COURT REPORTER: Mr. Ervin, please leave the exhibits on
14 my desk.

15 THE COURT: The Exhibits, State's Fourteen and on, where
16 are those at?

17 MR. DEBUSK: State's Fifteen is here.

18 THE COURT: Okay. And Fourteen he has and the other --
19 okay. Good.

20 CROSS EXAMINATION OF JUSTIN KIRKMAN BY MR. HOLFORD:

21 Q: Before we begin, Mr. Kirkman, it's true that you are
22 currently on probation right now?

23 A: Correct.

24 Q: For burglary?-

25 A: That's one of them.

1 Q: And robbery?

2 A: Yeah.

3 Q: And if you're convicted of a crime right now, your
4 probation could be revoked?

5 A: That is correct. It's even traffic violations as well.

6 Q: Right.

7 A: Anything.

8 Q: Anything could revoke your probation?

9 A: That's correct.

10 Q: As well as perjury?

11 A: That is correct.

12 Q: It's your testimony that nothing was told to you prior to
13 the lineup?

14 A: Exactly but I walked in and I checked in with the front
15 desk. It was the one behind Market Commons and I walked in,
16 there was a lady at the front desk and I told them I was here
17 to see the detective. And a gentleman came out, it wasn't the
18 same gentleman that first interviewed me in the car, I don't
19 believe, and then I said -- I asked him if we were gonna do an
20 in-person lineup and he said we don't do that anymore, we're
21 gonna do a photo lineup and he said you've got to go in this
22 room.

23 Q: And then when you were in the room, who was with you?

24 A: Just another officer was sitting in there.

25 Q: Just one other officer?

1 A: Yeah.

2 Q: And did he say anything before you started?

3 A: I mean, I can't recall exactly. He might've just -- I
4 mean, he might've -- he kind of told me what to do. He was
5 like just look at the pictures and, you know, pick which one
6 and let me know. Take your time.

7 Q: I'm gonna show you what's been marked as State's Sixteen
8 for ID. Does that look familiar?

9 A: (Inaudible.)

10 COURT REPORTER: Excuse me ---

11 THE COURT: I'm sorry. You need to answer out loud; I'm
12 sorry.

13 A: Oh, I'm sorry. Yeah, sure. I mean, it's been a -- I just
14 kind of signed it when he gave it to me but it looks similar.

15 Q: You just kind of signed it. It looks similar?

16 A: Yeah, I mean, it's obviously my handwriting or my
17 signature on there.

18 Q: But it's been about a year, right?

19 A: Uh-huh (affirmative response).

20 Q: So, you can't be exactly sure.

21 A: No, I'm a hundred percent sure that's my signature.

22 Q: But you don't remember if this was told to you beforehand?

23 A: No, he definitely mentioned -- I mean, he was -- went
24 through his spiel at the beginning. I cannot recall word-for-
25 word what was said to me, no.

1 Q: So you did or did not have a conversation before the
2 photographs were presented?

3 A: He did say words to me when -- in that room when we first
4 stated but not during, yes.

5 Q: Okay. So, now you had a conversation before it started?

6 A: Not like a full-on conversation. He was kinda was like,
7 this is what we're doing and -- with the lineup.

8 Q: But you don't remember if he said the admonition about
9 prior to showing you a photo lineup that's required?

10 A: He didn't say -- can you say that again?

11 Q: You don't remember if he gave you the admonition that's
12 required prior to showing you the photo lineup?

13 A: I'm -- let's see, I went in ---

14 THE COURT: I'm confused, Solicitor. I'm sorry, Mr.
15 Holford. Are you asking him did he read that or are you just
16 talking in general?

17 A: I'm just trying to remember ---

18 MR. HOLFORD: Yes, Your Honor. At first, he said there
19 was no conversation with anyone before the lineup. There's
20 clearly an admonition that the police have to give him before
21 the lineup and his signature is on it and I'm asking him
22 whether they gave that to him or not.

23 THE COURT: All right.

24 MR. HOLFORD: He remembers clearly the Number 2 ---

25 THE COURT: Okay. Go ahead and answer the questions.

1 A: I would say yes they did. I just was talking about as far
2 as someone telling me the way he phrased it, I thought he was
3 asking me the question of did anybody pointed to anybody on
4 that lineup and wanted to have a conversation or show me or
5 point to somebody prior. That's what I took that as.

6 BY MR. HOLFORD:

7 Q: Okay. Just so we're clear for me, I'll ask you a question
8 directly, you don't have to infer what I'm thinking or what
9 I'm asking you. If you just answer that and the same with the
10 State.

11 THE COURT: I appreciate that, Mr. Holford. All right.
12 Just a second. All right. The attorney will ask the
13 question. If you understand the question, answer the question
14 directly. If you don't understand the question, you ask him
15 to ask it again or rephrase it. If they ask you a yes or a no
16 question, you can answer yes or no but you can always explain
17 your answer after you answer yes or no. Okay?

18 A: Okay.

19 THE COURT: Very good. Go ahead, Mr. Holford.

20 MR. HOLFORD: May I approach, Your Honor?

21 THE COURT: Yes, sir.

22 BY MR. HOLFORD:

23 Q: I'm gonna hand you State's Fourteen. Now, today, you said
24 you're sure that Number 2 is the person you came in contact
25 with on November 21st, 2013?

1 A: That is correct, yes, today.

2 Q: And you were showed this on December 17th, 2013?

3 A: I'm not sure of the date, but yes.

4 Q: About a month ---

5 A: Yeah, ish, yes.

6 Q: And so, a month after it happened, you were not sure, were
7 you?

8 A: I told him exactly what I was explaining to the other
9 gentleman ---

10 Q: Did you circle Number 2?

11 THE COURT: I'm sorry, Mr. Holford, wait till he finishes
12 answering the question ---

13 MR. HOLFORD: Yes, Your Honor.

14 THE COURT: Go ahead.

15 A: No, I think -- I think what happened was I narrowed it
16 down for -- between 2 and 3 and I said I'm leaning towards 2
17 and then I believe I'm saying I'm pretty sure at the end that
18 that's the person. And he said, well, are you a hundred
19 percent, and he asked me to, you know, select one. He's like,
20 if you select it, you have to be a hundred percent. I was
21 like, I'm not a hundred percent, I'm sorry. So, I don't want
22 to get anybody in trouble.

23 Q: And so, a month after you couldn't pick between 2 and 3
24 which was the person you came in contact with?

25 A: Well, I did pick -- well, I mean, I narrowed it down all

1 the way to one by the end.

2 Q: So, it's your testimony that you told the police officer
3 that it was Number 2?

4 A: No -- well, I mean, I wasn't basically saying it's
5 between, you know, 4 and 5, it's a tie, I'm not sure. I said
6 I'm pretty sure it's Number 2 which was me narrowing it down
7 all the way but I said I'm not a hundred percent and he said
8 you have to be absolutely a hundred percent if you're gonna,
9 you know, select it and circle it, so on and so forth.

10 Q: So, today, a year later, you're a hundred percent sure
11 it's Number 2?

12 A: Well, after I came in and saw him in person, yes.

13 Q: So, a year later, this -- is this who -- Mr. Collier is
14 the person you saw?

15 A: Yes. I mean, he has longer hair obviously, but yes.

16 Q: And do you remember describing him to the police that
17 night?

18 A: The night of ---

19 Q: Night of the incident, actually about a year ago.

20 A: I do recall some of the conversation, yes.

21 Q: Do you remember saying he had a black hoodie on?

22 A: I do remember that and black gloves.

23 Q: Do you remember also telling the officer that you weren't
24 sure which person in this photo lineup it was because it was
25 dark when you saw the suspect?

1 A: I'm not sure if that came out of my mouth or not, no.

2 Q: If the officer wrote it down directly after the
3 conversation you had, would that be fair?

4 A: Sure, yes.

5 Q: Would it be fair to say that you're -- no, I'm -- how many
6 times have you met with the Solicitor's office before today?

7 A: Before today?

8 Q: Uh-huh (affirmative response).

9 A: Just one.

10 Q: Just once?

11 A: Uh-huh (affirmative response).

12 Q: How many times have you met with the police department
13 before today?

14 A: Regarding this case?

15 Q: Yes.

16 A: It'd be, let's see, twice; one for the sketch and then one
17 for the photo lineup and then -- well, yeah, that I actually
18 went to the police station and then if you're counting the
19 interview in the car afterwards, I guess, three times but ---

20 Q: But since you did the photo lineup and up until today, how
21 many times have you met with law enforcement or the
22 Solicitor's office?

23 A: Zero. They've just called me.

24 Q: Zero?

25 A: Yeah.

JUSTIN KIRKMAN - REDIRECT BY ERVIN

1 Q: You ever met with them before -- when did you meet with
2 the Solicitor's office?

3 A: I just said, Friday.

4 Q: Friday?

5 A: By law enforcement, you said law enforcement. I've never
6 -- I haven't gone back to the police station. The last time
7 was for the photo lineup when they called me to do that.

8 Q: And then you met with the Solicitor's office Friday?

9 A: That is correct.

10 Q: But you were not one hundred percent sure that Number 2
11 was the person that you saw that night?

12 A: The day of the photo lineup that is correct; I did say
13 that, yes.

14 Q: No further questions.

15 THE COURT: Any redirect?

16 MR. ERVIN: Yes, Your Honor.

17 REDIRECT EXAMINATION OF JUSTIN KIRKMAN BY MR. ERVIN:

18 Q: Mr. Kirkman, Mr. Holford asked you about some signing the
19 form, State's Sixteen?

20 A: Uh-huh (affirmative response).

21 Q: Do you know what's required for the police to tell you
22 before you view the lineup?

23 A: I have no idea.

24 Q: Have you ever viewed a lineup before?

25 A: I have not, no.

1 Q: Okay. And you indicated that this Defendant is the one,
2 Number 2 in that picture that you identified in December of
3 2013, correct?

4 A: Correct.

5 Q: Now, why were you not one hundred percent certain at that
6 time that this Defendant was the one in that -- in Picture
7 Number 2 of that lineup?

8 A: I believe my exact words the officer was -- I was pretty
9 sure it was him but I was worried that I was associating and
10 since the gentleman in the photo had a hoodie on, that I was
11 just associating those two together and that he was like,
12 well, are you pretty sure, and then he's like -- and I was
13 like yeah but I don't want to say a hundred percent because
14 I'm worried about -- you know, I didn't want them to go arrest
15 somebody that wasn't guilty, obviously.

16 Q: Was there anything about the picture quality in that
17 lineup that affected your confidence in choosing a certain
18 suspect?

19 A: Well, yeah, I mean, I was -- when the called me in, I
20 thought you'd go in and see people in person which would've
21 been easy, you know, kind of not exactly clear black-and-white
22 photos aren't the easiest things to -- it's not -- to me it
23 wasn't worth saying a hundred percent and possibly getting
24 somebody in trouble that didn't need to be in trouble over a
25 blurry -- you know, blurry black-and-white photo, so...

JUSTIN KIRKMAN - RECROSS BY HOLFORD

1 MR. ERVIN: Court's indulgence.

2 THE COURT: Yes, sir.

3 BY MR. ERVIN:

4 Q: And you hesitated earlier but you are -- are you one
5 hundred percent sure that this Defendant is the one you saw on
6 November 21st, 2013 in Jamaican Motel in Room 309.

7 A: Yes. The second I saw his face when I was in the
8 courtroom, I did.

9 Q: And it that testimony you've just given based on your
10 viewing that Defendant that night -- this Defendant that
11 night?

12 A: That I can recognize him now?

13 Q: Yes.

14 A: Yes.

15 Q: Thank you.

16 THE COURT: Mr. Holford?

17 RECROSS EXAMINATION OF JUSTIN KIRKMAN BY MR. HOLFORD:

18 Q: Based on seeing Mr. Collier today; is that correct?

19 A: Yes, sir.

20 Q: Sitting in the courtroom by himself at the Defense table?

21 A: That is correct. I mean, I recognize his face, it really
22 has no idea if has in the back or anything else.

23 Q: No further questions.

24 THE COURT: All right. Very good. You can step down,
25 sir.

1 A: Thank you.

2 COURT REPORTER: Mr. Holford, do you have one of my
3 exhibits?

4 THE COURT: Number Sixteen, State's Sixteen?

5 COURT REPORTER: Fourteen.

6 THE COURT: Just hand it to the Court Reporter. Thank
7 you, sir.

8 MR. ERVIN: The State calls Lester Cook.

9 THE COURT: Ma'am, could we ask for Lester Cook, please.

10 Mr. Cook, if you'll just come right all the way up here
11 and just meet the Clerk right up here, please, sir. Thank
12 you.

13 LESTER COOK, HAVING BEEN DULY SWORN, TESTIFIES

14 AS FOLLOWS:

15 CLERK: Please be seated. State your full name and spell
16 your last name for the Court, please.

17 MR. COOK: Lester Cook, C-O-O-K.

18 THE COURT: Go ahead, sir.

19 DIRECT EXAMINATION OF LESTER COOK BY MR. ERVIN:

20 Q: Good afternoon, Officer Cook.

21 A: Good afternoon, sir.

22 Q: What's your current rank?

23 A: I'm a Master Corporal.

24 Q: Okay. Where are you currently employed?

25 A: With the City of Myrtle Beach Police Department.

LESTER COOK - DIRECT BY ERVIN

1 Q: All right. Was that your employer in November of -- or
2 December of 2013?

3 A: Yes, sir.

4 Q: All right. How long have you been at Myrtle Beach Police
5 Department?

6 A: Almost fourteen years.

7 Q: All right. And do your duties differ now than they did
8 back in December of 2013?

9 A: No, they're the same. I'm in the same division, same --
10 I'm a detective.

11 Q: Did you have an occasion to conduct a photographic lineup
12 in this case?

13 A: Yes, sir, I did.

14 Q: Do you remember what date you did that?

15 A: No, sir. I don't remember the date.

16 Q: I'm gonna hand you what's been marked as State's Sixteen
17 for ID. Do you recognize that document?

18 A: Yes, it's a photo lineup advisory.

19 Q: Is that the standard form that you go through with all
20 witnesses in a photo lineup?

21 A: Yes, sir. Our regulation has a standard form and that's
22 it right there.

23 Q: Okay. And is that your signature on the bottom of it?

24 A: Yes, sir; it is.

25 MR. ERVIN: The State would move to admit Sixteen for the

1 purposes of this hearing.

2 THE COURT: Any objection?

3 MR. HOLFORD: No objection.

4 THE COURT: All right. State's Sixteen is in evidence
5 for this hearing.

6 STATE'S EXHIBIT NUMBER SIXTEEN

7 ADMITTED INTO EVIDENCE FOR NEIL V. BIGGER HEARING

8 BY MR. ERVIN:

9 Q: Corporal, I'm going to show you Sixteen. Would that
10 refresh your recollection on the date that you conducted the
11 lineup?

12 A: Yes, sir. December 17th, 2013.

13 Q: Okay. Where did this lineup take place?

14 A: I believe at the annex or our investigation's division in
15 one of the interview rooms.

16 Q: What did you tell -- did you read off of Sixteen to Mr.
17 Kirkman, the witness, did you read line-by-line that form to
18 him before you conducted the display?

19 A: Yes, sir. That's correct.

20 Q: Okay. Were you and Mr. Kirkman the only ones in the room?

21 A: I believe that's correct, yes.

22 Q: How many photos were displayed?

23 A: It's called a photo array. It's basically six photographs
24 on the same sheet of paper.

25 Q: Is that standard for your department?

- 1 A: Yes, sir, it is.
- 2 Q: All right. I'm going to show you State's Fourteen, is
- 3 that the lineup that you showed Mr. Kirkman?
- 4 A: Yes, sir, I believe it is.
- 5 Q: Can you describe the nature of the photographs that you
- 6 displayed in the lineup?
- 7 A: I'm sorry. The nature of the ---
- 8 Q: The nature of the photographs?
- 9 A: I -- can you explain what you mean by nature of the
- 10 photographs?
- 11 Q: What's contained in the photographs, can you just ---
- 12 A: Oh, I'm sorry. It's gonna contain six subjects, one of
- 13 which was gonna be subject that was under investigation in
- 14 this case and it's gonna five filler photographs and those
- 15 subjects were usually -- obviously gonna be similar
- 16 backgrounds.
- 17 Q: Were they similar in physical features?
- 18 A: They're supposed to be, yes, sir.
- 19 Q: How were they displayed?
- 20 A: They're displayed all six on the same piece of paper and I
- 21 believe they're numbered like, 1, 2, 3, 4, 5, 6.
- 22 Q: Now when you used this lineup with Mr. Kirkman, did you
- 23 influence or suggest to him which photograph to select?
- 24 A: No, sir.
- 25 Q: Did you have Mr. Kirkman view a physical lineup prior to

LESTER COOK - DIRECT BY ERVIN

1 viewing this picture lineup?

2 A: No.

3 Q: Did you display any photographs of any suspects
4 individually to Mr. Kirkman prior to this display?

5 A: No.

6 Q: Did Mr. Kirkman select a photograph of a person that he
7 believes committed this crime?

8 A: He wasn't sure when he -- when I handed him -- he opened
9 up the folder and he looked at the photographs, he studied
10 them for a little bit and he first said that Number 1 and
11 Number 6, if I recall correctly, were not the suspect. Then
12 he said he recognized the photo in Number 3 but he could not
13 be sure. But he went on to say he recognized the person in
14 Photo Number 2, however, he could not be certain about that as
15 well. And I think he said something to the effect of that if
16 I had to pick one it would be Number 2. However, he was not
17 sure of the identification.

18 Q: And did you tell him prior to viewing this lineup that it
19 was okay not to be a hundred percent certain -- to be sure one
20 hundred percent that you didn't want him to choose the wrong
21 photo.

22 A: I believe that's correct.

23 Q: Okay. And is that standard practice for you and other
24 officers in your department to not have a witness circle or
25 indicate a picture of a suspect if they're not one hundred

1 percent sure?

2 A: I don't. I don't have them circle it unless they --
3 unless they're sure about the, about the lineup
4 identification. When he was telling he wasn't sure, I didn't
5 feel comfortable having him do that given those circumstances.

6 Q: Did Mr. Kirkman convey any other communications to you
7 after he stated that Number 2 was who he thought the suspect
8 was?

9 A: If I recall correctly, I think later on he said something
10 about it was dark during the encounter with the suspect.

11 MR. ERVIN: Court's indulgence.

12 THE COURT: Yes, sir.

13 BY MR. ERVIN:

14 Q: That's all I have for now. Thank you.

15 THE COURT: Cross examination?

16 MR. HOLFORD: Yes, Your Honor.

17 CROSS EXAMINATION OF LESTER COOK BY MR. HOLFORD:

18 Q: Detective Cook, I believe you -- do you have the photo
19 lineup in front of you?

20 A: I don't have it in front of me, sir.

21 MR. HOLFORD: Your Honor, may I approach?

22 THE COURT: Yes, sir.

23 BY MR. HOLFORD:

24 Q: I'm gonna hand you what's been marked as State's Fourteen.
25 Can you tell me, is there anything different about Photo

LESTER COOK - CROSS BY HOLFORD

1 Number 2 then the rest of the other five? Is he the only one
2 wearing a hoodie?

3 A: That is -- that looks like it is correct, yes, sir.

4 Q: And Number 2 is the -- my client, the Defendant, Mr.
5 Collier?

6 A: I believe that's correct, yes, sir.

7 Q: And just to be clear, you presented this lineup to Mr.
8 Kirkman?

9 A: I believe it was a Justin Kirkman, if I recall correctly.

10 Q: Justin Kirkman. And I'm gonna show you Sixteen. Is that
11 your signature on there?

12 A: Yes, sir.

13 Q: And is that his signature on there?

14 A: I believe it is, sir, yes, sir.

15 Q: And did you go over this beforehand, this admonition?

16 A: Yeah, we read this photo lineup advisory prior to
17 providing them a lineup to look at.

18 Q: Did you know what number was the suspect?

19 A: No, I don't believe I was told who it was until after the
20 lineup had been displayed to him.

21 Q: I'm gonna approach you -- may I approach?

22 THE COURT: Yes, sir.

23 Q: --- with State's Fifteen. Did you have a copy of State's
24 Fifteen?

25 A: I don't believe I do.

LESTER COOK - CROSS BY HOLFORD

1 Q: Had you seen State's Fifteen before?

2 A: I may have and not remember.

3 Q: And so what do you take into the room?

4 A: I took a manila folder and I believe the photo lineup
5 advisory is attached to the exterior of the folder and the
6 folder contained the lineup.

7 Q: And just to be clear, on the 17th of December, Justin
8 Kirkman was not able to identify who he saw on the night of
9 November 21st, 2013?

10 A: Yeah, like I said before, he pointed to some photographs
11 but he wasn't completely sure.

12 Q: And he said that it was -- you said he said it was dark at
13 night?

14 A: Yeah, later on, after I believe the lineup was shown, I
15 think he said something about it was dark during the time when
16 he encountered the suspect.

17 Q: There was no clear identification of who he saw though?

18 A: There was no -- yeah, there was no clear-cut
19 identification.

20 Q: No further questions.

21 THE COURT: Anything else, Solicitor?

22 MR. ERVIN: No, Your Honor.

23 THE COURT: All right. You may step down, sir.

24 Further witnesses from the State for the Neil v. Biggers
25 hearing?

ARGUMENT OF COUNSEL

1 MR. ERVIN: None, Your Honor.

2 THE COURT: All right. Any witnesses for the Defense on
3 Neil v. Biggers?

4 MR. HOLFORD: No, Your Honor.

5 THE COURT: All right. Very good. All right.
6 Arguments. Yes, sir, Mr. Holford.

7 ARGUMENT OF COUNSEL:

8 MR. HOLFORD: Yes, Your Honor. Defense would make two
9 motions. The first being to suppress and exclude the photo
10 lineup. One, there is no -- there is no identification that
11 had been made prior to today. There's no indication that Mr.
12 Kirkman or any other person has selected an individual based
13 on this lineup. We don't have any circles, we don't have any
14 notes and by all testimony, no individual was selected off of
15 this lineup. So, we don't even have an identification before
16 it. Secondly, I would move to suppress any testimony of an
17 in-court identification. It's based on a couple of factors;
18 I'm sorry, Your Honor.

19 The first one being that this photo lineup, while Mr.
20 Kirkman could not even identify the correct person is still
21 suggestive. The difference between my client and everyone
22 else in these photos is that he's wearing a hoodie. It's
23 clear from Justin Kirkman's testimony that he gave to police
24 that night that he remembers seeing a black male, I believe it
25 was twenty-five to twenty-eight wearing a hoodie. Now, my

ARGUMENT OF COUNSEL

1 client in this six-pack is the only one wearing a hoodie. He
2 admitted on the stand that he didn't want to get the wrong
3 person in trouble, that the gentleman in Number 2, because of
4 a hoodie, he thought was somewhat suggestive and that's why he
5 couldn't pick him on that day. Now, a year later, all of a
6 sudden he's certain that it's Number 2. Something that
7 neither the State nor the Defense has heard until today. He
8 calls this photo lineup blurry black-and-white photos. And,
9 Your Honor, he admitted that today, seeing the Defendant
10 sitting at the Defense table, the only one not in the lineup,
11 not in a show-up lineup. Your Honor, I would argue that's
12 highly suggestive that all of a sudden he's able to say that
13 they person sitting at the Defense table facing the trial, is
14 in fact the one he saw a year ago even though the physical
15 description is different. And he based his selection on the
16 photo lineup today based solely on the suggestive nature of my
17 client being at the Defense table today. Your Honor, the
18 factors to consider are, as Your Honor obviously knows but
19 based on Neil v. Biggers, opportunity to view the criminal at
20 the time of the crime, and which at the time Mr. Kirkman said
21 it was dark, my client was wearing a hoodie; there was only
22 fifteen seconds; the witness' degree of attention; the
23 accuracy of the witness' prior description, which does not
24 match this description of my client today; the level of
25 certainty demonstrated, he was no certainty, he was not able

ARGUMENT OF COUNSEL

1 to be a hundred percent certain and wasn't able to pick a
2 month later after the alleged crime; and the length of time
3 between the actual identification and the crime which was
4 about a year. Your Honor, based on all those factors, I would
5 respectfully ask this Court to exclude the photo lineup as
6 well as any possible in-court identification of Mr. Collier.

7 THE COURT: All right. Solicitor, let me hear from you.

8 MR. ERVIN: Your Honor, I'll try to take it
9 chronologically. As to the suggestiveness of the lineup, all
10 six of the -- I'll call them suspects -- are wearing different
11 clothing. None stands out more than the other. In fact, I
12 see Number 5 wearing kind of a half-hoodie. So, I don't
13 believe that just because the Defendant in Picture Number 2
14 wearing a hoodie if want to call it that is in any way
15 suggestive. The officers and the victim will both testify to
16 the circumstances of this identification. Mr. Holford told
17 you that he did not have an opportunity to view this
18 Defendant, it was dark. The very fact that he was attracted
19 to the room, the light was on. He -- and he testified before
20 this hearing that he had about fifteen seconds of viewing this
21 Defendant. Obviously, circumstances -- I don't know if
22 anybody in this room has had a gun presented to them, I have,
23 and you're adrenaline goes up and you don't necessarily
24 recognize exact facial features or whatnot but subsequent to
25 viewing him in the room and the initial encounter, he ran

RULING AS TO NEIL V. BIGGERS HEARING

1 after him at, I think he said, a safe distance out of the
2 parking lot. So, he may have been a little fuzzy at the time
3 and I will bolster that by saying that the officer, Officer
4 Cook just testified that they go over a standard form that
5 says you do not have to be one hundred percent correct. And
6 you heard the victim testify that he knew this was serious.
7 He didn't want to get someone in trouble, he wanted to be one
8 hundred percent sure, so he didn't pick him out at that lineup
9 the photograph was not of good quality. So, here we are,
10 under lights, in a courtroom and a little safer setting than
11 he was then and he's identifying him now. So, I would argue
12 that that is admissible. He did narrow the picture down to 2
13 and, obviously, like I said, we're here in better conditions
14 and he's able to say yes, that was the man I encountered
15 November 21st, 2013. This all comes down to the weight of
16 evidence as you will instruct the Jury on and not the
17 admissibility and I would argue that the lineup should be
18 admitted. Thank you.

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

20 RULING OF THE COURT AS TO NEIL V. BIGGERS HEARING:

21 THE COURT: All right. First, this is a little bit
22 unusual in that there was not a clear one hundred percent
23 identification of the Defendant in the pretrial identification
24 process but the Court feels that the hearing is proper in that
25 from the witness' testimony that he had narrowed down his

1 belief to the picture that was the Defendant, that he did not
2 want to say it was a hundred percent because of the quality of
3 the photos but he says that he told the officers that if he
4 saw the person in-person that would be able to say whether or
5 not that was the person. It is clear that the first time this
6 witness has had the opportunity to see in-person the Defendant
7 is here in the courtroom and, in the earlier proceeding,
8 really without a direct question by the State -- the question
9 by the State could have produced some other answer than the
10 answer it gave, it was not asked in such a fashion that the
11 only answer could be to point to the Defendant, the witness, I
12 would say without direct State prompting identified the
13 Defendant as the person. He not only looked at him, he
14 pointed at him, besides the words that he said in court. Now,
15 if that is -- had all that had occurred between the incident
16 night and today, Neil v. Biggers doesn't even apply. U.S.
17 Supreme Court, courts around the United States, our South
18 Carolina Supreme Court has indicated that if there's a first-
19 time identification in the courtroom, Neil v. Biggers doesn't
20 even apply. There was some type of pretrial identification.
21 So, I would say that, you know, it's proper to have a, you
22 know, some Neil v. Biggers hearing.

23 The Court finds, and I'm gonna look at the factors, those
24 factors being the opportunity of the witness to view the
25 accused, the witness' degree of attention, the accuracy of the

RULING AS TO NEIL V. BIGGERS HEARING

1 witness' prior description, the level of certainty
2 demonstrated by the witness at the confrontation and the
3 length of time between the crime and the confrontation. The
4 witness indicated that he had a clear view of the face of the
5 man that perpetrated the crime for at least fifteen to twenty
6 seconds. The light was on in the room. He said he did not
7 have his hoodie on at the time. He later put it on but he did
8 not have it at the time, at the time he saw him. And he saw
9 him, he said, face-to-face, basically. The witness' degree of
10 attention, from his description, he had, his attention was
11 drawn and riveted to the person in the room. The accuracy of
12 the prior description, he gave a description of the Defendant.
13 There was some a-month-later photo lineup which the witness
14 describes as black-and-white fuzzy photos and not what he was
15 expecting. He said he wanted to see someone in person and he
16 did not want to identify somebody based on those photos
17 without being -- without seeing them in person. So, I don't
18 have a problem -- I don't see there's a problem with the
19 accuracy of the description. Level of certainty demonstrated
20 by the witness at the confrontation, I'm taking that to be,
21 you know, here in court. The previous proceeding we were in,
22 the State asked the question, which again did not
23 automatically require the witness to identify the Defendant.
24 He could've given some other answer but that's not what he
25 did. He ID'd the Defendant as the person in the room, not

RULING AS TO NEIL V. BIGGERS HEARING

1 only by words but how he acted. He looked directly at him and
2 pointed at him. So, clearly there's certainty and that ties
3 into his testimony that we just heard that he wanted to see
4 the person in-person. If he could see him, then he would
5 know. And the length of time between the crime and the
6 confrontation, the date of the offense was November 21, 2013
7 and we are here today December 9th, 2014. The time period is
8 whatever the time period is but that, I believe, is an issue
9 for cross examination.

10 With that, I believe that the testimony of the witness as
11 to the identification is proper and I will allow it into
12 evidence. There certainly is great room for cross examination
13 in the testing of that identification in front of the Jury and
14 they will be the ones that will ultimately decide whether or
15 not the in-court identification should be believed or not, the
16 credibility of it, the credibility and believability of it.

17 Now, as to the prior proceeding, the attempted
18 identification as to the six photos, and I'll ask you this
19 question, Mr. Holford. It would seem to me that you would --
20 and I'm just asking here -- it would seem to me that that
21 would be something that you want to be able to question the
22 witness about because of the uncertainty and the attack that
23 can be made on his credibility or believability but are you
24 asking me to suppress that and not have the State talk about
25 it and not available for you for cross examination?

RULING AS TO NEIL V. BIGGERS HEARING

1 MR. HOLFORD: No, Your Honor.

2 THE COURT: All right. Very good. I'm just -- I'm gonna
3 allow -- and over your objection, I understand this -- I'm
4 allowing the in-court identification over your objection but
5 you're not asking me then to suppress the other
6 identification?

7 MR. HOLFORD: Yes, Your Honor. And if I may ---

8 THE COURT: Yes, sir.

9 MR. HOLFORD: Just, for the record, something that I
10 failed to state before ---

11 THE COURT: Sure.

12 MR. HOLFORD: Mr. Kirkman, Justin Kirkman was in here
13 during the Jackson v. Denno hearing in which my client clearly
14 was on audio and I don't know how much that played into his
15 in-court identification all of a sudden a year later when it
16 never happened before, but I did fail to state that on the
17 record. I just want that preserved with my objection.

18 THE COURT: Okay. And I appreciate that and I'll allow
19 the State to respond to that. I don't remember if he was or
20 not. I'll ---

21 MR. DEBUSK: He was present.

22 THE COURT: Okay. That's fine.

23 MR. DEBUSK: And there was no sequestration order at that
24 time. As soon as we got that order, I moved him out. He was
25 in for a few minutes of the Jackson v. Denno that was done

RULING AS TO NEIL V. BIGGERS HEARING

1 this morning not any of what was done yesterday. But at some
2 point, there was gonna be a first time he saw him in court
3 whether it was at a Jackson v. Denno or when he was sitting on
4 the stand, there would've been a first moment he saw him in
5 court. I don't being in the Jackson v. Denno would've been
6 any different. At the point he came in, what the Defendant
7 was talking about in the Jackson v. Denno was what other
8 people did and not what he himself did.

9 THE COURT: All right. And I appreciate that. But
10 still, I understand that. If -- it does not -- I think it
11 also needs to be clear that between November 21 in 2013 and
12 today, December 9, 2014, this is the first time that the
13 witness had the opportunity to see in-person the Defendant and
14 again, I believe that ties into his testimony that he wanted
15 to be -- see the person to be a hundred percent.

16 But, anyway, so I'm gonna allow the in-court
17 identification and, again, the Court has not been asked to
18 suppress the other -- what we call the six-pack identification
19 by the Defense. All right? Thank you.

20 MR. ERVIN: Thank you, Your Honor.

21 BY THE COURT:

22 THE COURT: All right. Anything further at this point in
23 time from the State?

24 MR. ERVIN: Your Honor, I have the redacted versions of
25 the statements as we proposed to play at trial. If the Court

BY THE COURT

1 -- to be used this afternoon, I would invite Mr. ---

2 THE COURT: Yeah. Y'all would need to just go over that,
3 Mr. Holford and Mr. Gardner, y'all go over that and make sure
4 that it's proper.

5 So, let's talk about the trial tomorrow. I understand
6 there's an objection by the Defense, Mr. Gardner, you're time
7 and I appreciate that. I don't see the prejudice to the
8 Defendant and that's what I've got to look at. The prejudice
9 to the Defendant. I don't see there's prejudice to the
10 Defendant. I don't know what a delay would do regarding the
11 Defendant other than delaying it. You've had now the
12 opportunity to examine Mr. Kirkman extensively as to what he
13 saw, what he didn't see, when he saw it and that can only help
14 the Defense. You now have the opportunity to have all that to
15 be able to cross examine him with which you wouldn't have had
16 beforehand, which you now have. So, I don't see any prejudice
17 to the Defendant. The jurors that were involved in this case
18 are not gonna be in the panel, they've been excused for the
19 week. It's like having a brand new panel.

20 MR. GARDNER: That was my question ---

21 THE COURT: Yes, sir.

22 MR. GARDNER: That's my question. Logistically, is there
23 -- some of those people on that panel, are they gonna be the
24 same ones that were in there ---

25 THE COURT: No, no, sir.

1 MR. GARDNER: Not the jury, but the panel. Will we have
2 the same panel members that watched him pick a jury on Monday,
3 including the ones that were struck, the two black people and
4 everybody else ---

5 THE COURT: Yes.

6 MR. GARDNER: That would be prejudicial, I do believe.

7 THE COURT: And in what way?

8 MR. GARDNER: Well, number one, they're gonna wonder why
9 is that guy being tried all week long. They've already -- I
10 was struck from the jury the last time, he must be a bad dude,
11 he's gonna have two or three trials in one week. That's what
12 the jurors will be thinking, Judge.

13 MR. DEBUSK: Your Honor, we can handle that with a
14 corrective instruction and just tell the jury that for reasons
15 beyond their control, that trial is being called again and new
16 jurors being struck. It's the same trial. It's not a new
17 trial.

18 (REPORTER'S NOTE: Court confers with Clerk of Court.)

19 THE COURT: Okay. So, the only people that should've
20 been excused that have a reason not to come tomorrow are these
21 thirteen, Duke, and whoever those people are that we struck.
22 Dixie, who are they? Do we know? On Monday. So, that was
23 37, 58, 85, 142, 201, 300, 402, 416, 440. And then these
24 thirteen and Ms. Duke.

25 COURT REPORTER: The lady that could not sit on another

BY THE COURT

1 criminal case.

2 THE COURT: That was Ms. Duke. So, these thirteen and
3 Ms. Duke. Those are the only people that are excused. Nobody
4 else is excused. Everybody else needs to show up tomorrow
5 morning at 10 o'clock, no matter what. If they have to call
6 them and say, I'm sorry, we inadvertently excused you.
7 They're not excused. All right. Just those people. If you
8 need to get that list from Dixie again so that'd be that one
9 and then besides those numbers I just called. Then it'd be
10 100, 441, 373, 152, 157, 354, 243, 451, 44, 321, 260, 318, 64
11 and 104. Okay. Plus those other numbers I called. Those are
12 the only ones that are called. And then we'll see how many
13 show up. And if there's -- we'll just see how many show up.
14 And then, I'll make a decision about what we're gonna do. All
15 right?

16 MR. GARDNER: Fair enough.

17 THE COURT: So, it might be, you know, if we get eighty-
18 nine people and I need to exclude out of that bunch some
19 others, then I might very well do that. All right. So, let's
20 see who shows up tomorrow morning at 10 o'clock. Tell them to
21 come at 10 o'clock. Okay?

22 CLERK: Yes, sir.

23 THE COURT: All right. With that, anything else from the
24 State?

25 MR. DEBUSK: No, Your Honor.

1 THE COURT: From the Defense?

2 MR. HOLFORD: Nothing, Your Honor.

3 THE COURT: All right. I'll see y'all tomorrow morning,
4 gentlemen, at 10 o'clock. The reason it's 10 o'clock is I've
5 got some other matters that I've got to take care of in the
6 morning. We've got an arraignment or a plea, stuff -- other
7 things we've got going tomorrow morning. Okay?

8 MR. HOLFORD: Yes, Your Honor. Thank you.

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

10 (RECESS)

11 *****OFF THE RECORD*****

12 (END OF DAY TWO)

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BY THE COURT

1 BY THE COURT:

2 THE COURT: All right. In this matter of 2014-GS-26-
3 1540, State of South Carolina versus Derek Vander Collier,
4 possession of weapon during the commission of a violent crime
5 and 2014-GS-26-1541, burglary second degree violent, I want to
6 put two things on the record. First, I understand, gentlemen,
7 since we had just conducted in the prior -- when we attempted
8 to start this case earlier this week, the Jackson v. Denno
9 hearings in this matter, it's my understanding that the State
10 nor the Defense see the necessity of doing those all over
11 again since we're in the same week and I obviously made those
12 decisions and reaffirmed those decisions for this trial.

13 MR. HOLFORD: Your Honor, Your Honor. Just for purposes
14 of the record, the Defense would again renew its objection and
15 ask to do so after the jury is sworn to the admission of both
16 of those statements pursuant to the same colloquy we had in
17 the previous hearing as well as the suppression of the in-
18 court identification pursuant to the same colloquy we had in
19 the Neil v. Biggers hearing.

20 THE COURT: All right, sir. The Court reaffirms rulings
21 that I made in the two Jackson v. Denno hearings that we had
22 for the purposes of this hearing and I don't see a reason to
23 duplicate those. There's no new information, there's nothing
24 that's changed. The Neil v. Biggers hearing, we did that
25 yesterday day afternoon in contemplation of the trial starting

1 today in this matter and again I reaffirm my rulings as set
2 forth in the Neil v. Biggers hearing.

3 Mr. Gardner, you had raised an issue about the panel that
4 had been used to select the jury the first time. Those forty
5 people, I will tell you that I made a decision to eliminate
6 all forty of those people from the jury panel. That left us
7 with a balance of fifty-seven jurors from which the Clerk of
8 Court did their random computer draw and drew out another
9 panel of forty jurors and those are here ready to be brought
10 upstairs to select a jury but they do not include any person
11 that was in the original forty jurors. So, I just wanted to
12 make that clear so that there wasn't any misunderstanding
13 about that. All right?

14 MR. GARDNER: Very well, Your Honor.

15 THE COURT: All right. So, before we bring the jury up
16 to pick the jury in this case, is there anything that we need
17 to cover from the State before we would do that?

18 MR. DEBUSK: No, Your Honor.

19 THE COURT: All right. And from the Defense, anything
20 else we need to cover before we bring the panel upstairs?

21 MR. HOLFORD: Nothing from the Defense, Your Honor.

22 THE COURT: All right, sir. So, we'll take a short
23 break, if y'all want to go ahead and bring the panel up. As
24 soon as the panel is here, then we'll get started in picking
25 it that jury. All right? Thank you, gentlemen.

MOTIONS

1 MR. DEBUSK: No, Your Honor.

2 THE COURT: From the Defense?

3 MOTIONS:

4 MR. HOLFORD: Your Honor, we would just reiterate our
5 motion for sequestration of witnesses, which we've talked to
6 the State already, I believe both sides are in compliance
7 with. Further, now that a Jury has been impaneled, I would
8 make my motions under Jackson v. Denno to exclude the
9 statements and Neil v. Biggers to suppress the in-court
10 identification.

11 THE COURT: All right, sir. Again, the Court will
12 reaffirm my rulings that I've made after the hearings that we
13 conducted, the Jackson v. Denno hearings on the two statements
14 and the Neil v. Biggers hearing. I would reaffirm my rulings
15 and incorporate all of those proceedings as well as all the
16 testimony and everything that was presented to the Court into
17 my rulings and I am going to allow the statements as redacted.
18 I understand counsel has agreed to the redactions and then the
19 in-court identification, I'm going to allow the in-court
20 identification based on the reasons I set forth at the Neil v.
21 Biggers hearing.

22 All right. Anything further.

23 MR. GARDNER: Your Honor, if I may, for clarification of
24 the sequestration order, if we'd just let everybody know that
25 that means that they don't talk about the testimony before or

MOTIONS

1 after they take the stand. I don't know if I saw them out
2 there but I think I saw some of the witnesses congregating
3 outside. I'm not alleging anything, I just want clarification
4 that they all understand what sequestration means.

5 THE COURT: Well, okay. The sequestration is over once
6 they have testified. They can remain in the courtroom, they
7 can leave if they want to. That's up to the witness.

8 MR. GARDNER: That's fine but I would ask that Court that
9 they not be allowed to discuss their testimony or anything
10 with the pending witnesses.

11 THE COURT: You have some evidence that that has
12 occurred?

13 MR. GARDNER: I'm not making any allegations, but if
14 they're in the same room together, one's already testified,
15 one's getting ready to testify, it doesn't look good. I'm not
16 ---

17 THE COURT: Well, I appreciate that but, I mean, once
18 they've testified, they're either staying in the courtroom or
19 they're leaving.

20 MR. GARDNER: That's fine.

21 THE COURT: Okay. So, I mean, I don't understand what
22 the problem is but, you know, Solicitor, I'm sure that's not
23 gonna occur but I just don't see what the problem is.

24 MR. GARDNER: Like ---

25 THE COURT: Somebody is testifying, they're leaving.

1 They're either sitting here in the courtroom or they're
2 leaving the courthouse, they're not staying.

3 MR. GARDNER: That's good. Thank you, Judge.

4 THE COURT: All right. So, I just -- I don't know what
5 the problem is but, anyway, Solicitor, you'll make sure
6 they're in their proper place..

7 MR. DEBUSK: May we approach, Your Honor?

8 THE COURT: Yes.

9 (REPORTER'S NOTE: A bench conference was held off the record
10 outside the presence of the Jury.)

11 THE COURT: All right, so, we'll take a short break and
12 wait for the panel to select somebody. Thank you.

13 (RECESS)

14 *****OFF THE RECORD*****

15 (On the Record.)

16 (REPORTER'S NOTE: The following takes place outside the
17 presence of the Jury.)

18 BY THE COURT:

19 THE COURT: While we're waiting, the Jury selected Juror
20 Number 434, Juror Number 434, as the foreperson.

21 It's my intention, gentlemen, what we're gonna do is
22 we'll just do the -- obviously, hear the motion and then if we
23 get started we'll do the opening statements and then we'll
24 break for lunch after that.

25 MR. HOLFORD: Yes, Your Honor.

BY THE COURT

1 THE COURT: And Mr. Gardner, I told Mr. Holford that the
2 Jury had selected Juror Number 434 as the foreperson, 434. All
3 right?

4 MR. GARDNER: Thank you, Judge.

5 THE COURT: All right. Gentlemen, I understand you have
6 a motion you want to make, please.

7 MR. GARDNER: I don't believe, so, Your Honor. I think
8 we're all set. We're ready to go.

9 THE COURT: All right. Very good. All right. My
10 intention is that we would call the Jury in and have our
11 opening remarks to the Jury and when that's done, it's
12 probably time to break for lunch. So, we'll just get started
13 with the opening remarks and then we'll break for lunch and
14 then we'll come back and start the testimony after lunch. Any
15 problem with that, Solicitor?

16 MR. DEBUSK: No, Your Honor. Can I have just a moment to
17 release my witnesses until after lunch.

18 THE COURT: Sure.

19 MR. DEBUSK: 2 o'clock, Your Honor?

20 THE COURT: Yeah. 2 o'clock. Is there any problem with
21 that, gentlemen?

22 MR. GARDNER: No, Your Honor.

23 MR. HOLFORD: No, Your Honor.

24 THE COURT: All right. Very good.

25 All right. Ask the Jury to come in, please. Thank you

BY THE COURT

1 very much.

2 (REPORTER'S NOTE: Jury enters courtroom.)

3 THE COURT: All right. As I understand now, the Jury
4 has selected Juror 434 as the Foreperson; is that correct,
5 ma'am?

6 JUROR 434: Yes, sir.

7 THE COURT: All right. Very good. I don't know why I
8 call them sacred seats, but there's only two seats that have
9 to occupied by the same person all the time and that's the
10 foreperson and the alternate. Ladies, if y'all would just
11 always occupy those two seats, other than that, ladies and
12 gentlemen of the Jury, when y'all come back you've just got to
13 fill in wherever it is that you have to come back. I just
14 need to know where the foreperson and the alternate are. All
15 right?

16 The very first thing that's gonna happen in this trial is
17 the Clerk's representative is going to administer your oath to
18 you. So, if you would all please stand at this time.

19 (REPORTER'S NOTE: JURY IS DULY SWORN.)

20 CLERK: You may be seated.

21 THE COURT: Y'all can go ahead and be seated. Thank you.

22 Is there any member of the jury panel that did not
23 affirmatively take the oath that was just given by the Clerk?
24 If so, please stand. No juror having stood, I find the Jury
25 is properly sworn in this matter.

1 All right. Ladies and gentlemen, as I told you, the
2 State of South Carolina has charged the Defendant with two
3 crimes and those being burglary second degree and the
4 possession of a weapon during the commission of a violent
5 crime. And again, to those charges, the Defendant has pled
6 not guilty. Now, that put at that time the burden of proof on
7 the State of South Carolina to prove the Defendant guilty
8 beyond a reasonable doubt. Now, that burden of proof, that
9 obligation on the State of South Carolina does not end at any
10 point in time in the trial unless and until you believe the
11 State has proven to you the guilt of the Defendant of the
12 crime or crimes charged beyond a reasonable doubt. The State
13 has the burden of proof in this case and all criminal cases.
14 The Defendant has nothing to prove to you. The Defendant has
15 nothing to show to you. I tell juries all the time, the
16 Defendant need not even show up for trial because they don't
17 have anything to prove to you. The State has to prove its
18 case to you by the witnesses and the evidence it presents
19 beyond a reasonable doubt. That's the State's duty and
20 obligation. Now, your job in this case is going to be the
21 judges of the facts. I will not indicate to you in any way
22 what I believe the facts of this case are. That's gonna be
23 your job and your responsibility. It'll be your job and
24 responsibility to listen to the witnesses that come before
25 you, to at the appropriate time when you deliberate and

1 examine any kind of physical evidence or photographs that
2 might be passed around but you'll have all the time you want
3 to to look at any kind of physical evidence at the time but,
4 during the trial, you need to paying attention to what the
5 witnesses say because at the end of it, you're gonna -- it's
6 gonna be your job to evaluate that evidence, find that
7 evidence which convinces you it's true and then you take that
8 evidence you find to be true and you weigh it against the
9 State's burden to prove the Defendant guilty beyond a
10 reasonable doubt. Now, in that job with being the judges of
11 the facts, you have the duty of examining the credibility and
12 the believability of the witnesses that come before you and
13 testify in court, that'll be part of your job. You might be
14 thinking, how do I do that? You do it every single day of
15 your life. When somebody tells you something you're
16 automatically judging whether or not you believe them. How do
17 you do that? You use your good common sense, you use your
18 good judgment that you use in conducting your own affairs.
19 That's what we're asking you to do. Use your good common
20 sense. Apply it to the facts and the evidence you hear, find
21 that evidence that convinces you it's true and then weigh that
22 evidence against the State's burden to prove the Defendant
23 guilty beyond a reasonable doubt. At the end of the trial,
24 when we've heard all the evidence, you've heard the closing
25 arguments of the attorneys, I will give you the law that you

BY THE COURT

1 will apply to the facts and evidence you find to be true. So,
2 in that, I'm gonna be asking you do not talk about this case
3 until I give it to you at the end. There's a tendency of some
4 people if they start talking about the case and they might
5 express an opinion and it might be hard for them to go back
6 from that opinion and it might be the very next witness
7 changes their mind. So, don't talk about the case. Talk
8 about anything you want to other than that but don't talk
9 about the evidence, don't talk about the case until I give it
10 to you at the end. At that point in time, you'll have heard
11 all the evidence, you know the law that you have to apply to
12 that evidence, and then again it'll be up to you and you take
13 all the time that you deem necessary to discuss the case to
14 reach your unanimous decision.

15 During the course of the trial, the attorneys might raise
16 certain matters to the Court, motions, objections, whatever it
17 is that they would bring to the attention of the Court. If I
18 rule on them in your presence and I don't send you back the
19 jury room so I can discuss it more fully with them, if I rule
20 in your presence based on their objection or motion or
21 whatever it is, remember I'm bound by one of my duties, that
22 is governing the conduct of the trial, how the trial will
23 proceed. If it involves evidence it only would involve
24 evidence as to whether or not that evidence is proper for you
25 to hear in this case or not. I'm not making any comments on

BY THE COURT

1 the evidence. I'm not making any comments on who to believe
2 and who not to believe. It's just whether or not it should be
3 received in this case or not to be examined and judged by you
4 in this particular case.

5 The opening statements and the closing arguments of the
6 attorneys, those are not evidence and cannot be considered as
7 evidence. They are important. They are each side's opening
8 statements and initial presentation to you of what they
9 believe the evidence is going to show to you. Their closing
10 arguments are their arguments about what the evidence -- what
11 they believe the evidence has shown to you during the trial.
12 But remember, that's their comments about the case; it's not
13 evidence. The evidence comes from the witnesses who come
14 before you and testify under oath and any kind of physical or
15 documentary evidence that might be received. That is what you
16 are judging. Those are the facts you are judging to find the
17 evidence that convinces you of its truth.

18 So, with that, I'm going to turn it over to the State and
19 the Defense for their opening statements.

20 Solicitor?

21 MR. ERVIN: Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 OPENING STATEMENT BY MR. ERVIN:

24 MR. ERVIN: Good afternoon, ladies and gentlemen. We
25 were introduced to you a little while ago. I will briefly

OPENING BY ERVIN

1 tell you again, my name is Gray Ervin, this is George DeBusk.
2 We are Solicitors with the Horry County Solicitor's office
3 here. Our job is to prosecute crimes committed in Horry
4 County. One such crime, as you heard the Judge briefly recite
5 to you in our indictments occurred on November 21, 2013. The
6 Myrtle Beach Police responded to a burglary complaint at the
7 Jamaican Motel, which is about 30th Avenue in the Myrtle Beach
8 section of Horry County. Upon arriving there, the responding
9 officer, who you will hear from, met with the victim, Mr.
10 Justin Kirkman. You'll hear from him also and he will tell
11 you how he was a contractor. He was contracted to paint rooms
12 at the Jamaican during an off-season and get it ready. He was
13 staying there. He would periodically check on the rooms.
14 After he painted them he left the doors slightly ajar. He
15 heard a noise on the third floor -- he was on the floor above
16 -- heard a noise on the third floor went down to check it, saw
17 a light on in Room 309, walked in to see what was going on,
18 saw this man, this Defendant, inside Room 309 trying to take a
19 TV from the wall. Mr. Kirkman said, sir, what are you doing?
20 This Defendant presented a firearm to Mr. Kirkman, obviously
21 this alerted and scared Mr. Kirkman. Mr. Kirkman retreated to
22 a relatively safe spot outside of Room 309, watched this
23 Defendant exit the room walked in the stairwell to the north
24 side of the Jamaican get into a gold colored four-door Saturn,
25 turned north on Ocean Boulevard and left onto -- going towards

1 North Kings Highway. Mr. Kirkman returned to the third floor,
2 checked 309. Obviously, he did not see this Defendant take
3 the TV out of 309. He checked 310 adjacent to 309 and saw a
4 TV missing but there. This initial encounter took probably
5 thirty seconds. As you can imagine, Mr. Kirkman's adrenaline
6 was probably running. Mr. Kirkman then notified Myrtle Beach
7 Police and they responded. Now, when Officer Roy, who you
8 will hear from, responded to the scene, he got information
9 from Mr. Kirkman, he put out a BOLO, a be on the lookout to
10 all the other officers working that night for a four-door gold
11 in color Saturn. They did not find that car but Officer Roy,
12 secured the crime scene, it was considered a crime scene at
13 that time and, and notified detectives. And those detectives,
14 through the course of the investigation developed this
15 Defendant as a suspect in this case and he stands on trial
16 today for these crimes.

17 Now, the Judge is gonna instruct you later on the exact
18 elements of the crimes and what we have to prove to you. I
19 will let you know, initially, that burglary second degree
20 violent can be fulfilled, can be proved by us by either the
21 presence of a weapon or the nighttime hours if this Defendant
22 or anyone else enters a building at nighttime. We're gonna
23 prove both of those to you. He had a weapon. You'll hear
24 from Mr. Kirkman, it was at night, a little after midnight,
25 November 21st, 2013. You're also gonna hear from -- I will

OPENING BY ERVIN

1 call them acquaintances from this Defendant, pretty unsavory
2 characters, they don't have much to gain or lose by being
3 here, they're just gonna come tell their story. The most
4 important part of that is, the female acquaintance is gonna
5 tell you that this Defendant had access to a gold four-door
6 Saturn, the same vehicle seen that night leaving the Jamaican
7 after this burglary occurred. Now, all that's gonna be good.
8 I feel confident that you will be able to convict this
9 Defendant on those. Most importantly, you're gonna hear this
10 man's own confession. He confessed to this crime. The
11 detectives sat him down, talked to him, he told them what
12 happened, admitted to a burglary second degree violent and a
13 weapon's charge. Now, there's not much stronger evidence the
14 State can put forth than a defendant's own confession. We
15 have it, we'll let you hear it, thank goodness.

16 Now, at the end of this, the Judge is gonna tell you the
17 law and instruct you on the law and let you know exactly what
18 your job is after you've heard everything and I feel confident
19 that after you've heard everything and you have your
20 instructions on the law that you will be well able to find
21 this Defendant guilty of burglary second degree violent and
22 possession of a weapon during that violent crime. And I thank
23 you for your time and attention.

24 THE COURT: Mr. Holford?

25 MR. HOLFORD: May it please the Court?

OPENING BY HOLFORD

1 THE COURT: Yes, sir.

2 OPENING STATEMENT BY MR. HOLFORD:

3 MR. HOLFORD: Good afternoon, ladies and gentlemen. My
4 name is Josh Holford and, as I explained earlier, I'm a local
5 attorney here in the area. You know, I like to start off by
6 saying this, I've had the privilege in this courtroom
7 specifically of sitting up here where Mr. John Paul sits
8 beside the Judge; also, at this table as a prosecutor; and now
9 I sit as a defense attorney, a lot of different roles. You
10 know, I'm asked often what do I like, how do I do this job,
11 how can you go from one to the other. If you really believe
12 in this system of justice the way that I believe in this
13 system of justice and you believe that it works the way that
14 it should, then you would really be able to understand. I
15 could get into a long dissertation about constitutional
16 rights, which I won't bore you with this morning. But, I will
17 say this, right now, if you were go to back in your jury room
18 and the case was over right now, the only thing that you could
19 find is not guilty. You say, man, we just heard the Solicitor
20 get up here and say it's definitely this guy, he said it's
21 definitely the man sitting at the table right there, he's the
22 one on trial, so it must be. No. You've not heard any
23 evidence yet. The only thing that you can consider is the
24 evidence and the facts presented at this trial. So far, you
25 have zero evidence. When we talk about burdens of proof and

OPENING BY HOLFORD

1 we talk about evidence, let's assume this is the starting line
2 right here. So, right now, you have no evidence. The only
3 option to you right now is not guilty. Then in courts, we
4 have a scintilla of evidence. That's just barely a little
5 bit. So, if this were a starting line, we'll talk about just
6 barely a little bit of evidence. And then there's reasonable
7 suspicion. That's what the police need to be able stop him,
8 just a little. They think he might be committing a crime.
9 That's not enough to convict someone. Then we have probable
10 cause, that's what you need to take an arrest warrant. Now,
11 normally, when I'm doing trials, I don't have to stop at this
12 point since we've all heard or most of us have probably heard
13 what's going on in Ferguson, what went on in New York. We
14 hear about this Grand Jury and the indictments. And you might
15 be thinking, man, if this process has gone through a Grand
16 Jury then he must be guilty. That's not the case. I can
17 assure you that we have not gone through the same process that
18 took a number of weeks with witnesses and long, drawn out and
19 announcements at the courthouse steps that the Grand Jury has
20 decided; that doesn't happen in an everyday case. That's
21 doesn't happen in our courts here in Horry County. All they
22 need is probable cause. Is there enough that we think maybe
23 enough to submit an arrest warrant. Not guilty. Then we move
24 to the evidence in a civil case, preponderance of evidence.
25 If you tip the scales just barely, just over fifty percent,

OPENING BY HOLFORD

1 that's preponderance of evidence. That's what you need in a
2 civil case to find someone liable. That's past all this
3 other. Still, not guilty. In a fraud trial, you need clear,
4 cogent and convincing evidence. It's higher than a
5 preponderance, it's less than reasonable doubt. There's no
6 set standard. If you have clear, cogent and convincing
7 evidence that my client, Mr. Collier, committed these crimes
8 that he's been accused with, still not guilty. Then you have
9 reasonable doubt and reasonable doubt is something that would
10 cause you to hesitate to act. Each one of you gets to decide,
11 do I have reasonable doubt to each and every element of the
12 crime. If you have a reasonable doubt as to any of the
13 elements of the crime, not guilty. This is the highest burden
14 in any courtroom in all of our nation. It's such a high
15 burden because we place with such importance the value of
16 every single person's freedom whether he sits at the Defense
17 table, whether he stands like me and argues or whether you sit
18 in the jury, your freedom is most important. So, to deprive a
19 person of their freedom, you must find that the State carried
20 their burden beyond a reasonable doubt to each and every
21 element of this crime.

22 Ladies and gentlemen, at the end of this trial, after
23 you've heard what facts and evidence the State will prove,
24 I'll come back and submit to you again they will fail to meet
25 that burden. They will not be able to show that my client Mr.

OPENING BY HOLFORD

1 Collier was the one who was at this hotel on this alleged
2 night back in November. It sounds pretty bad that they're
3 gonna have a witness come up here and say that it's the
4 Defendant. You'll also hear -- listen to the motivations
5 about why witnesses testify the way they do. Also, you're
6 gonna hear a month after it, he wasn't able to say it was my
7 client. Suddenly a year later, we're sitting in court, my
8 client is the only one facing trial. Now, all of a sudden he
9 knows for sure. I ask that you take into consideration and
10 take into account the motivations of other witnesses. Mr.
11 Ervin got up and told you that my client's acquaintances will
12 testify against him. What he failed to mention is that these
13 are criminals, locked up, facing charges now testifying for
14 the State. What do they have to gain? A good deal. Who is
15 in control of what happens to them? The Prosecutor's office.
16 And now they're testifying against my client.

17 Don't hold it against my client that he has exercised his
18 constitutional right to a trial. Not everyone who sits at
19 this Defendant's table is guilty. Not everyone who is charged
20 with a crime is guilty. Not everyone who faces an indictment
21 is guilty.

22 Ladies and gentlemen of the Jury, Mr. Collier, is not
23 guilty of these charges. Please listen to the facts and the
24 evidence and base your considerations on that alone. Thank
25 you.

BY THE COURT

1 BY THE COURT:

2 THE COURT: All right. Ladies and gentlemen, I
3 appreciate there's been some delay in getting us going this
4 morning but now it's lunchtime. So, I wanted us to get to
5 this point in time. We're gonna break for lunch. I'd ask
6 that you be back -- y'all want them to assemble downstairs in
7 the assembly room?

8 DEPUTY: Yes, Your Honor.

9 THE COURT: Okay. If y'all can -- if I want to start at
10 2 o'clock, what time do you want them downstairs?

11 DEPUTY: 1:45.

12 THE COURT: 1:45. All right. So, jury assembly room
13 downstairs 1:45. Y'all be down there. They'll make sure
14 everybody is there and they'll count noses and, hopefully, we
15 won't lose anybody like we lost this morning. But, anyway,
16 hopefully we'll see all of y'all at 1:45 downstairs and 2
17 o'clock, we'll get started with the testimony. Remember,
18 don't talk about the case and, obviously, don't allow anybody
19 to talk to you about the case. All right? See you at 2
20 o'clock. Thank you very much.

21 (REPORTER'S NOTE: Jury exits courtroom. The following takes
22 place outside the presence of the Jury.)

23 THE COURT: All right. Gentlemen, we'll take a lunch
24 break. If y'all can just make sure that y'all are ready and
25 here in the courtroom at 2 o'clock so we can get started at

BY THE COURT

1 2:00. Okay?

2 MR. HOLFORD: Yes, Your Honor.

3 THE COURT: Thank y'all very much.

4 (RECESS)

5 *****OFF THE RECORD*****

6 (On the Record.)

7 (REPORTER'S NOTE: The following takes place outside the
8 presence of the Jury.)

9 THE COURT: All right. Solicitor, is the State ready for
10 the Jury?

11 MR. DEBUSK: Yes, Your Honor. Just for the record, I
12 have submitted a case, State v. New, it might be covered by
13 the standard charge, but it just says that duress as an
14 affirmative defense, it must be proven by the Defense by the
15 preponderance of the evidence. I just wanted to submit that
16 well ahead of time so that you could have time to take a look
17 at it, Your Honor.

18 THE COURT: All right, sir. Thank you. Have you given a
19 copy to opposing counsel?

20 MR. DEBUSK: I have, Your Honor.

21 THE COURT: All right. Very good. All right. And Mr.
22 Holford is the Defense ready for the Jury?

23 MR. HOLFORD: Yes, Your Honor.

24 THE COURT: Very good. Ask the Jury to come in, please,
25 sir.

MEGAN MECHANIC - DIRECT BY DEBUSK

1 (REPORTER'S NOTE: Jury enters courtroom.)

2 THE COURT: All right. Solicitor, your first witness,
3 please, sir.

4 MR. DEBUSK: Thank you, Your Honor. The State calls
5 Megan Mechanic.

6 THE COURT: Okay. Megan Mechanic.

7 Ms. Mechanic, if you would, if you'd come all the way
8 around up here and meet the Clerk of Court right up here,
9 please, ma'am. Thank you very much.

10 MEGAN MECHANIC, HAVING BEEN DULY SWORN,

11 TESTIFIES AS FOLLOWS:

12 CLERK: State your full name and spell your last name for
13 the Court, please.

14 MS. MECHANIC: Megan Mechanic, last name, M-E-C-H-A-N-I-
15 C.

16 THE COURT: Go ahead, Solicitor.

17 MR. DEBUSK: Thank you, Your Honor.

18 DIRECT EXAMINATION OF MEGAN MECHANIC BY MR. DEBUSK:

19 Q: Ms. Mechanic, who is your employer?

20 A: Brittain Resort Management.

21 Q: What properties does Brittain handle?

22 A: The Caribbean Resort.

23 Q: Okay. What is the Caribbean Resort? Is it a hotel?

24 A: Yes. It's a hotel that has four buildings.

25 Q: Okay. What is the Jamaican Motor Inn?

- 1 A: It is one of the buildings that makes up the four.
- 2 Q: Was it formerly a hotel of its own?
- 3 A: Yes, it was.
- 4 Q: But now it's part of the Caribbean Resort?
- 5 A: Yep.
- 6 Q: Where is it located?
- 7 A: 31st Avenue and Ocean Boulevard.
- 8 Q: Is that where, in general, the Caribbean Resort is
- 9 located?
- 10 A: In between 29th and 31st.
- 11 Q: All four buildings.
- 12 A: Yep.
- 13 Q: Does the Jamaican, the Jamaican Motor Inn, does it have a
- 14 separate management and check-in desk and all that?
- 15 A: No.
- 16 Q: Where is the check-in?
- 17 A: The main tower, the Cayman Tower.
- 18 Q: I'll show you what's been marked as State's Exhibit Two
- 19 and ask you if recognize this?
- 20 A: Yes. That is the Caribbean Resort and Ocean Boulevard.
- 21 Q: What in general is this item?
- 22 A: An overview picture.
- 23 Q: Is it an aerial photo?
- 24 A: Yes.
- 25 MR. DEBUSK: Your Honor, we would submit State's Exhibit

1 Two into evidence.

2 THE COURT: Any objection?

3 MR. HOLFORD: No objection, Your Honor.

4 THE COURT: All right, sir. It's in evidence without
5 objection.

6 MR. DEBUSK: Thank you.

7 STATE'S EXHIBIT NUMBER TWO

8 ADMITTED INTO EVIDENCE

9 MR. DEBUSK: Your Honor, may the witness approach the
10 Jury to demonstrate?

11 THE COURT: Yes, sir. All right. You want to step down,
12 ma'am, and if you'd please stand next to that box on the rail,
13 please, ma'am.

14 BY MR. DEBUSK:

15 Q: Just to help the Jury, Your Honor, where is the beach in
16 this photo?

17 A: Right there.

18 Q: Where is Ocean Boulevard?

19 A: Right up here.

20 Q: Okay. And where is the Caribbean Resort?

21 A: It's this span, so that's the Jamaican, that's the Sea
22 Captain's House Restaurant, our pool and waterslide, the
23 Cayman Tower and the Dominican Tower.

24 Q: Is the Sea Captain's House part of your resort or is it
25 independent?

1 A: It's owned by Brittain Resort Management who owns our
2 property.
3 Q: Okay. And the cross street here where the -- this is the
4 Jamaican ---
5 A: Uh-huh (affirmative response).
6 Q: --- which cross street is that?
7 A: This is 31st and that's Ocean Boulevard.
8 Q: I hate to ask you the obvious, what county is that in?
9 A: Horry County.
10 Q: And is that within the city limits of Myrtle Beach?
11 A: Yes.
12 Q: Thank you. You can go back to the stand. What's your
13 job?
14 A: I'm the front office manager.
15 Q: And what does the front office manager do?
16 A: I am over security, front desk, recreation, bellman,
17 auditors, front desk.
18 Q: So, you pretty much run the place?
19 A: Yeah, and make sure the property is secure.
20 Q: How about in November of 2013, were your duties any
21 different?
22 A: No.
23 Q: Okay. Now, in the course of your employment, are you
24 familiar with the records of guest registration and employees
25 of the Caribbean Resort?

- 1 A: Yes.
- 2 Q: Do you have access of those records in the daily course
3 of your duties?
- 4 A: Yes.
- 5 Q: Where are the records kept?
- 6 A: In our computer system and we also keep paper copies for
7 ten years.
- 8 Q: Okay. Are you able to check to see if certain people
9 have been registered at certain times?
- 10 A: Yes.
- 11 Q: Was the Defendant Derek Vander Collier a registered guest
12 or employee of the Caribbean Resort or the Jamaican building
13 during November of 2013?
- 14 A: No.
- 15 Q: Did you check your records to be certain of that?
- 16 A: Yes, many times.
- 17 Q: And there was no record there?
- 18 A: No.
- 19 Q: So, you checked multiple times?
- 20 A: Yes.
- 21 Q: Okay. Was he ever a guest or employee that you're aware
22 of?
- 23 A: No.
- 24 Q: Now, specifically as to the Jamaican building, Jamaican
25 Motor Inn building, what was the state of that property on the

1 20th and 21st of November of 2013?

2 A: It was blocked off so nobody could rent those units.

3 Q: Why?

4 A: There was nobody staying in the units because the doors
5 were being painted.

6 Q: So, none of those rooms were rented?

7 A: Correct.

8 Q: Okay. Now, was anyone besides the painting crew and the
9 employees at the resort authorized to go into those rooms?

10 A: No.

11 Q: Now, were the contractors or anybody else authorized to
12 enter the rooms and remove televisions?

13 A: No.

14 Q: Okay. Specifically, was this Defendant, Derek Vander
15 Collier, authorized to enter the rooms at the Jamaican Motor
16 Inn?

17 A: No.

18 Q: And remove televisions?

19 A: No.

20 Q: Let me show you -- now, did you have an incident on
21 November 21st, 2013?

22 A: Yes.

23 Q: What nature of an incident that happened?

24 A: What nature?

25 Q: What type of incident?

- 1 A: Well, somebody was ---
- 2 Q: In general.
- 3 A: In general, theft and trespassing.
- 4 Q: What was taken?
- 5 A: Televisions.
- 6 Q: Okay. And what room, do you recall?
- 7 A: 310 and 309. I believe it was taken from 310 and then
- 8 caught in 309.
- 9 Q: Let me show you what's been marked as State's Exhibits
- 10 Three, Four and Five and ask you if you recognize these.
- 11 A: Entry door to 309, entry to 309 and the bedroom 309.
- 12 Q: Let me show you State's Six, Seven and Eight and ask you
- 13 -- or Six and Seven and ask if you're familiar with these
- 14 photographs.
- 15 A: The entry door of 310 and the bedroom where the TV was of
- 16 310.
- 17 Q: Was there supposed to be a TV on that bracket on the
- 18 wall?
- 19 A: Yeah, there's no TV on the bracket.
- 20 Q: Let me show you what's been shown as State's Exhibit
- 21 Eight and ask if you recognize that.
- 22 A: The bedroom of one of the units.
- 23 Q: Okay. Is that a fair and accurate representation of the
- 24 distance between the television and the door?
- 25 A: Yes. They're all the same square footage.

1 Q: They're all the same dimensions?

2 A: Dimensions, yes.

3 Q: Thank you. Thank you, would move State's Three through
4 Eight into evidence at this time.

5 THE COURT: Any objection?

6 MR. HOLFORD: Your Honor, the Defense doesn't have an
7 objection to Three through Seven. I believe they were taken
8 by the patrolman the night of the incident. As to Eight, it's
9 my understanding that this picture that was taken does not
10 represent the incident at the time it was taken last week.

11 THE COURT: I appreciate that. Testimony was it's a
12 representative picture of what the rooms look like and I'm
13 gonna allow it into evidence over the objection of the
14 Defense.

15 MR. HOLFORD: Yes, Your Honor.

16 THE COURT: Three through Seven are in evidence.

17 STATE'S EXHIBIT THREE THROUGH EIGHT

18 ADMITTED INTO EVIDENCE

19 BY MR. DEBUSK:

20 Q: I show you State's Nine and Ten and ask if you recognize
21 those?

22 A: Yes. This is the stairwell going to the beach access on
23 31st Avenue and the Jamaican building, the stairwell from the
24 Jamaican and this is the other stairwell which is -- which we
25 say is on the south side. This is the north side, this is

1 south side stairwell.

2 Q: The south side stairwell, the one that -- State's Exhibit
3 Ten.

4 A: Yes.

5 Q: What rooms face that stairwell?

6 A: What rooms, you mean like the room numbers?

7 Q: On the third floor of the Jamaican building, what rooms
8 face that stairwell?

9 A: 310, 309, 308.

10 Q: Thank you. Please answer any questions that the Defense
11 might have.

12 THE COURT: I'm sorry. Did you want to introduce the ---

13 MR. DEBUSK: Oh, yes. I'm sorry, Your Honor. I do --
14 the State moves to introduce State's Nine and Ten into
15 evidence.

16 THE COURT: Any objection to Nine and Ten?

17 MR. HOLFORD: Your Honor, just the same objection that
18 it's not at the time. I believe those were taken last week.

19 THE COURT: All right. Very good. I'm gonna allow it
20 into evidence as a representative picture.

21 MR. HOLFORD: Thank you, Your Honor.

22 STATE'S EXHIBIT NUMBER NINE AND TEN

23 ADMITTED INTO EVIDENCE

24 THE COURT: You may cross examine.

25 MR. HOLFORD: Yes, Your Honor.

MEGAN MECHANIC - CROSS BY HOLFORD

1 CROSS EXAMINATION OF MEGAN MECHANIC BY MR. HOLFORD:

2 Q: Ms. Mechanic, how are you doing this afternoon?

3 A: Doing great, thank you.

4 Q: You said that you worked for the Caribbean; is that
5 correct?

6 A: Yes.

7 Q: And back on November 21st, 2013, you worked there as well?

8 A: Yes.

9 Q: You don't know my client Mr. Collier, do you?

10 A: No.

11 Q: You haven't seen him before?

12 A: No.

13 Q: You didn't see him on the 21st ---

14 A: I didn't ---

15 Q: --- of November, 2013?

16 A: I worked in the day, so, no.

17 Q: And so you don't have any knowledge as to who may or may
18 not have been in 309 that night -- in Room 309 that night?

19 A: Well, personally, no.

20 Q: I'll just -- yeah, I'll just ask you about what you
21 personally know.

22 A: Yes.

23 Q: Now, you have a list of people who were guests at that
24 hotel; is that correct?

25 A: Correct.

- 1 Q: Did you provide that to the State?
- 2 A: No, I did not.
- 3 Q: Okay. So, we don't have that list here today?
- 4 A: No.
- 5 Q: Was David Henry ever a guest?
- 6 A: I don't know.
- 7 Q: Was Catrisha Brandenburg against?
- 8 A: I don't know. We have over 436 rooms on our property. I
- 9 would have no idea; I would have to look.
- 10 Q: How about Akmal Henry? Do you remember the name Akmal
- 11 Henry?
- 12 A: No.
- 13 Q: Let me ask you this, Was Justin Kirkman a guest on that
- 14 night?
- 15 A: No. He was a contractor.
- 16 Q: He was a contractor. Did you know Justin Kirkman at that
- 17 time?
- 18 A: No. I just met him yesterday.
- 19 Q: You just met him?
- 20 A: Yes.
- 21 Q: Just yesterday?
- 22 A: Uh-huh, (affirmative response).
- 23 Q: But he was a contractor. Were any of the contractors
- 24 allowed to take TVs from the rooms?
- 25 A: No.

1 Q: If a contractor would have taken a TV and you would have
2 found that out, you would have reported that to the police; is
3 that correct?

4 A: Correct.

5 Q: Now, you said that you just met Justin Kirkman, this
6 contractor, yesterday?

7 A: Yes, correct.

8 Q: Did you discuss your testimony here today with him prior
9 to testifying?

10 A: No.

11 Q: Have you discussed your testimony with the Prosecutor
12 prior to testifying?

13 A: With who?

14 Q: With the Prosecutor for the State.

15 A: No.

16 Q: They did call and ask you to testify, though, right?

17 A: Well, yeah.

18 Q: I didn't ---

19 A: I was sent -- I had a subpoena, so, yeah.

20 Q: But you and I have not discussed any testimony before?

21 A: No.

22 MR. HOLFORD: No further questions, Your Honor.

23 THE COURT: Any redirect?

24 MR. DEBUSK: No, Your Honor. We would ask that Ms.

25 Mechanic be released from her subpoena so she can return to

MEGAN MECHANIC - CROSS BY HOLFORD

1 her duties.

2 THE COURT: Any objections?

3 MR. HOLFORD: No objection, Your Honor.

4 THE COURT: All right, ma'am, you are released from your
5 subpoena and you may go back to your regular duties. Thank
6 you.

7 MR. DEBUSK: Your Honor, the State calls Justin Kirkman.
8 Your Honor, State's Eight, was it in evidence at this
9 time?

10 THE COURT: Yeah, State's Eight is in evidence over the
11 objection of the Defense, as well as Nine and Ten.

12 MR. DEBUSK: Two through Ten all in evidence, Your Honor.

13 THE COURT: Yes, but Three through Seven were without
14 objection. Eight, Nine, Ten were in over the objection of the
15 Defense.

16 MR. DEBUSK: Thank you, Your Honor.

17 THE COURT: Go ahead.

18 JUSTIN KIRKMAN, HAVING BEEN DULY SWORN,

19 TESTIFIES AS FOLLOWS:

20 CLERK: Please be seated, state your full name and spell
21 your last name for the Court, please.

22 MR. KIRKMAN: Justin Kirkman, K-I-R-K-M-A-N.

23 DIRECT EXAMINATION OF JUSTIN KIRKMAN BY MR. DEBUSK:

24 Q: Mr. Kirkman, who is your employer?

25 A: At the current time, I am a real estate agent with

1 Wilkinson & Associates and a golf pro at River Oaks Golf
2 Course.

3 Q: So, you have two jobs?

4 A: I do.

5 Q: Now, a few years ago, you had a little problem with the
6 law, did you not?

7 A: I did, yes.

8 Q: Where was that?

9 A: Colorado. It was five years ago, I pled guilty to two
10 felonies and did ten years probation.

11 Q: What were those felonies?

12 A: Burglary and non-aggravated robbery.

13 Q: Okay. Now, is your probation up?

14 A: No, sir.

15 Q: When will it end?

16 A: I'm up for, I guess, early release, if you want to call it
17 that, June of this coming year.

18 Q: But your status was probationary, you didn't go to jail?

19 A: Correct, yes, sir.

20 Q: Okay. Now, let's talk a little bit about what you've done
21 since. How long have you been in Myrtle Beach?

22 A: About four years now.

23 Q: Okay. And you told us where you were working and you're
24 two jobs. As a real estate agent, are you licensed?

25 A: I am, with the State.

1 Q: Are you married?

2 A: I am not.

3 Q: Now, how about November 2013, who was your employer?

4 A: I was a subcontractor for Ron Pittman, who is a contractor
5 for several hotels in town for renovation purposes.

6 Q: What were your particular duties?

7 A: Whatever they needed me to do, painting, retiling floors,
8 just fixing plumbing, anything, anything at all.

9 Q: Let me ask you specifically about the late-night of
10 November 20th and the early morning hours of November 21st of
11 2013. What were you doing that night?

12 A: That morning, we started painting doors, another
13 subcontractor and I.

14 Q: Where were you painting?

15 A: Oh, the Jamaican, excuse me.

16 Q: Where is the Jamaican?

17 A: Where is the Jamaican?

18 Q: Yes, sir.

19 A: It's Myrtle Beach, I believe it's 31st Avenue.

20 Q: Okay. Thank you.

21 A: We were -- they wanted all the doors repainted and so him
22 and I, the other subcontractor and I, started painting doors
23 at 8:30 in the morning, then we had several other
24 subcontractors come. We painted all the doors. I can't
25 remember how many there were.

1 Q: How many floors were there?

2 A: Five. When we finished, it was late in the evening, and
3 they were still wet, so he asked me to stay behind and
4 basically run security just, you know, check all the doors and
5 close them as they dried every thirty minutes or so.

6 Q: Did they provide you with a place to stay?

7 A: They did. They cleared out the penthouse on the fifth
8 floor and I would stand up there so I wasn't, you know,
9 freezing and kept walking back up and down, so...

10 Q: Were you able to close any of the stores?

11 A: I was. I was doing checks about every thirty minutes and
12 then the hotel had security that would stop by occasionally,
13 as well. We were trying to run on opposite schedules to cover
14 the most amount of time. The doors started drying, the ground
15 floor, obviously, was first and then the first floor and the
16 second floor was next.

17 Q: By midnight, how many doors or how many floors ---

18 A: Two floors.

19 Q: What happens after midnight?

20 A: After midnight, I finished doing a round and I checked the
21 third floor, they were still a little tacky and so I didn't
22 want to show them quite yet and so I finished doing the fourth
23 floor as well, went back up to the penthouse and I had TV and
24 I was about to eat something and I heard a door shut and so I
25 went back down the elevator -- which I thought was weird,

JUSTIN KIRKMAN - DIRECT BY DEBUSK

1 because nobody was supposed to be there. I went back down the
2 elevator to the third floor and started there and I noticed
3 once I got out of the elevator that the room to the right of
4 the elevator, I believe it was 309, the light was on which I
5 thought was weird. So, I went to go check it out.

6 Q: I'm going to show you State's Exhibits Three, Four and
7 Five, in evidence, and ask if you recognize these?

8 A: I guess this would be Three, is that right?

9 Q: Three, yes, this is the door, 309, that's the door to the
10 room the light was on. Four is the inside of the room. And
11 Five is just more of the bedroom but still in the same room,
12 it looks like. So, once again, what was it that attracted
13 your attention to Room 309?

14 A: The light was on. I had all the lights turned off, you
15 know, that -- I know that I didn't turn any lights on, so when
16 I saw a lot was on I thought that was odd.

17 Q: Now, was this after midnight?

18 A: Yes, sir.

19 Q: How long after midnight?

20 A: I'm not sure of the exact time. I mean it was -- I would
21 assume it was around, you know, 12:30, maybe if I had to take
22 a guess.

23 Q: So, it would have been November 21st?

24 A: I guess so, yes.

25 Q: What did you see?

1 A: I went and opened the door and I saw a black gentleman
2 with his hands on the TV, with gloves on, trying to remove the
3 TV. I immediately asked him what he was doing there. I knew
4 what he was doing but I was just trying to stall, I guess, for
5 a minute. He said he was looking for Todd, I believe, and
6 just kept mumbling he was looking for Todd. And I said, Todd
7 who, what the hell are you doing in this room? And his hand
8 immediately went down in his left side was facing me and then
9 he pulled out what appeared to be a black semiautomatic
10 handgun and I immediately jumped back out of the room and then
11 he passed me shortly afterwards with his hood up this time,
12 gloves still long and walked down the steps to the first
13 floor.

14 Q: Let me step back for a moment. Did you get a good look at
15 the guy?

16 A: I did. We had about ten, fifteen seconds, I would say,
17 when he was telling me he was looking for Todd that we were
18 face-to-face, he didn't have his hood up or anything and the
19 light was on.

20 Q: Now, could you tell if the gun was a revolver or a
21 semiautomatic?

22 A: It was definitely not a revolver. It looked like a
23 semiautomatic.

24 Q: Did he point the gun at you?

25 A: No, sir. It was started coming up and I was out the door.

JUSTIN KIRKMAN - DIRECT BY DEBUSK

1 Q: So, you left before he pointed it at you?

2 A: Yeah, very very shortly.

3 Q: Let me step back a moment again. How were you dressed?

4 A: I had worked boots on and pajama bottoms. I took off my
5 work jeans after I closed some of the doors because we were
6 getting close to the end, and a jacket.

7 Q: What were you doing when you heard the sound downstairs
8 that brought you downstairs?

9 A: I was watching TV and about to eat something my boss had
10 brought me earlier that night, some food, so...

11 Q: So, you were sort of relaxing and keeping an eye on the
12 doors?

13 A: Yeah, just waiting for another twenty minutes or so,
14 thirty minutes and gonna go check it out again.

15 Q: So, when you saw this individual in the room, what was he
16 doing when you walked in?

17 A: He had his hands on the side of the TV and it looked like
18 he was trying to prop it back off the wall.

19 Q: And how far were you from him?

20 A: Probably, you know, twenty-five to thirty feet, probably
21 about from here to -- I was standing just on the inside of the
22 door and he was all the way in the middle of the bedroom.

23 Q: Let me show you State's Exhibit Eight and ask does that
24 reflect the distance between you and the individual you saw?

25 A: Yes, that's correct. I would still be on the tile

1 portion.

2 Q: And was the light on, again?

3 A: The light was on.

4 Q: Thank you. And you say you got a good look at him?

5 A: I did.

6 Q: Okay. Tell me again starting where you left the room and
7 tell me what happened next?

8 A: Well, he left the room immediately, still had his gloves
9 on, hood was up this time, he walked down the steps.

10 Q: Where were you when you saw him leaving the room?

11 A: I was just outside the door to the left of it and he
12 walked down the steps and the hood was up. Obviously, I
13 waited a minute to follow him and I kinda walked out slowly
14 behind him and I noticed he was going down the hallway towards
15 the north of the building, I believe, with the public beach
16 access sign where parking is.

17 Q: I show you State's Exhibit Ten and ask if you recognize
18 that?

19 A: That would be the stairwell, I guess, sir.

20 Q: Okay. State's Exhibit Nine, what is that?

21 A: That is the stairway leading to the North side, that
22 public beach access parking lot.

23 Q: Okay. You saw him go down those stairs; what happened
24 next?

25 A: As I said, I was slowly following him down that way and I

JUSTIN KIRKMAN - DIRECT BY DEBUSK

1 noticed he was going towards that public beach access parking
2 lot. Once he got down the steps here, he made a right-hand
3 turn and I heard a door shut shortly after words and I
4 sprinted out to the parking lot, at which point in time, he
5 drove past me and in what appeared to be a -- in the light,
6 you know, looked like gold or silver four-door sedan, kind of
7 old but still a little sporty.

8 Q: What make?

9 A: I'm not sure. I guess it was a Saturn but I didn't get a
10 real solid look at it, and so...

11 Q: Do you know what approximate year it was?

12 A: If I had to take a guess, it was late 90s, early 2000,
13 somewhere around there.

14 Q: Okay. How far were you from that car when it goes by?

15 A: Maybe fifteen, twenty feet at the most.

16 Q: Okay. And what did you see?

17 A: I saw the same gentlemen I saw in the room driving, in the
18 driver seat, there was nobody else in the car and a TV was in
19 the back of his car and I chased him as he pulled past me. I
20 chased after him for a little while trying to get the license
21 plate number but I, unfortunately, was unable to do that. He
22 made a right out of the parking lot and went down one street
23 and they made a left, so...

24 Q: Was there lighting in that beach access parking lot? Were
25 there streetlights?

1 A: Yes. I believe there are some on the edge of the
2 building, I'm not sure how deep they go though, I would not be
3 sure.

4 Q: Were you able to see the car clearly?

5 A: Oh, yeah, absolutely.

6 Q: Were you able to see who was in it clearly?

7 A: Yes.

8 Q: Was it the same individual you saw in the room?

9 A: It was the same individual, yes.

10 Q: Okay. I need to show you State's Exhibit Two and ask if
11 you recognize this.

12 A: That would be an aerial view of the Jamaican and
13 surrounding area.

14 Q: Okay. Could you step down and demonstrate for the Jury
15 where you saw the vehicle and where it went?

16 THE COURT: If you would stand right next to that square
17 box is on the rail, please, sir.

18 A: Yes, I'm sorry. This would be the Jamaican. He exited
19 this way and made a right and then a left-hand turn on 32nd
20 Avenue.

21 Q: But you weren't able to get a license number?

22 A: I was not. Now, was there anyone else in the car besides
23 the individual you saw in the room?

24 A: No, sir.

25 Q: All right. And did you say you saw a television?

1 A: I did, in the back.

2 Q: Where was that television?

3 A: In the backseat.

4 Q: Now, did you go back and check the rooms?

5 A: I did. Immediately afterwards, I realized once, you know,
6 he pulled off and make that left-hand turn, I called 911 and
7 told them what was going on. And while I was on the phone
8 with the dispatch, I ran back up to the third floor, just to
9 double check rooms, in case somebody else was around. And I
10 noticed the first room to the right of 309, I checked that one
11 is the TV was missing. And so I immediately ran through and
12 checked all the other rooms while I was on the phone and
13 shutting all the doors, whether they were wet or not.

14 Q: State's Six and Seven, I'll ask if you recognize those.

15 A: Six is the door to Room 310, that's where the TV was gone
16 and Seven is the inside of the room with just the mount still
17 up there.

18 Q: Okay. I think you said, sir, but did you call the police?

19 A: I did. I was on the phone with the police when I was
20 running around the building.

21 Q: Did you tell the police what you saw?

22 A: I did, yes.

23 Q: Did there come a time when you met with the police again?

24 A: Yes, there was. Well, they came out, officers --
25 responding officers came out and they called detectives that

1 evening and I was there with the detectives for a while. And
2 then, it was about, I'm not quite sure of the exact timeframe
3 but I would say approximately about a week later or so he, he
4 back to do a -- maybe a little less than that -- a sketch
5 artist and so I met with -- went down to the police station
6 down by Market Commons and there was a woman there that did
7 the sketch on the computer. And so, we sat there and did a
8 sketch.

9 Q: I'll show you what's been marked for identification as
10 State's Exhibit Twelve and ask if you recognize this?

11 A: I do. That would be our final solution to the sketch.

12 MR. DEBUSK: At this time, we would offer State's Twelve
13 into evidence.

14 THE COURT: Any objection?

15 MR. HOLFORD: Your Honor, I would just object to lack of
16 foundation. I don't believe this witness has laid the proper
17 foundation nor has he testified that he did that sketch.

18 THE COURT: I don't believe that's what he said. If you
19 want to ask him a couple of more questions about the ---

20 MR. DEBUSK: Yes, Your Honor.

21 BY MR. DEBUSK:

22 Q: This sketch is State's Exhibit Twelve, did you tell the
23 person who was helping you what features to add to the sketch?

24 A: Yes. She let me go through and I kept telling her what to
25 change and she kept changing what I wanted.

JUSTIN KIRKMAN - DIRECT BY DEBUSK

1 Q: And that's based on the person you saw in Room 309 that
2 night?

3 A: Yes.

4 Q: And this was the sketch that resulted from your direction
5 you are direction of her ---

6 A: Yes.

7 MR. DEBUSK: Your Honor, that would be showing as to
8 foundation.

9 THE COURT: All right, sir. Continuing objection by the
10 Defense?

11 MR. HOLFORD: Yes, Your Honor.

12 THE COURT: All right. Allow it into evidence over the
13 objection of the Defense.

14 STATE'S NUMBER TWELVE

15 ADMITTED INTO EVIDENCE

16 BY MR. DEBUSK:

17 Q: Now, did there ever come a time when you viewed a photo
18 lineup?

19 A: There was, it was a little while after that, you know,
20 about a month or so after everything. The police called me
21 back and asked me to come in and see a photo lineup, and see
22 if I could kick anybody out.

23 Q: Where did you go?

24 A: Back to the same police precinct near Market Commons.

25 Q: What happened when you were there?

JUSTIN KIRKMAN - DIRECT BY DEBUSK

1 A: I showed up, I felt -- checked in, had some detectives

2 meet with me and they just sat me down in the little room and

3 kind of explained how the situation worked and gave me the

4 photo lineup that they gave me and just said, pick one, and a

5 gentleman sat with me the whole time.

6 Q: Do you remember specifically the directions they gave you?

7 A: I don't recall the exact conversation. It was just very

8 more like procedure stuff, I would guess.

9 Q: Let me show you what's been marked as State's Fourteen and

10 ask if you recognize this?

11 A: That is the photo lineup the detectives gave me.

12 Q: Now, when you look at that photo lineup that's reflected

13 in State's Fourteen, were you able to pick someone out?

14 A: I -- it took me a little while. I immediately started

15 illuminating some of the ones -- I was having a hard time

16 since the lineup was in black-and-white and not exactly

17 wonderful quality. I narrowed it down to Photos 2 and 3. At

18 which point, I told them I was fairly certain of 2, leaning

19 towards 2, but he asked me -- I had to be 100 percent sure to

20 choose one and I could not do that just because the quality of

21 the photos, I was not comfortable, in case I got the wrong

22 person. And so -- but he told me later that, you know, if you

23 saw the person again, would you ---

24 Q: Don't tell us what he told you.

25 A: Okay.

- 1 Q: So, you said Number 2 was when you would pick but because
2 of the quality of the photos, you weren't comfortable saying
3 one hundred percent?
4 A: That is correct, yes, Number 2 was the one I was leaning
5 towards.
6 Q: Now, between the day at the Jamaican Motor Inn on November
7 21st and this week, have you seen the Defendant?
8 A: Have I seen the Defendant?
9 Q: Have you seen the individual you saw in that room before?
10 A: No, sir.
11 Q: You didn't see them again?
12 A: Between -- oh, before today?
13 Q: Before -- no, before this week?
14 A: Oh, before this week?
15 Q: Yes.
16 A: No, sir, since the night.
17 Q: Okay. Now, since this week, have you seen that
18 individual?
19 A: I have.
20 Q: Who was that?
21 A: He is the Defendant.
22 Q: Could you please indicate for the -- what's he wearing?
23 A: A blue shirt.
24 Q: Are you sure of that?
25 A: I am, a hundred percent.

1 Q: Why can you be sure of that and you couldn't be sure of
2 the photos?

3 A: The photo really wasn't of good quality and I told the
4 detective if I ever saw him again, I would a hundred percent
5 recognize him in-person it was a lot easier to recognize him,
6 obviously, in a -- in-person and not in a photo lineup.

7 Q: Again, on Exhibit Fourteen, it was fellow Number 2; is
8 that correct?

9 A: Yes, sir, Number 2 was the one.

10 MR. DEBUSK: Your Honor, we'll provide further foundation

11 ---

12 COURT REPORTER: Excuse me, Mr. DeBusk, I'm having
13 trouble hearing you.

14 MR. DEBUSK: I apologize. I will provide further -- we
15 will provide further foundation for Fourteen, Your Honor.

16 THE COURT: All right, sir.

17 MR. DEBUSK: Court's indulgence one moment, Your Honor,
18 to get back in order.

19 THE COURT: Yes, sir.

20 BY MR. DEBUSK:

21 Q: Mr. Kirkman -- Your Honor, may he approached the Jury?

22 THE COURT: Yes, sir. You may step down.

23 Q: If you would step down from the stand and approach the
24 microphone here, please. Explain to the Jury these photos,
25 State's Three, what is that?

1 A: That is Room 309.

2 MR. DEBUSK: Okay. May we publish this to the Jury, Your
3 Honor?

4 THE COURT: Yes, sir.

5 Q: State's Four, what is that?

6 A: That is the inside of Room 309.

7 Q: Is that where you saw the individual?

8 A: Correct. I was standing at that area.

9 THE COURT: You need to speak up, sir.

10 A: Oh, I was standing in the front entryway right here on the
11 tile and he was in the middle of the room right here on the
12 TV.

13 Q: Where the television is?

14 A: Yes, sir.

15 Q: State's Five.

16 A: That is the bedroom area of Room 309.

17 Q: Is that the television he was standing at?

18 A: That is the television.

19 Q: And is that the approximate lighting conditions when you
20 saw him?

21 A: Yes.

22 Q: And this one?

23 A: That's Room 310, the door of 310.

24 Q: State's Seven?

25 A: That is the inside of Room 310.

- 1 Q: What is important about that?
- 2 A: The TV is missing.
- 3 Q: Okay. Now, this, State's Eight, is that a fair and
4 accurate representation of the distance between you and where
5 you saw the individual?
- 6 A: That is correct.
- 7 Q: Just for the Jury's -- where were you standing?
- 8 A: I would have been just inside the doorway right here on
9 the tile.
- 10 Q: And the individual you saw would've been ---
- 11 A: At the TV, right where -- about a little in front, I
12 guess, of where this photo was taken.
- 13 Q: And approximately how long were you face-to-face with him
14 looking at his features?
- 15 A: A solid ten to fifteen seconds.
- 16 Q: State's Nine, what did you see there?
- 17 A: That is the entryway to the public access parking lot on
18 the north side of the Jamaican.
- 19 Q: Is that where you saw the Defendant run down?
- 20 A: This -- yes, this is where the Defendant ran down.
- 21 Q: Which way did he turn when he ---
- 22 A: Right.
- 23 Q: Did you see him get into the car?
- 24 A: I did not, no.
- 25 Q: But you saw him drive by?

1 A: Yes, sir.

2 Q: State's Ten?

3 A: That's the stairwell, I would assume, coming out of 309.

4 Q: So, that comes right out of 309 and go straight down?

5 A: Correct.

6 Q: Is that where you followed the individual you saw?

7 A: Yes, sir. He went down and I followed him down the
8 stairs.

9 Q: And when did you call the police? Before he got in the
10 car or after?

11 A: After. He was in the car, he left and then I called the
12 police.

13 Q: From the time he left the room until he got in the car and
14 left, how long do you think had passed?

15 A: It was not long at all. I would say probably less than
16 five minutes, total five.

17 Q: And State's Twelve?

18 A: That is the sketch that I did.

19 Q: Okay. Thank you. Please return to the stand. Thank you.
20 Please answer any questions the Defense might have.

21 THE COURT: Cross examination?

22 MR. HOLFORD: Yes, Your Honor.

23 CROSS EXAMINATION OF JUSTIN KIRKMAN BY MR. HOLFORD:

24 Q: Mr. Kirkman, it's true that you have been convicted of
25 burglary?

- 1 A: Yes, sir.
- 2 Q: And you have also been convicted of robbery?
- 3 A: Non-aggravated, yes, sir.
- 4 Q: And you're currently on probation?
- 5 A: Yes, sir.
- 6 Q: And if you were to commit another crime, that probation
- 7 could be revoked, couldn't it?
- 8 A: Yes, sir.
- 9 Q: And what would happen if that probation is revoked?
- 10 A: I believe it would be up to the judge, but I would assume
- 11 from what they told me before, I would just serve out the rest
- 12 of my sentence that I hadn't already served on probation and
- 13 ---
- 14 Q: How much time is over your head?
- 15 A: Five years.
- 16 Q: So, you're looking at a possible five years in prison if
- 17 you are convicted of another crime?
- 18 A: That is correct.
- 19 Q: And you certainly didn't have the right to take a TV from
- 20 310, did you?
- 21 A: Could you rephrase?
- 22 Q: You didn't have a right to take a TV from that -- from the
- 23 Jamaican, did you?
- 24 A: No, sir.
- 25 Q: And if you were caught taking the TV from Room 310 or from

1 any other room in the Jamaican and it was reported you were
2 the only one there, you could be facing possible charges?
3 A: That is correct.
4 Q: Which would revoke your probation?
5 A: Yes, sir, if someone charged me with that.
6 Q: Now, let's talk about the night that you reported a black
7 male coming up there and you having an encounter. On that
8 night, you just said it was a black male, somewhere between
9 twenty-three and twenty-eight years old; is that correct?
10 A: I cannot recall exactly what I told the detective.
11 Q: If the detectives wrote that down is what you said, that
12 would be correct?
13 A: That's fair, yes, if it was in the report.
14 Q: Because this was about a year ago, right, it's pretty
15 hard to remember exactly what happened?
16 A: Certain details.
17 Q: Certain details. You certainly didn't know Mr. Collier?
18 A: Before -- no, I've never meet him.
19 Q: No. Before being in trial?
20 A: Other than seeing him that one night?
21 Q: Right. But you didn't say that it was a Derek Collier
22 that you saw that night, did you?
23 A: No, sir, I did not know him.
24 Q: You said you saw a black male, somewhere between twenty-
25 three and twenty-eight years old?

1 A: As I said, I don't recall the exact age but, yes, that's
2 what I told the detective.

3 Q: Wearing a hoodie?

4 A: Yes, sir, he had a sweater/hoodie on, yeah.

5 Q: A sweater or hoodie?

6 A: Well, a hoodie, yeah, a jacket, yeah.

7 Q: A hoodie?

8 A: With the hood on it.

9 Q: Something you can turn over your head?

10 A: Yes, sir.

11 Q: You also stated to police that night it was dark?

12 A: It was nighttime.

13 Q: It was nighttime? Now, you said in court here today that
14 you were able to clearly see him and a TV in the car; is that
15 correct?

16 A: Yes, sir.

17 Q: But you've never told the police before that you saw a TV
18 in that car, did you?

19 A: As I said, I'm not sure exactly what the -- I said to him
20 word-for-word a year ago.

21 Q: It's pretty relevant information to a TV going missing if
22 you saw a TV in the car, wouldn't you agree?

23 A: I would agree.

24 Q: And so if you would've told the police that and they were
25 doing their job, they would write that in the report, wouldn't

1 they?

2 A: They should.

3 Q: Let's talk about this lineup for a minute, too. You came
4 back to the police about a month after you saw a black male
5 and they gave you a photo lineup, six different people; is
6 that correct?

7 A: Yes, sir.

8 Q: And you were not able to pick one definitively as the
9 person you saw that night?

10 A: For -- he said I had to be a hundred percent and I was
11 able to a hundred percent pick one.

12 Q: So, a month after you were unable to give hundred percent
13 identification, but now, as we sit in court, you are a hundred
14 percent sure that the only person sitting in the courtroom,
15 that a black male on trial, you're sure it's him?

16 A: I am one hundred percent sure.

17 Q: And you go up for a review for your probation in June,
18 right?

19 A: Yes, sir.

20 Q: It'd be good to have someone like the State on your side
21 during that review, wouldn't it?

22 A: I think my five years of excellent behavior and working
23 hard to become a good citizen, I think that would speak for --
24 enough for myself.

25 Q: So, you're not worried about this review?

1 A: I'm not worried about anything from this.

2 Q: On that night, didn't you tell police it was a silver
3 colored car?

4 A: I said silver or gold.

5 Q: You said silver or gold. So, if the police report says
6 they were looking for a silver car ---

7 A: I'd -- as I said, I'm unsure -- I told him silver or gold,
8 though.

9 Q: And so, now, it's a gold car?

10 A: Silver or gold.

11 Q: And that night, you didn't know what kind of car it was,
12 did you?

13 A: I did not know the exact make, model or year on that.

14 Q: But now, today, you're sure it's a Saturn.

15 A: No, sir, it was just that he asked me if I had -- I just
16 told him if I had to venture a guess, I would guess it was a
17 Saturn.

18 Q: So, a year after the fact, now you're venturing guesses
19 that it's the car that the police have now said it was?

20 A: No, that's what I told the detective that night.

21 Q: So, if the detective didn't include the fact that you told
22 him it was a Saturn that night, that would also be something
23 he left out?

24 A: I believe he recorded our phone conversation, so, I mean,
25 it should be in there.

JUSTIN KIRKMAN - CROSS BY HOLFORD

1 Q: You recorded your conversation?

2 A: Yes.

3 Q: Does the State have a copy of that record?

4 A: Yes, I believe so.

5 Q: Did you provide a written statement that night?

6 A: You know, honestly, I cannot remember. The first officer
7 that came up, I believe I had to write something on the back
8 of his car and the detective -- I spoke with three different
9 people that night, so...

10 Q: Do you know if the State has a copy of your written
11 statement?

12 A: I would believe they do.

13 Q: But again, you're not sure, that was about a year ago,
14 it's hard to remember exactly?

15 A: As I said, certain specific details.

16 Q: The only detail you're sure of is that the only person
17 sitting in here in trial, now you know a year later that's
18 him.

19 A: No, that's not correct.

20 Q: No, you don't know it's him?

21 A: No, that's not correct that that's the only detail I
22 remember of the night.

23 Q: You said the light was on in this Room 309 with the door
24 shut, right?

25 A: The door was not shut. The door stopper was down and it

JUSTIN KIRKMAN - CROSS BY HOLFORD

1 was cracked. That's how I could see the light was on.

2 Q: But you told police when you were unable to identify
3 someone in the lineup that it was because it was dark.

4 A: I don't recall our exact conversation.

5 Q: You also recall that lineup that the only person, the only
6 black male in that lineup wearing a hoodie was the person that
7 you have now said is Number 2?

8 A: I do recall that, yes.

9 Q: Didn't you also say that night that the windows were
10 tinted in the car?

11 A: I might have, as I said, I don't know the exact words I
12 told him. There might have been some tinting. It was not
13 like limo tint, though.

14 Q: But now, today, you're sure that that person in the car is
15 this Defendant?

16 A: I'm sure he is the person I saw in the room and I followed
17 the person out of the room into the car.

18 Q: He's not wearing a hoodie today, is he?

19 A: No.

20 Q: You described someone with short hair. He doesn't have
21 short hair, does he?

22 A: It's been a year.

23 Q: I -- but -- Court's indulgence?

24 THE COURT: Yes, sir.

25 Q: Did you do any preparation for your testimony today from

JUSTIN KIRKMAN - CROSS BY HOLFORD

1 yesterday to today?

2 A: Preparation. No, sir.

3 Q: You've met with the Solicitor's office last week; is that
4 correct?

5 A: That is correct. On Friday, I believe.

6 Q: How long did you meet with them on Friday?

7 A: It was probably -- not very long, thirty minutes, forty-
8 five minutes, something like that.

9 Q: You've never met with me before, have you?

10 A: No, sir, never met you, ever, except for here.

11 Q: And how many times did you meet with the police back
12 around the time this incident occurred?

13 A: Twice, if you don't include the night, the interview at
14 the hotel, two at the police station.

15 Q: And in all that time in the whole year, it wasn't until
16 you met with the Prosecutor's office and came to trial here
17 that you have named Derek Collier as the person you saw?

18 A: It wasn't until I walked in the courtroom and saw his
19 face.

20 Q: And again, if the hotel found out a TV was missing and you
21 were the only one there and you were arrested for that, you'd
22 face five years in jail?

23 A: Yes, sir.

24 Q: I have no further questions.

25 MR. DEBUSK: Your Honor, may we approach?

JUSTIN KIRKMAN - CROSS BY HOLFORD

1 THE COURT: Yes, sir.

2 (REPORTER'S NOTE: A bench conference was held off the record
3 in the presence of but out of hearing of the Jury.)

4 BY THE COURT:

5 THE COURT: All right. Counsel has asked to put some
6 things on the record. Ladies and gentlemen of the Jury, if
7 you would, go to your jury room, please. I'll call you out as
8 soon as I can. Thank you. Leave the exhibits here, please.
9 I'm sorry.

10 (REPORTER'S NOTE: Jury exits courtroom. The following takes
11 place outside the presence of the Jury.)

12 All right. Mr. Gardner, Mr. Holford, anything you want
13 to say to the Court?

14 MR. GARDNER: I believe the Solicitor had brought up a --
15 that he wanted to play a tape and that we objected to that.

16 THE COURT: All right, sir. And your objection is?

17 MR. GARDNER: Before we do that, I thought that we were
18 gonna put on the record what he -- the reason he wants to do
19 this is he thinks he's entitled to play this now because of
20 some conflicting testimony of the witness.

21 MR. DEBUSK: Your Honor, Mr. Holford, clearly implied
22 recent fabrication for some of the details told by the
23 witness, which opens it up for prior consistent statement
24 which he gave the night this happened to Detective Fullwood.

25 THE COURT: And your objection to that is now ---

JUSTIN KIRKMAN - CROSS BY HOLFORD

1 MR. HOLFORD: Yes, Your Honor. The objection would be --
2 the objection is that the door was not open to play the
3 entirety of this witness' statement. It would just be
4 bolstering testimony by the State. They are certainly able to
5 ask him questions as to what he's able to testify to today.
6 He's available, he's here in court, he can testify to what he
7 knows and what he doesn't know, that's all I ask him. Your
8 Honor, I asked him what he knows and what he told the police
9 ---

10 THE COURT: You were very specific about what you asked
11 him. You asked him specific details, did you tell the police
12 that, if it's not in their report -- you were questioning if
13 it's not in their report, are you remembering it now and you
14 were asking him specific questions about specific details.
15 So, I don't think it's fair for you to say I'm just asking
16 questions in general; you weren't asking general questions.

17 MR. HOLFORD: Your Honor, I would ask then that the
18 recording that's being played be limited to those specific
19 questions and not playing an entire tape that would allow Mr.
20 Kirkman to re-remember all sorts of details that he has since
21 forgotten.

22 THE COURT: Well, I guess -- how long is the recording?

23 MR. DEBUSK: Court's indulgence one moment, Your Honor,
24 I'm trying to find it. Fourteen minutes and forty-four
25 seconds, Your Honor.

1 THE COURT: Probably, what we're gonna have to do is play
2 the whole thing and see what it is that you object to and see
3 if it's the State's desire to play the whole thing or just
4 portions of it because I don't know what's on it, so I can't
5 possibly know what you're objecting to without us listening to
6 it. So, I guess we all have to sit here and listen to it
7 then. So, if you want to play it, Solicitor, go ahead.

8 *****OFF THE RECORD*****

9 (REPORTER'S NOTE: Interview of Justin Kirkman published to
10 the Court outside the presence of the Jury - not transcribed
11 herein.)

12 (On the Record.)

13 THE COURT: All right. Just a second, please. Anything
14 else you want to argue, Mr. Gardner or Mr. Holford?

15 MR. HOLFORD: Your Honor, I believe it's the State's
16 motion to allow it but ---

17 THE COURT: I know, but I mean, you're objecting to it
18 and I was gonna say is there anything else you wanted to add
19 to your objection?

20 MR. HOLFORD: Yes, Your Honor, certainly. After
21 listening to the audio, it appears that the only thing in
22 controversy that I specifically brought up that the State
23 would then say is a -- would be the same statement is the fact
24 that he does mention it could be a gold Saturn. Clearly, the
25 victim, according to this, gave multiple statements because he

1 says that he first called in and said it was a silver one, we
2 have a report this is he identified as a silver one and then
3 he talked to a security guard and he said, well, maybe it
4 could be a gold one. So, if the State wishes to play that
5 portion, that would be a statement that he gave to the police
6 that night concerning the car. The other areas which I
7 attacked, as far as seeing a TV in the car, were never
8 mentioned, just like I said.

9 THE COURT: Okay. Thank you.

10 MR. DEBUSK: Your Honor, he also clearly attacked the
11 description given by the victim of the individual, as well as
12 the time he got to look at him.

13 THE COURT: All right, sir. I'm looking at a case here,
14 y'all can look at it, State v. Foster, a decision of the South
15 Carolina Supreme Court, June 12th, 2003, 582 S.E.2d 426. The
16 Supreme Court says evidence of a prior consistent statement is
17 only permitted when the elements of Rule 801, and then they go
18 into certain subsections of it, but that's the applicable rule
19 is Rule of Evidence 801, and, I'm sorry, Rule 801 are met.
20 Put simply, a prior consistent statement offered for
21 rehabilitation is either admissible under 801 or not
22 admissible at all. Supreme Court in there goes on to say
23 plain language of Rule 801 only permits evidence of a prior
24 consistent statement when the witness has been charged with
25 recent fabrication or improper motive or influence. Although,

1 questioning a witness about a prior inconsistent statement
2 does call the witness' credibility into question, that is not
3 the same thing as charging the witness with recent fabrication
4 or improper influence or motive. The Appellant questioned the
5 accuracy of the witness memory, did not charge her with the
6 recent fabrication or improper influence or motive. Cross
7 examination by Mr. Holford, I do not believe can be
8 characterized as charging this witness with recent
9 fabrication. The only argument that I can see is if he is
10 attempting and will attempt in the future through other
11 witnesses are at closing an improper influence or motive and
12 that being to save himself from a probation violation that he
13 is lying now to save himself from a probation violation. So,
14 if it's the attention of the Defense to make that argument to
15 the Jury that this witness is lying to save himself from going
16 back to jail, then I am going to allow the statement, because
17 that is an argument by the Defense of improper influence or
18 motive.

19 Gentlemen, all leave it to the Defense.

20 MR. GARDNER: Thank you, Judge. If I could just have a
21 moment to explain this to my client.

22 THE COURT: Absolutely. Certainly.

23 (REPORTER'S NOTE: Mr. Gardner confers with Defendant.)

24 THE COURT: Yes, sir, Mr. Holford; I'm sorry.

25 MR. HOLFORD: Your Honor, it's not the Defense's

1 intention to argue to the Jury or to any other witness that
2 Mr. Kirkman has fabricated this story in order to avoid a
3 probation violation. The Defense would certainly still rely
4 on its ability to ask the jurors to question the credibility
5 of all the witnesses but ---

6 THE COURT: Certainly.

7 MR. HOLFORD: --- but would not make certain specific ---

8 THE COURT: If that's the case then, I don't think that
9 the -- under Rule 801, then the prior consistent statement can
10 be used because you would not be -- and I said, there's two
11 things that can bring it into play that the -- you didn't in
12 your questions and I think it's clear you didn't charge him
13 with the recent fabrication that he is fabricating or lying.
14 There were questions about, you know, what would happen if you
15 stole a TV; putting that out there, which led to me to ask
16 because then that would be improper motive. You know, your
17 fabricating here an improper motive to save yourself and put
18 the blame on somebody else. But, if that's not the argument,
19 then I don't think either prong of 801 applies and I'm not
20 gonna allow the State to use the prior consistent statement
21 under 801 then.

22 MR. HOLFORD: Thank you, Your Honor.

23 MR. DEBUSK: Yes, Your Honor.

24 THE COURT: All right. Since we gave the Jury a short
25 break, why don't we take five minutes and then we'll come back

1 in and continue. All right?

2 You can step down, sir, and take a break, you just can't
3 talk to the Solicitor. Thanks.

4 (RECESS)

5 *****OFF THE RECORD*****

6 (On the Record.)

7 THE COURT: The State ready for the Jury to come in?

8 MR. DEBUSK: Yes, Your Honor.

9 THE COURT: All right. Defense?

10 MR. GARDNER: Yes, Your Honor.

11 MR. HOLFORD: Yes, Your Honor.

12 THE COURT: All right. Gentlemen, can we asked the Jury
13 to come in, please?

14 (REPORTER'S NOTE: Jury enters courtroom.)

15 THE COURT: All right, Solicitor

16 MR. DEBUSK: Thank you, Your Honor.

17 THE COURT: Redirect.

18 REDIRECT EXAMINATION OF JUSTIN KIRKMAN BY MR. DEBUSK:

19 Q: Mr. Kirkman, Mr. Holford ask you about probation. Now, if
20 you were convicted of perjury or lying to the police, that
21 would get you a probation revocation, too, wouldn't it?

22 A: Yes, sir.

23 Q: That's tremendous incentive to tell the truth, right?

24 A: Yes, sir.

25 Q: Now, did you steal any TVs from that hotel that night?

1 A: No, sir.

2 Q: Did you take any televisions from the Jamaican Motor Inn
3 or Caribbean Resort on November 21, 2013?

4 A: No, sir.

5 Q: And it was dark, wasn't it, outside?

6 A: It was nighttime, yes, sir.

7 Q: It was midnight -- between midnight and 1 o'clock; is that
8 correct?

9 A: Yes.

10 Q: So, there's no doubt it was nighttime?

11 A: Yes, sir.

12 Q: You saw an individual with the gun; is that correct?

13 A: Yes, sir.

14 Q: No doubt you saw an individual with a gun, correct?

15 A: No doubt, yes.

16 Q: And you were in a room, even though it was nighttime
17 outside, the room was well lit, was it not?

18 A: Yes.

19 MR. HOLFORD: Your Honor, counsel is leading.

20 MR. DEBUSK: I'll rephrase the questions, Your Honor.

21 THE COURT: All right, sir.

22 BY MR. DEBUSK:

23 Q: Now, I think I might've asked you this already but how is
24 it that you can be one hundred percent sure that's the

25 Defendant sitting there live today but couldn't be one hundred

1 percent sure from that photograph, State's Exhibit Fourteen?

2 A: The photo was black-and-white, fuzzy, not of great quality
3 and, at the time, I didn't feel -- I didn't want to get
4 anybody innocent in trouble. In a well-lit courtroom, it's
5 obviously much easier, person-to-person.

6 Q: Thank you.

7 THE COURT: Anything on those questions, Mr. Holford?

8 MR. HOLFORD: No, Your Honor.

9 THE COURT: All right, sir, you may step down. Do you
10 wish this witness to be excused, Solicitor?

11 MR. DEBUSK: We do, Your Honor.

12 THE COURT: Any objection?

13 MR. HOLFORD: No objection, Your Honor.

14 THE COURT: All right, sir, you are relieved from your
15 subpoena and you may go back to your regular activities.

16 All right, Solicitor, your next witness, please?

17 MR. ERVIN: Your Honor, the State calls Jake Roy.

18 THE COURT: All right, sir. All right, sir, if you would
19 come all the way around up here and just meet the Clerk right
20 here at the corner of the witness stand, please, sir.

21 JAKE ROY, HAVING BEEN DULY SWORN, TESTIFIES AS
22 FOLLOWS:

23 CLERK: State your full name and spell your last name for
24 the Court, please.

25 MR. ROY: Officer Jake Michael Earl Roy, Myrtle Beach

JAKE ROY - DIRECT BY ERVIN

1 Police Department.

2 THE COURT: Go ahead, Solicitor..

3 MR. ERVIN: Thank you, Judge.

4 DIRECT EXAMINATION OF JAKE MICHAEL EARL ROY BY MR. ERVIN:

5 Q: Good afternoon, Officer Roy.

6 A: Afternoon, sir.

7 Q: What agency are you employed by?

8 A: Myrtle Beach Police Department.

9 Q: And how long have you been with Myrtle Beach?

10 A: Four years in January.

11 Q: Do you have any previous law enforcement experience?

12 A: No, sir.

13 Q: Were you employed by Myrtle Beach on November 21st, 2013?

14 A: Yes, sir.

15 Q: All right. Were you dispatched to the Jamaican Inn in
16 reference to this case?

17 A: Yes, that's correct.

18 Q: All right. Can you tell me what you did when you got that
19 call?

20 A: Responded to a call about 12:20 A.M. in the morning. Upon
21 arrival, secured the scene, make contact with the victim and
22 some witnesses, notified my supervisor and investigations to
23 respond to the scene.

24 Q: Okay, if I could stop there. Who was the first person you
25 contacted on scene?

1 A: It be at the time Jeremiah Beam.

2 Q: Okay. Who was the first person you may contact on the
3 scene?

4 A: Mr. Kirkman.

5 Q: Okay. What did Mr. Kirkman tell you?

6 A: He stated that he was on the fourth floor checking rooms
7 that they had been working in when he heard a noise coming
8 from the third floor. At which point, he descended down the
9 stairwell, realized that there was a suspect or the subject
10 was in Room 309, he made contact with him and asked him what
11 he was doing in that room and who he was. At which point in
12 time, the subject pulled a -- what he believed was a black
13 semiautomatic handgun from his waist area and pointed it at
14 him and told him to leave him alone.

15 Q: Okay. What did you do after you heard that information?

16 A: I obtained a description of the individual that he
17 described was in the room, gave that out over the radio so
18 that officers in the area that were still responding could be
19 on the lookout for him in the vehicle that he was said to be
20 driving when he left the scene.

21 Q: Do you remember of the description of the vehicle he told
22 you?

23 A: At that time, it was said to be a four-door silver car.

24 Q: And what did you do after you put the BOLO out?

25 A: Started to retrieve witness written statements from him

JAKE ROY - CROSS BY HOLFORD

1 and the security guard that was on the scene. And then,

2 notified my Corporal during that process of the call itself

3 and notified him who, in turn, notified investigations.

4 Q: Okay. Did that conclude your role in this case?

5 A: Yes, sir. I basically stayed on the scene, stayed at the

6 rooms to secure them, and that was it.

7 Q: All right. What did you find -- we'll collect the crime

8 scene, in Room 309 and 310, did you see anything amiss there?

9 A: 309 was practically left -- the door was still ajar when I

10 arrived and in Room 310, the same way, only there was a TV

11 missing from the wall mount area, if my memory serves me

12 correctly, with some bolts laying just directly underneath it.

13 Q: And that was, again, the conclusion of your role in this

14 case?

15 A: Yes, sir.

16 Q: Please answer any questions the Defense may have. Thank

17 you.

18 THE COURT: All right. Cross examination.

19 MR. HOLFORD: Yes, Your Honor.

20 CROSS EXAMINATION OF JAKE MICHAEL EARL ROY BY MR. HOLFORD:

21 Q: I'm sorry, is it Corporal?

22 A: No, sir, Officer Roy.

23 Q: I'm sorry, Officer Roy. On this incident, you -- have you

24 ever seen Mr. Collier before?

25 A: No, sir.

1 Q: You did not see him on November 21st, 2013, did you?

2 A: No.

3 Q: You didn't see a silver or a gold Saturn on that night,
4 did you?

5 A: No, not that I'm aware of. If I did, I ---

6 Q: When you first arrived, you just testified that Mr.
7 Kirkman told you that there was a silver, a silver car to be
8 on the lookout for?

9 A: Yes.

10 Q: You said BOLO, BOLO means be on the lookout for?

11 A: Yes, that's correct.

12 Q: And that's what you called in to dispatch?

13 A: Our dispatch, radio communications, yes, sir.

14 Q: Mr. Kirkman was the only one present when you arrived; is
15 that correct?

16 A: Initially, in a matter of moments or minutes, the security
17 guard that was working on the site approached us.

18 Q: And Mr. Kirkman gave you a description of someone but he
19 couldn't tell you who it was, right?

20 A: No.

21 Q: Someone he alleged that broke in?

22 A: Someone that he stated he saw in the room, right.

23 Q: And that was a black male.

24 A: Yes.

25 Q: With a hoodie?

1 A: Yes.

2 Q: And he gave some age range in the 20s?

3 A: Yes.

4 Q: Now, you just testified that on that night Mr. Kirkman
5 said the person in the room that he saw, this black male,
6 pointed a gun at him?

7 A: Yes.

8 Q: If he's testified under oath that he didn't point a gun at
9 him ---

10 MR. DEBUSK: Objection, pitting, Your Honor.

11 THE COURT: Sustained. It's not a proper question. You
12 cannot pit one witness against another, improper question.

13 MR. GARDNER: Your Honor, may we approach on that?

14 THE COURT: Yes, sir.

15 (REPORTER'S NOTE: A bench conference was held off the record
16 in the presence of but out of hearing of the Jury.)

17 BY MR. HOLFORD:

18 Q: Sorry, just one more question. And I lost it walking back
19 here, sometimes that happens. Court's indulgence.

20 THE COURT: Yes, sir, not a problem.

21 Q: On that night, you were looking for a black male driving a
22 silver car; is that correct?

23 A: Yes.

24 Q: No further questions.

25 THE COURT: Any redirect?

TODD MACPHERSON - DIRECT BY ERVIN

1 MR. ERVIN: No, Your Honor.

2 THE COURT: All right. Very good. Do you wish the
3 witness to be excused?

4 MR. ERVIN: We do.

5 THE COURT: Any objection?

6 MR. HOLFORD: No objection, Your Honor.

7 THE COURT: Very good. Sir, you are released from your
8 subpoena and may go back to your regular duties.

9 MR. ERVIN: Thank you, Your Honor.

10 THE COURT: All right. Next witness, Solicitor.

11 MR. ERVIN: The State would call Investigator Todd
12 MacPherson.

13 THE COURT: All right. Madame Clerk.

14 TODD MACPHERSON, HAVING BEEN DULY SWORN,
15 TESTIFIES AS FOLLOWS:

16 CLERK: Please be seated. State your full name and spell
17 your last name for the Court, please.

18 MR. MACPHERSON: Todd Christopher MacPherson, M-A-C-P-H-
19 E-R-S-O-N.

20 DIRECT EXAMINATION OF TODD CHRISTOPHER MACPHERSON BY MR.

21 ERVIN:

22 Q: Good afternoon, Detective MacPherson.

23 A: Good afternoon.

24 Q: What is your current duty?

25 A: I'm a detective with the Violent Crimes Unit at the Myrtle

TODD MACPHERSON - DIRECT BY ERVIN

1 Beach Police Department.

2 Q: Okay. How long have you been in that role?

3 A: About two years.

4 Q: Were you in that role on November 21st, 2013?

5 A: I was..

6 THE COURT: Hold on just one second. That microphone,
7 could you move it to the end of the table? There you go.

8 Good deal. Go ahead.

9 Q: Did you have an occasion to become involved in this
10 matter?

11 A: I did.

12 Q: How was that?

13 A: Several days -- I think four days had passed from the time
14 of the incident till it was assigned to me. I took of the
15 investigation, I believe it was December 17th, it was
16 approximately one month had gone by, we developed some leads,
17 developed the suspect. I made a six-photo lineup with the
18 Defendant's picture in the lineup using a computer software
19 system that we have in-house known as RMS. And what we do
20 with RMS is we pick out -- we put in the suspect's name and
21 date of birth and it shows us their photo, click that and then
22 we have five filler pictures that we pick out. And it's got
23 drop-down boxes and it goes by race, sex, hair color, eye
24 color, height, weight and ethnicity, I think, I've never even
25 used that one that I think it's in case somebody is maybe

TODD MACPHERSON - DIRECT BY ERVIN

1 Hispanic but I've never even used that button. I'm sure with
2 the Defendant, height, I never use that because it's
3 irrelevant. The pictures are face shots. And I only use his
4 weight if it's somebody extremely obese or somebody that's
5 very thin to kind of the filter out so I don't have to look
6 through so many pictures, but it filters out all the pictures,
7 basically.

8 MR. ERVIN: Your Honor, may I approach?

9 THE COURT: Yes, sir.

10 BY MR. ERVIN:

11 Q: I'm gonna hand you what's been marked as State's Fourteen.
12 To recognize that?

13 A: I do. That is the photo lineup.

14 Q: That's the photo lineup that you comprised?

15 A: Correct.

16 Q: You just described the nature of how you developed the
17 photographs to put into that.

18 A: Correct.

19 Q: Can you describe the nature of the photographs that you
20 see displayed there?

21 A: Full face shots, everybody has got the same general
22 physical features as the suspect, similar hair, eyes, color,
23 hair color, eye color.

24 Q: All right. Was the picture of -- was a picture of this
25 Defendant included in that lineup?

TODD MACPHERSON - DIRECT BY ERVIN

1 A: It is. It's Picture Number -- I'm sorry.

2 Q: Did -- when you comprised this lineup, did you -- did it
3 have any indications or any markings to suggest that the
4 Defendant's picture was included in that lineup?

5 A: I'm sorry. Can you say that again?

6 Q: Did this lineup, State's Fourteen for ID, when you
7 comprised it, did you mark it or otherwise suggest that the
8 Defendant's picture was included in this lineup?

9 A: No, it's marked 1, 2, 3 on the top, 4, 5, 6. Just -- they
10 are just numbered, there's no names. I mean, do you want me
11 to explain how that goes?

12 Q: Yeah, I gonna hand you what's been marked as State's
13 Fifteen for ID. Can you explain that?

14 A: When we developed the lineup, when were done with it, it
15 says, you know, do you want to print and we have -- I always
16 print in grayscale because I don't want colors, certain
17 colors, to be relevant and everybody's complexion is a little
18 different with color. We also print out -- I print out --
19 where everybody can later be identified and this comes also --
20 when I'm done with the lineup, and always print so that -- the
21 computer picks in random order so I never put -- I don't
22 decide where the suspect's photo is gonna be in the lineup. I
23 always hit random and then let the computer decides at random.
24 When I get this off the printer, then I get a manila envelope.
25 I put this in the manila envelope, I put this on top of it ---

TODD MACPHERSON - DIRECT BY ERVIN

1 Q: Let me stop you, when you say this, you're referring to

2 ---

3 A: I'm sorry, yeah, Fifteen.

4 Q: Okay.

5 A: I put it down, I put this on top of it so this can't be
6 seen but we can go, at a later date, and look all this up.

7 And I put this on top of it, I close the manila folder and
8 then on top of the disclaimer and it says things like, you
9 know, clothing changes, hair color, hairstyle, all these
10 things change and for them to keep that in mind.

11 Q: All right. Let me stop you there. State's Fourteen, is
12 that an accurate depiction of what you comprised for this
13 case?

14 A: Correct.

15 Q: All right. And have any alterations or deletions been
16 made to that?

17 A: No.

18 MR. ERVIN: All right. Your Honor, at this time I would
19 move State's Fourteen into evidence.

20 THE COURT: Any objection?

21 MR. HOLFORD: No objection.

22 THE COURT: All right. State's Fourteen is in evidence
23 without objection.

24 STATE'S EXHIBIT NUMBER FOURTEEN

25 ADMITTED INTO EVIDENCE.

1 BY MR. ERVIN:

2 Q: Okay. Now, Fifteen, when you were referring to the
3 document, explain just very simply Fifteen is a list of what?

4 A: The people that are identified in this photo. It's all
5 the people that are identified in this photo.

6 Q: And this photo is Exhibit Fourteen?

7 A: Correct.

8 Q: Okay. And is Exhibit Fifteen an accurate depiction of
9 what you comprised for this case?

10 A: That's correct.

11 Q: And no alterations or deletions have been made to that?

12 A: No.

13 MR. ERVIN: Your Honor, at this time, the State moves
14 Fifteen into evidence.

15 THE COURT: Any objection?

16 MR. HOLFORD: No objection.

17 THE COURT: All right. State's Fifteen is in evidence
18 without objection.

19 STATE'S NUMBER FIFTEEN

20 ADMITTED INTO EVIDENCE.

21 BY MR. ERVIN:

22 Q: Okay. So, you comprised this lineup. What did you do
23 after you developed this?

24 A: I asked Detective Cook to show the lineup for me. We
25 don't show our own lineups. Like I know who the suspect is so

TODD MACPHERSON - CROSS BY HOLFORD

1 I have another detective that doesn't necessarily know -- I
2 didn't share any of that suspect information with him -- if he
3 would show the lineup for me say that, you know, there's not
4 anything to suggest that I swayed it in any way possible.

5 Q: Is there any other reason that you don't show your lineup?

6 A: No, that's probably it.

7 Q: That's all I have for now. Thank you. Please answer any
8 Defense questions.

9 THE COURT: Cross examination.

10 MR. HOLFORD: Yes, Your Honor.

11 CROSS EXAMINATION OF TODD MACPHERSON BY MR. HOLFORD:

12 Q: Detective MacPherson, you are the investigator on this
13 case; is that correct?

14 A: Correct.

15 Q: And you came in -- you became the investigator a little
16 bit afterwards, right?

17 A: Yeah, approximately four days.

18 Q: But you would have knowledge of all the police reports and
19 all that because you headed up the investigation in this case?

20 A: Correct.

21 Q: You, yourself, did you report to the Jamaican Hotel that
22 night?

23 A: I did not.

24 Q: And so you didn't see any cars driving on the road that
25 night?

1 A: No.

2 Q: And you didn't see any black males on the road that night?

3 A: No.

4 Q: And your officers, none of your officers told you they saw

5 any black males on the road that night?

6 A: No.

7 Q: And they didn't see any gold or silver sedans?

8 A: No.

9 Q: In reference to State's Fourteen -- may I approach, Your

10 Honor?

11 THE COURT: Yes, sir, please.

12 Q: Can you tell me, Number 2, is there something different

13 about Number 2 that's not the same as the rest of the other

14 six?

15 A: His clothing -- everybody's clothing is different and I

16 don't control how their clothed.

17 Q: What is Number 2 wearing?

18 A: He's wearing a gray hooded sweatshirt or a light-colored

19 hooded sweatshirt; I don't know that is gray.

20 Q: Is he wearing a hoodie?

21 A: Correct.

22 Q: And by this time, you have been given a description, the

23 alleged black male was wearing a hoodie that night; is that

24 correct?

25 A: Correct. Although, to be honest, it had no relevance.

1 Twenty minutes after a crime, I don't think about the clothing
2 anymore, personally. I have been doing this job for sixteen
3 years.

4 Q: How did Mr. Collier end up at Number 2? I'm unfamiliar
5 with the way that lineups are made.

6 A: There is a random button when it says, would you like to
7 print this lineup now, you can keep him in the Number 1
8 position, you can move to any other position or you can hit
9 random. I always hit random, so the computer picked that out.

10 Q: Did you do a lineup with David Henry?

11 A: I don't believe so.

12 Q: Did you show anyone and lineup with Akmal Henry?

13 A: I don't believe so.

14 Q: How about ---

15 A: Are you talking in reference to this case?

16 Q: In reference to what we're here about.

17 A: Okay. No.

18 Q: You didn't do a lineup of David Henry or Akmal Henry?

19 A: No.

20 Q: And not of Trish Brandenburg?

21 A: No.

22 Q: Now, at some point in your investigation, you were looking
23 for a gold Saturn, none were seen driving that night by any of
24 your officers. Where is Myrtle Beach Police Department
25 located?

1 A: 1101 Oak Street.

2 Q: And about how far is that from the Jamaican?

3 A: Maybe two miles.

4 Q: And so if -- you're about two miles from the Jamaican and
5 so at some point you decided that it was probably someone
6 staying close to the Jamaican because no one saw the alleged
7 car on the road?

8 A: Are you talking about my notes?

9 Q: Yeah, your investigation that you did.

10 A: Yes. You're -- do you want me to explain.

11 Q: No, not necessarily.

12 THE COURT: The attorney asked the question and you
13 answer the questions to the best of your ability. If you feel
14 that it's necessary to explain your answer, you may do so.

15 A: Okay.

16 THE COURT: All right.

17 A: Yeah, I don't feel like I explained myself.

18 THE COURT: All right, sir. You may do so.

19 A: When I was -- the first day I was assigned to the case, I
20 looked at the report but I listened to Detective Fullwood's
21 interview on tape which put me on the path of a gold Saturn.
22 Yes, I said -- I'm thinking this, it's wintertime, it's Myrtle
23 Beach, we have a lot of officers on the road, we should've
24 seen this or it should be close. So, yes, I started close and
25 worked my way out looking for gold Saturns in parking lots and

TODD MACPHERSON - CROSS BY HOLFORD

1 that type of thing.

2 Q: And you found one, didn't you?

3 A: I did.

4 Q: It belonged to a Teresa Purcell?

5 A: Correct.

6 Q: And I believe she had a young son, too, a Nick -- but
7 driving age?

8 A: Yes.

9 Q: Not the last name Purcell, one moment. Nick Huffnagel;
10 is that correct?

11 A: Yes, I don't know, but I'm sure if it's written down, I
12 ---

13 Q: But you didn't bring them in and question them as
14 suspects, did you?

15 A: I questioned them at their home. I found out that the
16 car hadn't been moved and it was in serious disrepair.

17 Q: Well, did you also find out that the car could've been
18 driven that night, though?

19 A: I don't recall. For whatever reason, and I don't recall
20 at this moment, but something took them off my radar.

21 Q: Can you describe Teresa and Nick to me?

22 A: White male, white female, I mean, if that's what you're
23 looking for.

24 Q: I have no further questions at this time.

25 THE COURT: Any redirect?

TODD MACPHERSON - REDIRECT BY ERVIN

1 MR. ERVIN: Briefly, Your Honor.

2 REDIRECT EXAMINATION OF TODD MACPHERSON BY MR. ERVIN:

3 Q: Let me ask you about what Mr. Holford just asked you
4 about, Detective MacPherson.

5 A: Okay.

6 Q: That vehicle that was in the possession of Mr. Huffnagel,
7 I believe he said, do you know if that was functional on the
8 date of this incident?

9 A: From what I remember and I haven't refreshed myself since
10 then because it seemed like they got off my radar and I went
11 on with my investigation. But I believe I remember finding
12 out that that car was not functional.

13 Q: Okay.

14 A: I mean, my very first day I was assigned to this case, I
15 found that car, I investigated them and then the Defendant
16 wasn't developed as a suspect for a month -- close to --
17 approximately a month later. So, something took them off and
18 it wasn't their race. I think it was some disrepair with the
19 car.

20 Q: If I handed you a report that you generated, would that
21 refresh your recollection?

22 A: Absolutely.

23 MR. ERVIN: Your Honor, may I approach?

24 MR. HOLFORD: Objection, Your Honor, I don't believe he's
25 asked a question that he needs to refresh his memory on.

TODD MACPHERSON - REDIRECT BY ERVIN

1 THE COURT: Let me see the ---

2 MR. HOLFORD: The Detective has been able to answer all
3 the questions.

4 THE COURT: I'm going to allow it based upon the
5 questions that were asked on cross examination.

6 MR. HOLFORD: Yes, Your Honor.

7 BY MR. ERVIN:

8 Q: Do you recognize that document?

9 A: That's my follow-up.

10 Q: Okay. Can you read the bottom paragraph ---

11 THE COURT: To yourself.

12 Q: --- to yourself.

13 A: Okay.

14 Q: Okay. Does that refresh your recollection on ---

15 A: Yes, it does.

16 Q: Was that other vehicle, in fact, operational at the time
17 of this incident?

18 A: No, it had a blown motor and hadn't been operational for
19 weeks.

20 Q: Okay. Let me ask you one other question. The -- as far
21 as response time goes and when a BOLO was put out and you have
22 other officers and patrolmen looking for a vehicle, about how
23 far can a patrolman go in their area or their sector?

24 A: They stay in their area. We have -- Myrtle Beach would
25 have five patrol areas usually and you stay in your area.

TODD MACPHERSON - REDIRECT BY ERVIN

1 It's kind of like playing a sport.

2 Q: Okay. And how -- what size does that area encompass?

3 Are we talking five square miles, ten, two?

4 A: That area would've been 38th Avenue North to 16th Avenue
5 North from Ocean Boulevard all the way out to the Bypass.

6 Q: Okay. So, officers in that particular sector would not
7 extend past that to look for a BOLO vehicle, necessarily; is
8 that correct?

9 A: No, you -- I don't know how many officers were working
10 that night but you'd have one officer working from 38th North
11 to the upper city limits usually. One working that area.
12 Anyway, there's five patrol areas and it's -- but then you
13 have the waterfront units as well, but they work south of 21st
14 Avenue North down on the Boulevard. But in the wintertime,
15 you know, they -- a serious call like this, they could move
16 around, the Boulevard guys, I'm not exactly sure ---

17 Q: Okay. But it is true that this Defendant was not found
18 in a Saturn that night?

19 A: No, he was not found.

20 Q: In your estimation and your background with police
21 experience, how far could a suspect vehicle travel from the
22 time the call was made from the victim to the time the BOLO
23 was put out in this case?

24 A: A lot of 911 calls go to Horry County dispatch. They
25 talk to them, then they -- their dispatch calls our dispatch.

TODD MACPHERSON - RECROSS BY HOLFORD

1 and then our call taker tells the dispatch person that's on
2 the radio and then she gives it out over the air, several
3 minutes -- I would -- I'm not an expert on that but I would
4 say three to four minutes on average.

5 Q: So, it would be fair to say the suspect/Defendant in this
6 case, had about a three or four minute head start?

7 A: It's possible.

8 Q: That's all I have. Thank you.

9 THE COURT: Anything on those questions?

10 MR. HOLFORD: Yes, Your Honor. Your Honor, may I
11 approach?

12 THE COURT: Yes, sir, please.

13 RE CROSS EXAMINATION OF TODD MACPHERSON BY MR. HOLFORD:

14 Q: Detective MacPherson, I'm gonna hand you the exact same
15 copy as my copy of the report.

16 A: Uh-huh (affirmative response).

17 Q: Can you start reading right there, just to yourself. Is
18 it possible that Nick was driving the car that night?

19 A: I don't know how to answer this without being
20 argumentative. Can I read -- I can't read this?

21 THE COURT: You can't read it out loud, sir. You can use
22 that, set it down and give your testimony. So, you can't read
23 it.

24 A: All right. I found a gold in color Saturn, relatively
25 close on 30th Avenue North and -- okay. All right. I found a

TODD MACPHERSON - RECROSS BY HOLFORD

1 gold in color Saturn at 515 28th Avenue North. There was --
2 when I knocked on the door -- and the car was in awful shape
3 but I knocked on the door and I talked to a -- a white male
4 that was born in '93 was at the house and he was there with
5 his disabled, I think, it's the father. I asked him where he
6 was at on 11/21 and if he had any reason to be at the -- or I
7 asked him it was possible that he was on the Boulevard. He
8 said it was possible. I asked him if he was on the Boulevard
9 and he said, no, he had no reason to be on the Boulevard that
10 day.

11 Q: You asked him if it was possible he could've been driving
12 that car that night and he said it's possible.

13 A: Okay. I did. I asked Nick if it was possible he was
14 driving the Saturn on 11/21/2013 and Nick told me that it was
15 possible but he also told me that he didn't, he had no reason
16 to be down there. Can I go further?

17 THE COURT: Yes, sir, you can continue.

18 A: Okay. Nick's mother worked at Piggly Wiggly. I talked
19 to Nick's mother and she's the one that told me that the car
20 had a blown motor and hadn't been drivable for weeks. I
21 continued to drive by that car after talking to them and the
22 car never moved but they were off my radar at that point just
23 from the condition of the car and what I was told.

24 Q: When did you talk to Nick's mother? December 5th?

25 A: Yes.

TODD MACPHERSON - REDIRECT BY ERVIN

1 Q: Is that some weeks after November 20th?

2 A: Some weeks.

3 MR. HOLFORD: No further questions, Your Honor.

4 THE COURT: Any redirect on that?

5 MR. ERVIN: Just one question, Your Honor.

6 REDIRECT EXAMINATION OF TODD MACPHERSON BY MR. ERVIN:

7 Q: Detective MacPherson ---

8 A: Yes.

9 Q: At some point in your investigative experience and
10 background, you did not pursue Mr. Nick Huffnagel as a suspect
11 in this case, correct?

12 A: Correct.

13 Q: You dropped him off your radar you said?

14 A: Well, I -- I'm a trust-by-verify type of guy. I didn't
15 drive by just to see, you know, make sure the car is not
16 moving, that type of thing, but it was in such horrible
17 disrepair and it led me to believe that it hadn't been moved
18 that, you know, but I did drive by. I'm not saying they were
19 totally off.

20 Q: But you followed up and you, through the course of your
21 investigation, he was not a suspect anymore in this, correct?

22 A: Correct.

23 Q: That's all I have. Thank you.

24 THE COURT: You may step down.

25 Your next witness, please, sir.

BRIAN TRUEX - DIRECT BY ERVIN

1 MR. ERVIN: The State would call Special Agent Brian
2 Truex.

3 THE COURT: All right. All right, sir. Come all the way
4 around and meet the Clerk up here, please, sir.

5 BRIAN TRUEX, HAVING BEEN DULY SWORN, TESTIFIES
6 AS FOLLOWS:

7 CLERK: State your full name and spell your last name for
8 the Court, please.

9 MR. TRUEX: Brian Carl Truex, T-R-U-E-X.

10 THE COURT: Go ahead, Solicitor.

11 MR. ERVIN: Thank you, Your Honor.

12 DIRECT EXAMINATION OF BRIAN CARL TRUEX BY MR. ERVIN:

13 Q: Good afternoon, Agent Truex.

14 A: How you doing?

15 Q: Where are you employed right now?

16 A: Currently I work for the State Law Enforcement Division,
17 SLED.

18 Q: How long have you been at SLED?

19 A: About four months.

20 Q: Where did you work before SLED?

21 A: The Myrtle Beach Police Department.

22 Q: How long were you with them?

23 A: Fifteen years.

24 Q: Were you employed at Myrtle Beach Police on November
25 21st, 2013 and thereabouts a month after?

1 A: Yes, sir.

2 Q: Okay. What were your duties in January of 2013?

3 A: At that time, I was a violent crimes detective.

4 Q: Did you participate in the investigation of a burglary
5 and a weapons charge related to the Jamaican Motor Inn that
6 occurred on November 21st, 2013?

7 A: I did.

8 Q: And what was your role in that investigation?

9 A: I was involved in the arrest and interview of the suspect
10 in that case.

11 Q: Who was the chief investigator in that investigation?

12 A: Detective Todd MacPherson.

13 Q: And at some point did you encounter this Defendant, Mr.
14 Collier, during the investigation?

15 A: Yes, sir.

16 Q: Under what circumstances?

17 A: He was observed at 6th Avenue South and Ocean Boulevard
18 in that area walking down the street and he was stopped
19 related to those warrants.

20 Q: Okay. At the time of your initial encounter with this
21 Defendant, was he -- what was his appearance?

22 A: He was dressed in heavy clothing, it was winter, it was
23 cold and he was walking northbound on the Boulevard. He was
24 -- if I remember correctly he was wearing a large hoodie, he
25 had multiple layers of clothing on.

BRIAN TRUEX - DIRECT BY ERVIN

1 Q: Okay. What about his facial features?

2 A: I don't specifically remember his facial features. I
3 remember -- I remember the general appearance of his face
4 matching the photo and that he turned away when we drove by
5 him.

6 Q: Was he clean-cut then?

7 A: I don't remember exactly if he was clean-cut but I
8 wouldn't be able to tell you a hundred percent.

9 Q: All right. So -- I'm sorry. What was the date of your
10 encounter with him?

11 A: It would've been the 29th into the 30th, depending on
12 what time of the day we stopped him -- it could've been after
13 midnight on the 30th but it was right in that time.

14 Q: Okay. And what happened after you stopped him?

15 A: I stopped him and there was a brief encounter on the side
16 of the road related to his identity. Once his identity was
17 confirmed, he was transported up to the Myrtle Beach Police
18 Department for an interview.

19 Q: Was there any issue with your initial encounter related
20 to his identity?

21 A: He attempted to give us a false name and give us a
22 different name to evade arrest.

23 Q: Okay. Was he placed under arrest thereafter?

24 A: Yes, sir.

25 Q: And did you have a chance to interview this Defendant?

- 1 A: I did.
- 2 Q: Where did that take place?
- 3 A: At the Myrtle Beach Police Department jail in the
- 4 interview room.
- 5 Q: When was that?
- 6 A: In the early morning hours, sometime after 1:00 A.M.
- 7 Q: How long after the arrest did the interview take place?
- 8 A: Five to ten minutes, maybe.
- 9 Q: Okay.
- 10 A: The length of time it would've taken to transport to the
- 11 Police Department and have the booking process completed.
- 12 Q: Who was present in that interview?
- 13 A: Myself initially, Mr. Collier and then Detective Allen
- 14 joined us approximately -- maybe twenty to thirty minutes into
- 15 the interview.
- 16 Q: All right. Did you or Detective Allen threaten or coerce
- 17 this Defendant in any way to give him a statement?
- 18 A: No, sir.
- 19 Q: Did you make any promises or issue any threats to this
- 20 Defendant?
- 21 A: No, sir.
- 22 Q: Did you deprive him of anything he needed in order for
- 23 him to give you this statement?
- 24 A: No, sir.
- 25 Q: Did you inform him of his Miranda Rights?

1 A: I did.

2 Q: Was he under the influence of any drugs or alcohol when
3 he gave the statement?

4 A: He stated that he had smoked crack approximately forty-
5 five minutes prior to the interview.

6 Q: Did you question him about the -- in detail about the
7 effects of smoking crack in that interview?

8 A: I did.

9 Q: Did he seem to understand the -- was he under the
10 influence still to you?

11 A: He did not appear so to me.

12 Q: Okay.

13 A: He stated he was not.

14 Q: I'm gonna hand you what's been marked as State's Thirteen
15 for ID, do you recognize that document?

16 A: Yes, sir. That's the Miranda form that I would've read
17 to Mr. Collier and had him sign.

18 Q: All right. And is that a standard form that you give any
19 suspect in a case?

20 A: It is.

21 Q: You said yes?

22 A: Yes, sir.

23 Q: All right. Whose signature is that on the signed portion
24 of it?

25 A: Under the signed portion is Derek Collier and below is my

1 signature.

2 Q: Okay. Has that been altered or in any way deleted since
3 the time you recognized it?

4 A: No, sir.

5 MR. ERVIN: Your Honor, at this time, I'd move Thirteen
6 into evidence.

7 THE COURT: Any objection?

8 MR. HOLFORD: May I see that?

9 THE COURT: Yes, sir.

10 MR. HOLFORD: No objection.

11 THE COURT: All right. State's Thirteen is in evidence
12 without objection. You may proceed.

13 STATE'S EXHIBIT NUMBER THIRTEEN

14 ADMITTED INTO EVIDENCE

15 BY MR. ERVIN:

16 Q: Agent Truex, let's go back to the drug issue. So, the
17 Defendant told you he had smoked crack cocaine how long before
18 this interview?

19 A: He stated forty-five minutes.

20 Q: Okay. And you -- did you notice anything unusual about
21 his mental state at the time?

22 A: No, sir. He was articulate.

23 Q: Was he able to clearly communicate with you?

24 A: Yes, sir. He was articulate, he answered my questions in
25 an appropriate manner.

BRIAN TRUEX - DIRECT BY ERVIN

1 Q: Did he appear uncomfortable in any way?

2 A: No, sir. He actually was adamant about going forward
3 with the interview.

4 Q: Okay. I'm gonna show you what's been marked as State's
5 Exhibit Seventeen. Do you recognize that?

6 A: That's the recorded interview of Derek Collier on a CD.

7 Q: Is that a fair and accurate recording of the interview
8 conducted with this Defendant?

9 A: It is.

10 Q: And there were certain redactions made in the presence --
11 outside the presence of the Jury ---

12 A: Correct.

13 Q: --- with the Court, correct? (To the Court) Your Honor,
14 at this time, I would move to admit State's Seventeen and
15 publish it to the Jury.

16 THE COURT: Any objection?

17 MR. HOLFORD: Yes, Your Honor. I would ask to question
18 Detective Truex about the voluntariness of this statement and
19 would objection to the voluntariness of the statement.

20 THE COURT: I'll allow you to cross examine him now as
21 the voluntariness of the statement and then if you want to
22 raise any matters after that, I'll hear it. Go ahead.

23 CROSS EXAMINATION OF BRIAN CARL TRUEX BY MR. HOLFORD:

24 Q: Detective Truex, you said that Derek admitted to smoking
25 crack before the interview?

1 A: Yes, sir.

2 Q: About four to five or forty-five minutes before?

3 A: Forty-five minutes.

4 Q: Forty-five minutes before. You were a road officer
5 before, weren't you?

6 A: Yes, sir.

7 Q: If you pulled someone over and they admitted smoking
8 crack, would you arrest them for DUI?

9 A: It depends on their impairment.

10 Q: Would you agree that crack cocaine impairs someone's
11 abilities?

12 A: It can, yes.

13 Q: No further questions at this time, Your Honor,

14 THE COURT: All right, sir. Do you object to State's
15 Seventeen?

16 MR. HOLFORD: Yes, Your Honor. I would object to State's
17 Seventeen as to voluntariness. The evidence is that Mr. ---

18 THE COURT: Is that -- is it based on your prior
19 objections?

20 MR. HOLFORD: Your Honor, it's based on prior objections
21 as well as the fact that he smoked crack cocaine and could not
22 give a voluntary statement, sir.

23 THE COURT: All right, sir, that's ---

24 MR. HOLFORD: Yes, Your Honor.

25 THE COURT: All right. I'm going to allow State's

BRIAN TRUEX - DIRECT BY ERVIN

1 Seventeen in evidence over the objection of the Defense.

2 MR. HOLFORD: Yes, Your Honor.

3 STATE'S EXHIBIT NUMBER SEVENTEEN

4 ADMITTED INTO EVIDENCE

5 THE COURT: You may proceed.

6 MR. ERVIN: Your Honor, permission to publish the ---

7 THE COURT: You may publish it.

8 *****OFF THE RECORD*****

9 (REPORTER'S NOTE: State's Exhibit Seventeen published to the
10 Jury - not transcribed herein.)

11 (On the Record.)

12 CONTINUATION OF DIRECT EXAMINATION BY MR. ERVIN:

13 Q: Agent Truex, what was taking place at the very beginning
14 of that recording before the interview actually took place?

15 A: You're talking about the silence part of it?

16 Q: Yes, sir.

17 A: He -- I started -- when I start -- whenever I do an
18 interview and I go into the jail, I set up the interview room,
19 I turn on the recorder, set my stuff in and then I left -- you
20 can hear me out in the jail asking the jailors, you guys done
21 with him. I was retrieving him from the booking process,
22 whenever they were done, to bring him into the interview room.

23 Q: Okay. And obviously, we just heard on there, this
24 Defendant referred to the little motel beside the Jamaican.
25 Did you ever make mention of that before he pointed that out

BRIAN TRUEX - DIRECT BY ERVIN

1 to you?

2 A: He said the little hotel next to the Caribbean.

3 Q: The Caribbean.

4 A: Right, correct, no I did not. He indicated the avenues
5 -- you could hear him indicate the avenues on the south end
6 and then when we tried to give landmarks on the south end, he
7 corrected us and said, no, the north end, which is on the
8 opposite end of the Boulevard and the Caribbean, which is the
9 hotel directly next to the Jamaican.

10 Q: Okay. And how much time did you say passed between your
11 encounter and the rest on the street and this interview?

12 A: If I had to guess, five to ten minutes. The length of
13 time it would take to drive from 6th Avenue North to 10th
14 Avenue North and the booking process.

15 Q: That's all I have. Please answer the Defense questions.
16 Thank you.

17 THE COURT: Cross examination.

18 MR. HOLFORD: Yes, Your Honor.

19 CROSS EXAMINATION OF BRIAN CARL TRUEX BY MR. HOLFORD:

20 Q: Detective Truex, since this is on my mind, you were
21 actually the one who said Jamaican; Mr. Collier never said
22 Jamaican first, did he?

23 A: Correct. He said the hotel next to the Caribbean and I
24 said, the Jamaican, which is the hotel next to it.

25 Q: Prior to this interview, did you have any conversation

- 1 with Mr. Collier?
- 2 A: Briefly on the side of the road related to his name.
- 3 Q: And he was wearing a hoodie?
- 4 A: He was wearing some form of a bulky shirt. I believe it
- 5 was a hoodie but I couldn't tell you exactly.
- 6 Q: And you stopped him in reference to this case?
- 7 A: Correct.
- 8 Q: And then did you put him in your car, did you arrest him?
- 9 A: I don't have transportable vehicle. Somebody else, one
- 10 of the patrol officers would've transported him. Yes, he was
- 11 arrested.
- 12 Q: He was arrested there?
- 13 A: Correct.
- 14 Q: Was he read Miranda there?
- 15 A: No, he was not.
- 16 Q: Did he ask for an attorney?
- 17 A: No, he did not.
- 18 Q: At any point before this, did he say he wanted an
- 19 attorney present?
- 20 A: No, sir. We didn't talk anything about the case prior to
- 21 transport.
- 22 Q: But you certainly talked about something because when you
- 23 come on you say, it's as if you guys have talked before,
- 24 right?
- 25 A: We talked on the side of the road about his name, that's

BRIAN TRUEX - CROSS BY HOLFORD

1 the conversation at the very beginning when he says, when he
2 apologizes for giving me the runaround, he's talking about
3 lying about his name on the side of the road and then that's
4 when you hear me say, we're on the same page now, your name is
5 Derek Collier, because we had that conversation on the side of
6 the road.

7 Q: How did you find out he was lying about his name?

8 A: He told me -- he finally admitted to it.

9 Q: Now, Mr. Collier said he smoked crack prior to this
10 interview, correct?

11 A: Correct.

12 Q: And we talked about that just briefly.

13 A: Sure.

14 Q: And he says in the beginning of this interview that there
15 is some debt owed, do you remember that?

16 A: Correct.

17 Q: Do you remember what he was talking about, a debt owed by
18 his mom?

19 A: I do.

20 Q: Who was that debt owed to?

21 A: Some local -- local people that he knew.

22 Q: Some drug dealers?

23 A: From his statement, yes.

24 Q: It's fair to say that my client, Mr. Collier, knows some
25 pretty bad people in Myrtle Beach; is that correct?

- 1 A: Based on the names that he gave me, I'm familiar with
2 some of those people and ---
3 Q: Now, did you ever -- in reference -- well, do you know a
4 T.S.?
5 A: I don't -- I'm not aware of who that ---
6 Q: And these are all street names, right?
7 A: Correct.
8 Q: A lot of people go by a street name; is that correct?
9 A: Lots of people do, yes.
10 Q: Do you know Y.O.?
11 A: It was -- the name was given to me; I don't know who that
12 is.
13 Q: Do you know Twin?
14 A: I don't know who that is.
15 Q: Texas?
16 A: None of the names he gave me, I knew by recognition. I
17 know a lot of them ---
18 Q: DayDay, any of those guys?
19 A: I've heard the nickname DayDay before but I wouldn't know
20 what the real name was based on this investigation.
21 Q: Now, in this statement we just listened to, Mr. Collier
22 says that he got a number of TVs through an air conditioning
23 vent. We there an air conditioning vent in this hotel?
24 A: I've never been to the hotel, so I don't know.
25 Q: But this was Room 309 at the Jamaican?

BRIAN TRUEX - CROSS BY HOLFORD

1 A: I couldn't tell you. My only involvement in this case
2 was simply the arrest of him and the interview. I'm not the
3 case agent on any of the actual warrants or the arrest. I was
4 simply the detective on duty that interviewed him related to
5 these.

6 Q: So, you don't know what he's charged with?

7 A: I knew what he was charged with based on the warrants
8 that I have and the warrants that I served him. But as far as
9 the specifics of the room numbers and things like that, I
10 wasn't familiar with them specifically.

11 Q: So, you don't know if he got in or out through an air
12 conditioning vent?

13 A: At the time, you know, I had basic knowledge of those,
14 however, I don't know what the entry method was for the
15 Jamaican.

16 Q: And one thing that he's clear about, although he seems to
17 mention that he was around the Caribbean, there was no gun?

18 A: He says that he never witnessed -- he said, no, he'd
19 never witnessed anybody point a gun at anybody.

20 Q: He certainly didn't have a gun?

21 A: He didn't have a gun on him when I arrested him.

22 Q: Did you ever find a gun?

23 A: I did not, no.

24 Q: You didn't respond on November 21st, 2013, did you, to
25 the Jamaican?

1 A: No.

2 Q: And so you didn't meet with Justin Kirkman, did you?

3 A: I did not.

4 Q: And you weren't out there looking for any black males
5 driving a silver car that night, were you?

6 A: I couldn't tell you specifically that night, I was ---

7 Q: Your involvement just came later and really all you're
8 involved with is taking this statement, would that be fair to
9 say?

10 A: Taking his statement and taking him into custody, yes.

11 Q: No further questions.

12 THE COURT: Any redirect?

13 MR. ERVIN: Just a few, Your Honor.

14 REDIRECT EXAMINATION OF BRIAN CARL TRUEX BY MR. HOLFORD:

15 Q: You already said but you did Mirandize this Defendant
16 before your interview, correct?

17 A: Correct, prior to his in-custody interrogation.

18 Q: And he freely waived those rights and spoke to you,
19 correct?

20 A: He did.

21 Q: All right. And what was the date of your encounter with
22 him and the arrest?

23 A: The evening of the 29th into the 30th. It was most
24 likely after midnight on the 30th.

25 Q: And that's December?

BRIAN TRUEX - RECROSS BY HOLFORD

1 A: No, January -- I think it's January 30th.

2 Q: Of 2000 ---

3 A: 2013.

4 Q: Yes.

5 A: 2014, I'm sorry.

6 Q: And you have no way to know if this Defendant was armed
7 on November 21st, 2013?

8 A: I do not.

9 Q: He did not have a gun in your encounter?

10 A: The night that I arrested him he did not have a weapon on
11 him.

12 Q: Okay. That's all. Thank you.

13 THE COURT: Anything on that question?

14 MR. HOLFORD: Yes, just one.

15 RECROSS EXAMINATION OF BRIAN CARL TRUEX BY MR. HOLFORD:

16 Q: Did you say it was January 30th, 2013 or 2014?

17 A: '14, he was speaking when I corrected myself to 2014.

18 Q: Do you have the Miranda form in front of you?

19 A: I do not.

20 Q: This is State's Thirteen, which is in evidence. What
21 date is on that ---

22 A: 2013. I got them backwards.

23 Q: No further questions.

24 THE COURT: You may step down, sir.

25 A: Thank you.

CAROL ALLEN - DIRECT BY DEBUSK

1 THE COURT: Y'all come up and talk to me for just a
2 second, please.

3 (REPORTER'S NOTE: A bench conference was held off the record
4 in the presence of but out of hearing of the Jury.)

5 MR. DEBUSK: Your Honor, the State calls Detective Carol
6 Allen.

7 MR. ERVIN: Your Honor, before we have Detective Allen, I
8 would move to have Exhibit Seventeen available for the Jury.

9 THE COURT: All right, sir. Just give that to the Court
10 Reporter. It's in evidence over the objection of the Defense.

11 All right. Ms. Allen, come all the way around up here
12 and meet the Clerk's representative right here at the corner,
13 please, ma'am.

14 CAROL ANN ALLEN, HAVING BEEN DULY SWORN,
15 TESTIFIES AS FOLLOWS:

16 CLERK: State your full name and spell your last name for
17 the Court, please.

18 MS. ALLEN: Carol Ann Allen, last name spelled A-L-L-E-N.

19 DIRECT EXAMINATION OF CAROL ANN ALLEN BY MR. DEBUSK:

20 Q: Detective Allen, who is your employer?

21 A: City of Myrtle Beach.

22 Q: And what's your -- what are your duties?

23 A: I'm a Detective with the Myrtle Beach Police Department.

24 Q: How long have you been with Myrtle Beach?

25 A: Twenty-one years.

CAROL ALLEN - DIRECT BY DEBUSK

1 Q: How about in January of this year, January 31st, what
2 were your duties then?

3 A: I was still a detective over property crimes.

4 Q: Did you participate in an investigation of a burglary at
5 the Jamaican Motor Inn that happened on November 21st, 2013?

6 A: Yes, sir.

7 Q: Did you go to the scene?

8 A: I was not on the scene, no.

9 Q: What was your involvement?

10 A: I conducted interviews.

11 Q: Did you interview the Defendant, Mr. Collier?

12 A: I did.

13 Q: When was that?

14 A: I had one interview on January 30th and one interview on
15 January 31st.

16 Q: Let's talk about the one on January 31st. Let me step
17 back one moment. Were you present for part of interview that
18 Detective Truex conducted?

19 A: Yes, I was.

20 Q: During the course of that interview, did you threaten or
21 coerce Mr. Collier in any way to help get a statement from
22 him?

23 A: No, I did not.

24 Q: Did you tell him what to say?

25 A: No, sir.

CAROL ALLEN - DIRECT BY DEBUSK

1 Q: Did you give him any promises or threaten him in any way
2 to get him to talk?

3 A: No, I did not.

4 Q: Let's to the 31st then. Why did you talk to him on the
5 31st?

6 A: I was contacted by one of one of our detention officers
7 with the Myrtle Beach Police Department. They said that Mr.
8 Collier asked or requested to speak to a detective.

9 Q: So, you obliged?

10 A: Yes, sir.

11 Q: Now, even though you went down there by invitation, did
12 you read him his Miranda warnings again?

13 A: Yes, sir.

14 Q: Did you use the Miranda form that's usually used by the
15 City of Myrtle Beach?

16 A: I did.

17 Q: Let me show you State's Exhibit Nineteen and ask if you
18 recognize it.

19 A: Yes. This is the statement I used. It has my signature
20 along with Mr. Collier's signature.

21 Q: Okay.

22 A: Dated January 31st.

23 Q: And is that from that statement where he requested your
24 presence?

25 A: Yes, sir, it is.

CAROL ALLEN - DIRECT BY DEBUSK

1 MR. DEBUSK: The State would move Exhibit Nineteen into
2 evidence.

3 THE COURT: Any objections?

4 MR. HOLFORD: No objection, Your Honor.

5 THE COURT: All right. State's Nineteen is in evidence
6 without objection. You may proceed.

7 STATE'S EXHIBIT NUMBER NINETEEN

8 ADMITTED INTO EVIDENCE

9 BY MR. DEBUSK:

10 Q: Now, before he requested you come down there and talk to
11 him, did you threaten or coerce him in any way to get him to
12 give a statement?

13 A: No, sir.

14 Q: Did you make him any promises or issue any threats to get
15 him to give a statement?

16 A: No, I did not.

17 Q: Did you deprive him or anything he needed in order to get
18 him to give you that statement?

19 A: No, I did not.

20 Q: Did he appear to be under the influence of alcohol or
21 drugs when he gave his statement?

22 A: He did not appear to be.

23 Q: Did you ask about that?

24 A: Yes, I did.

25 Q: Did he say he was under the influence of alcohol or

1 drugs?

2 A: I asked him if he had any drugs or alcohol and he said
3 no.

4 Q: Did he appear to be physically uncomfortable in any way
5 when giving that statement?

6 A: No, sir.

7 Q: Did he appear to be anxious to speak to you?

8 A: Yes.

9 Q: Okay. Did you record that statement?

10 A: I did.

11 Q: Let me show you what's been marked as State's Exhibit
12 Eighteen and ask if you recognize this.

13 A: Yes. This is marked Derek Collier interview, January
14 31st, 2014.

15 Q: Is that a fair and accurate representation of the
16 interview that you recorded with the Defendant?

17 A: Yes, sir.

18 MR. DEBUSK: Your Honor, we would move State's Exhibit
19 Eighteen into evidence at this time. It is redacted by
20 consent of the parties.

21 THE COURT: Any objection to State's Eighteen?

22 MR. HOLFORD: Your Honor, I'll renew all prior objections
23 to State's Eighteen.

24 THE COURT: All right. I'm gonna allow State's Eighteen
25 into evidence. You may proceed.

CAROL ALLEN - DIRECT BY DEBUSK

STATE'S EXHIBIT NUMBER EIGHTEEN

ADMITTED INTO EVIDENCE

MR. DEBUSK: May we publish it for the Jury, Your Honor?

THE COURT: You may do so.

MR. DEBUSK: Thank you.

*****OFF THE RECORD*****

(REPORTER'S NOTE: State's Exhibit Number Eighteen published
for the Jury - not transcribed herein.)

(On the Record.)

BY MR. DEBUSK:

Q: Detective Allen, let me stop for just a moment. You said
you were showing him a picture; is that correct? What were
you showing a picture of?

A: I was showing him a picture of David Henry.

Q: Let me show you State's Exhibit Twenty and ask if you
recognize that?

A: Yes. That is a photograph of David Henry.

MR. DEBUSK: Your Honor, we would move this into evidence
as State's Twenty.

THE COURT: Any objection?

MR. HOLFORD: No objection.

THE COURT: All right. State's Twenty is in evidence
without objection. You may proceed.

STATE'S EXHIBIT NUMBER TWENTY

ADMITTED INTO EVIDENCE

1 MR. DEBUSK: Thank you, Your Honor.

2 *****OFF THE RECORD*****

3 (REPORTER'S NOTE: State's Exhibit Number Eighteen published
4 for the Jury - not transcribed herein.)

5 (On the Record.)

6 BY MR. DEBUSK:

7 Q: Did you or any other Myrtle Beach officer, to your
8 knowledge, ever brief Collier on the details of the crime
9 scene at the Jamaican Motor Inn prior to that interview?

10 A: I did not personally, no.

11 Q: Did you even know that the witness was wearing pajama
12 pants before he told you in that interview?

13 A: No, I did not.

14 MR. DEBUSK: Nothing further, Your Honor.

15 THE COURT: Cross examination.

16 MR. HOLFORD: Yes, Your Honor.

17 CROSS EXAMINATION OF CAROL ANN ALLEN BY MR. HOLFORD:

18 Q: Detective Allen, you were there for the first interview
19 with Detective Truex, weren't you?

20 A: Yes, I came in about halfway through, I believe.

21 Q: That was about 2:00-2:30 in the morning, A.M.?

22 A: That sounds about right, yes.

23 Q: And you were aware that Mr. Collier had smoked crack
24 before that interview? Were you aware of that ---

25 A: Just per what I was told.

CAROL ALLEN - CROSS BY HOLFORD

1 Q: You're also aware that Mr. Collier advised he had a tenth
2 grade education?

3 A: That's correct.

4 Q: In the second interview we heard, you were the only
5 person in that one; is that correct?

6 A: That's correct.

7 Q: Mr. Collier sounds a lot more tired that he did in the
8 first one; is that right?

9 A: I hadn't noticed.

10 Q: This was at 11:32 at night?

11 A: The second one?

12 Q: Yes.

13 A: Yes, I believe that's when it was.

14 Q: And at this time, Mr. Collier had been sitting in jail
15 for some time, hadn't he?

16 A: I'm not really sure exactly how long at that point
17 though.

18 Q: Did you offer him any food or something to drink?

19 A: The Police Department, when they do the meals, they do
20 them at certain times, so he would've already been fed prior
21 to the interview.

22 Q: Was Mr. Collier free to go at that time?

23 A: He was incarcerated, no.

24 Q: So, he wasn't free to leave?

25 A: Not the jail.

CAROL ALLEN - CROSS BY HOLFORD

- 1 Q: You've had instances with people who have been arrested
2 and they've told you almost anything to be able to walk out of
3 the jail; is that correct?
- 4 A: It has happened, yes.
- 5 Q: It's not -- this would not be first time that someone
6 admitted to something in order to go home?
- 7 A: Of course not.
- 8 Q: David Henry, who we've talked about, Little D, right?
- 9 A: Yes.
- 10 Q: It's clear from that audio that Mr. Collier is scared of
11 this Little D; is that correct?
- 12 A: He mentioned that he was scared of him.
- 13 Q: Mr. Collier never admitted to you to having a gun?
- 14 A: That's correct.
- 15 Q: Never admitted ever carrying a gun?
- 16 A: That's correct.
- 17 Q: He said this Little D guy, this David Henry, is a stone-
18 cold killer; is that correct?
- 19 A: That's what -- those were his words, yes.
- 20 Q: And one of DayDay's shooters?
- 21 A: Correct.
- 22 Q: Do you know who DayDay is?
- 23 A: Not personally, no.
- 24 Q: Do you know about him?
- 25 A: Yes.

CAROL ALLEN - CROSS BY HOLFORD

1 Q: Fair to say he's a big time drug dealer around Myrtle
2 Beach?

3 A: One, I'm sure, you know ---

4 Q: There are a lot of them. Unfortunately, there are a lot
5 here.

6 A: Yes.

7 Q: In this, State's Twenty, this is a picture of Little D or
8 David Henry, correct?

9 A: That is a picture of David Henry, correct.

10 Q: He has short hair in this picture, doesn't he?

11 A: It looks to be, yes.

12 Q: Pretty clean shaven?

13 A: Yes.

14 Q: Maybe a baby face, kind of like mine?

15 A: Well, I don't know if I would describe it as a baby face
16 but he is -- has -- doesn't have too many whiskers on his
17 face.

18 Q: If you saw a picture of him, would you estimate he's in
19 his twenties, early thirties?

20 A: Possibly, yes.

21 Q: And he is certainly a black male?

22 A: Yes.

23 Q: This, the second interview, the one that you did by
24 yourself, that was after -- obviously, this is gonna sound
25 like a dumb question -- that was obviously after the first

CAROL ALLEN - CROSS BY HOLFORD

1 interview; is that correct?

2 A: That's correct.

3 Q: But this time he had had stated that he was not under the
4 influence, that being Mr. Collier, stated he was not under the
5 influence at that point?

6 A: That was his words, yes.

7 Q: Do you know about the Jamaican Motel?

8 A: Just a little bit. I mean, I've read the incident
9 reports.

10 Q: Did you respond on scene?

11 A: No, I did not.

12 Q: And so you weren't aware of any description at that time,
13 were you?

14 A: No, I was not.

15 Q: You were just involved in the interview process; would
16 that be fair to say?

17 A: That's correct.

18 Q: So, you wouldn't know if when he said he got TVs out of
19 air conditioning units if that was even possible?

20 A: I wouldn't have been privy to that information at that
21 point.

22 Q: No further questions.

23 THE COURT: Any redirect?

24 MR. DEBUSK: Yes, Your Honor.

25 REDIRECT EXAMINATION OF CAROL ANN ALLEN BY MR. DEBUSK:

CAROL ALLEN - REDIRECT BY DEBUSK

1 Q: You stated the Defendant expressed fear of David Donnelle

2 Henry?

3 A: Yes.

4 Q: Who you referred to as Little D?

5 A: Right.

6 Q: And he says he was afraid of him because he was one of

7 DayDay's shooters; is that correct?

8 A: That's correct.

9 Q: Yet, he went on, did he not, in that interview and gave
10 you some more information about Mr. Henry, didn't he?

11 A: He did.

12 Q: Did he accuse him of any crimes?

13 A: He did.

14 Q: He gives you details about these crimes committed by Mr.
15 Henry?

16 A: He did.

17 Q: Is that consistent with being afraid of him?

18 A: No, it is not.

19 Q: Now, based on his statements in that interview, there
20 were more statements about Mr. Henry, weren't there?

21 A: That's correct.

22 Q: And the information he gave was what led to those
23 warrants; is that correct?

24 A: That's correct.

25 Q: Those warrants would not have been obtained except for

1 the information given by that Defendant?

2 A: That's correct.

3 Q: Now, what dates -- those warrants were for various dates;
4 is that correct?

5 A: Yeah, they were various dates.

6 Q: Do you know the whereabouts of Mr. Henry from December
7 15th until the current time?

8 A: He was incarcerated at J. Reuben Long Detention Center.

9 Q: And did some of those crimes that that Defendant in that
10 interview accused David Donelle Henry of occurred after
11 December 15th?

12 A: Yes.

13 Q: And what happened to those warrants?

14 A: I'm sorry?

15 Q: What happened to those warrants? Did they go to a
16 preliminary hearing?

17 A: Yes.

18 Q: What happened to them?

19 A: They went through.

20 Q: The ones that happened when he was -- when Mr. Henry was
21 in jail?

22 A: Oh, they were dismissed.

23 Q: Because Mr. Henry was in jail, correct?

24 A: Exactly.

25 Q: That he gave you information against this individual that

1 turned out not to be true?

2 A: Right.

3 Q: And he claimed he was afraid of him?

4 A: That's correct.

5 Q: Thank you. No further questions.

6 THE COURT: Anything on those questions?

7 MR. HOLFORD: Yes, Your Honor.

8 RECROSS EXAMINATION OF CAROL ANN ALLEN BY MR. HOLFORD:

9 Q: Detective, the -- it was clear based on that interview
10 that Mr. Collier was looking for some type of leniency; is
11 that correct?

12 A: Yes, he was trying to help himself, sure.

13 Q: He was trying to help himself and he was trying to help
14 Myrtle Beach Police?

15 A: Sure.

16 Q: And he offered to come testify against David Henry; is
17 that correct?

18 A: That's correct.

19 Q: David Henry is actually testifying against Mr. Collier?

20 A: That's what I heard, yes.

21 Q: And -- no further questions.

22 THE COURT: You may step down, ma'am.

23 MR. DEBUSK: Your Honor, may Detective Allen be excused
24 from her subpoena?

25 THE COURT: Any objection to the witness being excused?

BY THE COURT

1 MR. HOLFORD: No, Your Honor.

2 THE COURT: All right. Ma'am, you are released from your
3 subpoena and may go back to your regular activities.

4 A: Thank you, Your Honor.

5 THE COURT: Thank you, ma'am.

6 BY THE COURT:

7 THE COURT: All right. Ladies and gentlemen, we are
8 going to stop for the evening. We will resume tomorrow -- I'm
9 administrative judge and I always schedule things in the
10 morning and I want to make sure that I don't tell you to be
11 here and I'm already in the courtroom doing something. Be
12 downstairs at -- in the assembly room at 9:15. The Clerk's
13 office will have something for you in the jury room. They'll
14 take you up and my plan is to have you out in the courtroom at
15 9:30 and start the trial at 9:30 in the morning. So,
16 remember, obviously, you're not supposed to be talking about
17 this case among yourselves. You go home and you see your
18 husband, wife, boyfriend, girlfriend, person down the street,
19 you can't talk about the case because unintentionally or
20 intentionally they'll give you their opinion about it and
21 obviously, that's not proper. So, after the case is over
22 with, you can talk about it as much or as little as you want
23 to but right now you can't talk about it. So, with that, I'll
24 see you back tomorrow morning. Be in the assembly room at
25 9:15, please. Thank you very much.

DAVID HENRY - DIRECT BY DEBUSK

1 ma'am. If you would move from that seat and move to that
2 empty chair right in front of you, please, ma'am.

3 All right. Ladies and gentlemen, for reasons that the
4 Court deemed proper, I have removed from the Jury of this case
5 Juror Number 174 and with that, Ms. Etherden, you are now one
6 of the regular twelve members of the Jury and we'll proceed
7 with further testimony in this case.

8 All right. Solicitor, your next witness, please.

9 MR. DEBUSK: Thank you, Your Honor. The State calls
10 David Donnelle Henry.

11 THE COURT: All right, sir. Come around over here and
12 met the Clerk right over there, please.

13 DAVID DONNELLE HENRY, HAVING BEEN DULY SWORN,
14 TESTIFIES AS FOLLOWS:

15 CLERK: Please be seated. State your full name and spell
16 your last name for the Court, please.

17 MR. HENRY: David Donnelle Henry, H-E-N-R-Y.

18 THE COURT: Could you spell your middle name, also,
19 please, sir.

20 MR. HENRY: D-O-N-N-E-L-L-E.

21 THE COURT: Thank you, sir.

22 All right. Go ahead, Solicitor.

23 DIRECT EXAMINATION OF DAVID DONNELLE HENRY BY MR. DEBUSK:

24 Q: Mr. Henry, where you are currently residing?

25 A: [REDACTED]

- 1 Q: How long have you been there?
- 2 A: Thirteen months.
- 3 Q: When did you go in?
- 4 A: December the 15th, 2013.
- 5 Q: Have you been out since?
- 6 A: No, sir.
- 7 Q: Were you given a bond?
- 8 A: Yes, sir.
- 9 Q: But you were not able to make it?
- 10 A: No, sir.
- 11 Q: You've got a bit of a criminal history, don't you?
- 12 A: You might say.
- 13 THE COURT: The Court Reporter is having a little bit of
- 14 hard time hearing you. If you could, scoot up just a little
- 15 bit, please, sir. Thank you. Very good. Go ahead.
- 16 Q: Let me ask you about some of that. In 1997, you got a
- 17 burglary second, don't you?
- 18 A: Yes, sir.
- 19 Q: Also from that year, a grand larceny?
- 20 A: Yes, sir.
- 21 Q: 1999, another burglary second nonviolent?
- 22 A: Yes, sir.
- 23 Q: 2001, petit larceny and forgery?
- 24 A: Yes, sir.
- 25 Q: 2005, grand larceny again?

1 A: Yes, sir.

2 Q: 2006, manufacturing and distribution of -- I'm sorry,
3 malicious damage, malicious damage to personal property,
4 misdemeanor level?

5 A: Yes, sir.

6 Q: And 2007, possession of cocaine base?

7 A: Yes, sir.

8 Q: 2008, strong armed robbery?

9 A: Yes, sir.

10 Q: 2010, shoplifting?

11 A: Yes, sir.

12 Q: 2010, another shoplifting; 2010, possession of cocaine
13 third?

14 A: Yes, sir.

15 Q: And then two more shopliftings for 2011 and 2010?

16 A: Yes, sir.

17 Q: You use drugs, Mr. Henry?

18 A: Yes, I used to use them, yes, sir.

19 Q: Before you went to jail?

20 A: I mean, yes, sir.

21 Q: What drug?

22 A: Cocaine.

23 Q: Okay. Is it fair to say that a lot of stealing and
24 shoplifting was to get money for cocaine?

25 A: I mean, just to have nice things and, so ---

- 1 Q: And also pay for some cocaine?
- 2 A: Sometimes.
- 3 Q: Do you know the Defendant Derek Collier?
- 4 A: Yeah.
- 5 Q: How do you know him?
- 6 A: Through my other Codefendant.
- 7 Q: Who's that?
- 8 A: Trish.
- 9 Q: What -- do you know Trish's full name?
- 10 A: Catrisha Brandenburg.
- 11 Q: What was the relationship between you and Trish?
- 12 A: We was good -- we was friends.
- 13 Q: Close friends?
- 14 A: Good friends.
- 15 Q: Was there any romantic relationship between the two of
- 16 you?
- 17 A: No.
- 18 Q: Okay. How about between Trish and the Defendant?
- 19 A: Yeah, they was going together.
- 20 Q: Did you ever stay with Trish?
- 21 A: Some nights, yeah.
- 22 Q: Okay. Did you ever see the Defendant there at Trish's
- 23 house?
- 24 A: A couple of times.
- 25 Q: Did you work for someone named DayDay?

DAVID HENRY - DIRECT BY DEBUSK

1 A: I don't even know DayDay.

2 Q: Were you ever a shooter in the employ of DayDay?

3 A: No, sir.

4 Q: Are you a cold-blooded killer?

5 A: I've never hurt anything like that in my life, never,

6 sir. I never even tote a gun. I don't even ---

7 Q: Now, on November 21st, 2013, were you at the Jamaican

8 Motor Inn?

9 A: No, sir.

10 Q: Were you ever at the Jamaican Motor Inn?

11 A: No, sir. I don't even know where the Jamaican Motor Inn

12 at.

13 Q: Were you ever with the Defendant at the Jamaican Motor

14 Inn?

15 A: No, sir.

16 Q: Okay. To your knowledge, does the Defendant own a gun?

17 A: He -- I heard -- he sold somebody a gun, a .40 cal, yeah,

18 a .40 cal, something like that.

19 Q: Was it a revolver or semiautomatic?

20 A: I don't know. I don't know. But I know he had a gun.

21 Q: At one point he did. Okay. Once again, did you ever go

22 to a motel with the Defendant and steal televisions?

23 A: Never, ever.

24 Q: Please answer any questions the Defense may have.

25 THE COURT: Cross examination.

DAVID HENRY - CROSS BY HOLFORD

1 MR. HOLFORD: Yes, Your Honor.

2 CROSS EXAMINATION OF DAVID DONNELLE HENRY BY MR. HOLFORD:

3 Q: Mr. Henry, you go by Little D?

4 A: Yeah, that's what -- yeah.

5 Q: That's you? All right. So, if we heard about Little D
6 carrying a gun, that'd be you?

7 A: You got plenty of Little Ds, I don't -- nah, it wouldn't
8 be me.

9 Q: Okay. So, if Little D with the picture that said David
10 Henry was carrying a gun, that'd be you?

11 A: Nah.

12 Q: No?

13 A: No.

14 Q: You've never carried a gun?

15 A: Never.

16 Q: You're gonna tell this Jury you have never carried a gun?

17 A: That's what I said.

18 Q: You got a burglary second, another burglary second, two
19 grand larcenies, strong-armed robbery, a number of
20 shoplifting, cocaine charges and you've never carried a gun?

21 A: Never.

22 Q: And you want them to believe that everything you're
23 saying is the truth?

24 A: I mean, I can't make them believe nothing but I know what
25 I do, I never carried a gun.

DAVID HENRY - CROSS BY HOLFORD

1 Q: And you were also never at the Jamaican Motor Inn?

2 A: Never.

3 Q: You don't even know what it is?

4 A: Don't even know where the Jamaican Motor Inn at?

5 Q: And you also never dated Trish?

6 A: Never.

7 Q: You just stayed there a couple of nights?

8 A: That's what I said.

9 Q: And you're locked up right now, aren't you?

10 A: Yes.

11 Q: What are you locked up for?

12 A: Shoplifting.

13 Q: Shoplifting; is that it?

14 A: That's it.

15 Q: Do you know I got your records? That's the only thing
16 you're locked up for?

17 A: What, some burglaries that he put on me, yeah.

18 Q: Oh, how about fifteen counts of burglary?

19 A: Yeah.

20 Q: Oh, that too, or you want to stick to just shoplifting?

21 A: Shoplifting, that's what I'm -- that's what I'm guilty of
22 doing, shoplifting.

23 Q: So, if the prosecutor had records that you're locked up
24 for fifteen burglary violent right now, which would be true,
25 your testimony or their records?

- 1 A: I mean, I'm locked up for -- like I say, I'm locked up
2 for shoplifting. I commit to what I did, you know.
3 Q: So, what's your bond on one shoplifting charge?
4 A: One?
5 Q: Yeah. The shoplifting you are in jail for.
6 A: I can't remember.
7 Q: You've got a bond on the other charges?
8 A: Yes.
9 Q: Who is Slim?
10 A: That's somebody Trish used to go with.
11 Q: What's his government name?
12 A: Kendrick.
13 Q: Kendrick Pringle?
14 A: Yeah.
15 Q: That's Trish's boyfriend?
16 A: Old boyfriend. They went together years ago.
17 Q: How old are you?
18 A: Thirty-seven.
19 Q: How tall are you?
20 A: 5-6.
21 Q: How much do you weigh?
22 A: Around 180.
23 Q: And you don't know a DayDay at all?
24 A: Never heard of -- don't know him.
25 Q: You never heard of Texas before?

1 A: A who?

2 Q: Texas.

3 A: Texas?

4 Q: You never heard of YO? TS?

5 A: I don't know who you talking about. Never heard of them
6 names.

7 Q: Chief?

8 A: Never heard of them names.

9 Q: You don't run around Racepath?

10 A: I don't know them.

11 Q: All the drug charges, you don't know ---

12 A: I don't run around Racepath. I might go through. I got
13 a aunt stay in Racepath or I might go see my family, see how
14 they doing.

15 Q: All these drug charges and all these burglary charges and
16 you don't know that crew?

17 A: Don't know them.

18 Q: I have no further questions.

19 THE COURT: Any redirect?

20 MR. DEBUSK: Yes, Your Honor.

21 REDIRECT EXAMINATION OF DAVID DONNELLE HENRY BY MR. DEBUSK:

22 Q: Mr. Henry, to be truthful, you have sixteen burglary
23 charges put on you after you were already in jail for
24 shoplifting, right?

25 A: Yes, sir. Yes, sir.

DAVID HENRY - REDIRECT BY DEBUSK

1 Q: Are all those burglary charges still on you?

2 A: They still on me.

3 Q: Did some go to a preliminary hearing?

4 A: Some got throwed -- they got throwed out at the
5 preliminary hearing but they still on me.

6 Q: But they were thrown out at the preliminary hearing so
7 they're not on you.

8 A: Yes, sir.

9 Q: So, you've got maybe eleven; is that correct?

10 A: Yes, sir.

11 MR. GARDNER: Objection, leading.

12 MR. DEBUSK: Withdrawn.

13 BY MR. DEBUSK:

14 Q: Why were they thrown out?

15 A: Because he said that I was out committing burglaries with
16 him and I was in J. Reuben Long.

17 Q: You were in jail?

18 A: I was in jail at the time, sir.

19 Q: Thank you. No further questions.

20 THE COURT: Anything on those questions?

21 MR. HOLFORD: Yes, sir.

22 RE-CROSS EXAMINATION OF DAVID DONNELLE HENRY BY MR. HOLFORD:

23 Q: All these charges that are on you are said to have
24 happened after December 15th?

25 A: Some of them.

DAVID HENRY - RECROSS BY HOLFORD

1 Q: Some of them?

2 A: Yeah.

3 Q: So, some of them were while you were not in J. Reuben
4 Long?

5 A: Yes, sir.

6 Q: Okay. So, you got burglaries on you that happened before
7 you got locked up?

8 A: Yes.

9 Q: Were you locked up on November 21st, 2013?

10 A: November the 21st?

11 Q: Uh-huh (affirmative response).

12 A: Not to my knowledge.

13 Q: No, so you were out?

14 A: Yes.

15 Q: Have we ever met before?

16 A: No.

17 Q: No. How many times you met with the State?

18 A: A couple.

19 Q: What kind of deal you getting out of testifying today?

20 A: I ain't getting no deal.

21 Q: No deal? You just came here out of the goodness of your
22 heart?

23 A: Not the goodness of my heart. I came here to try to
24 clear my name from something I didn't do. That's why I'm
25 here.

1 Q: Are you on trial today?

2 A: Nope.

3 Q: Well, how you gonna clear your name?

4 A: How I'm gonna clear my name? I came to get it straight
5 to the Court that I had nothing to do with this. They brung
6 me here and I'm -- you questioning me and I'm giving you my
7 answers.

8 Q: This trial doesn't have anything to do with you.

9 A: Well, I'm coming to tell the truth, that's why I'm here.

10 Q: The truth that you've never carried a gun and the truth
11 that you're only in on shoplifting.

12 A: Man, I'm from Conway, man, anybody that know me can tell
13 you I never carried a gun, never. Scared of guns, death
14 scared of them.

15 Q: You scared of guns?

16 A: That's right.

17 Q: I have no further questions.

18 THE COURT: All right. You may step down. Thank you.

19 MR. DEBUSK: Your Honor, the State calls Catrisha
20 Brandenburg.

21 THE COURT: All right. Very good.

22 All right, ma'am, come right around over here, right over
23 to the corner here and met the Clerk, please, ma'am.

24 CATRISHA BRANDENBURG, HAVING BEEN DULY SWORN,

25 TESTIFIES AS FOLLOWS:

CATRISHA BRANDENBURG - DIRECT BY DEBUSK

1 CLERK: Please be seated. State your full name and spell
2 your last name for the Court, please.

3 MS. BRANDENBURG: Catrisha Norville Brandenburg, B-R-A-N-
4 D-E-N-B-U-R-G.

5 DIRECT EXAMINATION OF CATRISHA BRANDENBURG BY MR. DEBUSK:

6 Q: Ms. Brandenburg, where do you currently reside?

7 A: [REDACTED]

8 Q: How long have you been living there?

9 A: Been in [REDACTED] since January the 20th, sir.

10 Q: Okay. Now, you've got a little bit of criminal record,
11 don't you?

12 A: Yes, sir, a little bit. I've got a little bit of
13 chemical issues.

14 Q: Okay. Let's just go through it real quick. In 1994, you
15 had a couple of counts of possession of crack, right?

16 A: Yes, sir.

17 Q: And 2010, a prostitution charge?

18 A: Yeah.

19 Q: And then a couple of CDV charges?

20 A: Several, yes, sir.

21 Q: And then you have a possession of crack charge in 2013,
22 correct?

23 A: Yes, sir.

24 Q: I think you've put it pretty well, you have a little bit
25 of a chemical problem?

- 1 A: Yes, sir, I do.
- 2 Q: And how long have you had these problems?
- 3 A: Almost twenty years.
- 4 Q: Okay. Do you know the Defendant Derek Collier?
- 5 A: Yes, sir, I do.
- 6 Q: How do you know him?
- 7 A: We kind of hooked up but ---
- 8 Q: Is that -- does that mean your boyfriend and girlfriend?
- 9 A: Yes, sir.
- 10 Q: Okay. Does the Defendant have a nickname?
- 11 A: Fedie (spelled phonetically)?
- 12 Q: How long have you known him?
- 13 A: I guess it was about last September or October.
- 14 Q: During the November, around November 20th of 2013, what
- 15 was the nature of your relationship?
- 16 A: He -- we lived together.
- 17 Q: Is it fair to say you were boyfriend and girlfriend?
- 18 A: Yes, sir.
- 19 Q: Okay. Did anyone else live with you?
- 20 A: David Henry.
- 21 Q: Okay. How do you know David Henry?
- 22 A: He was friend of my ex-boyfriend's and then he became ---
- 23 Q: Who was your ex-boyfriend?
- 24 A: Kendrick Pringle.
- 25 Q: Okay.

- 1 A: And he became my friend as well and needed a place to
2 stay so I let him room with me.
- 3 Q: Does David Henry -- did you ever have a romantic
4 relationship with him?
- 5 A: No, sir.
- 6 Q: But you did with Kendrick Pringle?
- 7 A: Yes, sir, I did.
- 8 Q: And later with the Defendant?
- 9 A: Yes, sir.
- 10 Q: Did you have a vehicle at that time in November of 2013?
- 11 A: Yes, sir.
- 12 Q: What kind of vehicle?
- 13 A: A Saturn, 2001 Saturn SL1.
- 14 Q: What color was it?
- 15 A: Champagne, gold color.
- 16 Q: How many doors?
- 17 A: Four.
- 18 Q: Did the Defendant, Mr. Collier, did he have -- ever use
19 that car?
- 20 A: Yes, sir.
- 21 Q: Did he have access to it?
- 22 A: Yes, sir.
- 23 Q: Did you allow him to use it?
- 24 A: Yes, sir.
- 25 Q: Did he often borrow it?

1 A: Yes, sir.

2 Q: When would he borrow it?

3 A: Whenever he needed to go somewhere.

4 Q: Do you know David Donnelle Henry?

5 A: Yes, sir.

6 Q: I think we've been through that. Do you know him well?

7 A: Yes, sir.

8 Q: He's a friend of yours?

9 A: I mean, yes, yes, sir.

10 Q: To your knowledge, did he ever work as a shooter for a man
11 named DayDay?

12 A: No, sir.

13 Q: Is he a cold-blooded killer?

14 A: No, sir.

15 Q: What kind of person is he?

16 A: He's a pretty nice guy. I mean, he ---

17 Q: Does he have one of those chemical problems, too?

18 A: Yes, sir, he does.

19 Q: Thank you. Please answer any questions the Defense might
20 have.

21 THE COURT: Cross examination.

22 CROSS EXAMINATION OF CATRISHA BRANDENBURG BY MR. HOLFORD:

23 Q: Ms. Bradenburg, is it all right if I call you Trish?

24 A: Yes, sir, please do.

25 Q: That's what people know you by, right?

1 A: Yes, sir.

2 Q: Now, I know the Solicitor went over this before but a
3 couple of possessions of crack, the CDVs, though, who was that
4 with?

5 A: Kendrick Pringle.

6 Q: Kendrick Pringle?

7 A: Yes.

8 Q: And that's your boyfriend?

9 A: No, we used to be together. We broke up in 2012 when I
10 sent to a rehabilitation center and he found a new girlfriend.

11 Q: Is her name Jenna?

12 A: It is.

13 Q: Is he still with Jenna?

14 A: He sure is except for she's in J. Reuben Long right now.

15 Q: I did not know that.

16 A: She is incarcerated.

17 Q: You said you met Mr. Collier, my client, back in October
18 2013?

19 A: Sometime -- it was before -- it was before Halloween
20 because I remember Halloween night I went to my mother's house
21 and he was at the room.

22 Q: And you lived -- was it your house?

23 A: It was Sea Banks, Sea Banks Motel, my room.

24 Q: Where is Sea Banks?

25 A: 22nd Avenue South on Ocean Boulevard, Myrtle Beach.

1 Q: 22nd Avenue South ---
2 A: Yes, sir.
3 Q: --- Ocean Boulevard? Did David Henry also live there?
4 A: He did.
5 Q: It'd be fair to say he did more than just stay there from
6 time to time?
7 A: Yeah. He contributed to the rent.
8 Q: And he -- would it be fair to say he did more than just
9 saw Mr. Collier every now and then?
10 A: Oh, it's fair to say that, yes, sir.
11 Q: Cause they lived together?
12 A: Yes, sir.
13 Q: Okay. You know that David Henry had a gun, didn't you?
14 A: No, sir, I did not. I was unaware of that.
15 Q: You've never known David Henry to carry a gun?
16 A: No, sir.
17 Q: And you lived with him?
18 A: Yes, sir.
19 Q: Do you know DayDay?
20 A: I know who he is but I don't -- I couldn't point him out
21 to you right now.
22 Q: You don't run into him a lot?
23 A: No, I'm scared to go to the neighborhood where he lives.
24 Q: Pretty bad neighborhood, isn't it?
25 A: If you're on the drug street, yes.

CATRISHA BRANDENBURG - CROSS BY HOLFORD

1 Q: And that's over in Racepath, isn't it?

2 A: Uh-huh (affirmative response).

3 THE COURT: You need to say yes or no, please, ma'am.

4 A: Yes, sir.

5 Q: To your knowledge, does David Henry know DayDay?

6 A: He's been there before, yes.

7 Q: Is DayDay the one you got your drugs from, the crack?

8 A: I got my -- I just smoked his drugs; yes, sir.

9 THE COURT: I'm sorry. When you say his, you need to say
10 who?

11 A: Yes. Derek Collier's.

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

13 Q: Now, you said you have a gold Saturn; is that correct?

14 A: Yes, sir.

15 Q: And Mr. Collier had access to it?

16 A: Yes, sir.

17 Q: Did David Henry have access to it?

18 A: He drove it one time.

19 Q: Did anyone else have access to it?

20 A: I let Kendrick Pringle drive it a couple of times.

21 Q: So, Kendrick Pringle and David Henry both had access to
22 it?

23 A: Yes, sir.

24 Q: How many times -- this is gonna seem like a weird
25 question, I know -- we've never met before, have we?

- 1 A: No, sir.
- 2 Q: We haven't ever talked about the questions I'm gonna ask.
- 3 you?
- 4 A: No, sir, not at all.
- 5 Q: I didn't know exactly what you were gonna say here,
- 6 right?
- 7 A: Right.
- 8 Q: Would that be fair? You have met with the Prosecutor
- 9 before, right?
- 10 A: Yes, I have.
- 11 Q: How many times have you met with him?
- 12 A: I met with him once, Mr. DeBusk, once.
- 13 Q: How about Mr. Ervin?
- 14 A: I met that gentleman a few minutes ago.
- 15 Q: Okay. Did you talk about your testimony, what were you
- 16 gonna say here?
- 17 A: Yes, sir.
- 18 Q: And right now you're in J. Rueben Long so you obviously
- 19 have some type of charges?
- 20 A: Yes, sir.
- 21 Q: We don't need to talk about what they are but you have
- 22 some type of charges against you?
- 23 A: Yes, sir.
- 24 Q: What are you gaining from testifying today?
- 25 A: They -- after I agreed to testify, we discussed Drug

CATRISHA BRANDENBURG - CROSS BY HOLFORD

1 Court but I had already agreed to testify.

2 Q: Okay. So, there's been an offer of -- the way it works
3 is you plead guilty to whatever charges and you could be
4 offered Drug Court?

5 A: Yes, sir. But I'm not taking the offer.

6 Q: What is Drug Court?

7 A: It's a program like a rehabilitation program.

8 Q: It's a diversion program?

9 A: Yes, sir.

10 Q: Does that allow you to get out of jail?

11 A: Yes, sir.

12 Q: And the charges you're in here on right now, is it
13 because of what Mr. Collier has said?

14 A: Yes, sir, it is.

15 Q: I have no further questions.

16 THE COURT: Any redirect?

17 MR. DEBUSK: None, Your Honor.

18 THE COURT: All right. Very good. You may step down.

19 A: Thank you, sir.

20 THE COURT: All right. Solicitor, your next witness,
21 please.

22 MR. DEBUSK: At this time, Your Honor, the State rests.

23 THE COURT: All right. Very good. There's some matters
24 of law, Mr. Holford, before the Court at this time?

25 MR. HOLFORD: Yes, Your Honor.

MOTIONS

1 to talk to my client about something and then we'll address
2 those if you ---

3 THE COURT: Okay. Sure. Y'all go ahead.

4 *****OFF THE RECORD*****

5 (On the Record.)

6 THE COURT: All right. Go ahead, Mr. Holford.

7 MOTIONS:

8 MR. HOLFORD: Yes, Your Honor. At this time, the Defense
9 would re-raise the objections to based on Jackson v. Denno of
10 the statements as well as the in-court identification for Neil
11 v. Biggers, further would move for a directed verdict based on
12 the evidence viewed in the light most favorable to the State
13 fails to meet the burden necessary to send it to a jury.

14 Your Honor, the majority of the testimony is that it was
15 a black male on that date and time. The State has not proved
16 its case, not even by the weight necessary to send this case
17 to the Jury. For those reasons, we would ask for a directed
18 verdict.

19 RULING OF THE COURT AS TO MOTIONS:

20 THE COURT: All right, sir. Again, the Court would
21 reaffirm its prior rulings regarding the Jackson v. Denno
22 issues and the Neil vs. Biggers issues as reflected in the
23 record previously.

24 Regarding the directed verdict, the directed verdict
25 standard is that a defendant is entitled to a directed verdict

RULING AS TO MOTIONS

1 if the State fails to produce evidence of the offense charged.
2 My job is to look at the existence of evidence. It is not my
3 job to judge credibility or believability. As I explained to
4 the Jury, that is their job and their responsibility. My job
5 is only to decide whether or not the evidence exists. If
6 there's any kind of direct evidence or substantial
7 circumstantial evidence, reasonably tending to prove the guilt
8 of the accused, the case properly goes to a jury. I would
9 grant a directed verdict motion if the evidence merely raises
10 a suspicion that the Defendant is guilty of the crimes
11 charged. In this particular matter, again, excluding the
12 issues of credibility and believability, the evidence exists.
13 There is direct evidence as well as some circumstantial
14 evidence, but there is certainly direct evidence that the
15 Defendant committed the crimes for which he is charged. He is
16 charged with burglary second degree violent and there is
17 evidence that he entered a building without consent with the
18 intent to commit a crime in the building and that building was
19 a building where a person could lodge or lives or where people
20 assemble for the purpose of business, government, education,
21 religious, entertainment or the public use. The State also
22 produced evidence that while entering or while in the
23 building, the Defendant was armed with a deadly weapon. The
24 State also produced evidence that while entering or while in
25 the building, the Defendant used or threatened to use a

BY THE COURT

1 dangerous weapon or object. The State also had evidence while
2 entering or while in the building, the Defendant displayed
3 what was or appeared to be a deadly weapon and the State also
4 produced evidence that the Defendant entered or remained in
5 the building in the nighttime. All of those, any one of
6 those, if proven by the State is sufficient under the burglary
7 second violent offense. He has also been charged with the
8 crime of possession of a weapon during the commission or
9 attempt to commit a violent crime. If the Jury convicts of
10 burglary second degree violent, they will be allowed to
11 consider a possession of weapon during the commission of a
12 violent crime because there would be evidence that the
13 Defendant was armed with a deadly weapon.

14 Again, I'm concerned with the existence of evidence. The
15 evidence exists, it'll be up to the Jury to judge credibility
16 and believability but since there is direct evidence and
17 substantial circumstantial evidence reasonably tending to
18 prove the guilt of the Defendant of the crimes charged, the
19 directed verdict motion is denied.

20 Further motions on behalf of the Defense?

21 MR. HOLFORD: No, Your Honor.

22 THE COURT: All right. Just one second, please.

23 BY THE COURT:

24 All right. Besides the Defendant, is there potential for
25 any other witnesses or testimony on behalf of the Defendant?

DEREK VANDER COLLIER - BY THE COURT

1 MR. HOLFORD: Your Honor, if we can take a brief recess.

2 This is something that we need to discuss with Mr. Collier
3 back in a closed room.

4 THE COURT: All right. Very good. We'll take a short
5 break and then we'll come back and if there is gonna be other
6 testimony, then we'll discuss the matter about the Defendant
7 also testifying. Okay?

8 MR. HOLFORD: Yes, Your Honor. Thank you.

9 THE COURT: Thank you very much.

10 *****OFF THE RECORD*****

11 (On the Record.)

12 THE COURT: All right. Mr. Holford, is your client ready
13 for the Court to question him regarding his right to testify?

14 MR. HOLFORD: Yes, Your Honor.

15 THE COURT: All right. Very good. Madame Clerk, if
16 you'd place him under oath.

17 DEREK VANDER COLLIER, HAVING BEEN DULY SWORN,

18 TESTIFIES AS FOLLOWS:

19 EXAMINATION OF DEREK VANDER COLLIER BY THE COURT:

20 THE COURT: All right. Mr. Collier, I'm going to talk to
21 about certain of your constitutional rights and regarding
22 that, if at any point in time you don't understand what I'm
23 saying or you have a question about what the Court is saying,
24 you need to indicate that to me. You can raise your hand, you
25 can tell your attorney, but you've got to indicate in some way

BY THE COURT

1 testify in this case because they have to decide the case
2 solely and completely on the facts and the evidence presented
3 by the State to see if the State has proven you guilty beyond
4 a reasonable doubt. Before I ask you if you want to testify,
5 did you understand what we talked about?

6 MR. COLLIER: Yes, sir.

7 THE COURT: All right. Do you want to ask your attorney
8 any other questions?

9 MR. COLLIER: No, sir.

10 THE COURT: All right. Very good. Do you wish to
11 testify in this case?

12 MR. COLLIER: No, sir.

13 THE COURT: Very good, sir. Thank you very much. Have a
14 seat. Thank y'all.

15 BY THE COURT:

16 All right. So, before the Jury comes back in so that we
17 can do this and then we'll talk about where we are, what I'd
18 like for the Defense to do then, if -- there would be no other
19 testimony then or any other evidence offered at this point in
20 time; is that correct?

21 MR. HOLFORD: That's correct, Your Honor.

22 THE COURT: All right. So, therefore the Defense would
23 rest; is that right?

24 MR. HOLFORD: Your Honor, yes, the Defense would rest.
25 Obviously, we would reserve our right to rest in front of the

1 Jury ---

2 THE COURT: Oh, we're gonna do that but what I'm trying
3 to avoid is calling them out, you say you rest and then I send
4 them back out there again to cover the motions. So, what I
5 would -- we'll certainly allow you to do that and cover that
6 in front of them but just trying to avoid as little
7 inconvenience as I could to them.

8 MR. HOLFORD: Certainly, Your Honor.

9 THE COURT: All right. So, with that, would the Defense
10 rest?

11 MR. HOLFORD: Yes, Your Honor, the Defense rests.

12 THE COURT: All right. You'd like to -- would you like
13 to renew your motions that you made at the end of the State's
14 case?

15 MOTIONS:

16 MR. HOLFORD: Yes, Your Honor, at the end of the State's
17 case, the Defense made a number of motions, the suppression
18 motions as well as directed verdict motions, the Defense would
19 reiterate in full all of those prior objections and motions at
20 this point after the end of the Defense case.

21 RULING OF THE COURT AS TO MOTIONS:

22 THE COURT: All right, sir. Very good. Again, the Court
23 reaffirms and reiterates my prior rulings in the Jackson v.
24 Denno hearings and in the Neil v. Biggers hearing in allowing
25 those respective matters to be presented to the Jury. Further

BY THE COURT

1 as to the directed verdict motion, I'm not gonna go back over
2 that standard that I just said but the Court respectfully
3 declines to grant your motion for a directed verdict, again
4 finding that there is direct evidence or substantial
5 circumstantial evidence existing in the -- or from the
6 witnesses of the State that reasonably tends to prove the
7 guilt of the accused of the crimes for which he has been
8 charged.

9 BY THE COURT:

10 THE COURT: All right. So, with that, before we call the
11 Jury back in, then let's talk about submitting it to the Jury.
12 We've got -- got a potential verdict form. It has the caption
13 of the case, burglary second degree violent, on the charge of
14 burglary second degree violent, we, the Jury, by unanimous
15 consent find the Defendant -- and it has check one of the
16 following boxes, I've got two -- not guilty or guilty.
17 Foreperson's signature, place for them to place the date. The
18 second page says it's a note to the Jury. If the Jury has
19 found the Defendant guilty of burglary second degree violent,
20 please render a decision on the charge of possession of a
21 weapon during the commission of a violent crime on Page Three.
22 And then there's space. However, if the Jury has found the
23 Defendant not guilty of burglary second degree violent, the
24 Defendant must be found not guilty of possession of a weapon
25 during the commission of a violent crime, since obviously

1 organized for your closing arguments?

2 MR. HOLFORD: Yes, Your Honor.

3 THE COURT: All right. Very good. We'll take about a
4 short five-minute break and then we'll come back and continue
5 on then. Thank you.

6 *****OFF THE RECORD*****

7 (On the Record.)

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

9 MR. DEBUSK: Yes, Your Honor.

10 THE COURT: And Defense?

11 MR. HOLFORD: Yes, Your Honor.

12 THE COURT: All right. Ask the Jury to come in.

13 (REPORTER'S NOTE: Jury enters courtroom.)

14 COURT TO JURY:

15 THE COURT: All right. The State having rested, what's
16 the position of the Defense at this time?

17 MR. HOLFORD: Yes, Your Honor. The Defense rests.

18 THE COURT: All right. Very good.

19 All right. Ladies and gentlemen, one thing about the
20 notes, this was not a lengthy trial. Normally, we don't have
21 jurors taking notes during the testimony of a trial, we rely
22 on the Jury's collective wisdom regarding what occurred in
23 that and the main reason for that is we've noticed in the past
24 that sometimes when jurors are taking notes, they've got their
25 head down and they're taking notes and they're not listening

1 to the next question and the next answer given, so we value
2 that and the collective wisdom more than somebody's note
3 taking. So, that's why we do that.

4 Where we are on the trial, we've heard all the evidence
5 that's gonna be presented in this particular case. That does
6 not end the case. Where we are now is we're gonna hear the
7 closing arguments of the attorneys. As I told you about the
8 opening statements, closing arguments are not evidence. We've
9 heard all the evidence. It's already been received. Closing
10 arguments are important. They are each side's summation to
11 you of what they believe the evidence has shown to you during
12 the course of the trial. Remembering, of course, that you are
13 the judges of the facts and the credibility and believability
14 of the witnesses that have testified in this particular case.
15 After we hear the closing arguments, I will give you the law
16 that you will apply to the facts and evidence you find to be
17 true in this case and then I'll submit the case to you for
18 your deliberations and your unanimous decision in this
19 particular matter.

20 All right. With that, Solicitor.

21 MR. DEBUSK: Thank you, Your Honor. May it please the
22 Court?

23 THE COURT: Yes, sir.

24 CLOSING BY MR. DEBUSK:

25 MR. DEBUSK: Ladies and gentlemen, it's not been a

CLOSING BY DEBUSK

1 | terribly long trial. You heard the testimony and you heard
2 | from two people that were in the Jamaican Motor Inn on
3 | November 21st in the early morning hours, 2013. First you
4 | heard from Justin Kirkman, remember him, he's the tall fellow,
5 | he's a golf pro and a real estate agent. He says he was being
6 | paid to stay there and, well, watch paint dry and to keep the
7 | rooms safe while the doors were propped open. What did he
8 | say? He says he saw a black male and he later picked out the
9 | Defendant from a lineup, picked out his picture, Picture
10 | Number 2, which was the Defendant, and he identified him in
11 | court today as the Defendant. He said he saw that individual
12 | in Room 309 of the Jamaican building. He said he saw him
13 | trying to take the television off of the mount, hands up there
14 | on the television. He says -- Justin says that when he,
15 | Justin, was there, Justin was wearing pajama pants and a
16 | jacket. Justin says he followed the Defendant down after he
17 | saw him trying to steal a television and then he said he saw
18 | the Defendant leave in a car and he said that car appeared to
19 | be a Saturn, silver or gold, even gave approximate year, late
20 | 90s or early 2000s. That's what he saw. You also heard from
21 | the Defendant in his statement to the Myrtle Beach Police
22 | Department. What story did he tell? Well, he said that he
23 | was at the Jamaican Motor Inn. He may not have given the
24 | name, he said is that building next to the Caribbean, right at
25 | the end of the strip where the houses begin and the hotels

CLOSING BY DEBUSK

1 end. He says he was at the Jamaican Motor Inn, he was
2 stealing the TV, he had his hands up on the TV trying to take
3 it down when he was interrupted by a white male. He says that
4 white male was wearing pajama pants and a jacket. He says
5 that white male followed him down to the beach access where he
6 was parked. He says he left the scene in a Saturn automobile.
7 So, clearly, Justin and the Defendant were describing the same
8 incident. Clearly, they are describing from personal
9 knowledge because they were both there and clearly the
10 Defendant admitted being guilty of burglary in the second
11 degree, violent.

12 First, we need to talk a little bit about the law. Now,
13 the Judge will instruct you on the law. He is the instructor
14 of the law and you are the finders of fact. So, what the
15 Judge says rules but I have to discuss it at least a little
16 bit so you understand what my burden is. He told you the
17 burden is on the State, that's me and Mr. Ervin, to prove him
18 guilty beyond a reasonable doubt. I believe we have but I
19 have to tell you exactly what our burden was so you'll know.
20 Our burden is to prove the elements of burglary, each element
21 beyond a reasonable doubt. What are the elements? First,
22 entry, not breaking and entering, just entering, walking
23 through an open door is the same as kicking a door down as far
24 as burglary is concerned. It's entering, entering a building.
25 The Jamaican Motor Inn is now part of the Caribbean Resort,

CLOSING BY DEBUSK

1 it's a building, it's got walls, it's got door, it's got
2 floors, you've got pictures, it's got rooms; it's a building,
3 a building where people normally work, where people can
4 normally stay, it's a building. Without consent, you heard
5 the lady who worked for the hotel, Ms. Mechanic, she told you,
6 she checked the records, he was never a guest at the hotel, he
7 was never an employee of the hotel, he was there without
8 consent entering a room he didn't have any permission to touch
9 those TVs. With the intent to commit a crime therein, again,
10 the Defendant admitted himself he went there to steal TVs.
11 You could look at the room next-door, he was in 308 -- 309,
12 working on taking the TV and he had already taken the TV from
13 310. You've got pictures, look at them yourselves. 309,
14 where he was trying to get the TV, State's Exhibit Five; 310,
15 State's Exhibit Seven where he had already taken the TV. So,
16 that's entering a building without consent with the intent to
17 commit a crime therein. That makes burglary. What makes it
18 burglary second violent are certain aggravating factors. The
19 Judge will give you a complete list of those factors. There's
20 several things. The two most important ones, I want you to
21 listen for, one is that it happens in the nighttime. If it
22 happens in the nighttime, that's all you need to know. That
23 makes it burglary second violent. You heard the testimony of
24 the police, you heard the testimony of Justin Kirkman. This
25 happened between midnight and 1 o'clock in the morning,

CLOSING BY DEBUSK

1 midnight, halfway between dusk and dawn. It was night; it was
2 dark. This happened in the nighttime.

3 Another potential aggravating factor is being armed with
4 a weapon or displaying one. Clearly, you heard Justin say he
5 pulled a gun out on me when I was in that room. So, either
6 one of those, you don't have to have both, either on by
7 themselves makes it burglary second violent.

8 The elements of possession of a weapon during a crime of
9 violence are even easier. That is to possess or visibly
10 display a weapon and a gun is a weapon while committing a
11 crime of violence. And burglary second degree violent is
12 obviously violent.

13 So, the Defendant has pretty much admitted to the
14 burglary part of it. He's admitted to the burglary second
15 violent. His own statement gives the details that only
16 somebody there would've known. Is his statement reliable?
17 Would he have made that statement in an effort to get out of
18 jail? Set aside for a moment the obvious fact that you don't
19 confess to a crime you didn't commit in order to get out of
20 jail. He gave details that only someone involved in the crime
21 would've known. Details like the fact that when he was
22 interrupted by Justin Kirkman, Justin Kirkman was wearing
23 pajama pants and jacket. Even Carol Allen, the detective,
24 didn't know that until the Defendant told her that. That he
25 was taking a TV down when he was interrupted goes directly

1 with what Justin Kirkman told the police. That Justin Kirkman
2 followed him down the stairs -- all these details only someone
3 present at the crime scene would've known. So, there was no
4 false confession. He confessed to what he did. And remember
5 also he told Detective Truex where it happened. Remember
6 Detective Truex wasn't involved in the investigation of this
7 case. He just happened to driving down the street, saw the
8 Defendant, recognized him as someone with a warrant and
9 arrested him. Then, within minutes of arresting him, then
10 another officer took him to jail. He took him back there to
11 talk to him, you know, you got to strike while the iron is
12 hot, while he's still willing to talk. And they sat down and
13 started talking and the Defendant said Avenue 30th South. So,
14 Detective Truex starts naming landmarks down at the south end.
15 South Beach Resort, right there next to the putt-putt? And
16 the Defendant in his own words, he says, no, no, on the North
17 end, next to the Caribbean. Next to the Caribbean, the
18 Jamaican, Caribbean. And Detective Truex asked him to
19 confirm, is that -- you mean, up on the north end of the strip
20 where the houses end -- where the hotels end and the houses
21 begin, the last hotel before the houses, the Jamaican. And
22 the Defendant said yes. He told Detective Truex where it
23 happened. Again, a detail only somebody involved would've
24 known. Clearly, the Defendant knew more about that crime than
25 even the detectives knew because he committed it.

CLOSING BY DEBUSK

1 Now, there are differences in the stories told by Mr.
2 Kirkman and the Defendant and you can look at those two
3 statements and decide which one you want to believe and when
4 you're looking at statements and trying to decide which one to
5 believe you look at two things, the motivation to make a
6 statement and the reliable of the statement, it doesn't match
7 up with the other evidence you see. Let's start with Mr.
8 Kirkman. Now, Mr. Kirkman, he had a little trouble with the
9 law in the past, he got probation on a couple of felony
10 charges. He's tried to start his life over with. He's become
11 a licensed real estate agent and a golf pro; he's doing well.
12 On the night of November 21st, 2013, he was working for a
13 contractor, he'd been like I said hired to watch paint dry.
14 He was patrolling those halls to make sure nobody got in there
15 while these doors had to be open and steal stuff out of the
16 rooms. He was looking for somebody doing exactly what the
17 Defendant admitted he was doing, stealing things from inside
18 the rooms. What was his motivation to give his statement, he
19 was doing his job, his job was to patrol that hotel and make
20 sure nobody took the stuff. That's why he made a statement,
21 that's why he called the police because he was doing his job.
22 He didn't even know the Defendant. He didn't give a name. He
23 gave a description. He even made a sketch. Remember the
24 sketch? It's kind of tough to make a sketch. I liken it a
25 little bit to speaking a foreign language. My mother grew up

CLOSING BY DEBUSK

1 in Brazil and they speak Portuguese there and I heard a lot of
2 Portuguese growing up and got pretty familiar with it. If I
3 hear somebody speaking Portuguese I can generally understand
4 what they're saying. It's easy to know it when you see it,
5 when you hear it but when I try to speak Portuguese, it's much
6 harder to think of the words as they come to your mind and put
7 together a coherent sentence. It's kind of like that with a
8 -- it's very hard to describe somebody, what somebody else
9 looks like. If you even try to describe your closest loved
10 one, mother, your cousin or your brother, your spouse, it's
11 very difficult to describe that exactly to someone but he did
12 a pretty good job and his catch looks a lot like the
13 Defendant.

14 He also viewed a lineup prepared by the Myrtle Beach
15 Police Department. If you look at that lineup you can see
16 that now let very similar to each other. He narrowed it down,
17 initially, to two and then one. He said it's Photo Number 2.
18 You heard Detective McPherson, who made the lineup, said he
19 had the key here, it says right there Photo Number 2, Derek
20 Vander Collier, the Defendant. He was able to pick out the
21 Defendant from that lineup. Again, a reliable witness, his
22 statement goes exactly with everything else. The Defendant
23 admitted being there, he identified the Defendant in the
24 lineup without knowing his name, not knowing who he is.
25 Justin has got no friends to help, no enemies to punish. He's

CLOSING BY DEBUSK

1 just doing his job. And he was able to identify the Defendant
2 from that lineup. Now, he did say because of the graininess
3 of the photo and the low-quality, he couldn't be a hundred
4 percent sure and he was being conscientious -- not only is he
5 reliable but he's conscientious. He's saying I don't feel
6 comfortable pointing a finger at somebody to be arrested just
7 based on this grainy photo. I want to see them live. And
8 when he saw the Defendant live he said, yeah, that's him,
9 that's the individual I saw. Going back to the language, if
10 you understand a foreign language when someone's talking
11 directly to you, it's easy to understand, but imagine
12 listening to them on a fuzzy radio station, it gets much
13 harder. That lineup is kind of like a fuzzy radio station.
14 When you get it in person it's much easier to identify.

15 Now, the car, the Defendant also identified a car. You
16 heard Catrisha Brandenburg just this morning tell you, I have
17 a gold 2001 Saturn sedan that the Defendant could use. He had
18 access to it at all times. Justin said I saw a car, it was
19 gold or silver, it was -- I believe it was a Saturn and even
20 estimated the year between late 90s and early 2000s. Then you
21 heard Detective MacPherson, after he reviewed all of the facts
22 in the case, he reviewed all the interviews, reviewed Justin's
23 statement, he went out looking for a car. He went out looking
24 for a gold Saturn. He found one but it turned out to be the
25 wrong one, an old car with a blown motor that couldn't even

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1 drive anymore but that's what he was looking for, a gold
2 Saturn. That's what Justin said was the car that he saw the
3 Defendant fleeing in. He said he saw the Defendant fleeing
4 alone. He said he had a TV -- one TV in the car and there was
5 one TV missing from the hotel. Again, it all works, it all
6 lines up, these facts are consistent. He even said -- what
7 was the Defendant doing when he walked in there? He said he
8 was attracted because the light was on, that's why he was able
9 to get a good look at him because the light was on. He heard
10 a noise down there, he went downstairs, saw the light on, he
11 walks in, he sees him up there trying to take the TV down.
12 Again, consistent with the rest of the evidence in the case.

13 What further motivation does Justin have to tell the
14 truth? Well, at least for a little while longer, he's doing
15 well, he might get off probation early but as of right now
16 he's still on probation. If he were to be convicted of lying
17 to the police or lying to the Court, he could go to jail, he
18 could go to prison. He has a lot of incentive to tell the
19 truth. And most importantly, Justin says two things, the
20 Defendant was alone, there was one person there, one person in
21 the room, one person left in the car. And when he confronted
22 him, after he stammered and stuttered a little bit, the
23 Defendant pulled out a gun. He saw the gun; it was a dark
24 colored semiautomatic handgun. He saw it just feet away.
25 You've got the pictures and you see what the room looked like.

1 He was in a perfect position to see it? And when he saw what
2 he did what any reasonable person would do, he said, I'm paid
3 to watch paint dry, I'm not paid to get shot, so he stabbed
4 out there. He stepped back a safe distance and watched the
5 Defendant run downstairs. Again, everything Justin says lines
6 up with the rest of the testimony, lines up with the
7 admissions of the Defendant himself. Justin has no motivation
8 to lie. Justin is a reliable witness.

9 What about the Defendant? Let's start with his
10 motivation. What's his motivation? It's either to escape or
11 at least minimize the punishment he might face for his crime,
12 for breaking into the -- or for going into the Jamaican Motor
13 Inn and trying to steal TVs in the nighttime. Further, his
14 motivation would be to lessen his exposure to punishment by
15 giving them somebody else, saying this guy is worse than me,
16 I'll help you with them if you give me a deal. Would the
17 Defendant lie? Well, we know he did. When Detective Truex
18 approached him on the street, he lied about his name. He said
19 he was somebody else. The first thing he does when he gives
20 the statement to Detective Truex, he said, man, I'm sorry for
21 giving you the runaround, sorry for giving you that fake name.
22 So, he's lying. Something else that's telling about his
23 lying, when he gives the follow-up interview to Detective
24 Allen, he utters the same line twice in two different places.
25 I'm not going to lie to you on the more. I'm not gonna lie to

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1 y'all know more. That tells you two things, one, he's been
2 lying. At least some of what he told you already ain't true.
3 And, two, if he was lying before, he's probably still lying.
4 And most of all, think about poor David Donnell Henry.
5 The Defendant, during the course of his statement, he accused
6 Mr. Henry of a number of crimes and they prepared sixteen
7 warrants for Mr. Henry, warrants that -- you heard his record,
8 his record is bad. He would be looking at many, many years in
9 prison if he was convicted if David Donnell Henry was
10 convicted of these crimes that the Defendant put on him. He
11 was ready to throw him into prison. But, what happens when
12 those cases go to court? They find out for some of those ones
13 he accused him of, David Donnell Henry was in jail already.
14 J. Reuben Long doesn't give furloughs to go out and do
15 burglaries. He couldn't have done it. Those cases were
16 thrown out. What's that tell you about everything else he has
17 said about David Donnell Henry, when he lied about those four
18 it means the rest of them are lies, too. He lied about his
19 name, lied about those crimes and follows it all up by saying
20 well, I ain't gonna lie to you no more.

21 What was David Donnell Henry's reason for being there?
22 Why was he saying David Donnelle Henry was with him at the
23 Jamaican? David Donnell Henry was a patsy. He's the guy
24 that's gonna take the blame for what the Defendant did because
25 if he can find somebody that he thinks the Myrtle Beach Police

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1 Department might be more interested in prosecuting than him,
2 he can escape blame. I argue to you that David Donnell Henry
3 was telling the truth up here. He never was in the hotel
4 room. He had nothing to do with this case. He was just
5 brought in as somebody for the Defendant to use as a patsy to
6 try to minimize his own Defendant -- his own exposure by
7 throwing somebody else under the bus. And boy, didn't Mr.
8 Collier try to sell it. That old David Donnell Henry, he's a
9 cold-blooded killer. DayDay -- he'd give him crack and then
10 he'll kill people for DayDay. He heard about these shootings
11 in Racepath and -- well, I don't really know that you might
12 want to look at David Donnell Henry, he's a cold-blooded
13 killer. He's got a gun and shoots people.

14 How does that compare with what Catrisha Brandenburg says
15 about him? Let me tell you what David Donnell Henry is. He's
16 a crackhead. It's sort of -- it's got meaning. It's those
17 people that have gone out there and try and that crack cocaine
18 and find out they can't stop. What does this record is it?
19 It looks like a guy has gone through life stealing to get
20 money to buy drugs. No assaults, no gun charges, just one guy
21 who can't stop using crack cocaine. And it makes a convenient
22 patsy for the Defendant because he can say, look at this guy,
23 he's got a bad record, go after him. The fact is, nobody else
24 saw him, nobody else saw David Donnell Henry in that motel
25 room that night. Was he a cold-blooded killer? He says he

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1 have never had a gun, Catricia Brandenburg said no, he didn't
2 have a gun, he's not a cold-blooded killer but the Defendant
3 has to sell him as a cold-blooded killer to make it a patsy.
4 That's why David Donnell Henry is in the story. The Defendant
5 brought them in there, was willing to see that man, David
6 Donnell Henry, go to prison to save himself. Go to prison for
7 something he didn't do. He had to give Myrtle Beach somebody
8 he thought Myrtle Beach might want more than him. Now, if
9 David Donnell Henry were this cold-blooded killer, this person
10 to be so feared, he wouldn't throw him under the bus, he'd be
11 afraid of him, he'd point somebody else or he'd take the blame
12 himself. He wasn't afraid of David Donnell Henry. He was
13 using him as a patsy. The Defendant also tried to throw a
14 bunch of other people under the bus, Trish, Kendrick Pringle,
15 DayDay, he went -- Mr. Holford went through a litany of drug
16 dealers, there's Tex, TO, DO, PDQ, whatever. He said he knew
17 all these bad guys, these drug dealers. He'd have gone up
18 there and testified against them, too; I'll give you all these
19 people, too, if you let me go. Imagine, there's this guy who
20 says I never smoked crack before until some guy put a gun to
21 my head and made me smoke it, which conveniently happened just
22 forty-five minutes before he gave his first statement to
23 Detective Truex, but yet he knows all these drug dealers in
24 Myrtle Beach and is ready to give information on them. How
25 can it be? Again, lies.

1 So, was the Defendant reliable? When Justin Kirkman gave
2 his statement, he called the police the day it happened, the
3 minute it happened. The police came there, took his report
4 and you heard Detective -- I'm sorry, Patrolmen Roy, tell you
5 the story was pretty much exactly what just Justin testified
6 to. He told the story immediately and consistently. And the
7 Defendant, he didn't tell his story and until he was arrested
8 over two months after the burglary. When he told that story,
9 where he's facts consistent? Not exactly it wasn't. He said
10 something about air-conditioning vents, no testimony by
11 anybody else that air-conditioning vents even existed in this
12 hotel. He said he took three or four TVs and there was only
13 one missing and was the one that he had his hands on. So, his
14 details are quite so reliable. But there were some details in
15 there that only a person there would've known. Remember those
16 details. The guy interrupted him, that he was up there
17 getting the TV when the guy interrupted him and that the guy
18 that interrupted him was white and he was wearing pajama
19 bottoms and a jacket and that he followed him down and he left
20 in a Saturn. All these things, only someone was is at the
21 scene was known. So, and finally, don't forget, David
22 Donnelle Henry, he gave information on all those crimes that
23 resulted in sixteen warrants of David Donnelle Henry, several
24 which got probably thrown out because they were based on lies
25 and David Donnelle Henry was in jail when that happened.

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1 Again, unreliable, lying. But, like any good liar, any good
2 life spins in pieces of the truth to make it sound good. You
3 have to bring in pieces of the truth for people to believe
4 you. That's what the Defendant did, he told some of the truth
5 and he told some of the lies. The truth was the Defendant was
6 in that hotel room stealing that TV. The lie was that David
7 Donnelle Henry had anything to do with this. So, let's apply
8 our tests now, motivation and reliability. Justin Kirkman,
9 no motivation to lie all of his details match up. Everything
10 he did he did because he was doing his job. The Defendant
11 lied to the police about his name, lied to the police about
12 all these other crimes that David Donnelle Henry allegedly
13 did, gave that famous statement twice when he was talking to
14 the police, I ain't gonna lie to y'all no more. I ain't gonna
15 lie to y'all no more. That means he's already lying with bits
16 of truth that you need to try to get the police to buy into
17 your lies. Which one do you believe about a gun? Well, the
18 answer is obvious, and you believe the reliable person with no
19 motivation to live. Justin Kirkman said the Defendant pulled
20 out a gun with him when he interrupted the burglary, that's
21 what happened, Justin Kirkman saw gun. The Defendant says
22 there weren't no gun; that's part of the lie to save himself
23 from being responsible. Just like throwing in all those
24 patsies is, these other people that he will testify against to
25 save himself.

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1 So, let's step back to the elements for a minute.

2 Burglary second violent, again, entering, the Defendant admits

3 he was in a hotel room, admits he was up there taking down

4 that TV, he was there. A building, again, the Jamaican is a

5 building, you got pictures, you got the map; the Jamaican is a

6 building. Without consent, remember Ms. Mechanic,

7 she told you he wasn't a guest, he wasn't an employee and had

8 no business being in their stealing the TVs. With the intent

9 to commit a crime therein, he told you, he was there to steal

10 TVs, he was there taking that TV down to take it with him and

11 do with it, I don't know, give it to DayDay, who knows. Plus,

12 an aggravating factor, and there are two here, this happened

13 at midnight, so this is happening at nighttime. Just that

14 alone, just the fact it happened at nighttime, alone, makes it

15 burglary second violent. Also, the Defendant had a gun. Just

16 the fact that he had a gun, alone, is enough to make it

17 burglary second violent. You can have one or more, here we

18 had at least two, maybe more, but all you need is one.

19 Nighttime is enough; just the gun is enough. Possession of a

20 weapon during a crime of violence, again, he's pretty much

21 admitted to burglary second violent going in there in the

22 nighttime. If he had a gun, that's all you need. If he

23 possessed or displayed gun during the crime of violence, he's

24 guilty. The proof is there and the Judge is gonna tell you

25 about the law, he's also gonna tell you about standard of

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1 proof. The standard of proof in a case like this is proof
2 beyond a reasonable doubt. He's gonna give you some
3 descriptions, ideas of what reasonable doubt is. He'll tell
4 you things like it's proof that leaves you firmly convinced of
5 the Defendant's guilt. He'll tell you that you can't prove
6 everything beyond all doubt just beyond a reasonable doubt.
7 But he can't draw you a picture, he can give you a formula for
8 reasonable doubt because that's a standard that comes from
9 you. You as a cross-section of the community, you put the
10 reasonable in reasonable doubt; you decide that. I put to you
11 in the Defendant himself is admitted it, even though his lies,
12 when a reliable witness has seen it, told you about it, come
13 in here to this Court and testify to you that there is only
14 one possible verdict here and that's that the Defendant is
15 guilty, guilty of burglary second violent and guilty of
16 possession during a weapon during a violent crime.

17 I thank you for your attention and I look forward to your
18 verdict. Thank you.

19 THE COURT: All right, Mr. Holford?

20 MR. HOLFORD: May it please the Court?

21 THE COURT: Yes, sir.

22 CLOSING STATEMENT BY MR. HOLFORD:

23 MR. HOLFORD: You know, I was gonna stand up here and say
24 that the most shocking thing that I've heard was the fact that
25 Justin Kirkman says that it was in fact Derek Collier, my

1 client, that he saw that night, because we hadn't heard that
2 in a year. But I've got to change just a little bit. The
3 most shocking thing that I've heard is poor old David Henry.
4 Are you kidding me? If you bought anything that David Henry
5 said about, nah, I don't -- I've never carried a gun before.
6 How many burglaries, how many robberies, possession of drugs
7 -- no, I don't know DayDay; no, I may've stayed with Trish.
8 He lived there, her knew Derek. David Henry didn't nothing
9 but lie to you. David Henry is a criminal. He's been
10 convicted. He got charges because Derek Collier thought he
11 was helping the police. Is David Henry gonna know my name?
12 What's Detective Allen say? Nope. He knows and he's
13 testifying for the State. For what? For a better deal.
14 They're gonna put the gun man, the guy who runs the streets on
15 Racepath doing drugs, committing crimes, carries a gun. He's
16 the one copping a plea, testifying against Derek because Derek
17 said I didn't do this, I'm not guilty, I want a trial. I have
18 zero sympathy for David Henry, none. And I have no respect
19 for him or for Justin Kirkman.

20 This is an important trial. My client has said he's not
21 guilty. We get in here -- and I'm gonna get to this in one
22 second, I'm sorry, my thoughts are a little jumpy -- this
23 super fuzzy photo lineup. The State got up here and said that
24 Justin Kirkman picked out Number 2. You know, the problem
25 with that is that their own police officer said he wasn't able

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1 to pick out someone. Because the way lineups work is that you
2 have to pick one person and then you circle that and put your
3 initials by it. There are no circles, there are no initials.
4 Justin Kirkman told you himself he could not identify the
5 person that he saw, a black male wearing a hoodie that night
6 from this lineup until, shockingly to me, because they've got
7 to turn over the evidence that they have, all of a sudden
8 Justin Kirkman gets in here, a convicted robber and convicted
9 burglar, and all of a sudden says, oh, yeah, the one person
10 sitting in trial, I know for a fact that's him.

11 I went over this in the beginning but these are the
12 standards, no evidence, scintilla of evidence, reasonable
13 suspicion, probable cause. This is what got us here today,
14 probable cause. Preponderance of the evidence, 50.1 percent,
15 just barely over fifty percent. Then we have clear and cogent
16 and convincing and reasonable doubt. The absolutely highest
17 burden in any court. What's a reasonable doubt, something
18 that will cause you to hesitate to act. I got a bunch of
19 reasons why you should hesitate to act. Who could've been
20 there the night of November 21st, 2013, because that's all
21 we're talking about. This hotel room, Room 309, where there's
22 still a TV, did a burglary occur in that room. There's a TV
23 missing in next-door. Couldn't be no other person. Could be
24 it's not a black male. If you believe this whole Saturn
25 thing, gold car, there's one close by, the problem is it's a

1 white female and a white male. The investigation stopped
2 there as far as they're concerned. It could be another black
3 male because the only thing we knew coming into this trial,
4 the only thing the police knew, Justin Kirkman knew was that
5 Justin Kirkman saw a black male, about 5-5 to 5-8, twenties,
6 thirties, wearing a hoodie. That could've been David Henry.
7 It could've been this guy. It could've been that guy. All
8 black males, all appear about the same. That's why Justin
9 wasn't able to pick one. Even though, my client is the only
10 one wearing a hoodie in the lineup. And still, he said, well,
11 there's one guy black wearing a hoodie, that's why I described
12 him as, I still can't pick him out of this lineup. It could
13 be Little D or David Henry. Is there a possibility?
14 Absolutely. What's he got to gain, what's his motivation to
15 get out of jail? He's gonna come in here and testify for the
16 State who holds the keys to the jail. They're the ones that
17 offer pleas. They're the ones that take people to trial.
18 Could be Slim, Kendrick Pringle; he used to date Trish. He
19 had access to a Saturn. Could be any other black male that
20 had access to a Saturn. God forbid my roommate drives a
21 silver Altima. Some hotel around me gets robbed by a Silver
22 Altima, I've got access to it. That's not enough. Could be
23 Akmal Henry, David Henry's brother. There are a whole slew of
24 possibilities who it could be. The State has failed to prove
25 to you beyond a reasonable doubt that my client, Derek

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1 Collier, on November 21st, 2013 burglarized with a gun, this
2 hotel room. There are too many reasons, too many
3 possibilities. I'll tell you this, beyond a reasonable doubt
4 is not it's likely or it could've happened. If you're
5 thinking to yourself, man, it just -- it seems like Derek
6 probably did it; that's not guilty. It seems like Derek
7 could've done it; that's not guilty. I know beyond a
8 reasonable doubt that Derek Collier committed this crime of
9 which he's been charged. That is the only thing that you're
10 able to come back and say, each and every one of you, guilty.

11 I want to talk about witnesses for a minute. Megan
12 Mechanic, sweet girl, no doubt about that, runs the hotel,
13 doesn't know a thing about this trial. Doesn't know someone
14 -- who broke in. All she knows is that a TV is missing out of
15 310 and she checked the register and Mr. Collier wasn't a
16 registered a guest. I'll tell you, Mr. Collier wasn't a
17 registered guest, we agree on that. That doesn't prove
18 anything. I'm gonna skip Justin for a second. The police,
19 what are their motivations. The police' job is to prosecute
20 cases, make arrests. David Henry, I talked about him in the
21 beginning. I wasn't planning on it. His motivation, get out
22 of jail. His reliability, zero. His other Codefendant Trish
23 said, oh, yeah, he knows DayDay. Well, he doesn't know DayDay
24 at all. Well, yeah, he stays at my house, we lived together.
25 Well, he didn't do that either. I don't believe a thing he

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1 said.: Trish, what's her motivation? She told you right here,
2 she's facing all these serious charges and what's she been
3 offered? Get of jail free card by the prosecution. She
4 agrees to testify, Drug Court. Drug Court is a diversion
5 program in our county that allows people to get out of jail.
6 If she pled to Drug Court tomorrow, she'd be out of jail. You
7 tell me who has got motivation. Justin Kirkman has
8 motivation, already convicted felon already on probation.

9 MR. DEBUSK: Your Honor, I'm gonna have to object. May
10 we approach?

11 THE COURT: Yes, sir.

12 (REPORTER'S NOTE: A bench conference was held off the record
13 in the presence of but out of hearing of the Jury. The
14 following takes place outside the presence of the Jury.)

15 THE COURT: Ladies and gentlemen of the Jury. I have a
16 matter of law that I need to talk to the lawyers about. Go to
17 your jury room, please. Thank you.

18 (REPORTER'S NOTE: Jury exits courtroom. The following takes
19 place outside the presence of the Jury.)

20 THE COURT: Solicitor, you had a matter you want to bring
21 up to the Court?

22 MOTION:

23 MR. DEBUSK: Yes, Your Honor. Earlier in the trial, you
24 ruled on a admissibility of a prior consistent statement by
25 the witness, Justin Kirkman. And you denied that State to

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1 | play it based on an assertion by the Defendant that they would
2 | not attacking the credibility of the -- of that witness based
3 | on his fear of going to jail, of not argue recent fabrication.
4 | And now, he's arguing that very thing. We would move to
5 | reopen the case and play that tape, Your Honor.

6 | THE COURT: Your argument, Mr. Holford.

7 | MR. HOLFORD: Yes, Your Honor. In the previous ruling,
8 | first of all, the Defense's objection and consideration for
9 | the Court in playing that was that the only part that was
10 | specifically attacked was due to a gold Saturn. Your Court --
11 | Your Honor ruled that it wouldn't be played if I did not
12 | attack the motivation of Justin Kirkman as far as saying that
13 | he committed that crime. Your Honor, at the time, I certainly
14 | told the Court that I would be attacking his credibility and
15 | believability as a witness. The State in their closing
16 | argument went to great length about Justin Kirkman's
17 | believability and reliability. They went to great length
18 | about saying that he gave a statement and what he said was
19 | true. I certainly don't think that I would now be precluded
20 | from attacking a witness' credibility and reliability.

21 | THE COURT: I don't have any intention of precluding you
22 | from attacking his reliability and credibility. The issue is
23 | now, because you have done so, which was a question I did ask
24 | you some time ago. And it came during the testimony of Mr.
25 | Justin Kirkman the issue came up and we had a discussion about

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1 Rule 801 and I read to you what the Supreme Court had said in
2 the case of State v. Foster at 582 S.E.2d 426. Now, in Rule
3 801, when we're talking about a statement, which is not
4 hearsay, regarding a prior statement by a witness, it's not
5 hearsay if consistent with the declarant's testimony and is
6 offered to rebut an expressed or implied charge against the
7 Defendant of recent fabrication which I said that's not what
8 you were doing or improper influence or motive. That's
9 exactly what you're doing right here, improper motive. You're
10 saying he's lying to save himself from going to jail. Okay?
11 That's exactly what you're doing. Not saying you can't do
12 that, I'm gonna allow you to do that but the problem is I did
13 not allow the State to play that tape based upon your
14 statement that you weren't gonna do that, imply and improper
15 motive to him. Well, clearly, you're doing that right now and
16 I'm not gonna preclude you from doing so. You can argue that.

17 MR. HOLFORD: Your Honor, I would state that at the time,
18 I said that I would not imply that his testimony or him saying
19 what he was saying to preclude him from going to jail at the
20 time.

21 THE COURT: That's exactly what you just said.

22 MR. HOLFORD: No, I said it's to preclude -- I said that
23 he's saying this attacking his credibility and believability
24 that they shouldn't believe what he's saying that he's making
25 things up which is ---

1 THE COURT: To save himself from going to jail.

2 MR. HOLFORD: He's not facing jail right now.

3 THE COURT: But that's your argument.

4 MR. HOLFORD: No, Your Honor, I -- I can't bring perjury
5 charges against him. I'll tell -- I can tell the Jury that
6 there's no way I can bring a perjury charge against him.

7 THE COURT: I appreciate that. You can't but that's what
8 you're alluding to and that's what you are indicating to the
9 Jury, this is his motive. He has an improper motive in
10 testifying because he's on probation and if he says, and you
11 believe that, then he's lied and he's going to jail. That's
12 clearly what you're doing.

13 MR. HOLFORD: Your Honor, I don't believe that's what I'm
14 doing. I can certainly clear that up. I -- I have not said
15 that he's gonna go to jail if he was lying. I'm saying they
16 shouldn't believe him, he is lying.

17 THE COURT: Why are you making reference to his prior
18 record and the fact that he's on probation? What are you
19 doing that?

20 MR. HOLFORD: Because they shouldn't believe what he's
21 been saying.

22 THE COURT: Implying an improper motive.

23 MR. HOLFORD: That's attacking his credibility as a
24 witness and believability as a witness. I'm not implying that
25 he's gonna go to jail if he's found to be lying.

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1 THE COURT: Your argument, Solicitor?

2 MR. DEBUSK: Your Honor, I think your ruling was clear
3 and the reason we weren't allowed to make -- to play that tape
4 was precisely because he said he wasn't gonna make that
5 argument and I don't see any way around that, Your Honor.

6 MR. GARDNER: Your Honor, I would like to put one thing
7 on the record, if I may, Your Honor.

8 THE COURT: Yes, sir, Mr. Gardner.

9 MR. GARDNER: I believe that we had improper bolstering
10 of this witness' testimony by the Solicitor by saying he could
11 face perjury charges. The Solicitor opened up any kind of
12 door that we might be talking about and I think that that ---

13 THE COURT: You didn't raise the matter to me in the form
14 of an objection.

15 MR. GARDNER: And we'll live by it. We'll live by it but
16 he should live by it, too. That was very improper for him to
17 do that.

18 THE COURT: Well, if it was or it wasn't, you did not
19 give me an opportunity at that point in time to address the
20 issue. Therefore, I can't do anything about it now. It's
21 already out there.

22 MR. GARDNER: I'm not making an objection to it. I like
23 it in there. He brought it up because he thought it was
24 important. We should be able to ---

25 THE COURT: And I'm not gonna prevent you from doing so.

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1 I'm gonna allow you to do so. The point is whether or not the
2 Court should reopen the case at this point in time to allow
3 the playing of that statement. I'm not gonna prevent you from
4 making any of those arguments. You can make those arguments
5 all you want to. Okay? I'm gonna allow you to do it. I'm
6 not preventing you from arguing a thing to the Jury. Okay?
7 Let's be clear about that.

8 MR. HOLFORD: Your Honor ---

9 THE COURT: Okay?

10 MR. GARDNER: I understand that, Judge, but I believe
11 that the -- number one, we would submit that there's nothing
12 on this Court's motion to reopen the case, that would satisfy
13 ---

14 THE COURT: The State's motion to reopen the case.

15 MR. GARDNER: I thought you asked him if he had a motion.

16 THE COURT: I asked him if he had a motion ---

17 MR. GARDNER: To reopen the case.

18 THE COURT: And he said he has a motion to reopen the
19 case, yes; I asked him.

20 MR. GARDNER: Okay. I don't think that there is proper
21 -- anything proper to -- that would give grounds for this
22 motion at this point in time.

23 THE COURT: Solicitor, your grounds for reopening the
24 case at this point in time?

25 MR. DEBUSK: Your Honor, the -- the evidence was denied

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1 specifically because there was an assertion by the Defense
2 that they weren't gonna make that argument and now they're
3 making it. I think that the basis of the prior ruling
4 evaporates when the argument is made. And so the evidence
5 becomes admissible and should be allowed.

6 THE COURT: All right. Thank y'all.

7 MR. HOLFORD: Your Honor, if I may also, the question in
8 controversy about the prior consistent statement that I
9 attacked specifically was whether the car was silver or
10 whether he said it was gold. If they want to play that -- if
11 they want to reopen it and play that portion of the tape that
12 he said it was gold and silver, even after the prosecution had
13 an opportunity to redirect and did redirect him and he said I
14 said it could be gold or silver, if that's the prior
15 consistent statement they want. But the playing of a prior
16 consistent statement was to direct questions which I asked him
17 implied were not consistent and that would be the color of the
18 car.

19 THE COURT: All right. Thank you, gentlemen.

20 If y'all want to take a break. This is going to take a
21 little while.

22 (RECESS)

23 *****OFF THE RECORD*****

24 (On the Record.)

25 RULING OF THE COURT AS TO MOTION:

1 THE COURT: Regarding the State's motion to reopen the
2 case to play either the statement of the witness Justin
3 Kirkman to the police or a portion thereof, I'm going to deny
4 the State's motion to do so. In that, I think I certainly
5 have the authority to do so, no question about that, by the
6 case law. But I'm not going to do so in this case. I do
7 believe that, Mr. Holford, that you are making arguments to
8 the Jury that I thought I had clearly indicated to you not to
9 make. You had a choice. We play a portion of the statement,
10 you can make any arguments you want to or you said you weren't
11 going to, under Rule 801, imply the improper motive to Mr.
12 Kirkland. And I -- I understand what you're saying but I
13 don't think there is any way around what you're saying to the
14 Jury that they can understand it in any other way. So, you
15 will not imply the improper motive argument in such that,
16 regarding Mr. Kirkman, that he is fabricating something to
17 save himself from prosecution or going to jail or revocation
18 of his probation. You can attack his credibility, you can say
19 based on the facts in evidence, he's not believable, this is
20 why. He obviously couldn't be certain a month after and now
21 he's certain in court, all those arguments, but to say that he
22 is fabricating to save himself from going to jail, that
23 particular argument I'm not gonna allow you to make because
24 that's what we talked about at the time of the request of the
25 State and my understanding, it might not have been your

RULING AS TO MOTIONS

1 understanding, it was clearly my understanding you would not
2 make that argument to the Jury. I'm not preventing you from
3 making any other arguments, attacking his credibility in any
4 way, just that argument about improper influence. He's lying
5 on the stand to save himself from going to jail because he's a
6 convicted felon. You can say he's a convicted felon but that
7 he's -- you're not to say to the Jury he's lying to save
8 himself from going back to jail or going to jail. Are we
9 clear about that?

10 MR. HOLFORD: Yes, sir.

11 THE COURT: You can -- you can say he's not believable in
12 any way, convicted felon, facts, whatever it is. It's that
13 one argument about the improper motive. That's the one I'm
14 not gonna allow you to say. But otherwise, you can attack his
15 credibility any way you can think of. All right?

16 MR. HOLFORD: Yes, Your Honor.

17 THE COURT: All right. Let's -- what I'm gonna do is --
18 well, I'm gonna -- I'm not asking you to shorten your argument
19 in any way. I just wanting to know, can you give me some kind
20 of idea how much longer you might be, just some approximation?

21 MR. HOLFORD: Ten, fifteen minutes.

22 THE COURT: All right. That's fine. Whatever it is is
23 whatever it is. I'm not telling you to shorten it in any way,
24 Mr. Holford. I'm just trying to get some idea of where we
25 might be in this. If it's gonna be in that range, I'm

CLOSING BY HOLFORD

1 probably not gonna break again and then charge them. I'll
2 probably just go right into the charge. Normally, I would
3 break after both of y'all had the arguments but we've given
4 them a lot of a break now, so... Let's have the Jury come back
5 in and let's see if we can just continue on and get it to
6 them. All right?

7 MR. HOLFORD: Yes, Your Honor.

8 THE COURT: All right.

9 (REPORTER'S NOTE: Jury enters courtroom.)

10 THE COURT: All right. Mr. Holford, you may continue,
11 sir.

12 MR. HOLFORD: Thank you, Your Honor. May it please the
13 Court?

14 THE COURT: Yes, sir.

15 CONTINUATION OF CLOSING STATEMENT BY MR. HOLFORD:

16 Q: Ladies and gentlemen, sometimes I get a little work up
17 about stuff that really matters to me because it matters to my
18 client. And I notice that I might've been a little excited
19 and I didn't meant to be shouting you if I was. Sometimes
20 there are things that happen, though, that deals with the
21 Court, doesn't deal with you doesn't mean you did anything
22 wrong.

23 Like I was saying before, though, Justin Kirkman,
24 convicted felon. Believable? No. Reliable? No. What did
25 he see that night, November 21st, 2013, a black male, average

CLOSING BY HOLFORD

1 height, average weight, wearing a hoodie. First time, first
2 time, he was ever able to identify Mr. Collier was while Mr.
3 Collier is sitting on trial. I submit to you the State said,
4 you know, no one saw Little D. I submit to you there's a
5 possibility Justin Kirkman saw Little D, if he saw anybody.
6 What's David Henry look like, black male, average height,
7 average weight. If I represented David Henry and he was the
8 only one sitting here in court, I submit to you Justin Kirkman
9 would've got on that stand and said, yep, that's the guy. I
10 know a hundred percent because now I see him in court. Now, I
11 know he's on trial. I met with the prosecutor on Friday.
12 That's not believability. That's not reliability. Two people
13 facing charges, trying to get out of their crimes; that's not
14 reliable, that's not believable.

15 Let me talk about the tape for a minute. Why would a
16 person say they did something or at least part of something,
17 if they didn't. Now, the State wants it both ways on this
18 issue. They want to say you can't believe Derek, he's a liar,
19 but you gotta believe him, he's reliable, he said he did it;
20 which one is it? I don't know. He says on that tape, I
21 didn't have a gun, no one had a gun. He also says that the
22 guy had pajama pants down. How could you know something two
23 months after the fact if you can do it? Maybe you live with
24 the guy. Maybe you heard it on the street. You know, in my
25 line of work, I represent a lot of people that know a lot of

CLOSING BY HOLFORD

1 things that the police don't know. There's a lot of stuff
2 that happens. The word on the street travels pretty quickly;
3 that's just the truth. There are ways to know about what
4 something happened two months after the fact, about some of
5 the details, even if you weren't the one who did it. You
6 know, they want you to believe that he's telling the truth but
7 then they say, well, you know, he said something about air-
8 conditioning vents. That wasn't part of the crime, so he's
9 lying about that. Is he or did he not actually do it? That's
10 reasonable doubt.

11 Mr. Kirkman also said, for the first time ever, there's a
12 TV in the back of the car. That's convenient. We now know
13 there's one TV missing from Room 310. In that statement made
14 by my client, there was four or five TVs. The prosecutor
15 wants you to believe that he's reliable and that he did it but
16 maybe he doesn't know all the facts, maybe he got some of the
17 facts wrong. Did my client say Jamaican first? No. He said
18 building near the Caribbean. Truex, the detective, said you
19 mean the Jamaican? Yeah, yeah, that's what I mean. Four or
20 five TVs? Yeah, yeah, that's what it was. Air-conditioning
21 unit, that's how you're getting in on the third floor? Yeah.
22 But that doesn't match the facts, that doesn't match the
23 evidence. You see, the problem with this case is there's a
24 lot that isn't here. You know, we heard a long list of people
25 that may be witnesses for the State, a number of police, a

1 number of other people that I don't know how they are
2 involved. We didn't hear from them. Could that have clear
3 that some of this? I don't know. They're not my witnesses.
4 No one testified as to any fingerprints, no one testified as
5 to any DNA, no one has ever found a gun, some alleged gun.
6 They arrested Mr. Collier walking on the street wearing a
7 hoodie. He didn't have a gun on him. We don't have witness
8 statements written by Mr. Kirkman. You remember he said he
9 wrote a statement that day to the police? We don't have a
10 security guard. Where is he? What did he say? Did he see
11 anything? Did he give a statement? Did he not? What did he
12 tell the police? I don't know. My guess is that it wasn't a
13 helpful to the State. If it was, they would've called them
14 but they didn't. Maybe it doesn't match up with this guy's
15 story. Not a lot does. There are a number of inconsistencies
16 between the south side and the north side, silver car, gold
17 car, someone had a gun, someone didn't have a gun. Was David
18 Henry in for shoplifting or just burglaries or both? You
19 can't believe anything he said. Don't hold it against my
20 client that he exercised his right to a trial. It's a
21 constitutional right that everyone; that does not mean he's
22 guilty. The only thing that can prove him guilty is evidence
23 beyond reasonable doubt from that witness stand. The evidence
24 that you have here, the sketch wasn't actually drawn by Justin
25 Kirkman, it was an officer, that's how they do sketches. An

CLOSING BY HOLFORD

1 officer draws, the guy tells them I think this is what he
2 looks like. This Miranda form, a tenth grade education,
3 smoked crack, don't hold it against him that he smokes crack.
4 I know that's bad; we know that's bad. That's wrong. That is
5 not what he is on trial for today. Don't take away his
6 freedom because he hangs with the wrong people. Don't take
7 away his freedom because he knows the wrong people. That's
8 not what he's on trial for today. Don't take away his freedom
9 because he is scared. That's not what he's on trial for
10 today. You should only take away his freedom if each and
11 every one of you believes beyond a reasonable doubt you don't
12 have to hesitate to act that man right there, Derek Collier,
13 committed the crime that he is accused of. This Miranda form
14 says 1/30/13. You know, the Judge told you that you don't
15 have to take that statement into account. I'm okay if you do
16 but you don't have to. See, the evidence, the preponderance
17 -- preponderance of the evidence, that's what -- that lets it
18 in. That's how you can even hear it but it's up to you to
19 decide, is that reliable, does someone have their full mental
20 and physical faculties, are they able to give a voluntary
21 statement? You know, I ask the officer, he said, yeah, I was
22 a road officer. If you pulled over someone and they said they
23 smoked crack would you arrested for DUI? He said, maybe or
24 probably. The answer is yes, yes, yes, all day long. While
25 wouldn't he just say that? Maybe because he knows that you're

1 not in your right mind, maybe because he knows that first
2 statement was under the influence. And the second statement,
3 was based on the first one. Hey, Derek, didn't you already
4 say this to us in custody? Yeah.

5 Ladies and gentlemen, there are probably a lot of things
6 that I've missed. A lot of things that when I sit down I'm
7 gonna think back and say, oh, I wish I just could've told them
8 that. The fact of the matter is, this is going to be in your
9 hands. There are going to be things that you thought of that
10 didn't make sense. There are gonna be things that you heard
11 that just don't match up. There are gonna be things that you
12 wish you would've heard from the witness stand. There's gonna
13 be a lot that you may be thinking about and why wasn't that
14 resolved? I don't know all these things. There's a lot that
15 I have, a lot of things that I'm thinking about and it all
16 adds up to more than a reasonable doubt. I ask that you go
17 back there in that jury room, do your duty, think
18 independently, come to a decision together, find the just
19 verdict in this case. My client Derek Collier is not guilty
20 of burglary second degree or possessing a weapon.

21 Thank you.

22 CHARGE TO JURY:

23 THE COURT: All right, ladies and gentlemen. It is now
24 my duty and responsibility to give you the law that you will
25 apply to the facts and evidence that you find to be true in

CHARGE TO JURY

1 this particular case. I told you in the very beginning I
2 would not indicate to you in any way what I think the facts of
3 this case are because that's your job and your responsibility.
4 In that same vein, if you came into the courtroom with any
5 kind of preconceived ideas of what the law is, what it ought
6 to be, what it should be, what you hoped it would be, you'll
7 disregard that. You will take the law as I now give it to you
8 and apply it to the facts and evidence you find to be true. I
9 told you at the very beginning your job as the judges of the
10 facts would encompass judging credibility and believability of
11 the witnesses. Now, in doing so, you could believe one
12 witness against several, several against one. You can believe
13 a portion of what a witness says and disregard the remaining
14 portion of it. You could disregard the entire testimony of a
15 particular witness if you've got a good and sound reason for
16 doing so. What do you look for? You look at whether or not
17 that particular witness has exhibited to you any kind of
18 interest, motive, bias, prejudice they might have in giving
19 you the testimony they gave you from the witness stand. You
20 can consider their demeanor, how did they appear when they
21 were actually giving you the testimony from the witness stand?
22 And obviously, you consider opportunity for knowledge. How
23 did they come about that information that they gave you from
24 the witness stand. Your objective is to find the truth. It
25 doesn't matter from what part of the evidence or combination

CHARGE TO JURY

1 of parts of the evidence that comes from. You don't have any
2 friends to reward. You don't have any enemies to punish.
3 Your verdict can't be the result of any kind of passion,
4 prejudice or sympathy. It has to be an examination of the
5 facts and evidence and find that evidence which convinces you
6 of its truth. Two types of evidence that are produced in
7 virtually every single case that's tried is called direct and
8 circumstantial evidence -- direct evidence. That's the
9 testimony of a person who claims or asserts to have actual
10 knowledge. Circumstantial evidence, that's proof of a chain
11 of facts indicating the existence of a fact. The law doesn't
12 make any distinction between the two, a greater degree of
13 proof, it's not required of one over the other but to the
14 extent that you find the State has relied on circumstantial
15 evidence, if it did, all of the circumstances must be
16 consistent with each other and when taken together point to
17 the guilt of the accused beyond a reasonable doubt. That's
18 because the State has -- as I told you in the beginning, it
19 has the burden of proving the Defendant guilty beyond a
20 reasonable doubt. Our rules of evidence provide that the
21 testimony of a witness may be discredited or impeached by
22 showing the witness has been convicted of a crime for which
23 they could have been imprisoned for more than one year for a
24 crime that involves dishonesty. Now, as to this evidence, is
25 offered only on the issue of credibility or believability and

CHARGE TO JURY

1 for no other purpose. A person who has a past criminal record
2 is available and can and properly testify in trial. Their
3 past record does not affect their ability to testify. The
4 past record effects, only if you think it should, their
5 believability and their credibility, that's your province,
6 that's your call, that's what you are called upon to do but
7 you can look at that, if you want to, to decide somebody's
8 credibility and believability.

9 The Defendant didn't testify in this case. I'm telling
10 you this is not a factor to be considered by you in any way in
11 your deliberations or mentally in considering the question of
12 whether or not the Defendant or the State to prove the
13 Defendant guilty beyond a reasonable doubt. You are to draw
14 no conclusions whatsoever from the fact the Defendant did not
15 testify. The burden of proof is on the State of South
16 Carolina to prove the Defendant guilty beyond a reasonable
17 doubt and that burden of proof remains with the State at all
18 times. The statement alleged to have been made by the
19 Defendant was admitted into court by -- I ruled that it was
20 admissible as evidence in this case. Now, while I made the
21 decision to allow it into evidence, you are the ultimate
22 decision-maker of two things. Whether or not the Defendant
23 made the statement and, if you believe the Defendant made the
24 statement, then you must decide was the statement made by him
25 voluntarily and of his own free will. That means the

CHARGE TO JURY

1 statement wasn't coerced, it wasn't caused by pressure, force,
2 fear, threats, intimidation or by hope or promise of any kind
3 of leniency or reward of any kind. In determining whether or
4 not it was voluntary, you can consider the age of the
5 Defendant, the Defendant's education or lack thereof, the
6 Defendant's mental capacity, the Defendant's intelligence, the
7 Defendant's background and environment, the place and length
8 of detention, the nature of the questioning and the advice or
9 lack thereof of his constitutional rights including but not
10 limited to the right to remain silent, that any statement you
11 make can and will be used against you in a court of law, you
12 have the right to have a lawyer present. If you cannot afford
13 a lawyer, one will be appointed to represent you. You can
14 stop making a statement at any time if you so choose to do so.
15 The State has the burden of proving, as it does with
16 everything, proving to you beyond a reasonable doubt that the
17 Defendant made the statement and that it was his voluntary
18 statement taking into consideration these things I'm talking
19 about.

20 I told you at the very beginning, the Defendant pled not
21 guilty. That put the burden of proof on the State of South
22 Carolina to prove Defendant guilty beyond a reasonable doubt.
23 This is the presumption of innocence. This presumption of
24 innocence did not end at the beginning of the trial and it has
25 not ended now. It does not end unless and until you believe

1 the State has proven the Defendant guilty beyond a reasonable
2 doubt based upon the facts and evidence presented in this
3 case. That presumption of innocence is not just some legal
4 theory. It's not just a legal phrase that you hear. It is a
5 substantial right to which every defendant, to which this
6 Defendant is entitled, unless you believe the State has proven
7 to you the guilt of the Defendant beyond a reasonable doubt.

8 What's reasonable doubt? The kind of doubt that would
9 cause an ordinary, reasonable person to hesitate to act.
10 Proof beyond a reasonable doubt is proof that leaves you
11 firmly convinced the Defendant is guilty of the crime or
12 crimes charged. Now, there are very few things we can know
13 with absolute certainty and the law does not require the State
14 of South Carolina to give you that kind of proof. But what is
15 required is that, based upon your consideration of the
16 evidence, you are firmly convinced the Defendant is guilty of
17 the crime or crimes charged, you must find the Defendant
18 guilty. On the other hand, based upon your view of the
19 evidence in the evidence you find to be true, you are not
20 firmly convinced the Defendant is guilty of the crime or
21 crimes charged, you must give the Defendant the benefit of the
22 doubt and find him not guilty.

23 What's the Defendant charged with? Burglary second
24 degree violent. To prove this crime, the State must prove to
25 you beyond a reasonable doubt that the Defendant entered a

CHARGE TO JURY

1 building without consent and with the intent to commit a crime
2 therein in the building. What's a building? Any kind of
3 structure, vehicle, watercraft, aircraft where a person lodges
4 or lives or where people assemble for the purpose of business,
5 government, education, religion, entertainment, public use,
6 public entertainment, any of those; that's a building. The
7 State also has to prove to you one of these things that,
8 beyond a reasonable doubt, that the Defendant while entering,
9 while in the building or fleeing the building was armed with a
10 deadly weapon. A deadly weapon is any kind of article or
11 instrument which is likely to cause death or great bodily
12 harm, whether or not an instrument is a deadly weapon depends
13 on the facts and circumstances of each case; or while
14 entering, while in the dwelling or when fleeing, the Defendant
15 used or threatened to use a dangerous weapon or a deadly
16 weapon; or, when entering, while in the dwelling or when
17 fleeing, the Defendant displayed what appeared to be a deadly
18 weapon or a dangerous weapon; or the Defendant entered or
19 remained in the building in the nighttime. Nighttime, that's
20 the period between sunset and sunrise in which there is not
21 enough daylight to recognize a person's face except by
22 artificial light or moonlight. So, the State has to prove
23 that, beyond a reasonable doubt, that the Defendant entered
24 the building, without consent, with the intent to commit a
25 crime therein and then one or more of the others. Not all of

CHARGE TO JURY

1 | them, just one of them, beyond a reasonable doubt. That would
2 | be burglary second degree violent. If and only if you find
3 | the Defendant guilty of burglary second degree violent, you
4 | consider possession of a weapon during the commission of or
5 | attempt to commit a violent crime. The State has to prove to
6 | you beyond a reasonable doubt that the Defendant was in the
7 | possession of a firearm or visibly displayed what appeared to
8 | be a firearm during the commission of the violent crime. In
9 | order to find the Defendant guilty of the possession of a
10 | weapon during the commission of a violent crime, you must
11 | first find the Defendant guilty of committing the violent
12 | crime or attempting to commit the violent crime. I'm telling
13 | you that you convict the Defendant of burglary second violent
14 | that is a violent crime, so that would be satisfied, then you
15 | would have to see from the facts and evidence, do you believe
16 | the State prove the Defendant guilty of -- that he was in
17 | possession of a firearm or visibly displayed that firearm
18 | during the commission of burglary second violent. Also, the
19 | State has to prove beyond a reasonable doubt that that weapon
20 | further advanced or helped in some way in the commission of
21 | crime.

22 | That, ladies and gentlemen, is the law that you are gonna
23 | apply to the facts and evidence you find to be true. I have
24 | prepared a verdict form for your use. It's pretty
25 | straightforward. The caption of the case State of South

CHARGE TO JURY

1 Carolina versus Derek Vander Collier, burglary second degree
2 violent. On the charge of burglary second degree violent, we,
3 the Jury, by unanimous consent find the Defendant -- the fact
4 that I put one choice before the other, don't assign anything
5 to that -- not guilty or guilty, a block to pick one of the
6 two and a line for the Foreperson to sign and put today's
7 date. There's a note, if the Jury has found the Defendant
8 guilty of burglary second degree violent, please render a
9 decision on the charge of possession of a weapon during the
10 commission of a violent crime. However, if the Jury has found
11 the Defendant not guilty of burglary second degree violent,
12 the Defendant must be found not guilty of possession of a
13 weapon during the commission of a violent crime. So, the only
14 way you can consider the second charge is if you have already
15 convicted Defendant of burglary second degree violent. If you
16 have convicted him of that, then you go on to possession of a
17 weapon during the commission of a violent crime. On the
18 charge of possession of a weapon during the commission of a
19 violent crime, we, the Jury, by unanimous consent find the
20 Defendant -- again, two choices, one before the other; don't
21 assign anything to that -- not guilty or guilty, a line for
22 the Foreperson to sign. And when the Jury has reached that
23 unanimous verdict, knock on the door and let the Bailiff know
24 that you've done that.

25 Now, I said unanimous several times here and earlier when

CHARGE TO JURY

1 I talked to you. It means exactly what you think it means, it
2 means twelve/zero. Whatever verdict you render, whatever
3 block is checked, it must be every single member of the Jury
4 agrees that's their verdict, that's what a unanimous verdict
5 means. So, Madame Forelady, you check the block, you sign
6 your name, you put today's date, y'all knock on the door and
7 let the Bailiff know you have reached a verdict. You are
8 telling the Court, every single member on the Jury agrees,
9 that's their verdict. So, if called upon when they come back
10 in the courtroom to raise the right-hand and indicate that's
11 their verdict, they will be able to do so.

12 What I'm going to ask that you do, Madame Forelady, is
13 two things. They obviously have ordered lunch for you.
14 They've got that. When y'all go back to your jury room
15 they'll deliver that and y'all enjoy your lunch. Do not, do
16 not begin your deliberations until the Bailiff brings to you
17 the verdict forms and the exhibits. After that, you know, I
18 would suggest you want to eat lunch and then start your
19 deliberations but you do whatever you want to do. But don't
20 start your deliberations until the Bailiff hands to you the
21 verdict form and the exhibits. All right?

22 With that, Madame Forelady, take your Jury to the jury
23 room, please. Thank y'all.

24 (REPORTER'S NOTE: Jury exits courtroom. The following takes
25 place outside the presence of the Jury.)

BY THE COURT

1 BY THE COURT:

2 THE COURT: Exceptions, deletions, additions to the
3 charge from the State?

4 MR. DEBUSK: No, Your Honor.

5 THE COURT: From the Defense?

6 MR. HOLFORD: None, Your Honor.

7 THE COURT: All right, gentlemen. Thank you very much.

8 I want to tell the State and the Defense, gentlemen, y'all did
9 everything that the Court expected of you. You diligently
10 and, you know, with great effort represented each side, you
11 know, what everything that the Court would expect of you. All
12 of y'all did a good job and I appreciate that and thank you
13 for that. All right?

14 Please get with the Court Reporter and make sure we've
15 got all the proper exhibits going to the Jury. Okay?

16 Yes, sir?

17 MR. DEBUSK: The exhibits that have the statements on
18 them are in such a format they would play in a CD player, they
19 wouldn't need a computer, those ---

20 THE COURT: That they do need a computer?

21 MR. DEBUSK: No, I don't think -- I think it will play on
22 a CD player. I think we tried to do that.

23 THE COURT: Do you have a CD player?

24 MR. DEBUSK: Unfortunately not, Your Honor. I was gonna
25 ask the Court ---

1 THE COURT: Well, then we don't -- the Clerk of Court
2 doesn't have one. So, what we've done in the past is your
3 office has a blank computer which has gone into the jury room.
4 So, that's what you'll need to do is secure and find that
5 blank computer.

6 MR. DEBUSK: We will, Your Honor.

7 THE COURT: And that needs to go into the jury room so
8 they can play them if they want to. Now, let's be clear about
9 that. Are those statements redacted?

10 MR. DEBUSK: These are the redacted versions, Your Honor.
11 This, which is not evidence for the trial but is in evidence
12 for the ---

13 THE COURT: Okay. But the ones that are in evidence in
14 trial are the redacted versions, correct?

15 MR. DEBUSK: Single redacted versions on one track on
16 each CD.

17 THE COURT: All right. Great. All right. Good deal.
18 So, y'all locate that.

19 MR. HOLFORD: My question would be does it have the
20 portions, does it jump in portions or does it ---

21 MR. DEBUSK: It's exactly as you heard it on the record.

22 MR. HOLFORD: No, I know, but does it show -- I know that
23 the audio is exactly what we agreed to but does it show that
24 the statement is forty-two minutes long but they only hear ten
25 minutes of it?

BY THE COURT

1 THE COURT: Whatever, so it just shows whatever it is
2 that's actually on the disk?

3 MR. DEBUSK: Yes, sir.

4 THE COURT: All right. Great.

5 MR. GARDNER: May I make one suggestion? I don't know
6 how long it takes to get the laptop. Are we sending
7 everything back there now?

8 THE COURT: No, sir. No, we're gonna send it all in at
9 one time. They're gonna be eating lunch anyway. So, let them
10 eat lunch and then, Solicitor, you go get that computer your
11 office has that has nothing on it.

12 MR. DEBUSK: Yes, Your Honor.

13 THE COURT: Okay. And get that. Okay?

14 MR. GARDNER: Thank you, Your Honor.

15 THE COURT: Thank y'all. And then we'll be at ease till
16 the Jury needs us.

17 (REPORTER'S NOTE: Jury to have lunch and deliberations begin
18 at 12:40 P.M.)

19 (RECESS)

20 *****OFF THE RECORD*****

21 (On the Record.)

22 THE COURT: All right. Is the State ready for the Jury
23 to come in?

24 MR. DEBUSK: Yes, Your Honor.

25 THE COURT: And the Defense?

VERDICT OF JURY

1 MR. HOLFORD: Yes, Your Honor.

2 THE COURT: All right. Ask the Jury to come in, please.

3 (REPORTER'S NOTE: Jury enters courtroom. 2:00 P.M.)

4 VERDICT OF THE JURY:

5 THE COURT: All right. Madame Forelady, has the Jury
6 reached a verdict in this matter?

7 JUROR 434: Yes, sir.

8 THE COURT: All right. Could you hand the verdict forms
9 to the Clerk, please, ma'am?

10 You may publish the verdict.

11 CLERK: In the Court of General Sessions Fifteenth
12 Judicial Circuit, 2014-GS-26-01541, State of South Carolina,
13 County of Horry, State of South Carolina versus Derek Vander
14 Collier, burglary second degree violent. On the charge of
15 burglary second degree violent, we, the Jury, by unanimous
16 consent find the Defendant guilty, signed by Foreperson Claire
17 Taylor, December 11, 2014.

18 In the Court of General Sessions Fifteenth Judicial
19 Circuit, 2014-GS-26-01540, the State of South Carolina, County
20 of Horry, State of South Carolina versus Derek Vander Collier,
21 possession of weapon during a crime -- during the commission
22 of a violent crime on the charge of possession of weapon
23 during the commission of violent crime, we, the Jury, by
24 unanimous consent find the Defendant not guilty signed by
25 Foreperson Claire Taylor, December 11, 2014.

POLLING OF JURY

1 Ladies and gentlemen of the Jury, if this is your verdict
2 so signify by raising your right hand.

3 (REPORTER'S NOTE: All jury members comply.)

4 THE COURT: All right. You may put your hands down.

5 Now, Madame Forelady, it's apparent on the face of the
6 verdicts that there was a correction made in the verdict form;
7 is that correct?

8 JUROR 434: Yes, sir.

9 THE COURT: All right. So, with that, just to be sure,
10 what we're gonna do is poll the Jury one-by-one. We're gonna
11 use your juror number. So, Madame Clerk, if you would do
12 that, please, ma'am.

13 POLLING OF JURY:

14 CLERK: Okay. Please stand when I call your number.
15 I'll ask you two questions. After you answer them, please be
16 seated.

17 Juror 434, is this your verdict.

18 JUROR 434: Yes, ma'am.

19 CLERK: Still your verdict?

20 JUROR 434: Yes, ma'am.

21 CLERK: Juror 472, is this your verdict?

22 JUROR 472: Yes.

23 CLERK: Still your verdict?

24 JUROR 472: Yes.

25 CLERK: Okay. Be seated.

POLLING OF JURY

1 Juror 306, is this your verdict?
2 JUROR 306: Yes.
3 CLERK: Still your verdict?
4 JUROR 306: Yes.
5 CLERK: Juror 108, is this your verdict?
6 JUROR 108: Yes, ma'am.
7 CLERK: Still your verdict?
8 JUROR 108: Yes, ma'am.
9 CLERK: Juror 329, is this your verdict?
10 JUROR 329: Yes, ma'am.
11 CLERK: Still your verdict?
12 JUROR 329: Yes, ma'am.
13 CLERK: Juror 72, is this your verdict?
14 JUROR 72: Yes, ma'am.
15 CLERK: Still your verdict?
16 JUROR 72: Yes.
17 CLERK: Juror 287, is this your verdict?
18 JUROR 287: Yes, ma'am.
19 CLERK: Still your verdict?
20 JUROR 287: Yes, ma'am.
21 CLERK: Juror 47, is this your verdict?
22 JUROR 47: Yes, ma'am.
23 CLERK: Still your verdict?
24 JUROR 47: Yes, ma'am.
25 CLERK: Juror 2, is this your verdict?

POLLING OF JURY

1 JUROR 2: Yes.

2 CLERK: Still your verdict?

3 JUROR 2: Yes.

4 CLERK: Juror 426, is this your verdict?

5 JUROR 426: Yes, ma'am.

6 CLERK: Still your verdict?

7 JUROR 426: Yes, ma'am.

8 CLERK: Juror 227, is this your verdict?

9 JUROR 227: Yes.

10 CLERK: Still your verdict?

11 JUROR 227: Yes.

12 CLERK: Juror 131, is this your verdict?

13 JUROR 131: Yes, ma'am.

14 CLERK: Still your verdict?

15 JUROR 131: Yes, ma'am.

16 THE COURT: The Jury having affirmed their verdict by

17 polling, is there anything further from the State of South

18 Carolina as to the Jury itself?

19 MR. DEBUSK: No, Your Honor.

20 THE COURT: As to the Jury itself from the Defense?

21 MR. HOLFORD: No, Your Honor.

22 THE COURT: Thank you very much.

23 BY THE COURT:

24 THE COURT: All right. Ladies and gentlemen of the Jury,

25 I want to thank you for your service in this case. You did

BY THE COURT

1 exactly what the Court asked you to do, that is to well and
2 truly deliberate, reach a unanimous verdict in this matter. I
3 understand, the lawyers and the parties understand we asked
4 you to do a difficult thing. Many of you are in or have been
5 in a relationship and you understand it's difficult to get two
6 people to agree on something sometimes and so to get twelve
7 people to agree, we understand that's a difficult process.
8 You did -- you paid attention, you listened and I appreciate
9 your service. I will excuse you from the balance of the week
10 for your service. And with that, you are now excused.

11 Thank you very much.

12 (REPORTER'S NOTE: Jury exits courtroom. The following takes
13 place outside the presence of the Jury.)

14 THE COURT: Solicitor and Defense counsel, if y'all want
15 to come up, please.

16 (REPORTER'S NOTE: A bench conference was held off the
17 record.)

18 THE COURT: All right. Motions on behalf of the Defense?

19 MOTIONS:

20 MR. HOLFORD: Yes, Your Honor. Your Honor, the Defense
21 would make a motion to set aside the verdict as read by the
22 Jury. It appears that there is some inconsistency. Your
23 Honor, the Defense believes that the Jury just made a
24 compromise and found not guilty on one and guilty on the
25 other. And then had it done the other way. It appears they

MOTIONS AND RULING ON MOTIONS

1 were just compromising, not necessarily taking all the
2 evidence into consideration. And for that reason, we would
3 ask that Your Honor step in, set that verdict aside and assign
4 a verdict of not guilty.

5 Further, if the Court denies that motion, there would be
6 a motion to reconsider prior overrulings of Defense counsel's
7 motions during the trial including the directed verdict and
8 ask Your Honor to direct a verdict in favor of the Defendant
9 at this point. If that is denied, Your Honor, the Defense
10 would move for a new trial at this point.

11 RULING OF THE COURT AS TO MOTIONS:

12 THE COURT: All right, sir. Regarding the motions by the
13 Defense, I would first say that I believe that the proper --
14 certainly you can have a motion for reconsideration but the --
15 I believe the proper motion is for a -- it is to be made at
16 the end of any criminal cases for a new trial. It's my belief
17 that if I have considered the motions for a directed verdict
18 at the end of the State's and the Defense case and denied
19 those motions, then I cannot now rule otherwise if I -- to
20 change the decision of the Jury. Now, I can rule on a motion
21 for a new trial. I do not believe that there is a motion for
22 a third -- as thirteenth juror in criminal court. I think
23 that is only available in civil court. So, to act as the
24 thirteenth juror, I believe, would be improper if I was so
25 inclined to do so. I'm not -- even it was available to me,

MOTIONS AND RULING ON MOTIONS

1 I'm not so inclined. I do not believe that the Jury's verdict
2 is improper in any way and would have no inclination and would
3 not step in as a thirteenth juror but I don't think that's
4 available in a civil trial. That's -- you know, there
5 basically is no judgment notwithstanding the verdict in a
6 criminal trial.

7 What is available, first, the motion for reconsideration
8 as far as the Court's prior rulings, I respectfully decline
9 that and I am reaffirming all the prior rulings I've made in
10 the course of this trial regarding all of the pretrial
11 hearings, Jackson v. Denno hearings, Neil v. Biggers hearings
12 and the rulings I made during the scope of the trial.

13 Regarding the motion for a new trial, I believe the
14 standard is, is when there is competent evident to sustain the
15 Jury's verdict, I may not substitute my judgment for that of
16 the Jury and overturn the verdict even if I was so inclined to
17 do so. I'm not so inclined to do so. I do find that there
18 was more than sufficient evidence presented by the State if
19 that evidence was believed by the Jury, and they must have, to
20 find the Defendant guilty of the crime for which he was found
21 guilty beyond a reasonable doubt. There's more than
22 sufficient evidence in the record to find the Defendant guilty
23 beyond a reasonable doubt of burglary second degree violent.
24 I do not believe the error in the checking of the box by the
25 Jury was a compromise in any fashion. The Jury could have

1 well found in this case that there was no weapon but still
2 found the Defendant guilty of burglary second degree violent
3 because it is clear that if the burglary occurred there is no
4 question, there was never any question by the State or the
5 Defense that it occurred in the nighttime. It occurred in the
6 nighttime if it happened. So, there's no question about that
7 and that simple fact makes it burglary second degree violent
8 if he, you know, committed the crime. So, there is no --
9 disconnect between the two verdicts. Clearly, the Jury could
10 have found based upon the evidence presented that the
11 Defendant committed the crime, the burglary, committed it in
12 the nighttime and all the factors of burglary second degree
13 violent were present; therefore, convicted him of that crime
14 but found that there was no weapon and therefore he could not
15 have possessed a weapon if they found there was no weapon and
16 that's the evidence in the case. Again, there is competent
17 evidence to sustain the Jury's verdict both as to guilty
18 burglary second degree violent and not guilty as to possession
19 of weapon during the commission of a violent crime.

20 Therefore, I respectfully decline to grant your motions
21 in this matter. The motion to reconsider, the motion for new
22 trial and the motion regarding the fact that it was just a
23 compromise verdict in this matter.

24 Anything further from the Defense?

25 MR. HOLFORD: No, Your Honor.

ARGUMENTS OF COUNSEL

1 THE COURT: All right. Solicitor, are you prepared to go
2 forward with the sentencing?

3 MR. DEBUSK: Your Honor, I don't have a sentencing sheet.
4 I ---

5 THE COURT: All right. We'll take a short break for five
6 minutes to prepare a sentencing sheet and we'll come back for
7 sentencing.

8 MR. DEBUSK: We'll do so, Your Honor.

9 THE COURT: Thank y'all.

10 (RECESS)

11 *****OFF THE RECORD*****

12 (On the Record.)

13 ARGUMENTS OF COUNSEL:

14 THE COURT: Yes, Solicitor.

15 MR. DEBUSK: Your Honor, the sentencing sheet is with
16 Madame Clerk, I left a copy of the indictment on your desk
17 there.

18 THE COURT: Okay. All right, Solicitor, I'll be glad to
19 hear from you.

20 MR. DEBUSK: Your Honor, the Defendant has some
21 significant prior record. From 2004, a driving without a
22 license, this is in South Carolina; 2004, public disorderly
23 conduct; 2011, simple possession of marijuana; 2012,
24 possession with intent to distribute marijuana first offense;
25 2012, shoplifting; from the State of Virginia, 2010,

ARGUMENTS OF COUNSEL

1 possession of marijuana first; 2013, identity theft; and then
2 from the State of New York, 2002, assault third degree and
3 menacing second degree with a weapon; 2005, possession of
4 marijuana fifth; and in North Carolina, 2005, common law
5 robbery, conspiracy to commit robbery with a deadly weapon and
6 assault on a female.

7 Your Honor, we have some thirty-five now other pending
8 warrants that we will pursue after this one but this -- I
9 guess this begins the process, Your Honor.

10 THE COURT: All right, sir. All right. Mr. Gardner or
11 Mr. Holford?

12 MR. HOLFORD: Yes, Your Honor. Your Honor, as to the
13 Defendant's prior record, driving without a license,
14 possession of marijuana, even PWID marijuana, identity theft,
15 assault third, while there are a number of charges on his
16 record, I don't believe they are violent charges or what would
17 be considered violent charges. This certainly is a violent
18 charge against him. I don't believe that Mr. Collier has
19 shown a violent past. Based on the Jury's verdict, not
20 finding a weapon, the Jury certainly didn't believe that he
21 was the one with the weapon.

22 Your Honor, you witnessed the same trial. He doesn't
23 hang out with the right people, he doesn't know the right
24 people. I'm sorry, let me skip -- the thirty-five pending
25 warrants, I'd ask that you not consider that ---

ARGUMENTS OF COUNSEL

1 THE COURT: Well, I'm not considering that at all. I'll
2 just tell you right now, I'm not -- that's not gonna factor in
3 my decision at all. I'm not gonna do that.

4 MR. HOLFORD: Your Honor, he exercised his right to a
5 trial by jury which is certainly his constitutional right.
6 You know, the guy that carried the gun is gonna get a better
7 deal out of this. The woman whose car it was, might get a
8 diversion program. Your Honor, Mr. Collier has pled not
9 guilty and went to trial and has been found guilty of one
10 offense of burglary in the second degree violent. Based on
11 the Jury's verdict, they believe that he went into that room
12 in the nighttime with the intent to steal a TV. He's facing
13 zero to fifteen years. I certainly don't think that he should
14 get the max in this case. Your Honor, he's twenty-eight years
15 old. His mother is incarcerated. He has family support with
16 him here today. His brother Tyler is here who holds a good
17 job in Georgetown, who took the day off to come up here and
18 support his brother. Certainly, Mr. Collier has made mistakes
19 but, Your Honor, we would ask for leniency -- we would ask for
20 the leniency that Mr. Collier was seeking when he was trying
21 to help the police by telling them about this. Detective
22 Allen said herself from the stand, these indictments, this
23 warrant wouldn't have existed but for Mr. Collier saying the
24 things he said. He certainly was tricked into saying the
25 things he did, thought he was helping himself, thought that he

ARGUMENTS OF COUNSEL

1 was gonna be a benefit and help to the Myrtle Beach Police and
2 when it came down to it, Your Honor, we would ask that you
3 show him some type of leniency for that assistance and help
4 he's provided even though he's chosen to go to trial on this
5 charge.

6 THE COURT: All right, sir. Thank you very much.

7 MR. HOLFORD: Your Honor, I believe the Defendant would
8 like to address Your Honor.

9 THE COURT: Yes, sir, Mr. Collier, be glad to hear from
10 you, sir.

11 MR. COLLIER: First of all, Judge, Your Honor, I want to
12 thank you for being a fair judge. I just want to say I'm
13 sorry for the circumstances but I actually thought that I was
14 helping the police. I mean, when you in that position, as I
15 heard the prosecutor state, when -- I know it's not in this
16 trial but when you got a situation where you either die or
17 comply, it's a hard decision, you know, when you facing the
18 death penalty not as far as with a gun to you, you know, so, I
19 didn't do this not on my own accord and I thought I was
20 helping the police with these dangerous people. And at the
21 end, I got tricked and I got shafted. That's what you heard
22 on the second interview when I told her is these people gonna
23 know I will be testifying against them. Is y'all gonna help
24 me like y'all told me y'all was. I didn't even know I was
25 being charged, Your Honor, to be honest with you. And I just

ARGUMENTS OF COUNSEL

1 ask if I can get some type of leniency in my sentencing, Your

2 Honor. I'm young, I don't want to do fifteen years.

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

4 MR. DEBUSK: Your Honor, I would like just to address the
5 assistance allegedly given to the Myrtle Beach Police
6 Department resulting in us bringing warrants against Mr. David
7 Donnelle Henry that had to be dismissed at prelims because he
8 was in jail when those acts happened and the rest of the
9 information received by the Myrtle Beach Police Department
10 proved just as helpful and that's why he didn't get a benefit
11 for it, Your Honor.

12 THE COURT: All right, sir.

13 MR. DEBUSK: Thank you, Your Honor.

14 THE COURT: How long has your client been in jail, Mr.
15 Holford, do you know?

16 MR. HOLFORD: Your Honor, since January 30th, 2014.

17 THE COURT: January 30th, 2014?

18 MR. HOLFORD: Yes, Your Honor. Approximately, eleven
19 months, ten and half months.

20 THE COURT: All right.

21 MR. HOLFORD: We would ask for credit for time served,
22 Your Honor.

23 THE COURT: Yes, sir. But -- I'm gonna put on there that
24 I am gonna give him credit for time served, so I'm gonna put
25 it since that date that you've told me, January 30th, 2014.

SENTENCE OF THE COURT

1 All right, sir.

2 MR. HOLFORD: Yes, Your Honor, and he's never made bond.

3 THE COURT: All right. Very good.

4 SENTENCE OF THE COURT:

5 THE COURT: 2014-GS-26-1541, State of South Carolina,
6 County of Horry versus Derek Vander Collier regarding burglary
7 second degree violent -- first I want to say and reiterate, I
8 did not take into consideration, obviously you heard from the
9 tape and I know there's other charges, not taking that into
10 consideration, that is not before me. It is such that it has
11 not happened. That's not part of his record. I am
12 considering his record, what record he does have, I am
13 considering that he does have a criminal history. How that
14 applies with this, I also am taking into consideration that
15 the Jury in this matter found the Defendant not guilty of the
16 offense of the possession of a weapon during the commission of
17 a violent crime. I am taking that into consideration in the
18 sentence also. So, with that, 2014-GS-26-1541, State of South
19 Carolina, County of Horry versus Derek Vander Collier
20 regarding burglary second degree violent, the sentence of the
21 Court is that the Defendant is committed to the State
22 Department of Corrections for a determinate term of thirteen
23 years. The Defendant is given credit for all the time he has
24 served since January 30th, 2014.

25 Thank you very much.

1 MR. GARDNER: Thank you, Judge.

2 MR. HOLFORD: Thank you, Your Honor.

3 (ADJOURNED.)

4 END OF DAY THREE.

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STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

Derek Vander Collier

AKA:

Race: BLACK

Sex: M

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary, 2nd Degree, Violent (after 06/20/85) (Up to 15 years)

in violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086

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

ATTEST:

8/12

SCB16182

DeBusk, Jr., George H.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 13 years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. *Since January 30, 2014*☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.98
TOTAL	\$	\$ 133.98

PTUP

_____ days/hours Public Service/Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 25.00 beginning 12/11/2014

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Melanie Huggins Ward
Diane Eubank

Presiding Judge

Judge Code:

Sentence Date:

12/11/14

12/11/14

WITNESSES

B Floyd Myrtle Beach Police Department

REST WARRANT NUMBER

2014A2620600126
CDR: 0549 16-23-0490
DOA: 1/30/2014

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: APR 24 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-26- 61540

The State of South Carolina

County of Horry

George H. DeBusk, Jr.
14H00599

COURT OF GENERAL SESSIONS

APRIL, 2014 TERM

THE STATE

vs.

Derek Vander Collier
B/ M

ATTORNEY: Galmore, James Cullen

Indictment for

**POSSESSION OF WEAPON DURING
COMMISSION OF VIOLENT CRIME**

Jimmy A. Richardson, II, Solicitor

ORIGINAL

HORRY COURT

2014 DEC 11 PM 3:35

MELANIE H. JONES-WARD
CLERK OF COURT

*Trial Not Guilty
Judge Steven H. John
COURT DATE 12/11/14
PLED GUILTY/TRIAL*

CR: Dixie Eubank

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

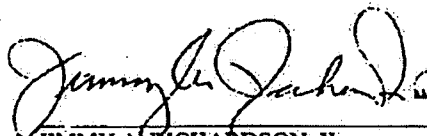
At a Court of General Sessions, convened on April 24, 2014, the Grand Jurors of Horry County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That Derek Vander Collier did in Horry County, on or about November 21, 2013, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

B Floyd Myrtle Beach Police Department

ARREST WARRANT NUMBER

2014A2620600127

CDR: 0086 16-11-0312(B)

DOA: 1/30/2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: APR 24 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-26-01541

The State of South Carolina

County of Horry

George H. DeBusk, Jr.
14H00599

COURT OF GENERAL SESSIONS

APRIL, 2014 TERM

THE STATE

vs.

Derek Vander Collier
B/M

Hofford, Josh & Gardner, Johnny

ATTORNEY: Galmore, James Gullen

Indictment for

BURGLARY 2ND DEGREE VIOLENT

Jimmy A. Richardson, II, Solicitor

ORIGINAL

COURT DATE
2014 DEC 1 PLEA GUILTY/TRIAL
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

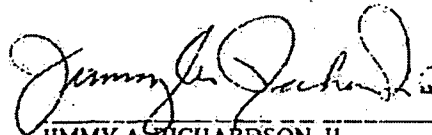
At a Court of General Sessions, convened on April 24, 2014, the Grand Jurors of Horry County present upon their oath:

BURGLARY, SECOND DEGREE
(VIOLENT)

CDR: 0086 16-11-0312(B)

That Derek Vander Collier did in Horry County on or about November 21, 2013, enter without consent and with the intent to commit a crime therein, a building of Jamician Motel located at 3006 North Ocean Blvd, Myrtle Beach, Room 309, and the defendant, Derek Vander Collier, did enter the building in the nighttime, in violation of Section 16-11-0312(B), S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

28
10th
Crack - 45 min
yes

STATE'S
EXHIBIT

13
Dec 12-9-14



City of Myrtle Beach
Police Department
SOUTH CAROLINA

YOUR RIGHTS

- ✓ You have the right to remain silent, and refuse to answer any questions.
- ✓ Anything you say can be used against you in a court of law.
- ✓ You have the right to talk to an attorney and have him present with you while you are being questioned.
- ✓ If you cannot afford an attorney, one will be provided at government expense before any questioning, if you wish.
- ✓ If you desire to make a statement or answer questions, you have the right to stop at any time.

The above rights have been explained to me and I understand each one of them.

Signed: _____

X Deuce Collins

Witness as to Defendant's signatures: _____

Date: _____

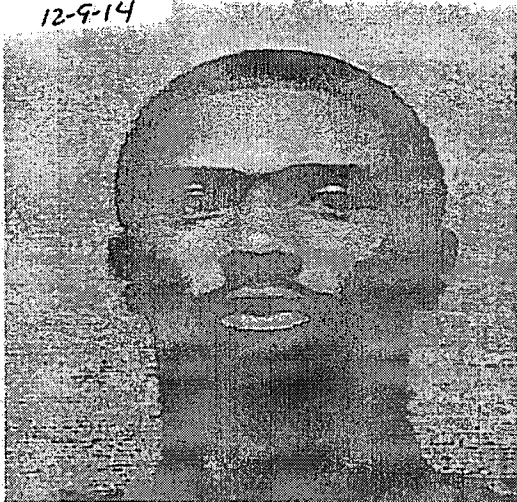
1/30/13

Brian Thomas
Printed Name of Witness.

STATE'S
EXHIBIT

MYRTLE BEACH POLICE DEPARTMENT

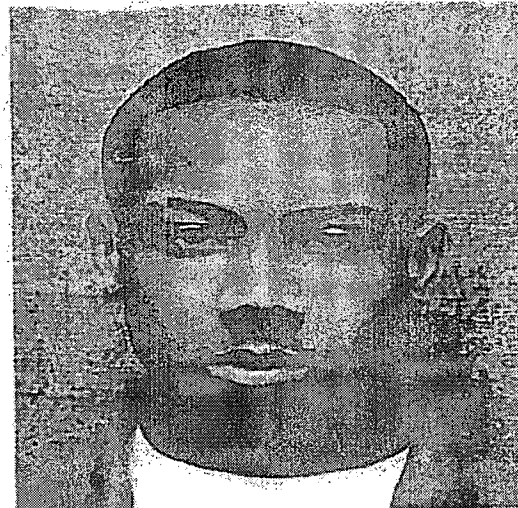
14
Dec 12-9-14



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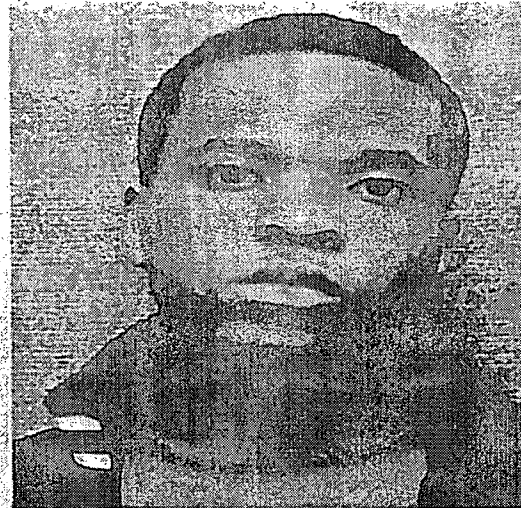
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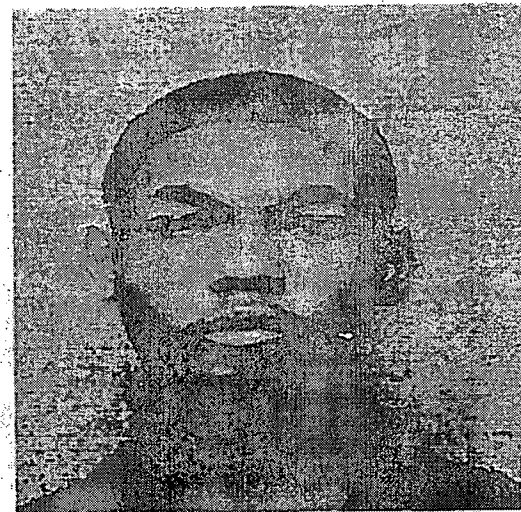
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MBPD - 15024334

Case Number

Date Viewed

MACPHERSON

Shown By

Viewed By

Signature:

Suspect Selected
(circle one)

1 2 3 4 5 6

Lineup ID Report

Related Case Number: MBPD - 13024334

Suspect Name ID: 40176

Total Selection Pool: 3822

Lineup Archive ID: 73

Reason For Lineup:

CRIMINAL INVESTIGATION

STATE'S
EXHIBIT15
dce 12-9-14

Name ID: 125346

CALDWELL, FELTON
ANTONIO

Name ID: 40176

COLLIER, DERICK VANDER

Name ID: 76592

ALSTON, TIMMY Jr

Name ID: 123582

BLACKWELL, DASMAR
SANCHEZ

Name ID: 110406

BODDIE, DAMIUS CORDELL

Name ID: 91036

DRAYTON-THOMLING,
STEPHEN NATHANIEL



Myrtle Beach Police Department
1101 N. Oak Street, Myrtle Beach SC 29577
Telephone: 843-918-1382
Fax: 843-918-1320

Photo Line-up Advisory

The following admonition shall be read to a witness prior to showing a photo line-up:

"I am going to show you a group of photographs. This group of photographs may or may not contain a photograph of the person that committed a crime currently being investigated. Please keep in mind that appearances may change over time, such as with the changing of hairstyles, as well as the growing or cutting of beards and mustaches. Please also keep in mind that photographs may not always depict a person's true complexion. Once you have looked at all the photographs, tell me whether you recognize any individual in this line-up. After we conclude, please do not discuss this line-up with any other witnesses."

STATE'S
EXHIBIT

16 ED
Dec 12-9-14

[Signature] 1 Justin Kirkman 12/17/13
(Witness' signature) (Witness' printed name) (Date)

[Signature] L. Cook 12/12/13
(Detective's signature) (Detective's printed name) (Date)

City of Myrtle Beach
Police Department
SOUTH CAROLINA

STATE'S
EXHIBIT
19
dec 12-16-14

YOUR RIGHTS

- You have the right to remain silent, and refuse to answer any questions.
- Anything you say can be used against you in a court of law.
- You have the right to talk to an attorney and have him present with you while you are being questioned.
- If you cannot afford an attorney, one will be provided at government expense before any questioning, if you wish.
- If you desire to make a statement or answer questions, you have the right to stop at any time.

The above rights have been explained to me and I understand each one of them.

Signed: Derrick Callen

Carol A. Allen
Witness as to Defendant's signatures:

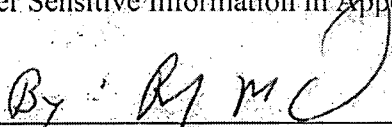
Carol Allen
Printed Name of Witness.

1-31-14
Date:

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 27, 2016



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Simmons Law Firm, LLC
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South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, SC 29211-1589
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Attorneys for Appellant Derek Vander Collier

RECEIVED

CERTIFICATE OF COUNSEL FOR APPELLANT APR 27 2016

SC Court of Appeals

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April 27, 2016

By: *RJMC*

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