

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Larry B. Hyman, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMAL MARQUIS DANIELS,

APPELLANT

APPELLATE CASE NO. 2017-000135

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)

TRANSCRIPT OF RECORD

COUNTY OF HORRY)

CASE NO.: 2013-GS-26-02393

2013-GS-26-02394

2013-GS-26-02391

2013-GS-26-02715

April 11-14, 2016

BEFORE: The Honorable Larry B. Hyman, Jr.

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

JAMAL MARQUIS DANIELS,

Defendant.

 ORIGINAL

APPEARANCES:

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Official Court Reporter
Natalie Dahl, RPR

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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: Okay. I have it. I don't see the
3 requirements -- do you agree, Ms. Livesay, that in
4 order to proceed on a TIA there must be evidence of
5 him having been informed in writing if he failed to
6 appear, he would be tried in his absence? I'm looking
7 at the bond proceedings and I'm seeing where it says
8 that he will be charged with a separate offense,
9 failure to appear, that a warrant will be issued for
10 his arrest: I've been explained that if I fail to
11 appear before this court as required, a warrant for my
12 arrest will be issued -- here it is -- I understand
13 and have been informed that I have a right and
14 obligation to be present at trial, and should I fail
15 to attend the court, the trial will proceed in my
16 absence. He has signed that, and that was on his bond
17 February the 11th, 2016.

18 Mr. Long, what is your opposition on that?

19 MR. LONG: Sounds like he was properly notified,
20 Your Honor.

21 THE COURT: Very well. I find he was noticed
22 that if he failed to appear, that the trial would
23 proceed in his absence. I'm informed that the court
24 -- the bailiff has called for him. Mr. Long, you also
25 verified that he has not appeared here today; is that

1 correct?

2 MR. LONG: That's correct, and the only remaining
3 question is that the notice sent by the Solicitor's
4 Office was sent to his address on that bond form.

5 THE COURT: Tell me about that, Ms. Livesay.

6 MS. LIVESAY: We mailed him a subpoena at
7 , Myrtle Beach, South
8 Carolina. That was mailed out in March of 2016 for
9 his trial date for today, April the 11th.

10 THE COURT: I note that his bond paperwork
11 indicates that his address is

12 Myrtle Beach, South Carolina. Could
13 we make -- do you have a copy that we could make that
14 a part of the record.

15 MS. LIVESAY: Yes, sir. I'll mark it as Court's
16 Exhibit, along with the bond paperwork.

17 THE COURT: I have that right here, and I'll make
18 it as -- let me do this. One this is the bond that he
19 just signed, the magistrate's check sheet, and we'll
20 make that all a part of the record. Here is his
21 subpoena.

22 (Court's Exhibits 1 and 2 marked.)

23 THE COURT: I find that he waived his presence
24 today, and we'll proceed in his absence. We have a
25 Neil versus Biggers hearing. Is this a show-up,

TODD MacPHERSON - DIRECT EXAMINATION - NEIL v. BIGGERS

1 line-up, photo line-up, what do we have?

2 MR. LONG: Photos line-up, Your Honor.

3 THE COURT: Okay.

4 (State's Exhibit 1 marked.)

5 MS. LIVESAY: At this time, we could call
6 MacPherson to the stand.

7 (TODD MacPHERSON, having been duly sworn,
8 testified as follows:)

9 DIRECT-EXAMINATION

10 BY MS. LIVESAY:

11 Q Where are you employed?

12 A Myrtle Beach Police Department.

13 Q How long have you been employed there?

14 A Approximately 18 years.

15 Q What is your current responsibilities?

16 A I'm a detective assigned to the investigative
17 division.

18 Q Do you recognize what I'm showing you marked
19 State's Exhibit No. 1?

20 A I do.

21 Q Tell this Court what that is.

22 A It is a six photo line-up.

23 Q And if you don't mind, tell the Court the date on
24 the photo line-up.

25 A April 23, 2013.

TODD MacPHERSON - DIRECT EXAMINATION - NEIL v. BIGGERS

1 Q And if you don't mind, tell us how you are
2 familiar with that photo line-up?

3 A You want the whole story? Detective Clothier
4 sent out an E-mail to everyone in investigative
5 divisions stating he was going to be out of the office
6 and he would have a visitor come and view a line-up.

7 On April 23, 2013 at about 11 o'clock a.m., one
8 of the police cadets indicated and informed me -- told
9 me that Detective Clothier had a visitor that was here
10 to see a line-up. I -- this line-up was in a manila
11 envelope and placed on a refrigerator. I retrieved
12 the line-up, met Ms. Daniels, the victim, at the
13 police department and I showed her in. I read her the
14 admonition. On the outside of the envelope, this
15 form, what we call a photo line-up advisory, was on
16 the outside. I read her the admonition, which
17 basically -- you want me to read it?

18 Q Yes.

19 A It states: Before showing the photo line-up, the
20 following admonition should be read to the witness.
21 I'm going to show you a group of photographs. This
22 group of photographs may or may not contain a picture
23 of the person who committed a crime now being
24 investigated. Keep in mind that hairstyles, beards and
25 mustaches may be easily changed. Also, photographs may

TODD MacPHERSON - DIRECT EXAMINATION - NEIL v. BIGGERS

1 not always depict a true complexion of a person. When
2 you have looked at all the photos, tell me if you
3 recognize any individual in this line-up. Do not
4 discuss this line-up with other witnesses.

5 So the way we do it is there is a manila
6 envelope. This is on the outside, and then this is on
7 the inside. I handed her the closed envelope. She
8 opened it. She immediately became emotional and
9 started crying. She said, Oh, my God, I never thought
10 I would see him again. She said I'm a hundred percent
11 sure that's him. And I said so it is a positive
12 identification, and she said I'm a hundred percent
13 sure that's him. I had her sign on -- or circle -- I
14 said please circle the person you are identifying, and
15 sign or initial next to that. She did that, handed it
16 back to me, and then I went back and wrote an Email to
17 Detective Clothier saying I didn't ask her any
18 questions, but she picked No. 2.

19 Q Let me ask you this. Did she show up with
20 anyone, or by herself?

21 A She was by herself.

22 Q Were there any other documents shown to her other
23 than the ones that you've told this Court about?

24 A No, these are the only documents.

25 Q Now, were you familiar with this case at all to

TODD MacPHERSON - DIRECT EXAMINATION - NEIL v. BIGGERS
1 know even who was in the line-up, as to whether or not
2 that defendant was even in the line-up?

3 A No. As I understand it -- and this happened in
4 February. I was still assigned to the Beach Patrol
5 Unit. I wasn't involved in the investigative division
6 at that time.

7 Q So you didn't know who was in the photo line-up?

8 A No, I didn't know anything about the case.

9 Q Did you do anything after that, or did you only
10 participate in the photo line-up?

11 A That was all. That was my only involvement in
12 the case.

13 Q Was there anybody else in the room with you and
14 her during the photo line-up?

15 A No, we were alone.

16 Q And where were you all when she picked out Jamal
17 Daniels?

18 A I knew we were at the annex. I imagine we were
19 in the interview room, but I don't know. There only
20 have been a handful of times where we wouldn't be in
21 the interview room. I might have been in the
22 conference room if it was used. I don't recall that
23 being one of those times, so it was probably in the
24 interview room.

25 Q Did anyone talk with her, other than you, at the

TODD MacPHERSON - DIRECT EXAMINATION - NEIL v. BIGGERS
1 police department before the line-up?

2 A I imagine maybe a secretary, and I'm just
3 speculating, and the cadet that notified me that she
4 was here to seen the line-up.

5 Q And no one was with you when she picked out No.
6 2?

7 A No.

8 Q How long did it take her to pick someone out of
9 the photo line-up?

10 A It seemed instant.

11 Q Looking at the phone line-up, tell the Court
12 briefly of the individuals, six individuals, in the
13 line-up.

14 A They all appear to be young, black males with
15 slight facial hair, mustache, short hairstyle.

16 Q Do any of them have any unique characteristics at
17 all?

18 A No. They all appear very close in facial
19 features.

20 Q Let me ask you this. Is there anything to
21 indicate which picture is Jamal Daniels, any names or
22 anything identifying any of the individuals?

23 A No.

24 MS. LIVESAY: No further questions, Your Honor.

25

TODD MacPHERSON - CROSS-EXAMINATION - NEIL v. BIGGERS

CROSS-EXAMINATION

BY MR. LONG:

Q Detective, I'll show you this document --

MS. LIVESAY: Hold on. Jamal Daniels is here.

MR. LONG: I was informed that my client is here in the lobby. Can I bring him in to proceed?

THE COURT: You certainly may.

(A pause in the proceedings.)

MR. LONG: I was told he went downstairs to talk to his mama about something and they are trying to locate him, but we'll proceed.

THE COURT: I have issued a bench warrant for him, locate him, place him under arrest.

Q (MR. LONG) I'll show you this document and ask if you can identify that document?

A It is a Myrtle Beach Police Department investigative report to be-on-the-lookout.

Q Be-on-the-lookout, does that say when that be-on-the-lookout was listed or when it was originated? It does not, does it?

A I believe it just says -- no, just the date of the incident.

Q That would have been done by Detective Clothier?

A It looks like it was.

TODD MacPHERSON - CROSS-EXAMINATION - NEIL v. BIGGERS

1 Q And what is the Myrtle Beach Police Department
2 procedure as far as BOLOs, are they published on a
3 Website?

4 A They may be. We now have a Facebook page. I
5 don't think we had one at the time, but back then, we
6 had E-mail.

7 Q So any victim to a crime, if they are published
8 to the Website, if they are interested, they can go on
9 the Website and see who the Myrtle Beach Police
10 Department is on the lookout for?

11 A I don't know.

12 Q Depending on the day it was posted as a BOLO?

13 A I don't know if we had that capability at that
14 time.

15 Q That would have been February of 2013?

16 A Yes.

17 Q So you don't know whether the victim saw this
18 photograph or not prior to coming in and looking at the
19 six-pack?

20 A No, I wasn't involved in that type of thing. I'm
21 trying to tell you general information.

22 MR. LONG: We offer Defendant's 1 for purposes of
23 this hearing.

24 THE COURT: Ms. Livesay?

25 MS. LIVESAY: Yes, Your Honor.

TODD MacPHERSON - REDIRECT EXAMINATION - NEIL v. BIGGERS

1 THE COURT: So admitted.

2 (Defendant's Exhibit 1 marked and admitted.)

3 Q (MR. LONG) State's 1 and Defendant's 1, I know
4 it is a copy, but does it appear to be the exact same
5 photograph that was presented in the six-pack?

6 A Yes.

7 MR. LONG: No further questions. Thank you, sir.

8 THE COURT: Ms. Livesay?

9 REDIRECT-EXAMINATION

10 BY MS. LIVESAY:

11 Q Thank you, Your Honor, one or two more questions.
12 Detective McPherson, did she indicate to you that she
13 saw any pictures of that gentleman before that day?

14 A No.

15 Q How quick was she able to pick him out?

16 A It was instant.

17 Q What were the comments she made?

18 A She said, Oh, my God, I never thought I would see
19 him again, I'm 100 percent sure that's him.

20 MR. LONG: One more question, Your Honor.

21 RECROSS-EXAMINATION

22 BY MR. LONG:

23 Q You never asked her if she had looked and seen
24 the BOLO pictures?

25 A I never asked her any questions.

TODD MacPHERSON - EXAMINATION BY THE COURT

EXAMINATION

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BY THE COURT:

Q May I ask you a couple of questions? How long after the alleged commission of this offense was it that you were able to provide the witness with a line-up, photographic line-up; was this like weeks, days, hours?

A Well, my involvement with it was only the line-up. I wasn't involved in the investigation at all.

Q Can you tell me the date of the line-up?

A It was April 23, 2013.

Q Did you have anything to do with the actual creation of the line-up?

A No, sir. I had no knowledge of any of the investigation prior to showing her the line-up.

THE COURT: Thank you, sir. Yes, ma'am.

MS. LIVESAY: I have one more witness.

THE COURT: How about put out something, see if they can find him in the neighborhood or whatever. Is he on foot?

DEPUTY: Yeah, he went out on foot, but I don't know if he went out on a vehicle.

THE COURT: Sam, see what you can do. Thank you.
Ms. Livesay.

STEVEN CLOTHIER - DIRECT EXAMINATION

1 MS. LIVESAY: Detective Steve Clothier.

2 (STEVEN CLOTHIER, having been duly sworn,
3 testified as follows:)

4 THE CLERK: State your name and spell your name
5 for the Court.

6 WITNESS: Steven Paul Clothier the Second.

7 DIRECT-EXAMINATION

8 BY MS. LIVESAY:

9 Q If you don't mind, for court purposes, where are
10 you currently employed?

11 A Myrtle Beach Police Department.

12 Q How long have you been employed there?

13 A It will be 17 years in the fall.

14 Q And were you the detective on the case that we're
15 here today for?

16 A I was.

17 Q And were you the one that created the photo
18 line-up?

19 A I did.

20 Q And are you also familiar with the BOLO placed
21 out?

22 A Correct. Correct.

23 Q If you don't mind, for clarification of the
24 Court, I'm showing you Defendant's 1; do you recognize
25 that?

STEVEN CLOTHIER - DIRECT EXAMINATION

1 A I sure do.

2 Q Tell the Court what you are looking at?

3 A I'm looking at a BOLO that I generated on our
4 computer system of Jamal Daniels, and I'm the one that
5 E-mailed it to our officers.

6 Q For clarification of the Court, who saw that
7 BOLO? Is that distributed to everyone in the public,
8 or distributed to --

9 A Emailed to all of our officers in an attempt --
10 if during the course of their duties they see him or
11 they can go by an address -- if there is an address
12 listed, they'll attempt to locate him.

13 Q So would the victim have had access to that prior
14 to the line-up?

15 A No.

16 Q And was this ever put out to the general public?

17 A No, I did not put it out.

18 Q So this was something just for officers to know
19 who to be looking for as far as suspect?

20 A Correct. And I generated after I found out that
21 there was a positive identification from the line-up.

22 Q Okay.

23 MS. LIVESAY: Nothing further, Your Honor.

24 THE COURT: Mr. Long.

25

STEVEN CLOTHIER - DIRECT EXAMINATION

CROSS-EXAMINATION

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BY MR. LONG:

Q The BOLO, there is no place on that form that you can -- that the form is dated so we know when it was generated or E-mailed or when it was sent?

A No. Unless we go back to our saved E-mails and see when it was sent out.

Q Is there a Myrtle Beach Police Department policy that any BOLOs issued by officers are published to a Website?

A There is no policy.

Q Is there a Website?

A There was no Website at that time.

Q None at that time?

A Not that I'm aware of, no, sir.

Q So no way it could have been put on the Internet to be on the lookout?

A Not unless there was a press release, but I don't believe that was ever one done on that.

Q So the only way that could be out on the internet is if there was a press release, or whatever, put it on their Website?

A I believe so. And, generally, when we have crimes like this, the lieutenant that is in charge of that will most likely E-mail the investigator with a

STEVEN CLOTHIER - DIRECT EXAMINATION

1 synopsis summary. He would say is this correct, does
2 this look good, and I don't recall ever seeing that.

3 Q Do you recall the date that you requested the
4 six-pack photo from SLED, how long before it was
5 requested?

6 A I generated the line-up myself.

7 Q Well, I have a SLED photo line-up request form, I
8 believe, prepared by you to SLED seeking a Fusion
9 Center photo line-up?

10 A I don't recall. I think I'm the one that did it,
11 but I could be wrong.

12 Q Let me show you this document and see if you can
13 identify that.

14 A Yes, sir.

15 Q And is that a SLED photo request line-up from you
16 to SLED?

17 A Yes, sir, it sure is.

18 Q And does that refresh your memory whether you
19 prepared the line-up, or whether SLED did?

20 A It does not. I would have to look back through
21 my E-mails to see.

22 Q Is that request dated?

23 A There is no date.

24 Q So we don't know when it was submitted, if it was
25 ever submitted, to SLED; is that correct?

STEVEN CLOTHIER - EXAMINATION BY THE COURT

1 A Correct. But I do know that I do not send out
2 BOLOs unless I have warrants.

3 Q I'm trying to find out the date you requested the
4 photo line-up.

5 A I don't know.

6 Q Because the form does not have a date?

7 A There is no date on it.

8 Q And you don't know whether SLED created that
9 line-up, or you created it?

10 A I can probably tell you almost certainly that
11 SLED did not do this, only because Mr. Daniels is
12 wearing orange, that would be from a jail photo, and
13 SLED uses the DMV photos. So based on this, I don't
14 believe SLED.

15 Q SLED wouldn't have access to the jail photos?

16 A I've never see a photo line-up with a jail photo.

17 Q All right.

18 MR. LONG: Thank you. No further questions.

19 THE COURT: All right. Anything further?

20 MS. LIVESAY: No further questions.

21 THE COURT: Let me ask you a few questions.

22 EXAMINATION

23 BY THE COURT:

24 Q I understand that the line-up was April 13,
25 2013 -- that was the prior testimony?

MOTIONS

1 A Yes, sir.

2 Q What was the date of the offense?

3 A I believe March 1.

4 Q You were the investigating officer?

5 A I was not the investigator that was on scene at
6 the time. I was at home off duty. I was called in to
7 assist Detective Mike Hall who was there, but I took
8 over the case because I knew he was getting out of
9 investigations.

10 Q And so this was about 45 days after the actual
11 event?

12 A Yes, sir.

13 Q Okay. All right. Thank you.

14 MS. LIVESAY: No further questions.

15 THE COURT: Could I see the line-up? Thank you.
16 Ms. Livesay.

17 MS. LIVESAY: Nothing further on this issue.

18 THE COURT: Mr. Long?

19 MR. LONG: Your Honor, you've heard the
20 testimony, a different officer not investigating the
21 case was the officer who actually presented it to the
22 victim for line-up. I don't see how we can challenge
23 the voluntariness of it since he said he did not
24 provide any other information.

25 THE COURT: I look at the photo line-up and these

MOTIONS

1 young men look remarkably similar, eyes, mustache,
2 age, complexion. I think they are all very similar.
3 I'm a little -- my perspective -- and the officer
4 testified, there was an orange suit that the defendant
5 had on; however, you can barely see it. It looks just
6 like a shirt. There is nothing to indicate that it
7 would be prison garb any more than anyone else. I do
8 not believe that it was suggestive. Of course the
9 officer who conducted knew little or nothing about the
10 case. I do not believe his stands out. They are
11 certainly similar. There is nothing to indicate his
12 identity, nothing to indicate or imply he has a prior
13 record. I don't think there was anything at all
14 suggestive about this line-up and, therefore, I would
15 rule that the identification is admissible. Thank
16 you. Jerry.

17 DEPUTY: The person you are looking for is on the
18 phone and wants to talk to Nancy.

19 THE COURT: He's on the phone?

20 THE BAILIFF: He is on the phone and wants to
21 talk to Ms. Livesay.

22 MR. LONG: If I could talk to him first?

23 THE COURT: Please, help yourself.

24 We'll be in recess.

25 (A recess was taken.)

MOTIONS

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THE COURT: Witness No. 9, M. Landi, do you know who it is, Buddy?

MS. LIVESAY: Mark Landi.

MR. LONG: Is that chain of custody?

MS. LIVESAY: No, sir. He is a Myrtle Beach officer.

THE COURT: How about 13?

MS. LIVESAY: David Bailey?

THE COURT: Gavrilis.

MS. LIVESAY: He's no longer with the police department, we can take him off.

THE COURT: And how about Bailey.

MS. LIVESAY: David is his first name.

THE COURT: And No. 19, Williams, what -- who is Officer Williams (sic)?

MS. LIVESAY: Officer Williamson, Scott Williamson.

THE COURT: And 14, Furlong.

MS. LIVESAY: Doug.

THE COURT: Anything we need to address before the jury comes up?

MR. LONG: For the Court's information, I was out at the jail doing pleas yesterday afternoon, spoke with the defendant at the sheriff's desk when we were

JURY SELECTION

1 in court, had a message from his aunt yesterday at the
2 office who called and said that she would have him
3 here in court this morning before 9:30. That was
4 reported to me by the staff who took the phone call,
5 and he's not here and have not seen him.

6 THE COURT: Okay.

7 MR. LONG: She didn't have any better luck than
8 we did.

9 THE COURT: Yesterday, I examined his bond
10 paperwork and have determined that he was informed in
11 writing, a form that he signed, that he would be tried
12 in his absence if he did not appear, and I made it a
13 part of the record, that document, as well as his
14 notice to be here. Mr. Long, apparently you had
15 contact with him. You, like the court staff, had
16 contact with him yesterday. He's fully aware that
17 he's being tried in his absence or will be tried this
18 week, and he has chosen not to be here and he's waived
19 his presence.

20 MR. LONG: Just for inquiry, 10 and 5 for
21 strikes?

22 THE COURT: I think that is right, 10 and 5.

23 MS. LIVESAY: Yes, sir. One thing for the
24 record, because I may use this if it is found
25 admissible, and I wanted to notify Mr. Long, Jamal

JURY SELECTION

1 Daniels went to the Solicitor's Office and spoke with
2 an employee by the name of Rebecca Stanley. He asked
3 her several times if the victims showed up.
4 Obviously, that may be admissible at some point. I
5 guess we'll address it when we get there, but that
6 will be a statement against a party opponent. Shortly
7 after that, he came upstairs, looked in the courtroom
8 and left.

9 THE COURT: He just asked if the victims were
10 here?

11 MS. LIVESAY: Yes, sir.

12 THE COURT: Show is that a statement against the
13 interest?

14 MR. LONG: I don't see how it is. He was just
15 inquiring whether they were available to testify.

16 THE COURT: All right. We'll address it, but I
17 don't see where it comes in, but we'll see. We're
18 going forward on what charges, Ms. Livesay?

19 MS. LIVESAY: Attempted murder, armed robbery,
20 kidnapping and burglary first.

21 THE COURT: Attempted murder, armed robbery,
22 burglary first and kidnapping. All right. We will be
23 at ease until the jury is up.

24 (A recess was taken.)

25 MR. ROPP: Yes, we have everyone.

JURY SELECTION

1 THE COURT: Ladies and gentlemen, it is good to
2 see you again from yesterday. We had conversations
3 about your qualifications to serve as jurors, and I
4 think I mentioned that process before we seat a jury
5 that that involves two things. First, we determined
6 whether you are qualified, and I've determined that.
7 You are all qualified. The next part is when we bring
8 you up and talk to you about the particular case we
9 are trying. You know, the most important thing that
10 we can do is select a fair and impartial jury. That
11 is the cornerstone of our American jurisprudence.
12 Everybody, the State and the defense, is entitled to
13 have a fair and impartial jury to try their case.

14 I'm going to be talking with you about that. Let
15 me begin by telling you about the case that we're
16 going to be trying. I'm going to get this information
17 that I'm going to share with you from the indictments.
18 Let me impress upon you that the fact that a person
19 has been arrested, charged, indicted does not raise
20 any presumption or inference of guilt. These
21 indictments are not evidence, should not be considered
22 by you as being evidence of guilt in this particular
23 case. It simply is that through our process, in order
24 for a case to be presented to this court for trial,
25 there must be an indictment issued, which is a

JURY SELECTION

1 document that just merely puts the defendant on notice
2 of what he is charged with, and that is all the
3 indictment is. As I said, it does not create any
4 presumptions or inferences of guilt, it is just a
5 charging document, and you should not place any
6 emphasis on that fact.

7 Now, let me tell you what is alleged to have
8 happened. When I say "alleged," because the defendant
9 in this case, like every defendant who appears before
10 the Court in this country, is presumed to be innocent.
11 He has his presumption of innocence that follows him
12 throughout the trial, and the fact that these
13 allegations are made are, again, not evidence that he
14 is guilty of this offense. So I'm going to tell you
15 what is alleged at this time. The State has a burden
16 of convincing whoever is seated on this jury of the
17 defendant's guilt beyond a reasonable doubt. The
18 defendant has no burden, not required to do anything.

19 Now, it is alleged that the defendant in this
20 case, Jamal Marquis Daniels -- Mr. Daniels has waived
21 his presence here today. You will draw no inference
22 or presumptions or conclusions from that fact. He has
23 the right to waive his presence at his trial. He is
24 being tried in what we call in his absence, which you
25 attach nothing of any evidentiary consequence at all

JURY SELECTION

1 to the fact that he may not be here, but it is alleged
2 that on or about February 28 of 19 -- excuse me, 2013;
3 the defendant attempted to kill Katrina Daniels with
4 malice aforethought, either expressed or implied, and
5 that -- those allegations, if true, would constitute
6 the offense of attempted murder.

7 It is further alleged that he did, on that same
8 day, while armed with a deadly weapon, to wit, a
9 pistol, take and carried away personal property of
10 Katrina Daniels and thereby did commit the offense of
11 armed robbery, if these allegations are true and
12 prudent.

13 Further, it is alleged that on or about February
14 the 28th of 2013, the same day, he did seize or
15 confine in some form or fashion and carry away one
16 Katrina Daniels, the same victim, without authority of
17 law thereby committing the offense, if proven, of
18 kidnapping.

19 It is further alleged that on that same date he
20 did enter the dwelling of Katrina Daniels without the
21 consent and with the intent to commit a crime while --
22 and while doing so was armed with a deadly weapon, and
23 if proven, that would constitute the offense of
24 burglary in the first degree.

25 So we have four charges. This offense allegedly

JURY SELECTION

1 occurred -- where was it, Ms. Livesay, Myrtle Beach?

2 MS. LIVESAY: Occurred in Myrtle Beach, Jefferson
3 Place.

4 THE COURT: This occurred over in Myrtle Beach on
5 February 28, 2013. I hope that that is enough
6 information to establish, in your minds at least, what
7 and when and where it is alleged that these offenses
8 took place.

9 Now, we are about to proceed in the jury
10 selection process. Let me tell you a little bit about
11 it. Yesterday we spoke about Judge Henderson being
12 down the hall and he's trying civil cases. If this
13 were a civil case, we would be using a particular
14 method of selecting the jury. On the criminal side,
15 our traditions and the practice in these courts is
16 quite different from the one that we use if this were
17 a civil case. If Judge Henderson was selecting this
18 jury, we have a very kind and friendly way of doing
19 it. The way that would work is the clerk of court
20 would take your names, place all of your names in a
21 random fashion on a sheet of paper, much like she did
22 in this case. She gives all of you a new number so
23 you don't even know who we are talking about. From
24 that list, the attorneys would just strike. You would
25 be sitting there and they would say, Your Honor, we

JURY SELECTION

1 strike No. 3, we strike No. 4, and they go through the
2 strikes and you wouldn't know who they were talking
3 about. When it was all done, the clerk would read off
4 12 of your names and you would be seated in the jury
5 box. Isn't that a kind and gentle way to do it?

6 In the criminal side, it is very different. The
7 clerk will call your names, you have been placed in
8 random order again, but she goes down the list and she
9 will call your names. You will be required to come
10 right up here, turn around, face the attorneys and
11 your fellow jurors, and we will begin with the State
12 saying either, Your Honor, excuse this juror. If the
13 State were to say "excuse the juror," that means they
14 have used a strike, and you return to your seat.
15 However, if the State would say, Your Honor, present
16 this juror, then it moves over to the defense and
17 Mr. Long would have the opportunity to then say, Your
18 Honor, please excuse the juror on this case. If he
19 does that, that means the defense has exercised a
20 strike, and you would return to your seat. If he
21 says, Your Honor, swear the juror, then you would come
22 around and take a seat in the jury box and you would
23 be on this particular jury.

24 Now, many of you will find that to be
25 intimidating. We all hate to be brought up in front

JURY SELECTION

1 of the crowd, you know, and some people are
2 embarrassed if they get struck. Let me say this. As
3 these attorneys go through that strike process, they
4 are going to be making faces, scratching their heads,
5 pretending to make notes about you and all, and look
6 like they know what they are doing. I practiced 32
7 years, and I can promise you, they don't have a clue.
8 They don't know what they are doing. They don't know
9 you. Isn't that right, Mr. Long? Isn't that the
10 hardest thing in the world for the lawyer to do?

11 MR. LONG: Absolutely, Your Honor. There is no
12 science to it, whatsoever.

13 THE COURT: No science, whatsoever. As my
14 friend, Judge Floyd, used to say, They may strike you
15 because you part your hair on the left or you part
16 your hair on the right, or you have no hair to part,
17 it is just a gut reaction. Of course, both the State
18 and the defense hope that they can gleam from that
19 little bit of information that you sent in on those
20 pink slips, they can gleam something that might make
21 them feel that you would be a juror that might be
22 sympathetic to their position in the trial, and that
23 is the best they can do. I tell you this because I
24 don't want you to feel bad or embarrassed if you come
25 up and you were struck.

JURY SELECTION

1 Now, I'm going through all of this and you are
2 probably sitting there thinking, I hope I get struck
3 so I can go home. I promise you, if you are selected
4 on this jury -- jurors tell me this, that once they
5 have been through the process, although it may be
6 emotionally taxing sometimes, that they leave with a
7 greater appreciation, not only of their participation
8 in the process, but the process itself. They have a
9 greater appreciation of the fact that as citizens they
10 also have a right to be tried by a jury on any
11 allegation of criminal activity on their part.

12 Well, with that said, I'm going to step down off
13 the soap box and we'll move forward with the selection
14 process. As I said, we are going to be calling your
15 names. Bring any personal property. If you brought a
16 book, purse, anything like that, bring it with you
17 because you may be seated. I want you to come
18 forward, come down here, turn around, face everybody
19 and we will go forward with the selection process.
20 What I intend to do in this case is to select 12
21 jurors, two alternates, strikes will be 5 and 10, and
22 I'll allow 2 and 3 on the alternates. Very well
23 gentlemen? Okay.

24 Now, before I get there I need to ask you some
25 questions about any information you might have about

JURY SELECTION

1 the case. It is so important that we have a fair and
2 impartial jury. I'll ask the clerk to place you under
3 oath again. I always thought this was wrong, if you
4 are a witness in a case, no matter how serious, you go
5 to the stand and take an oath one time. If you are a
6 juror, you have to take it three times before you ever
7 get in a jury box, but that is how our process works.

8 If you would, stand and place them under oath.

9 (Whereupon, the potential jury pool was sworn.)

10 THE COURT: I told you yesterday that Ms. Dahl
11 has to put down everything said in this courtroom.
12 Even when I ask for a response, I have to turn and
13 tell her what the response was. Please be seated.

14 Now, listen carefully to my questions. Has
15 anyone on this jury panel ever been related by blood
16 or marriage, or if you had a close or personal
17 relationship with either the defendant in this case --
18 and don't draw any conclusion from the fact that I
19 refer to him as "the defendant," again, that does not
20 raise any presumption or inference that he's guilty,
21 it is just the terms that we use -- Mr. Daniels, or
22 with the alleged victim, Ms. Katrina Daniels? Anybody
23 related by blood or marriage, close personal friends,
24 social relationship with either of those parties?
25 And.

JURY SELECTION

1 There is no response.

2 Now, I have asked the attorneys to provide me
3 with a list of potential witnesses. I doubt we will
4 hear from all of these witnesses in the trial. It is
5 rare that I do, but I ask them to tell me anyone they
6 think that might probably be a potential witness. If
7 you are related by blood or marriage or have a close
8 personal relationship with any of these potential
9 witnesses: Katrina Daniels, Laura Conklin, Thomas
10 Kato, that is with a K, Steven Clothier, Mostafa
11 Chouri, Tracy Smith, Cory Jasiak, Anthony Humes, Mark
12 Landi, L-A-N-D-I, Kandi McSpadden, Richard Arroya,
13 A-R-R-O-Y-A, David Bailey, Doug Furlong, Will
14 Kitelinger, William Stair, S-T-A-I-R, Todd MacPherson,
15 Cathy Rhodes, Officer Scott Williamson, Amy Stephens
16 Pat Crooks, Jennifer Nates, Tracy Russell, Sandy Lowe,
17 Melinda Shadoan. Anyone related by blood or marriage?
18 Do you have a close personal or social relationship?
19 Do you know anything about any of these witnesses --
20 potential witnesses that might create in you a
21 tendency not to believe a witness or to believe that
22 witness over someone else?

23 And there is no response.

24 Let me tell you about the attorneys. We have
25 Ms. Nancy Livesay here with Ms. Popp, her assistant.

JURY SELECTION

1 Ms. Livesay, stand up. Ms. Livesay has been with the
2 Solicitor's Office here in the 15th Judicial Circuit
3 working in primarily Horry County for several years.
4 She will be presenting the case for the State.
5 Mr. Buddy Long, J.M. Long, Junior, here, he will be
6 representing the defendant, Mr. Daniels. Mr. Long
7 works with the Public Defender for the 15th Judicial
8 Circuit, again, practicing primarily in Horry County
9 and has done so for a number of years. Has anyone
10 ever been related by blood or marriage, had a close
11 personal or social relationship with? Have you been
12 represented by either of these attorneys, or perhaps
13 an attorney that might have been associated with them?
14 I know you don't know who may have been associated
15 with them in the past, but if you know someone that
16 was, we need to know that as well.

17 And there is no response to that inquiry.

18 Has anyone on this jury panel formed or expressed
19 an opinion about any matter involved in this case?
20 Now, in that regard what I would like to know is are
21 any of you aware that this offense even took place?
22 Is it in your neighborhood, perhaps? Maybe it
23 happened around the corner from you and you know
24 something about it. You know someone who might have
25 mentioned it to you. Do you know anything about the

JURY SELECTION

1 case?

2 And there is no response.

3 Is there any member of the jury panel who -- and
4 we talked about it a little yesterday -- who has been
5 on the Grand Jury for Horry County since February of
6 2013?

7 And there is no response for that.

8 Any member of the jury panel who is a member or
9 contributor to any group which has as its primary
10 concern in the promotion of law enforcement or victims
11 rights, and that can be Fraternal Order of Police,
12 MADD, SADD, CAVE, anything like that?

13 And there is no response.

14 Finally, let me ask you this: Is there any
15 person on this jury panel who knows of any reason why
16 he or she should not serve on this jury with
17 particular emphasis being placed upon your abilities
18 to be fair and impartial to both the State and the
19 defense?

20 Yes, ma'am, that is a sensitive question, can I
21 have you come forward, please?

22 (The following is had as a bench conference.)

23 JUROR: I mentioned that yesterday I wear
24 bilateral hearing aids. I did not hear the names when
25 they are not facing me. I heard maybe 50 percent of

JURY SELECTION

1 what you have said. This is a murder case, and I'm
2 scared to death to be on a jury.

3 THE COURT: I'll excuse you.

4 JUROR: I'm sorry, but I can't hear.

5 THE COURT: What number?

6 JUROR: I want to say 269, Barbara Pearson. It
7 is from a car accident.

8 THE COURT: Oh, 30. We'll take care of that.
9 Thank you. So that one is off.

10 Okay, madam clerk, we're ready to proceed.

11 THE CLERK: No. 48, Dean Caldwell. What say the
12 State?

13 MS. LIVESAY: Please present the juror.

14 MR. LONG: Please swear the juror.

15 THE COURT: Mr. Caldwell did such a good job,
16 he's on the jury.

17 (Laughing)

18 THE CLERK: No. 38, Pamela Bremer. What say the
19 State?

20 MS. LIVESAY: Please present this juror.

21 THE CLERK: Defense?

22 MR. LONG: Please swear the juror.

23 THE CLERK: 155, Martha Howard. What say the
24 State?

25 MS. LIVESAY: Could you please present this

JURY SELECTION

1 juror.

2 THE CLERK: Defense?

3 MR. LONG: She'll either love me or hate me.

4 Please excuse the juror for the trial of this case.

5 She smiled.

6 THE CLERK: 236, Gwendolyn McCray. What say the
7 State?

8 MS. LIVESAY: Please present this juror.

9 THE CLERK: Defense?

10 MR. LONG: Please present the juror.

11 THE CLERK: 308, Ann Scandariato. What say the
12 State?

13 MS. LIVESAY: Please present this juror.

14 MR. LONG: Please excuse the juror from the trial
15 of this case.

16 THE CLERK: No. 34, Kety Bouzounis. What say the
17 State?

18 MS. LIVESAY: Please present this juror.

19 THE CLERK: Defense?

20 MR. LONG: Please swear the juror.

21 THE CLERK: 284, Michael Ramsey. What say the
22 State?

23 MS. LIVESAY: Please excuse this particular
24 juror.

25 THE CLERK: You're excused from this particular

JURY SELECTION

1 case. 266, John Parker. What say the State?

2 MS. LIVESAY: Please present this juror.

3 MR. LONG: Please swear the juror.

4 THE CLERK: 237, Donald Mcferrin. What say the
5 State?

6 MS. LIVESAY: Please present the juror.

7 MR. LONG: Please swear the juror.

8 THE CLERK: 348, Kenneth Sylvester. What say the
9 State?

10 MS. LIVESAY: Please present this juror.

11 THE CLERK: Defense?

12 MR. LONG: Please swear the juror.

13 THE CLERK: 91, Amanda Eaton. What say the
14 State?

15 MS. LIVESAY: Please present this juror.

16 THE CLERK: Defense?

17 MR. LONG: Please swear the juror.

18 THE CLERK: 270, Margaret Pearson. What say the
19 State?

20 MS. LIVESAY: Please present this juror.

21 THE CLERK: Defense?

22 MR. LONG: Please excuse the juror from this
23 case.

24 THE CLERK: 279, William Poston. What say the
25 State?

JURY SELECTION

1 MS. LIVESAY: Please excuse this particular
2 juror.

3 THE CLERK: You are excused from this particular
4 case.

5 THE CLERK: 309, David Schenk. What say the
6 State?

7 MS. LIVESAY: Please present this juror.

8 THE CLERK: Defense?

9 MR. LONG: Please seat the juror.

10 THE CLERK: 253, Azalea Neal. What say the
11 State?

12 MS. LIVESAY: Please excuse this particular
13 juror.

14 THE CLERK: You are excused for this particular
15 case.

16 54, John Chaisson. What say the State?

17 MS. LIVESAY: Could you please present this
18 juror.

19 MR. LONG: Please excuse the juror from this
20 case.

21 THE CLERK: 282, Joanne Rabon. What say the
22 State?

23 MS. LIVESAY: Please present this juror.

24 MR. LONG: Please excuse the juror from the trial
25 of this case.

JURY SELECTION

1 THE CLERK: 295, Sarah Richardson. What say the
2 State?

3 MS. LIVESAY: Could you please present this
4 juror.

5 THE CLERK: Defense?

6 MR. LONG: Please swear the juror.

7 THE CLERK: 315, Richard Scott. What say the
8 State?

9 MS. LIVESAY: Please present this juror.

10 THE CLERK: Defense?

11 MR. LONG: Please swear the juror.

12 THE CLERK: Please be seated in the jury box.
13 242, Kevin Miller. What say the State?

14 MS. LIVESAY: Could you please present this
15 juror.

16 THE CLERK: Defense?

17 MR. LONG: Please swear the juror.

18 THE COURT: Two alternates.

19 THE CLERK: 181, Nancy Kaiser. What say the
20 State?

21 MS. LIVESAY: Please present this juror.

22 THE CLERK: Defense?

23 MR. LONG: Please present the juror.

24 THE CLERK: 144, Gene Hendricks. What say the
25 State?

JURY SELECTION

1 MS. LIVESAY: Please present this juror.

2 THE CLERK: Defense?

3 MR. LONG: Please swear the juror.

4 THE COURT: Okay. I'm going to let the jury take
5 a quick break. Is there a challenge to the panel,
6 Mr. Long?

7 MR. LONG: No, Your Honor.

8 MS. LIVESAY: No challenge, Your Honor.

9 THE COURT: The balance of the jury panel is
10 excused. I'll ask you again to call back after
11 6 o'clock and see whether or not we need you, but you
12 are excused for today. You are welcome to stay if you
13 would like, but otherwise you are excused.

14 A (Prospective jury pool exits at 10:29 a.m.)

15 THE COURT: Bobby, would you let this jury
16 refresh themselves. Mr. Miller, you will occupy that
17 seat when you return. Ms. Kaiser, Mr. Hendricks, if
18 you would always occupy one of those two seats, you
19 are our alternates. I just need to have you where
20 we'll know where you are. The rest can sit wherever
21 you like. Bobby, take them back and make sure they
22 have anything they need and have an opportunity
23 refresh themselves.

24 (The jury exits at 10:30 a.m., and the
25 following is heard out of the presence of the jury.)

MOTIONS

1 MR. LONG: Will I have time to go downstairs,
2 Your Honor?

3 THE COURT: Yes.

4 MR. LONG: Thank you.

5 THE COURT: For the record, I asked before trial
6 that -- no one had any voir dire or anything, you both
7 said that my voir dire was sufficient?

8 MR. LONG: That is correct.

9 MS. LIVESAY: That's is correct, but I have one
10 motion, and I didn't realize it until the indictments
11 were read out. I need to make a motion to amend the
12 indictment for attempted murder. The victim on that
13 indictment was Katrina Daniels. The lady that was
14 shot was Laura Conklin, the other victim. We turned
15 over pictures --

16 THE COURT: All right. Ms. Conklin?

17 MS. LIVESAY: Yes, sir, Your Honor.

18 THE COURT: What do you say, Mr. Long?

19 MR. LONG: That is more than a scrivner's error
20 or addition or change to the indictment. We object at
21 this time, we have to object.

22 MS. LIVESAY: If I may --

23 THE COURT: Let me tell you what I'll do. No
24 harm, no foul quite yet, okay. I'll let you proceed
25 with your trial. I will address that after the lunch

MOTIONS

1 hour and give you both an opportunity to present some
2 authority for your positions, okay.

3 MR. LONG: Thank you very much.

4 THE COURT: I think we can proceed as we are and
5 see what happens, okay.

6 MR. LONG: Your Honor, we would move to sequester
7 State's witnesses. I hate to not allow them, get
8 bored sitting in a waiting room, but we move to
9 sequester.

10 THE COURT: That is at a course usually. Do you
11 have any position, Ms. Livesay?

12 MS. LIVESAY: No, Your Honor. Just the two
13 victims --

14 THE COURT: The victims and your lead.

15 MS. LIVESAY: Yes, sir, Your Honor.

16 THE COURT: All right. Let's take a break.

17 (A recess was taken.)

18 MS. LIVESAY: Just one issue, Your Honor. One
19 the guys on the jury is an administrative assistant's
20 father. I didn't know who he was on the jury, but I
21 wanted to let you know.

22 THE COURT: Who is your administrative assistant?

23 MS. LIVESAY: Miller.

24 MS. POP: 242.

25 THE COURT: She's not participating, is she, your

THE COURT TO THE JURY

1 administrative assistant?

2 MS. LIVESAY: Lacey is just my admin answering
3 the phone and all.

4 THE COURT: Make sure she doesn't participate in
5 this.

6 MR. LONG: No objection.

7 MS. LIVESAY: Thank you. I wanted everyone to
8 know.

9 THE COURT: Still not located Mr. Daniels?

10 MR. LONG: No, Your Honor.

11 THE COURT: Bring in the jury.

12 (The jury enters at 10:45 a.m., and the
13 following is heard in the presence of the jury.)

14 THE COURT: Madam clerk, will you swear the jury
15 please?

16 THE CLERK: Stand and raise your right hand to be
17 sworn.

18 (Whereupon, the jury was sworn.)

19 THE COURT: Was there any juror who did not take
20 that oath?

21 And there is no response to that.

22 Ladies and gentlemen, let me talk to you a little
23 bit before we get started with the trial so you will
24 know what to expect. First of all, Ms. Kaiser,
25 Mr. Hendricks, you are the alternates in this case,

THE COURT TO THE JURY

1 and I'll ask you to always occupy those two seats.
2 Mr. Miller, you were lucky enough to be seated on the
3 corner, so you are the foreperson and to always occupy
4 that particular seat when we come out. You will be
5 generally the liaison between this jury and the Court.
6 If at any time you have a problem, need anything, you
7 need some assistance from the Court, bring that to the
8 attention of Mr. Ropp -- either Mr. Ropp will be with
9 you or I'll be sure there is a sheriff's deputy every
10 moment.

11 You will also preside over the deliberations that
12 the jury might have at the end of this case, and you
13 will direct, if you will, the deliberations of the
14 jury. Again, if you have any questions or need
15 anything, don't hesitate to bring it to my attention.

16 As I told you yesterday, I try not to go more
17 than an hour, or hour-and-a-half at a sitting. The
18 reason I do that is I don't want you to become
19 uncomfortable. If you do, in the meantime, I don't
20 care if you have just been here 10 minutes, you need
21 to refresh yourself, you have a problem, raise your
22 hand and that is a signal to me that you need to take
23 a break and we'll let you go back out to your jury
24 room and we'll bring you back in whenever you get
25 ready to come back in.

THE COURT TO THE JURY

1 Let me also say that a trial is nothing more than
2 the orderly presentation of information to a jury. At
3 the end of this case, you will be asked during your
4 deliberations to determine what the facts are. Facts
5 and evidence are two different things. You gleam the
6 facts from the evidence presented in this case.

7 So, if at any time, you are not able to hear or
8 see what is going on, again, I would ask you to raise
9 your hand and let me know. There is nothing more
10 important in this trial than making sure that you are
11 getting the information. I can promise you that at
12 sometime during this trial, Ms. Livesay or Mr. Long
13 are going to walk up and down and get between you and
14 the exhibits or going to get where you can't -- it is
15 the nature of lawyers. You are concentrating on the
16 case. You don't mean to do it, but you will do it.
17 It happens every time. If that happens, they may have
18 an exhibit up here perhaps that they are talking to a
19 witness about. If you can't see it, well, then
20 information is not getting to you. So, please,
21 remember, you're the most important thing in this
22 courtroom and we want to make sure that all the
23 information comes to you, so just raise your hand.

24 Let me speak to you generally about trials. I'm
25 sure that all of you have -- probably on a daily basis

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1 -- seen files in forensic shows on TV and things about
2 trials. My wife won't let me watch American Pickers
3 for trials on television. Unfortunately, those trials
4 are always just action packed and just something
5 suspenseful happening every moment. In reality, that
6 is not the case because the search for the truth, and
7 that is what we are about. It is often very slow,
8 deliberate and repetitive. We're not here for
9 entertainment. We are here to present you with
10 information. I will tell you in that regard that
11 before this trial is over, you either will want to
12 jump across that rail and grab Ms. Livesay or Mr. Long
13 and choke the daylights out of them because they are
14 going to ask questions, and you know where they are
15 going, know what the final question they are getting
16 at, but they'll ask 10 questions to get to one. Do
17 not hold that against them. This court, as all courts
18 in this country, have traditions, rules, procedures
19 for presenting evidence and they are required to lay
20 proper foundations before they can ask that ultimate
21 question. They are doing exactly what they are
22 supposed to do. You may hear Ms. Livesay or Mr. Long
23 during the trial object to a question that the other
24 may be asking. Again, that is because they are
25 supposed to do that. They are required to do that.

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1 You should not hold that against them in any form or
2 fashion. They are doing their jobs, that is what good
3 lawyers do. That is what good lawyers are supposed to
4 do. So, please, don't hold that against them.

5 I will tell you this. They are sworn, as I am,
6 to conduct themselves professionally and ethically
7 during this trial. You can expect that. I will
8 expect that, and we will require that. But you have
9 also taken an oath to professionally and ethically
10 undertake your duty as jurors, because as I have tried
11 to impress upon you, there is nothing more important
12 once you do, because at the end of this trial, you'll
13 have to deliberate, you'll have to decide what the
14 resolution of this case should be.

15 What is deliberation? Let me tell you about
16 deliberation. I was trying to think of something
17 jurors could relate to. It is like a three-part
18 process. First, you as jurors are the sole and
19 exclusive judge of the facts. The law doesn't even
20 allow me to have an opinion about the evidence that is
21 presented in this case. You, as jurors, must judge
22 the effect, weight and value of the evidence that you
23 receive in this case. How do you do that? You may
24 ask yourself, We don't know any of these people who
25 are going to testify, we don't know whether to believe

THE COURT TO THE JURY

1 them or not. What you do is you apply that same test
2 of truthfulness that you do in your daily lives when
3 you deal with your fellow citizens. I will tell you,
4 you are free to believe every word that a witness
5 says, or nothing that a witness says. You can believe
6 part of what he says or she says, and reject the
7 remainder of what he or she says. That is entirely up
8 to you. You can consider such things as, well, was
9 this witness in a position to actually see or hear
10 what the witness says that he or she saw or heard?
11 Does this witness impress me with having the ability
12 to recall what happened? What is this witness'
13 intelligence level? Is this witness a person who can
14 hear or see or interpret that event? You can even
15 consider what we call a witness' demeanor on the
16 stand. How does that witness appear on that stand?
17 Does that witness appear to be truthful? You can
18 consider all of those things in determining what
19 evidence you will believe. From that evidence, you,
20 and you alone, will decide what happened, what are the
21 facts in this case, that is step one in your
22 deliberation process. Because if you will, think
23 about two great big gears. One gear you construct as
24 the facts, the other gear I construct as the law. The
25 third part -- number one, facts; two, getting law.

THE COURT TO THE JURY

1 You don't have to worry about the law, I'll tell you
2 about that, and then the third process is you bring
3 those gears together and you see how the facts and the
4 law fit, and that fit determines whether or not the
5 State has proved this case beyond a reasonable doubt.

6 I said you don't have to worry about the law,
7 because at the end of the trial, I will tell you what
8 law you must apply during your deliberations. You
9 find the facts and you apply them to the law as I give
10 it to you. Just like you are the sole judge of the
11 facts, I'm the sole judge of the law. You might not
12 agree with what I tell you, might not think what it
13 ought to be, but you are sworn to follow it as I give
14 it to you, and that is how you will reach a verdict in
15 this case.

16 It is important that throughout this trial you
17 keep an open mind. It is essential that you not
18 pre-deliberate this case. Pre-deliberation occurs
19 when a jury goes into the jury room and you start
20 discussing witnesses and evidence before you heard
21 everything. You must keep your minds open and be
22 receptive to both sides of the case and not draw any
23 conclusions before you have heard it. Don't even
24 discuss the case among yourselves. If we go over into
25 tomorrow when you go home, don't discuss it with your

THE COURT TO THE JURY

1 spouses or your significant others or anyone else. As
2 I said, you can't even discuss it among yourselves.
3 Wait until you have heard everything.

4 As I mentioned a moment ago, the burden in this
5 case is 100 percent on the State. The State must
6 convince each and every one of you that the defendant
7 is guilty of the charges beyond a reasonable doubt,
8 and I will tell you that you will be required to
9 return a verdict on each of the four charges that I
10 have mentioned to you. You will return separate
11 verdicts, and you must consider each charge
12 separately. The defendant may be found innocent of
13 all. He may be found guilty of all, depending how you
14 find the evidence or how compelling you find the
15 evidence. Or he may be found guilty on some and not
16 guilty on the others. That is entirely up to you to
17 determine.

18 Now, during the trial, as I said a moment ago,
19 you might hear an objection. At the time I may send
20 you out of the courtroom. That is not because we're
21 trying to keep anything from you. It simply is this.
22 Usually that involves how a piece of evidence is
23 presented, and in ruling on that, I'm sometimes
24 required to maybe express an opinion about the piece
25 of evidence. It would be highly improper for you to

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1 be influenced by anything that I say, not that we're
2 trying to keep anything from you, just that we're
3 trying to avoid me interjecting any influence on how
4 you look at the evidence, and that is how we do it.

5 During the trial of the case, we'll take many
6 breaks. Please do not drag out that cell phone and
7 start investigating the case on your own. We don't
8 need you Googling the location. We don't need you
9 looking up if there was any news coverage. I don't
10 have a clue, but if there was, don't be looking up
11 that kind of stuff. Don't be Googling or searching
12 Facebook for Ms. Livesay or Mr. Long or for me, that
13 would bore you to death. Don't be doing any of that.
14 You have to decide this case from what you hear from
15 the witness stand.

16 I'll tell you how we will proceed. In a moment,
17 I'll give Ms. Livesay an opportunity to make what we
18 call an opening statement. In that statement, Ms.
19 Livesay is going to tell you way more about this case
20 than I am. She's going to lay out the facts. She's
21 going to tell you what she thinks she can show.
22 She'll tell you what evidence that she's going to
23 present. She's going to, essentially, give you the
24 case from her perspective. Nothing that she says is
25 evidence. She may prove it from the witness stand, as

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1 the evidence progresses, but what she says in other
2 opening remarks is to give you an overview of the case
3 so you will understand better what is going on.

4 Following that, Mr. Long will also have an
5 opportunity to make an opening statement or remarks,
6 and he will talk to you again about the evidence and
7 what the State may or may not show. Keep in mind he
8 is not required to do anything. No defendant is
9 required to prove himself or herself innocent. They
10 don't have to put up a single piece of evidence.
11 Defendant does not even have to appear, as he has in
12 this case. He waived his presence. And you will draw
13 nothing -- nothing from the fact that he is not here.

14 Following that, Ms. Livesay will be required to
15 put up the State's case. She must put up evidence and
16 enough evidence to convince you of the defendant's
17 guilt beyond a reasonable doubt. She will begin by
18 putting up evidence or witnesses as a witness
19 testifies. Plaintiff will have an opportunity to
20 cross-examine, and so it will go until such time as
21 Ms. Livesay says the State rests. At the time the
22 State rests, the defense may or may not, it is
23 entirely up to them, put up witnesses and a defense.
24 If they do not, you cannot draw a conclusion -- that
25 doesn't mean anything. They are not required to put

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1 it up.

2 Following the time that the defense rests, the
3 attorneys will make closing arguments and they will,
4 again, represent to you arguments setting forth their
5 position on the case, why they think they should
6 prevail. Following closing arguments, then I will
7 charge you on the law and you will receive the case
8 for deliberations. I will tell you up front that I
9 don't think any other judge in the state does it, it
10 is a process that has been approved by the supreme
11 court, and it is just something I think is fair to
12 jurors. We bring you here from your routines and your
13 jobs and, unfortunately, we expect you to understand
14 everything we're doing. The charge on the law can be
15 very complex sometimes, involve many different
16 principles of law. I believe, and I've always felt,
17 that it was unfair to expect a jury to listen to that,
18 recall it all, things that took years to cover in law
19 school. I prepare a written transcript of my charge
20 for your use during your deliberation process. That
21 doesn't mean you don't have to listen to me when I'm
22 charging you, but I have that for you. Jurors tell me
23 that in the past it has been very helpful to them, but
24 that is how the law will be presented to you.

25 Now, are we ready to proceed, Ms. Livesay?

OPENING STATEMENT - MS. LIVESAY

1 MS. LIVESAY: Yes, sir, Your Honor.

2 THE COURT: Very well, make an opening remark.

3 Anything further, Mr. Long?

4 MS. LIVESAY: Ladies and gentlemen of the jury,
5 I'm Nancy Livesay. I'm the prosecutor in this case.
6 I will be putting forth the case just like the Judge
7 told you: The burden is on me to either try him and
8 produce the evidence to convince you that he is
9 guilty. First of all, what is he charged with, that
10 way you will know as you listening to the witnesses
11 what you are looking for and can be checking things
12 off, this is evidence to show A, B or C.

13 First, he's charged with attempted murder. What
14 is attempted murder? It is very commonsense. It is
15 exactly what you would think it would be. It would be
16 somebody that either through words or actions show
17 that they have the intent to murder someone, but for
18 whatever reason, that person lives through that
19 experience. So it is attempted murder. If I shoot
20 Ms. Pop and she lives, that is attempted murder. The
21 only difference is if that shot fired causes the end
22 of her life, then we are here for a murder case. That
23 is the only difference.

24 The second charge is armed robbery. That should
25 be pretty self-explanatory. That is when someone

OPENING STATEMENT - MS. LIVESAY

1 approaches you with some sort of weapon and takes
2 something from you. That is exactly what you would
3 think it would be. If I walked up to Ms. Pop with a
4 weapon and I said, Give me your watch and all of your
5 belongings, that is armed robbery, just like you see
6 it every other day.

7 The third is kidnapping. Kidnapping is when
8 someone takes control of somebody else. They are not
9 free to leave. Now, I don't have to have my hands on
10 that person. If I am holding someone at gunshot,
11 gunpoint, that person cannot leave, so at that time
12 they are being kidnapped. If you are doing something
13 that is forcing that person, taking away their ability
14 to leave, that is kidnapping.

15 The last charge is burglary first. Burglary is
16 breaking into something. Burglary first is breaking
17 into someone's home in the nighttime hours with a
18 weapon. So if someone breaks into Ms. Pop's house and
19 either already has a gun when they break in, or they
20 acquire a gun in the course of the burglary, that is
21 all burglary first.

22 Now, burglary first is not always breaking in the
23 door. Burglary first is when you have the intent to
24 commit a crime when you enter someone else's home in
25 the nighttime hours. When you have the intent, which

OPENING STATEMENT - MS. LIVESAY

1 means if you are acting under deception or
2 misrepresentation and you enter into that home with
3 the intent to commit a crime, you are then committing
4 burglary first. If I go up to Ms. Pop's door and I
5 have the intent to rob her, but I go up to the door
6 I'm selling magazines, she invites me in, I
7 immediately put a weapon on her and rob her, that is
8 burglary first. She hadn't consented to that. She
9 has given me consent under deception or
10 misrepresentation, so that is not consent.

11 Now, these are the crimes he's charged with.
12 What are the facts? What are the facts in this case?
13 The facts are that these two ladies -- this is Katrina
14 Daniels and Laura Conklin. These are the two victims
15 in the case. The facts are that at the time this
16 happened, which was in February of 2013, these two
17 ladies at that time were addicts. They had a drug
18 problem. They go to Racepath and they meet the
19 defendant in this case, Jamal Daniels, only at that
20 time, as you can imagine, he had a nickname. The
21 nickname at that time was Polo. So they go to
22 Racepath, meet up with Polo and there is a drug
23 transaction between them and the defendant. They also
24 exchange phone numbers, exchange phone numbers so they
25 can keep these transactions going. These two ladies

OPENING STATEMENT - MS. LIVESAY

1 go home. We know they exchange phone numbers because
2 in the course of the investigation we obtain the
3 defendant's phone. Of course, as you can imagine, in
4 his contact list are these ladies' phone numbers.

5 Now, the phone number is not under "Laura" or
6 "Katrina." The phone number in his contact list as
7 "new jack." When I first looked at this case, I
8 didn't understand what that meant. Their name is not
9 New Jack, so what exactly does that mean? Once you
10 start unfolding what happens that night, it becomes
11 more clear. They call him up again that night and
12 say, look, we would like to make another purchase. He
13 says at that time, I would hate for you to come out
14 here, let me come to your house, safer, better place.
15 So, of course, these two ladies, yes, of course. He
16 comes over to the house the first time and they let
17 him in. When he is in the house, they go upstairs.
18 There is talk about the transaction. He then says,
19 No, I don't have what you are looking for, let me
20 leave and go get it and I'll come back.

21 They let him out and say, okay. They open the
22 door, he gets into a white sports truck, they shut the
23 door and wait for him to call back. Of course he
24 calls back a few minutes later and says, hey,
25 actually, I looked in my car and I have what you want.

OPENING STATEMENT - MS. LIVESAY

1 They said, okay, great, come on. He knocks on the
2 door. Again, they let him in and go upstairs.

3 This is the second time they met him. They go
4 upstairs. He's meandering around, won't make any
5 transaction. They are saying, Look, let's do this and
6 move on. He's kind of moving around, won't really do
7 anything. Lo and behold, there is a tap at the door.
8 They told him, We don't want anyone else, just you.
9 Tap, tap on the door. Polo immediately runs
10 downstairs. This lady, Laura Conklin, immediately
11 runs behind him. At this point they know something
12 bad is about to happen. They run downstairs. She
13 immediately tries to keep the door closed. Of course
14 he's trying to open the door for the other guy, and
15 she's trying to close it.

16 The other guy pushes through and immediately
17 fires one shot at this lady, immediately. It grazes
18 her head right here. We know that that gun was fired
19 because you are going to see the pictures of the blood
20 and the area around the front door. You will see her
21 injury, and you will hear from a lady at SLED that
22 says that the particles on her hands are consistent
23 with gunshot residue.

24 She is now bleeding, and you'll see the blood on
25 the bathroom floor and kitchen area where she was shot

OPENING STATEMENT - MS. LIVESAY

1 immediately by the front door. That is where all the
2 blood is. Polo then grabs this woman. Katrina
3 Daniels runs downstairs. She hears the gunshot and
4 she immediately runs downstairs. The guy with the gun
5 immediately strikes her and grabs her. They
6 immediately take them back upstairs to try to get the
7 money. You will see the blood on the steps, going up
8 to the steps, and you'll see in the bedroom blood in
9 the bedroom where this lady is bleeding from that
10 wound.

11 While they are in there, they are held at
12 gunpoint. One guy is holding her at gunpoint. Polo
13 takes the money on the bed and he immediately starts
14 to rummage through everything looking for money, Where
15 is the money, where's the money, where's the money.
16 These women are scared to death, say please take
17 whatever you want, the money is in my car, go get it
18 out, here are my car keys, it is not worth my life.
19 He immediately grabs the car keys and runs downstairs.
20 These two ladies are still held at gunpoint.

21 You'll see pictures of the car, hatch back is
22 down where someone rummaged through the car. There is
23 items on the ground. You'll see multiple bank
24 envelopes that somebody would have cash in where I'm
25 sure they were going through looking. All of that is

OPENING STATEMENT - MS. LIVESAY

1 in the car.

2 The guy upstairs finally runs downstairs. When
3 he runs downstairs, these two women, in an effort to
4 get away, jump through the second floor of their
5 apartment and jump down to the ground out of the
6 second floor window. Now, you will see blood on the
7 inside of the windowsill where someone put their hand.
8 You will see blood all along the blinds. You will see
9 the curtain hanging outside that windowsill where they
10 were trying to get down from the second floor.

11 They immediately run to the neighbor. You will
12 hear the 911 tape. The neighbor will not let them in.
13 He's not sure what is happening, but he knows this
14 woman is bleeding from the apartment, and he's not
15 letting her in. The police finally arrive. These
16 ladies are taken for medical care.

17 Now, through the course of the investigation,
18 Detective Clothier, who you will also meet, is able to
19 determine who Polo was. They were able in the course
20 of the investigation to get a description: Young,
21 black male, close haircut, slim. Of course he was
22 able to identify who Polo was, a guy named Jamal
23 Daniels. Slim, black male, close haircut. He gets a
24 line-up of six people. Somebody from the police
25 department showings it to Katrina Daniels. She

OPENING STATEMENT - MS. LIVESAY

1 immediately picks out Polo, who is Jamal Daniels.

2 Now, earlier I told you about a sport truck, that
3 is the vehicle that was driven that night.

4 Ms. Daniels will tell you a Sport Trac. Another lady
5 in the neighborhood will tell you I see a man run to a
6 Sport Trac and hightail, never seen that truck before.
7 So what, then, is the connection between this Sport
8 Trac and the defendant? Is it registered to the
9 defendant? I can already tell you, no. That never
10 happens. But I can tell you, you are going to hear
11 from a witness that says I used to have a Sport Trac.
12 I drove a Sport Trac during that time, and I
13 frequented Racepath and I loaned that Sport Trac out.
14 One of the people I loaned the Trac out to was a guy
15 named Polo, had a short haircut, tall, slender, black
16 male, gold teeth. You will find out later on when he
17 was arrested by the police, tall, black male, close
18 haircut, gold teeth.

19 This is a very serious, serious case. This
20 defendant broke into these women's house, and in South
21 Carolina we have what you call
22 hand-of-one-is-hand-of-all. So when you are working
23 in conjunction with someone, you are planning, going
24 in there together, everybody is responsible for
25 everything that happens in that apartment. They are

OPENING STATEMENT - MS. LIVESAY

1 going to tell you Polo did not pull the trigger, but
2 he is responsible in South Carolina because
3 the-hand-of-one-is-the-hand-of-all. But for Polo,
4 that man would have never had access to these women.
5 So he is just as responsible. They were working
6 together. One was holding them at gunpoint, and the
7 other was looking for the cash.

8 You will hear witnesses tell you what happened
9 that night. These women will tell you what happened
10 that night. The guy that loaned them the Sport Trac
11 will tell you what happened. The lady that saw the
12 Sport Trac go away from the scene will tell you what
13 happened. Detective Clothier will talk to you about
14 who they picked out in the line-up and when they
15 obtained his phone, whose phone number was in his
16 phone. It was these victims. Once you think about
17 what happened that night, them being robbed and money
18 being taken, all of a sudden that number being in the
19 contacts as "New Jack" makes a lot of sense.

20 I'm going to come to you after you have heard all
21 of the witnesses, and I'm going to talk to you again
22 in closing, but I'm going to ask you now to listen to
23 all of the evidence, to all of the witnesses. And I
24 believe once you hear all of the evidence you are
25 going to find that Jamal Daniels is guilty of all of

OPENING STATEMENT - MR. LONG

1 the indictments we've charged with him. Thank you for
2 your time.

3 THE COURT: Mr. Long.

4 MR. LONG: Thank you, Your Honor. Good morning
5 ladies and gentlemen. I'm Buddy Long with the Public
6 Defender's Office. I represent Jamal Daniels. As
7 Your Honor told you, he is not here. I can tell you
8 that he is scared to death. He's scared to come here
9 for trial. He's scared to not come to trial, and,
10 unfortunately, the chicken in him won out. He did not
11 want to appear for trial. He waived being present for
12 trial.

13 There is always two sides to every story.
14 Sometimes there is three or four or more. The
15 Solicitor has given you one side of the story, and
16 that is one side of the story as presented to police,
17 but you will find there is multiple stories within her
18 story. This case doesn't smell right. There is
19 something about it that just doesn't ring true. You
20 will have an opportunity to hear the witnesses
21 testifying, see how they act and react and how they
22 answer questions and whether they freely are coming
23 forward with information, or whether they struggle or
24 hunt and think about their answers before they give
25 them. But you will get an idea using your good common

OPENING STATEMENT - MR. LONG

1 sense that there is a lot more to this story.

2 I don't know whether Mr. Daniels and his homeboy
3 were shafted. In other words, they said bring by the
4 drugs and then grab the drugs and tried to close them
5 out. I don't know what happened, but I do know that
6 you are not hearing the full story. I sympathize with
7 each and every one of you. Respectfully, to the
8 Solicitor and to myself, your job is much harder than
9 ours, much, much harder. Respectively to His Honor,
10 your job is much harder than his because you have to
11 try to listen to all of the testimony and evidence,
12 determine what is true, what is not true, what is
13 probably true, what probably is not true, what may be
14 true, et cetera, go through all of that and
15 unanimously agree of someone's guilt beyond a
16 reasonable doubt.

17 My wife and I can't even agree what we want for
18 supper some nights, something as trivial and mundane
19 as that. The State imposes a huge burden on you. We
20 are appreciative of that. We appreciate your time and
21 attention, because a man's life is at stake here.
22 These victims want to be heard, and you are the ones
23 that are selected to do that. So we ask you to pay
24 close attention to the testimony and evidence, and
25 thank you.

CATHY RHODES - DIRECT EXAMINATION

1 MS. LIVESAY: The State calls Cathy Rhodes to the
2 stand.

3 (State's Exhibits 2 and 3 marked.)

4 (CATHY RHODES, having been duly sworn,
5 testified as follows:)

6 THE CLERK: State your name for the record and
7 spell your last.

8 THE WITNESS: Catherine Rhodes, R-H-O-D-E-S.

9 DIRECT-EXAMINATION

10 BY MS. LIVESAY:

11 Q If you don't mind, tell this jury where you are
12 employed.

13 A With the Myrtle Beach Police Department.

14 Q And if you don't mind, tell them how long you
15 have been there?

16 A 13 years.

17 Q And what are your current responsibilities?

18 A I supervise our Support Services Division, which
19 includes records, property and evidence and dispatch.

20 Q So when someone calls for emergency, 911, that is
21 your responsibility?

22 A It is.

23 Q And do you keep the records from those calls?

24 A Yes, we do.

25 Q Do you also keep the records from those calls?

CATHY RHODES - DIRECT EXAMINATION

1 A Yes, we do.

2 Q If you don't mind, tell this jury, are they kept
3 in such a manner they cannot be tampered with?

4 A Yes. They are kept on a secured server.

5 Q And are the recordings and notes that go with
6 911, are they kept in the ordinary course of business?

7 A Yes, they are.

8 Q If you don't mind, I'll show what you is marked
9 as State's No. 2 and 3; do you recognize those items?

10 A Yes, I do.

11 Q If you don't mind, tell the Court what is State's
12 2?

13 A 911 recording for service.

14 Q Have you heard that?

15 A Yes, I have.

16 Q Would you tell the jury whether or not it was
17 tampered with in any form or fashion?

18 A It has not been tampered with.

19 Q And do you recognize State's Exhibit No. 3?

20 A Yes, I do.

21 Q And if you don't mind, tell the Court what that
22 is?

23 A That is our dispatch call for service. It is our
24 dispatch logs.

25 Q Are those notes kept in the regular course of

CATHY RHODES - DIRECT EXAMINATION

1 business?

2 A Yes, they are.

3 Q Have you reviewed those notes?

4 A I have.

5 Q If you don't mind, tell the Court and jury, have
6 they ever been tampered with, at all?

7 MS. LIVESAY: The State wishes to move State's
8 Exhibit 2 and 3 into evidence.

9 MR. LONG: Your Honor, we would object. We need
10 to know whose voice is on the 911 tape before it is
11 submitted into evidence. It is hearsay as such until
12 we know who we are talking about making the call.

13 THE COURT: Does your log indicate who you
14 received the call from?

15 THE WITNESS: Our log indicates it was the male
16 neighbor that called it in.

17 THE COURT: I'm going to allow it, 2 and 3.

18 (State's Exhibits 2 admitted.)

19 Q (MS. LIVESAY) And if you don't mind, tell this
20 Court, do you recognize the dispatcher's voice on the
21 recording?

22 A Yes, I do.

23 Q Who is the dispatcher?

24 A We have two that are there, Yesenia (phonetic)
25 Rodriguez and Quinton Wise.

CATHY RHODES - DIRECT EXAMINATION

1 Q And when these recordings come in -- and you've
2 heard this one; is that correct?

3 A Yes.

4 Q Is that a recording of what is going on at that
5 time?

6 A Yes, it is.

7 Q And those notes, are those notes that are taken
8 as to what is going on at that time?

9 A It is.

10 Q So that is the indication of that person's
11 presence sense impression of what is going on?

12 A Yes.

13 THE COURT: Take the jury out for a minute.

14 (The jury exits at 11:26 a.m., and the
15 following is heard out of the presence of the jury.)

16 THE COURT: Ms. Livesay, are you about to offer
17 collateral notes expressing impressions or opinions by
18 the dispatcher?

19 MS. LIVESAY: Your Honor, the call is just as it
20 always is.

21 THE COURT: I mean, we have the call, it speaks
22 for itself, kept in the course of business. You know
23 it would pass the res gestae test as well I believe,
24 but I'm concerned about what I think you are about to
25 do is offer up notes made by the dispatcher as the

CATHY RHODES - DIRECT EXAMINATION

1 dispatcher is receiving that call, and those notes,
2 from what the witness said, would be the dispatcher's
3 impression of what was being relayed to him or her.

4 MS. LIVESAY: Yes, sir, Your Honor. The dispatch
5 notes are what is going on at that time and it is --

6 THE COURT: Let me see what you have there. It
7 seems to me that that would be their interpretation of
8 what is on the call, and we put the call in, the jury
9 can draw what conclusions they need to draw, but let
10 me see what you have.

11 MS. LIVESAY: You want to see it visually?

12 THE COURT: Yes. Yes.

13 MS. LIVESAY: Certainly.

14 THE COURT: Have you seen this, Mr. Long?

15 MR. LONG: I believe I have, Your Honor. There
16 is quite a bit of discovery in the case, but I'm sure
17 it was provided as well.

18 THE COURT: One, it says times and things of that
19 nature. I don't -- this is not -- this is not what I
20 understood the witness to say, Ms. Livesay. This is
21 merely when you were dispatched and arrived, and that
22 sort of stuff.

23 MR. LONG: Notes rather than impressions.

24 THE COURT: I was under the impression that the
25 witness -- I gathered from what the witness was saying

CATHY RHODES - DIRECT EXAMINATION

1 was that the dispatcher was taking notes and recording
2 his or her impression of what was being said.

3 MS. LIVESAY: No. No, sir. That is my fault.

4 MR. LONG: Just to renew my objection a little
5 bit. I believe the caller is Mostafa Chouri, the next
6 door neighbor to the victims. His statements are
7 hearsay at this point, whether or not they come under
8 the business records or not. If he is preparing to
9 testifying, after he's testified, then it is not
10 hearsay and they can play --

11 THE COURT: I think the better practice -- you
12 intend to call him?

13 MS. LIVESAY: Your Honor, we are not calling him.
14 The rule says that under present sense and impression,
15 the witness is immaterial; so, therefore, there is an
16 exception. And then this is a recording that is
17 kept --

18 THE COURT: I don't know exactly what he has
19 said.

20 MR. LONG: Your Honor, there is parts of the
21 conversation where I believe he says what the victim
22 told him that the victim was shot, okay. But there
23 was no bullet holes, no gun, no shell casings, nothing
24 recovered from the residency and none of the neighbors
25 heard a shot. The fact that he's testifying through a

CATHY RHODES - DIRECT EXAMINATION

1 911 tape --

2 THE COURT: Under present sense and impression,
3 he can say things like it is cold here or it is hot
4 here.

5 MR. LONG: Correct.

6 THE COURT: Or I'm scared. For present sense of
7 impression, I'm hearing loud noises. But if he's
8 going to say, This person, my neighbor, told me this,
9 and he is just relaying it --

10 MS. LIVESAY: What he's saying is he sees her and
11 she's bleeding from her head.

12 THE COURT: That is his present sense impression,
13 I can understand that. But if he says there was a
14 burglary at their home.

15 MS. LIVESAY: He doesn't say that.

16 THE COURT: I think what he is doing is relaying
17 what someone else told him.

18 MR. LONG: He has to relay --

19 THE COURT: It is what he is perceiving at the
20 time. You know, there is a lady lying in the middle
21 of the street, you know, something like that is
22 admissible. We have to be careful now. We are not
23 going to get into him relaying information that he's
24 not perceiving.

25 MS. LIVESAY: You hear the victim on the tape

CATHY RHODES - DIRECT EXAMINATION

1 say, My roommate was shot in the head. My
2 understanding is that that would be obviously a
3 present sense impression or excited utterance.

4 THE COURT: That is excited utterance on the part
5 of that person. If that person is there speaking, I
6 would allow that.

7 MR. LONG: The only problem is we may or may not
8 hear the victim in the background of the phone call
9 made by Mr. Mostafa, but he's relaying information
10 throughout the conversation. The victim says
11 something, he repeats it to the 911 operator, this
12 that and the other.

13 THE COURT: That is where we have a problem.

14 MR. LONG: Yes, sir. That is all throughout.
15 I'm sure it is all throughout the 911 call.

16 THE COURT: How long is the 911 call?

17 MS. LIVESAY: 10 minutes.

18 THE COURT: Let's listen to it.

19 (Published to the Court.)

20 THE COURT: All right. Mr. Long, what part do
21 you specifically believe to be inadmissible?

22 MR. LONG: To the best of my recollection, the
23 caller says that people broke into her house and a
24 fellow with a mask shot her, that she was shot in the
25 head.

CATHY RHODES - DIRECT EXAMINATION

1 THE COURT: I think what he said is he saw blood
2 on her head, he doesn't know what is going on.

3 MR. LONG: He reported to the police that she had
4 been shot in the head.

5 THE COURT: Because he could see blood on the
6 head.

7 MR. LONG: Correct.

8 THE COURT: I think that is presence sense
9 impression.

10 MR. LONG: Your Honor, the reason we challenge,
11 contest, this is that medical staff reported that the
12 head injury may be consistent with a grazing bullet
13 wound. I don't think we have medical testimony to
14 testify that, yes, there was a bullet wound to the
15 head. Him, making those statements, hearsay
16 statements, on a 911 tape are prejudicial to our later
17 position concerning what the extent of the injuries
18 were.

19 THE COURT: Ms. Livesay. I mean, you have the
20 victim testifying.

21 MR. LONG: I understand. Until she does, we
22 think it is hearsay.

23 THE COURT: All right. Ms. Livesay.

24 MS. LIVESAY: Your Honor, if I may, the victim is
25 going to testify, and you hear her on the tape saying

CATHY RHODES - DIRECT EXAMINATION

1 he shot her in the head and we were robbed. Now,
2 present sense impression and excited utterance comes
3 from the rule of res gestae, which basically says you
4 can get into what is going on at that time.

5 THE COURT: I think it comes in under not res
6 gestae as excited utterance, but res gestae as
7 explaining the whole story.

8 MS. LIVESAY: Yes, sir. And then they derive to
9 say, well, this is someone saying what is going on at
10 that time. They don't have time to reflect back and
11 fabricate a story. I believe in this particular case
12 you can hear the victim on the phone saying -- I think
13 it is clear, I don't know if Buddy heard it or not --
14 I heard her say, We were robbed and she was shot in
15 the head.

16 THE COURT: I'm going to allow it. You are going
17 to publish that now?

18 MS. LIVESAY: Yes, sir, at the end. And I'll
19 have -- in case we can handle this now, I'll have her
20 read those notes to the jury so she can convert the
21 military time into regular time and tell them what the
22 shorthand means, like GS --

23 THE COURT: Every entry?

24 MS. LIVESAY: Just the last page so they know it
25 means Grand Strand Regional Hospital. It shouldn't

CATHY RHODES - DIRECT EXAMINATION

1 take her long.

2 THE COURT: Give me the jury. It is a quarter of
3 12:00. Let's go ahead.

4 (The jury enters at 11:44 a.m., and the
5 following is heard in the presence of the jury.)

6 THE COURT: You may proceed.

7 Q (MS. LIVESAY) Just to recap, State's evidence or
8 Exhibit No. 2 is the 911 tape?

9 A Yes.

10 Q Has it been tampered with in any form or fashion?

11 A No.

12 Q Do you recognize the voices of the dispatchers?

13 A Yes.

14 Q If you don't mind, tell the jury who those are.

15 A Yesenia Rodriguez and Quinton Wise.

16 MS. LIVESAY: The State asks to move it into
17 evidence if it hasn't done so.

18 THE COURT: I would admit it over your objection.

19 Q (MS. LIVESAY) And State's 3, do you recognize
20 that?

21 A Yes.

22 Q What is that?

23 A Dispatch call for service.

24 Q So that is the time and information coming into
25 the dispatcher?

CATHY RHODES - DIRECT EXAMINATION

1 A Yes.

2 Q And she's just putting it in the notes?

3 A Correct.

4 MS. LIVESAY: At this time the State asks to move
5 State's Evidence No. 3 into evidence.

6 MR. LONG: Over our objection.

7 THE COURT: Over your objection.

8 (State's Exhibit 3 admitted.)

9 MS. LIVESAY: The State asks to publish State's
10 Evidence No. 2, the 911 tape.

11 THE COURT: Certainly.

12 (State's 2 published to the jury.)

13 Q (MS. LIVESAY) Is that the entire notes from the
14 dispatcher that you have with you now?

15 A It is.

16 Q Are they in military time?

17 A Yes, they are.

18 Q If you don't mind, read those notes to the jury
19 and convert that military time in regular time, and
20 speak up if you can?

21 A Okay. Neighbor got shot, 2/28/13, 9:09 p.m., 35
22 seconds. QY, 330:30, Code 2, 2/28/13, 9:10 p.m., 30
23 seconds, Esmatollo (phonetic). 311, Code 2, 2/28/13,
24 9:10 p.m., 47 seconds Esmatollo. 336, Code 3, 2/28/13,
25 9:11 p.m., 44 seconds, Esmatollo. Complainant saying

CATHY RHODES - DIRECT EXAMINATION

1 the blood is coming from her head, thinks she got shot
2 there. 2/28/13, 9:11 p.m., 46 seconds, Y. Rodriguez.
3 228, Ccde 3 -- sorry. 288, Code 3, 2/28/13, 9:11 p.m.,
4 53 seconds, Esmatollo. Unsure where the person who is
5 shot her. 2/28/13, 9:12 p.m., Y. Rodriguez. The
6 victim is outside, he doesn't want her in the house
7 because he has kids. 2/28/13, 9:12 p.m., UDTs stands
8 for undefined time stamp, radio silence called.
9 2/28/13, 9:13 p.m., 7 seconds, Esmatollo. EMS is
10 staging. 2/28/13, 9:13 p.m., 24 seconds, Esmatollo.
11 The person who shot her had a mask. 2/28/13,
12 9:13 p.m., 23 seconds, Y. Rodriguez. Call-taker can
13 hear a female saying it was an armed house break-in,
14 unknown if they are still in the house. 2/28/13,
15 9:15 p.m., 41 seconds, Y. Rodriguez. 288, Roommate was
16 shot in the head. Waiting on another unit to check
17 location. 2/28/13, 9:15 p.m., 59 seconds, Esmatollo.
18 288, EMS can go in. Both female residents are outside
19 of the house. 2/28/13, 9:16 p.m., 44 seconds,
20 Esmatollo. 330, incoming units can respond. Normal
21 response. 2/28/13, 9:18 p.m., 4 seconds, Esmatollo.
22 Unit to find time stamp. Radio silence lifted.
23 2/28/13, 9:20 p.m., 47 seconds, Esmatollo. 288,
24 location is secured. 2/28/13, 9:21 p.m., 5 seconds,
25 Esmatollo. 226, suspect vehicle is a newer model

CATHY RHODES - DIRECT EXAMINATION

1 four-door white truck occupied by one to two BM. One
2 male goes by the name of Paulo or Polo known to
3 frequent the Racepath area. 2/28/13, 9:26 p.m., 32
4 seconds, Esmatollo. HCPD, which stands for Horry
5 County Police Department, notified by BOLO for suspect
6 vehicle. 2/28/13, 9:29 p.m., 17 seconds, S. Royal.
7 330, following EMS to GSR, which stands for Grand
8 Strand Regional. 2/28/13, 9:30 p.m., 48 seconds --

9 MR. LONG: I'll object at this point. Are we
10 talking about the 911 tapes, or just talking about log
11 notes for everything from Myrtle Beach Police
12 Department?

13 THE COURT: I mean, what significance is this?

14 MS. LIVESAY: Your Honor, this is the documents
15 that were taken that night as to the information taken
16 into dispatch.

17 THE COURT: They speak for themselves. I mean, I
18 think the jury can figure what is going on. Are you
19 offering them?

20 MS. LIVESAY: I'm offering them as a business
21 document.

22 THE COURT: Well, let's just offer them in, okay,
23 rather than have the witness go through forever
24 reading it. The jury is capable of doing that.
25 Unless there is something specific you want to get to?

CATHY RHODES - DIRECT EXAMINATION

- 1 Q (MS. LIVESAY) Is everything in that document
2 recorded as part of the business of basically 911 of
3 Myrtle Beach?
- 4 A Yes.
- 5 Q And are those notes taken as that information is
6 coming in?
- 7 A Yes.
- 8 Q Have they been tampered with in any form or
9 fashion?
- 10 A They have not.
- 11 Q Did it indicate that a BOLO was put out that
12 night for Horry County Police Department?
- 13 A Yes.
- 14 Q And what was the BOLO put out for?
- 15 A The suspect description and vehicle.
- 16 Q And what kind of vehicle was it?
- 17 A According to the notes, it is a newer model
18 four-door white truck.
- 19 Q And what time was that?
- 20 A That was at 9:29 p.m.
- 21 Q And was a name dispatched for BOLO purposes?
- 22 A It says that the one male goes by Paulo or Polo.
- 23 Q What time was that?
- 24 A That was 9:26 p.m.
- 25 Q And what time was this call taken?

CATHY RHODES - CROSS-EXAMINATION

1 A The initial call came into our dispatch center at
2 9:08 p.m. and 57 seconds.

3 Q What date?

4 A February 28, 2013.

5 Q So at 9 o'clock on February 28 is when the call
6 approximately came in?

7 A Yes.

8 Q Would it have been dark outside at that point?

9 A Should have, yes.

10 MS. LIVESAY: Nothing further from this witness.

11 CROSS-EXAMINATION

12 BY MR. LONG:

13 Q You say the call was received by Myrtle Beach
14 Police Department at 9:08?

15 A According to our records.

16 Q Based on the notes and the log you have, what
17 time was it when the first police officer arrived on
18 scene? I imagine on scene would be to the caller's
19 residence?

20 A According to our log, the first officer arrived
21 at 9:13 p.m.

22 Q So we have been on the phone for five minutes
23 before the first officer arrived, correct?

24 A Correct.

25 Q And then how long after that did other officers

KATRINA DANIELS - DIRECT EXAMINATION

1 arrive?

2 A The next arriving officer got there at 9:15 p.m.

3 Q So -- all right. During that time -- I withdraw
4 the question.

5 MR. LONG: Nothing further.

6 THE COURT: Very well. You may step down.
7 Anything further?

8 MS. LIVESAY: Nothing further.

9 THE COURT: You may step down. Thank you. Let's
10 get another one before we break for lunch.

11 MS. LIVESAY: Yes, sir, Your Honor, I was going
12 to call the victim, Katrina Daniels.

13 (KATRINA DANIELS, having been duly sworn,
14 testified as follows:)

15 THE CLERK: State your full name, spell your
16 last.

17 THE WITNESS: My name is Katrina Daniels,
18 D-A-N-I-E-L-S.

19 DIRECT-EXAMINATION

20 BY MS. LIVESAY:

21 Q Tell us about how old you are.

22 A I'm 51 years old.

23 Q And where are you currently living?

24 A Myrtle Beach.

25 Q Are you working anywhere?

KATRINA DANIELS - DIRECT EXAMINATION

1 A Yes, I am.

2 Q Where are you working?

3 A Pizza Hut.

4 Q Where are you from?

5 A I'm from Wilmington, North Carolina.

6 Q And where did you live around February 28, 2013?

7 A

8 Q Tell the jury who lived with at that time.

9 A Laura Conklin.

10 Q How long had you all lived together in that
11 apartment?

12 A At that time, it was about 18 years.

13 Q And if you don't mind, tell this Court and jury
14 about your educational level and past work.

15 A I have a master's degree in mathematics, and I'm
16 a math instructor at the community college level, just
17 unemployed right now doing that, and that is what I do.

18 Q Did you have an occasion to come into contact
19 with the police on February 28, 2013?

20 A Yes, I did.

21 Q And if you don't mind, tell this jury what
22 happened that night that led to the police being
23 called?

24 A Around 4 o'clock I had gone to the area, which
25 they were talking about, Racepath. We drive there, and

KATRINA DANIELS - DIRECT EXAMINATION

1 there were several people standing there. Two people
2 approached my car, one person identified themselves as
3 what was either Paulo or Polo, I wasn't quite sure, and
4 purchased drugs from that person, went back home. We
5 exchanged numbers at that time, too. When I called him
6 when I got -- around 8 o'clock, 9 o'clock, I called him
7 to come -- to go back over there, and he said don't
8 come here, let me come to your house, it is safer. So
9 he did.

10 He came in and we agreed upon on the phone for
11 purchase of \$400 worth. He came in and had \$200
12 worth, said that he didn't have the rest, he would go
13 get it. He left the house, immediately called back on
14 the phone and said he found the other drugs in the
15 car.

16 Q Ms. Daniels, before you get too far. The first
17 time you met Polo, you were where?

18 A At the door, when I opened the door -- first
19 time? In Racepath.

20 Q Where was the first time, just so it is clear for
21 the jury?

22 A In Racepath about 4 o'clock that afternoon.

23 Q When you came across him, tell this jury about
24 how that worked. Were you by yourself?

25 A No, Laura was with me.

KATRINA DANIELS - DIRECT EXAMINATION

1 Q And how many people were with Polo when he
2 approached your car?

3 A One other person.

4 Q So the two of them approached your car?

5 A Correct.

6 Q You only do the transaction with the guy you
7 named Polo?

8 A Correct.

9 Q At that time, you had his phone number and he got
10 your phone number?

11 A That's correct.

12 Q And that is how this meeting came about at your
13 house the second time?

14 A That is right.

15 Q So tell this jury -- take me back. So he comes
16 to your house the second time, and does he come into
17 the house?

18 A He does come into the house. He comes upstairs,
19 and we make a transaction.

20 Q When he comes that first time, who is all at your
21 house?

22 A Laura, myself and just Polo.

23 Q Just the three of you the first time?

24 A That's correct.

25 Q If you don't mind, where did you take him in the

KATRINA DANIELS - DIRECT EXAMINATION

1 house, where in particular?

2 A To the bedroom, upstairs.

3 Q Okay. And then did he indicate -- was there a
4 transaction at that time the first time?

5 A There was, for the amount of \$200, but it was
6 supposed to be for \$400, so he had half the amount.

7 Q So at that time, what happens?

8 A Made the transaction. He says that he'll go get
9 more stuff and call me later, and I take him to the
10 door, watch him get in the truck and close the door and
11 lock it and go back upstairs.

12 Q So when he leaves your house, or during the
13 course he's in your house, are the lights on in your
14 house?

15 A Yes, they are.

16 Q Does he have anything covering his face?

17 A No, he does not.

18 Q The guy that came to your house that time is the
19 same guy that you met as Polo on Racepath?

20 A Yes.

21 Q And when you met him earlier that day at 4
22 o'clock, was it light outside?

23 A Yes, it was.

24 Q So this is the second time that you got a clear
25 look at him?

KATRINA DANIELS - DIRECT EXAMINATION

1 A Yes, it was.

2 Q Briefly describe him to the jury, what he looks
3 like.

4 A He is a black male, tall, around 6'1", 6'2",
5 slender. I remember his eyes being a little droopy
6 with no dreads or anything, short haircut.

7 Q So he comes a second time, and then you say he
8 leaves that time; do you see what car he gets in?

9 A He gets in a white sports SUV -- well, a truck,
10 white truck.

11 Q And he gets in a white truck and you shut the
12 door?

13 A Yes.

14 Q And then what happens next?

15 A Go upstairs, and then the phone rings again and
16 it is him again. He tells us that he has found more
17 drugs in the car and that he can give us the rest of
18 what we wanted in the first place.

19 Q And at that point, does he come back to the
20 house?

21 A He does.

22 Q Okay.

23 A Knocks on the door.

24 Q Who all is at your house at that time?

25 A Just still Laura and I, Laura and myself.

KATRINA DANIELS - DIRECT EXAMINATION

1 Q So just you and Laura?

2 A Correct.

3 Q And then Polo?

4 A When I let him, Polo comes in and we go back
5 upstairs.

6 Q Same guy from the two prior times?

7 A Yes.

8 Q Is he wearing the same clothes?

9 A Yes.

10 Q So then what happens?

11 A He has the drugs in his hand. He doesn't give
12 them to me right away, even though I had the money.
13 He's walking around and fidgeting. I ask him what is
14 the problem, why are you not making the exchange, then
15 there is a knock on the door.

16 Q And then were you expecting anyone else?

17 A No.

18 Q Had you exchanged numbers or met anyone else that
19 day at Racepath?

20 A No.

21 Q So then what happened when you hear the knock at
22 the door?

23 A I said there is no one else allowed in this
24 house. He is standing next to me at the time. He
25 immediately starts running towards the stairs. Laura

KATRINA DANIELS - DIRECT EXAMINATION

1 is right after him, and by the time she got down the
2 stairs, he -- I was upstairs still. I hear a noise.

3 Q Describe that noise to the jury.

4 A The way I described it at the time to the officer
5 later on in the hospital was -- sounded like a group of
6 books falling. We had a tile floor, so that is what it
7 sounded like to me, because I didn't know what happened
8 when I was upstairs. I was like, What was that? I go
9 flying downstairs, and the first thing I see at the
10 bottom is a man with a bandanna, it is black and tied
11 around so it is covering everything except his eyes.
12 He immediately strikes me right here (indicates), and
13 knocks me out. I'm on the stairs knocked out.

14 Q When you come downstairs, do you still see Polo
15 in the house?

16 A Yes. As soon as I got downstairs, I looked to my
17 left. As I saw the masked man, I see Laura bleeding
18 from the head. She's screaming, I got shot. Polo is
19 getting Laura off the ground as she's laying there with
20 blood everywhere.

21 Q Did Polo ever call the other guy's name or
22 indicate who that was?

23 A No.

24 Q Did he appear like he knew that guy?

25 A Yes.

KATRINA DANIELS - DIRECT EXAMINATION

1 Q Did he appear like he expected that guy to come?

2 A Yes.

3 MR. LONG: Objection, calls for conclusion.

4 THE COURT: That does. Jury will disregard the
5 question and the response.

6 MS. LIVESAY: Certainly, Your Honor.

7 Q (MS. LIVESAY) So at that time, she's bleeding,
8 you have been struck. Who strikes you again?

9 A The man with the black mask on and the gun.

10 Q And Polo is getting Laura off the ground?

11 A Yes.

12 Q And then what happens?

13 A I come to and he is grabbing me by the collar.
14 The man with the black mask and the gun has me. Polo
15 has Laura, and he is shaking me trying to get me more
16 awake on the stairs and screaming at me, Where is the
17 money you F'ing bitch.

18 Q Do they take you all upstairs?

19 A They do.

20 Q And then tell this jury what happens once you get
21 upstairs?

22 A We get upstairs, and it is very manic. They are
23 screaming, Where's the money. They are flipping up the
24 mattresses.

25 Q Who is doing that?

KATRINA DANIELS - DIRECT EXAMINATION

1 A Polo and the man with the gun, but the man with
2 the gun always has the gun on us. Laura and I move to
3 the other side of the mattress. There was money under
4 the mattress in the amount of \$5,400.

5 Q Where did that money come from?

6 A It came from the bank. It was to pay -- Laura
7 had a business, and it was to pay her payroll for the
8 next day.

9 Q And you all were painting at that time?

10 A Painting. Laura owned a painting company, yes.

11 Q So who is screaming at that time, Where is the
12 money?

13 A Both of them.

14 Q Who is going through the room?

15 A Polo was doing most of going through the room,
16 because the man with the mask has us held at gunpoint.
17 At this time, he particularly has me on the ground with
18 the gun pointed --

19 Q Did you feel like you could leave?

20 A No. The gun is directly on my head at this time.

21 Q And then what happened?

22 A I was telling Laura, who was standing next to me,
23 just give them the money, because I was scared to death
24 that she was shot in the head, and that I was going to
25 get shot. And Laura said at that time the money is in

KATRINA DANIELS - DIRECT EXAMINATION

1 the car, hoping to get them out of the house.

2 Q And then what happens once she says that?

3 A Polo goes downstairs and leaves the house. That
4 is all I know at that time. The man is still holding
5 us at gunpoint constantly telling me, I'm going to die
6 if I don't give him the money.

7 Q And then what happens?

8 A It was not anything instant. It took what seemed
9 like a very long time, but it was probably five to
10 eight minutes that Polo was downstairs or out of the
11 house searching the car, is what I thought was going
12 on, you know. The man with the black mask received a
13 text on his phone. He was looking through his phone.
14 At that time, he turned and started to walk away.

15 Q And what did you and Laura do then?

16 A I said at this point let's get out of here,
17 because I didn't know when he turned and walked away if
18 he was going to get Polo back in the house, so I opened
19 up the window upstairs and said let's jump, and that's
20 what happened.

21 Q Did you jump out of the window?

22 A Laura went first, and I went second. When I
23 fell, it was concrete, I didn't have any shoes on, and
24 I injured my foot really bad. I crunched my heel.

25 Q And where do you all go for help?

KATRINA DANIELS .- DIRECT EXAMINATION

- 1 A To Grand Strand -- at that point there is a
2 barricade that separates the two condos, and Laura is
3 the first person that busts through them. At this
4 point I can't hardly -- I mean, I can't walk, so Laura
5 is going through and I'm crawling behind her. We start
6 banging on the glass sliding door of the condo on their
7 back balcony.
- 8 Q And did you hear the 911 tape?
- 9 A I did.
- 10 Q Did you hear either you or Laura's voice on the
11 911 tape?
- 12 A I heard mine.
- 13 Q Tell this jury what you said.
- 14 A I said that we've been robbed and Laura has been
15 shot.
- 16 Q And did you tell after this happens, what happens
17 next? Are you taken to the hospital?
- 18 A A police officer -- I could see the police
19 officer coming to my next door neighbor's, first name
20 is Mostafa. I can see the police officer walk through
21 his living room, the door was opened. I guess they
22 already had Laura at this point, I don't know. But
23 they carried me through his house out to the front.
24 When I arrived out to the front, there were two
25 ambulances. Laura was being worked on, and a detective

KATRINA DANIELS - DIRECT EXAMINATION

1 approached me as I was sitting on their front porch.

2 Q And did you tell the police that night what had
3 happened?

4 A I did.

5 Q And is what you told the police what you told
6 this jury today?

7 A Yes, it is.

8 Q And do you remember the clothes you were wearing
9 that night?

10 A Yes, I do.

11 Q You would recognize them if I showed them to you?

12 A Yes, ma'am.

13 (State's Exhibit 4 marked.)

14 Q Look in that bag and tell me what you see.

15 A I see in some gray and white sleeping type of
16 pants, sweat pant type of things, and a T-shirt, gray
17 T-shirt.

18 Q I'm showing you what is marked as State's Exhibit
19 4; do you recognize those?

20 A Yes, they are mine.

21 Q Were they the ones that you had on that night?

22 A Yes.

23 MS. LIVESAY: At this time the State wishes to
24 put State's 4 in evidence and publish to the jury.

25 MR. LONG: Without objection.

KATRINA DANIELS - DIRECT EXAMINATION

1 (State's Exhibit 4 admitted.)

2 Q (MS. LIVESAY) Do you mind taking those clothes
3 out and showing the jury? I know they have been in
4 the bag awhile. Just stand.

5 (State's 4 published to the jury.)

6 Q (MS. LIVESAY) Those were the sleeping pants you
7 had on that night? That is the T-shirt you had that
8 night? They are cut up, were they cut at the
9 hospital?

10 A Yes.

11 Q So that is why they have the cuts on them?

12 A Yes.

13 Q But they were intact when you originally went to
14 hospital?

15 A Yes.

16 Q During the course of what happened, correct me if
17 I'm wrong, you saw Polo a total of three times?

18 A Correct.

19 Q And every time you saw him, it was without a mask
20 and in a lit area?

21 A That's correct.

22 Q And when you spoke to the police, did you
23 indicate whether or not you would be able to pick him
24 out?

25 A I did. I said I would.

KATRINA DANIELS - DIRECT EXAMINATION

1 Q And I'm going to show you what is marked as
2 State's Exhibit 1. If you don't mind, tell this Court
3 what State's Exhibit 1 is.

4 A I can say this is a photo line-up. Let me get
5 them, I'm sorry.

6 Q Let me get your glasses.

7 A Do I needed to read the whole thing?

8 Q Just tell them what it is first.

9 A This is labeled as a photo line-up advisory.

10 Q And had you seen that before today?

11 A Yes.

12 Q And is that your signature on it?

13 A Yes, it is.

14 Q And it has your signature and the date?

15 A Yes, the date is on there.

16 Q And if you don't mind, turn to that second page
17 and tell me if you recognize what that is.

18 A This is a photo line-up array.

19 Q Now, if you don't mind, tell this Court where you
20 first saw this documentation.

21 A I was told to go to -- I don't know the address,
22 but it is where the detectives are.

23 Q And did you go to the police department to look
24 at this documentation?

25 A Yes.

KATRINA DANIELS - DIRECT EXAMINATION

1 Q And does it look today identical to when you saw
2 it on that date?

3 A Yes, it does.

4 MS. LIVESAY: At this time the State wishes to
5 put State's 1 into evidence.

6 MR. LONG: There is no full chain of custody at
7 this point, Your Honor.

8 THE COURT: No. 1 is just the advisement?

9 MS. LIVESAY: And the line-up, both together.

10 THE COURT: She's testified that that is the
11 line-up she looked at?

12 MS. LIVESAY: Yes, sir. We can go back over it.

13 Q (MS. LIVESAY) Ms. Daniels, there is two sheets
14 of paper there. The first sheet, does that have your
15 name on it?

16 A Yes, it does.

17 Q Is that the documentation that you saw at the
18 police station?

19 A Yes, it is.

20 Q And that is your signature?

21 A Yes, it is.

22 Q If you don't mind, flip that piece of paper over
23 and tell the Court what you are looking at there?

24 A I'm looking at a photo line-up, six different
25 individuals.

KATRINA DANIELS - DIRECT EXAMINATION

1 Q And when you viewed these two pieces of paper,
2 did you view them together, read the advisement and
3 look at the line-up?

4 A Yes.

5 Q Is any of your writing on that line-up?

6 A Yes. There is a signature on the picture and
7 also a circle around the No. 2, which was the person
8 who I chose.

9 Q That is your signature and your circle indicating
10 that that is who you picked out?

11 A That's right.

12 THE COURT: I'll allow it, State's 1.

13 (State's Exhibit 1 admitted.)

14 Q (MS. LIVESAY) When you looked at that line-up,
15 how long did it take you to pick out No. 2?

16 A It was very instant.

17 Q And if you don't mind, tell this jury how sure
18 you are that No. 2 is the man that came in your house
19 that night as Polo?

20 A I'm a hundred percent sure.

21 Q If you don't mind --

22 MS. LIVESAY: Your Honor, I'm going to publish to
23 the jury and ask this lady to step down.

24 THE COURT: All right.

25 Q (MS. LIVESAY) First of all, before you step

KATRINA DANIELS - DIRECT EXAMINATION

1 down, Ms. Daniels, earlier when you described -- I
2 know -- do you want water?

3 A No, I'm fine.

4 Q When you described Polo to the police, was that
5 the night of the incident?

6 A Yes, it was.

7 Q And that night when you described him, tell again
8 the jury how you described him.

9 A I described him as tall, slender, black male,
10 short hair and his eyes seemed a little droopy to me.
11 I really looked at his eyes good.

12 Q When you came and looked at this line-up, what
13 was the date?

14 A 4/23/13.

15 Q And is the person you picked out match the
16 description that you told the police in February of
17 2013?

18 A It does.

19 Q If you don't mind, step down and -- actually, I
20 have something.

21 (State's Exhibit 5 marked.)

22 Q (MS. LIVESAY) I'm showing you State's 5; do you
23 recognize that?

24 A Yes, I do.

25 Q Is that identical to what is on that piece of

KATRINA DANIELS - DIRECT EXAMINATION

1 paper?

2 A Yes.

3 Q Is that your circle?

4 A Yes.

5 Q Is there anything different from this than what
6 is on State's Evidence No. 1?

7 A No.

8 MS. LIVESAY: I would like to place State's
9 Exhibit 5 and use it for demonstrative purposes.

10 MR. LONG: Judge, it is redundant.

11 THE COURT: I'm not going to do it. You brought
12 the exhibit in, and the exhibit is the original, that
13 is what we'll use. No. Thank you. No. No. Use the
14 original.

15 Q (MS. LIVESAY) Ms. Daniels, before we go too far,
16 what I showed you was identical to this, correct?

17 A Yes.

18 Q If you don't mind, step down for the jury and
19 show them -- point out to them your signature and who
20 you circled. Come down here in the middle so everyone
21 can see it.

22 A I circled No. 2. You can see my signature in
23 black right about where his chin line is over to the
24 side, to the right.

25 Q And for the jury's clarification, this is the man

KATRINA DANIELS - DIRECT EXAMINATION

1 that you've picked out as Polo?

2 A Yes, it is.

3 Q And tell them how sure you are that that is the
4 man that broke into your house?

5 A 100 percent sure.

6 Q And if you didn't mind, tell this jury how long
7 it took you to pick this out?

8 A Fairly instantly.

9 Q Thank you, Ms. Daniels. You can have a seat.
10 Now, Ms. Daniels, had you ever met Polo other than that
11 night?

12 A No.

13 Q Had you ever seen the guy that was with Polo that
14 night before that night?

15 A No.

16 Q You had no contact with them since that night?

17 A No.

18 Q Now, you recognized him on that date, correct?

19 A Yes.

20 Q Would you be able to recognize him now?

21 A Yes.

22 Q What you told the police that night, was that the
23 truth?

24 A Yes, it was.

25 Q Now, what you are telling this jury, is that the

KATRINA DANIELS - CROSS-EXAMINATION

1 truth?

2 A Yes, it is.

3 Q Now, if you don't mind, tell this jury, did you
4 want to come and testify today?

5 A Not really.

6 Q If you don't mind, tell them why.

7 A Couple parts of it. I'm embarrassed about where
8 I was in my life at that time, and I'm also afraid of
9 this man.

10 Q And where are you at in your life today?

11 A Alcohol and drug free today, clean and sober.

12 Q If you don't mind, describe the clothing that
13 Polo was wearing when he came to your house that night.

14 A It was like an off-white, maybe a little gray
15 sweat shirt that zipped up, had a hood on the back and
16 jeans that were really low, hanging down like they
17 wear.

18 Q And did he ever put the hood up at any point?

19 A He did. The very first time he came in, he did
20 not have the hood on. When he went back out to get
21 more drugs and came back in, he put the hood on when he
22 came upstairs.

23 MS. LIVESAY: Nothing further.

24

25

KATRINA DANIELS - CROSS-EXAMINATION

CROSS-EXAMINATION

1

2

BY MR. LONG:

3

Q I'm sorry you went through all of that, but did
that result in being scared straight?

4

5

A Definitely scared me, yes, sir.

6

Q How long did it take after that before you
finally got clean and straight?

7

8

A I don't recall the exact date.

9

Q This occurred February of 2013, where were you
working at that time?

10

11

A I don't think I was working.

12

Q And Laura, where was she working February of
2013?

13

14

A She owns her own business.

15

Q What type of business is that?

16

A Painting, subcontracting painting company.

17

Q How many employees did she have?

18

A It will vary. You'll have to ask her that, sir.

19

It wasn't my business.

20

Q Was it fair to say that she was paying all of the
bills?

21

22

A Yes, she was.

23

Q How much is the rent there at Jefferson Place
that you pay?

24

25

A It wasn't rent, it was mortgage.

KATRINA DANIELS - CROSS-EXAMINATION

1 Q How much is the mortgage payment?

2 A It was -- at one time it was a thousand dollars
3 and we renegotiate to 700, so I can't remember the
4 date.

5 Q How much approximately were you and her monthly
6 living expenses, utilities, cable, phone, things of
7 that nature connected with the house?

8 A \$1,800 maybe, 1500 to 18.

9 Q Groceries and everything, that kind of stuff?

10 A Yes.

11 Q Did you have a vehicle at that time?

12 A Yes.

13 Q What make and model was your vehicle?

14 A It was a Ford Explorer, and I don't remember the
15 year.

16 Q Was it paid for?

17 A Yes, it was.

18 Q What type of vehicle did she have at that time?

19 A That is the vehicle.

20 Q The two of you owned that vehicle?

21 A The vehicle is in the company's name, I believe.

22 Q Is that the vehicle you went to Racepath in that
23 afternoon?

24 A Yes.

25 Q How long have you had a drug problem?

KATRINA DANIELS - CROSS-EXAMINATION

1 A For approximately 10 years before that.

2 Q How often would you buy drugs the preceding
3 months to this happening?

4 A It varied, but roughly once a week.

5 Q And once a week, approximately how much would you
6 purchase?

7 A 2-, \$300.

8 Q So that would be at least one trip per week down
9 to Racepath, or somewhere, to try to find a hundred,
10 2-, \$300 worth of drugs, whatever you could afford,
11 whatever you needed at the time?

12 A Yes, or someone would come over.

13 Q And then what happened to your other suppliers?

14 A Just didn't answer the phone.

15 Q So you had to find new suppliers from time to
16 time?

17 A That time, we did.

18 Q You say you never met or saw Jamal Daniels or
19 Polo before that day?

20 A No, I didn't.

21 Q Never bought drugs from him before that day?

22 A No.

23 Q Never sold drugs to him before that day?

24 A No.

25 Q You say you and Laura went -- how much did you

KATRINA DANIELS - CROSS-EXAMINATION

1 buy that afternoon? I believe you said it was

2 4 o'clock. How much did you buy then?

3 A One hundred dollars.

4 Q And \$100, for those of us who don't know how
5 much, are we talking about as far a gram, half a gram,
6 two grams? How much is that?

7 A Probably about a half a gram.

8 Q How many doses does that equate?

9 A Maybe three each.

10 Q So a total of six doses, so 15 or 16 per dose?

11 A Yes, sir.

12 Q So from 4 o'clock until a little before, I
13 imagine, 9 o'clock, you and she went through every bit
14 of that?

15 A Yes, sir.

16 Q I mean, how long does a high last from crack
17 cocaine?

18 A Maybe a minute to two minutes.

19 Q Is it accumulative, the more you use -- I mean do
20 you have to -- if you use three doses within three,
21 four hours, is the third stronger than the first?

22 A No, it is weaker. The first is always the
23 stronger, that is why you get addicted, you chase that.

24 Q So you and she had blown through a hundred
25 dollars' worth of crack in a couple of hours, and you

KATRINA DANIELS - CROSS-EXAMINATION

1 called him back for more?

2 A Yes, we blew through that hundred dollars' worth
3 of crack in an hour.

4 Q And you felt down and wanted more?

5 A Several hours later.

6 Q Then you wanted 4-, \$500 worth?

7 A That's correct.

8 Q So you called him up based on meeting him at
9 Racepath?

10 A Yes.

11 Q And then you said he suggested I'll bring it to
12 you?

13 A That's correct.

14 Q And this is a person you met one time in your
15 life?

16 A Yes.

17 Q And you invited him to your house?

18 A That's correct.

19 Q He comes to the door, and you let him in?

20 A That's right.

21 Q And didn't take him to the living room, straight
22 upstairs to the bedroom?

23 A That's right.

24 Q Never met this man but once in your lifetime?

25 A That's right.

KATRINA DANIELS - CROSS-EXAMINATION

1 Q Come on in, come straight up in my bedroom, sell
2 me drugs?

3 A That's right.

4 Q You said -- I believe you testified that he
5 brought \$200 worth with him; is that correct?

6 A Yes.

7 Q Was the deal or transaction completed for the
8 \$200? Did he hand you the drugs, and did you hand him
9 the \$200?

10 A That is correct.

11 Q But you wanted more?

12 A We originally wanted \$400. I stated that.

13 Q Wasn't it 4- to \$500?

14 A It was \$400.

15 Q He said I don't have that here, but I do have
16 200, here you go, thank you for your money, I'll see if
17 I can find more?

18 A That's right.

19 Q Where was Laura during all of this?

20 A Same place, in the bedroom.

21 Q Was she participating in all of the conversation?

22 A I was -- I did most of the dealings or
23 hand-to-hand.

24 Q Whose money were you using, whose \$200?

25 A It was Laura's.

KATRINA DANIELS - CROSS-EXAMINATION

1 Q So you were being her agent?

2 A No, sir. We are partners, been partners for 20
3 years, so it is really our money.

4 Q I understand. Then you said there was a knock on
5 the door or he called, I believe, and said I -- you
6 said it was four, five minutes -- five to eight minutes
7 or so until he called back?

8 A I don't remember saying it was that long. I know
9 it was pretty immediately. I don't remember saying
10 that.

11 Q But he came back and said I have the drugs?

12 A Yeah, it wasn't that long.

13 Q He came back in and he had the drugs?

14 A Yes, he did.

15 Q But you said he was dragging his feet or didn't
16 want to finish up the deal or anything?

17 A Acting nervous!

18 Q When he came back in with the drugs, did you
19 invite him back up again?

20 A I did.

21 Q Why couldn't you take the transaction there at
22 the doorway, hallway, here you go, I found the drugs,
23 thank you? Why did you take him back to the bedroom?

24 A I was afraid of the front window, someone looking
25 in or the back window. I always had it upstairs, made

KATRINA DANIELS - CROSS-EXAMINATION

1 sure no one could see inside, and that is the way I did
2 the transactions at that time when I was addicted.

3 Q It was dark?

4 A Doesn't matter, that is the way I did the
5 transactions.

6 Q You had blinds on your windows?

7 A No, I did not. The blind I had on the window did
8 not cover the entire window. There were gaps -- like
9 this side had this much of a gap, and this side had
10 this much.

11 Q But the door would close?

12 A The door was close.

13 Q And in the living room, you could have taken him
14 there?

15 A Same thing, sir. I did not ever, ever in my life
16 do a transaction in the living room because I was
17 paranoid. I always took them to my bedroom, not a
18 great choice, but that is what I did.

19 Q Did you ever tell the police -- when someone
20 knocked on the door, did you ever tell police that you
21 said to him no one else is allowed in the house?

22 A I don't recall.

23 Q Did you ever tell the police that when you were
24 all in the bedroom that he and this other person were
25 flipping up the mattress and looking for money and

KATRINA DANIELS - CROSS-EXAMINATION

1 stuff under the mattress, did you tell police that?

2 A I think I would have told them that.

3 Q Did you ever tell the police that the gunman got
4 a text and then left?

5 A Well, I'm not sure if he got a text. I know he
6 took his phone and looking at it like this. When I
7 said that earlier, I assumed he had a text. I don't
8 recall whether I told them that or not, but I know I
9 told someone at some point that that is not the first
10 time I said that.

11 Q Did you ever tell police that the gunman struck
12 you in the head with a pistol and knocked you out?

13 A The gunman didn't strike me in the head with a
14 pistol. I did not tell the police that, I don't think.
15 The gunman struck me in the chin with his fist.

16 Q Did I mistakenly hear you testify you were hit in
17 the head and knocked out, and when you came to, that is
18 when you were grabbed by the collar and taken upstairs?

19 A Well, I don't think -- if I just said I was hit
20 in the head with the gun, I don't remember saying that.
21 I know I was hit, and I was hit in the chin, right here
22 with his fist (indicates).

23 Q Did you tell police that you were knocked out?

24 A Yes. As far as I know. You have to remember
25 that I was knocked out and it was very hectic, and when

KATRINA DANIELS - CROSS-EXAMINATION

1 we got to the police station, I was very confused, very
2 scared and was trying to recall everything that
3 happened during a very traumatic situation.

4 Q I understand. Now, there was \$5,400 and some odd
5 change in an envelope in cash underneath the mattress
6 in the upstairs bedroom, I'm assuming; is that correct?

7 A That's correct.

8 Q Whose money was that?

9 A Laura's money.

10 Q How many bedrooms are upstairs?

11 A Two.

12 Q Is one a master and one a guest? Do you share --

13 A We share a bedroom, that is correct.

14 Q Other bedroom, what is it used for?

15 A Guest bedroom.

16 Q Was the money -- and did the deal go down in the
17 master bedroom?

18 A Yes, it did.

19 Q What else is upstairs? A restroom?

20 A Yes, Jack and Jill restroom that connects the two
21 bedrooms.

22 Q Now, after all of this went down, you saw them
23 leave, correct?

24 A I saw them go down the stairs of my house. What
25 you do mean by leave?

KATRINA DANIELS - CROSS-EXAMINATION

1 Q You saw them leave out the door of your apartment
2 and go?

3 A Polo had already been downstairs searching the
4 car, never came back in the house. The gunman went
5 down the stairs. I jumped out the window.

6 Q How did you know what type of vehicle to report
7 to police, the white Ford --

8 A I knew that because he had come into my house
9 already one time, and I had seen him get out of the
10 car.

11 Q Which time was that? The time before he knocked
12 on the door and said I'm here?

13 A Both times.

14 Q So you could have watched him arrive?

15 A Yes, I did.

16 Q And you, likewise, could have watched them leave?

17 A I was in the back door trying to get to the --
18 back balcony trying to get to the other person.

19 Q I believe you said both you and Laura went out
20 the upstairs second bedroom window?

21 A Yes.

22 Q Both went out the window?

23 A Yes, we did.

24 Q And was that dropping onto the payment or yard,
25 or what was there?

KATRINA DANIELS - CROSS-EXAMINATION

1 A It was concrete, pavement down below.

2 Q So you hung out the window and dropped down to
3 the pavement?

4 A As best we could. Best I could.

5 Q And went to the neighbor's house?

6 A Yes.

7 Q And then we heard what happened when you arrived
8 at the neighbor's house on the 911 tape?

9 A Right.

10 Q Did you tell police when they came in and talked
11 to them that you did not know who had robbed you?

12 A Yes, I didn't know the person's real name. I
13 told them that it was Paulo or Polo, or something like
14 that.

15 Q Did you tell them that two masked black men broke
16 into the house and robbed you and Laura?

17 A I don't recall telling them two masked men. I
18 know one of them was masked. If I said that, I
19 probably about -- just because there were two people.

20 Q You told the police that they stole 250. What
21 was this 250 that you claim they stole?

22 A Well, if you remember, we made a deal for \$400.
23 He first came in with \$200. I gave him 200. There was
24 another \$200 sitting on the bed. For the transaction
25 that should have occurred the first time. When he left

KATRINA DANIELS - CROSS-EXAMINATION

1 and came back within a couple of minutes, he came
2 upstairs, this was the \$200 still on the bed. I had
3 it, trying to make the transaction, that is when
4 everything got fidgety. He got fidgety, nervous and
5 knocked at the door. I put the money deck on the
6 mattress again. After everything happened downstairs,
7 gunshot, him knocking me here, bringing us back
8 upstairs. As they first went up the stairs, Polo
9 grabbed the \$200 off the mattress. If there was
10 another 50 laying on the table next to the bed, I don't
11 remember.

12 Q I believe you reported to the police that \$250 on
13 the bed was all there was and they took it; is that
14 correct?

15 A All that they knew about.

16 Q The other was under the mattress?

17 A Under the mattress.

18 Q If he had left the drugs and taken the 200, would
19 he have taken anything from you?

20 MS. LIVESAY: I'm not sure what Mr. Long is
21 asking.

22 THE COURT: I'm allowing him to ask the question.

23 MR. LONG: Thank you, Your Honor.

24 Q (MR. LONG) If he had left the drugs and taken
25 the \$200, would he have shorted you for anything or

KATRINA DANIELS - CROSS-EXAMINATION

1 taken anything from you?

2 A Well, you just said that he took 50 more, so.

3 Q No, I said if he left the drugs with you and
4 taken the \$200, would he have shorted you anything or
5 stolen anything from you?

6 MS. LIVESAY: I know that is a question that he
7 is trying to indicate that legally that -- I guess his
8 client has done anything wrong if he left the drugs
9 after he pistol-whipped her.

10 MR. LONG: I'm just asking what the deal was.

11 THE COURT: I'll allow the question.

12 A Yes. That's correct.

13 Q (MR. LONG) So if he would have left the drugs
14 and taken the 250 on the bed, he would taken \$50 from
15 you?

16 A Well, you know, he would have taken \$50 from me
17 and also left me with almost a broken jaw and Laura
18 shot in the head.

19 Q I'm not talking about any of that.

20 A I am.

21 Q If he left the drugs and took the 250, would he
22 have shorted or stolen \$50 from you?

23 A He would have stolen 50 if there was 250, yes.

24 Q Did you agree to pay him delivery fees or talk
25 about gas or anything?

KATRINA DANIELS - CROSS-EXAMINATION

1 A Absolutely not.

2 Q Did not, okay. Did you ever tell the police that
3 when Polo went down the stairs to let his homeboy in --

4 MS. LIVESAY: What was the nickname he used,
5 because I don't know that.

6 MR. LONG: I'm reading it from the incident
7 report, Paulo.

8 Q (MR. LONG) When Paulo went down the stairs to
9 open the door, and I believe you said you may have
10 told the police, or maybe you didn't, you hollered to
11 him, No one else is allowed in the house, right?

12 A If you are asking me what I told police, I don't
13 recall everything because I was in the hospital. I
14 remember laying there. I remember being very confused,
15 and so I cannot recall everything I told the police
16 that night.

17 Q Here is my question.

18 A Okay.

19 Q You said that Laura ran behind him going down the
20 stairs to the door?

21 A Yes.

22 Q Did you ever tell police that?

23 A As I am telling you again, I don't recall.

24 Q That is all I need to know. Thank you.

25 MR. LONG: Nothing further.

KATRINA DANIELS - REDIRECT EXAMINATION

REDIRECT-EXAMINATION

1

2 BY MS. LIVESAY:

3 Q Mr. Long asked you if he left the drugs. Would
4 it be okay -- would that transaction have been even; do
5 you remember that?

6 A Yes, I do.

7 Q If he had left the drugs, would it had made it
8 okay that he shot Laura in the head?

9 A No.

10 Q Would it have been -- if he left those drugs, the
11 fact that that guy busted into your house, is that
12 okay?

13 A No.

14 Q Would it have been okay that he knocked you in
15 the head and drugged you upstairs?

16 A No.

17 Q Would it make any difference when you had to jump
18 from the second floor window, would that have made a
19 difference to you?

20 A No.

21 Q Now, when you left out of the second floor
22 window, were they still hanging around? Did you see
23 Polo hanging around anywhere?

24 A I don't know. He was downstairs, and I was
25 upstairs.

KATRINA DANIELS - REDIRECT EXAMINATION

1 Q And you said you would recognize him if you saw
2 him in the courtroom?

3 A Yes.

4 Q Tell this jury, do you see him in the courtroom?

5 A I don't.

6 MR. LONG: Nothing further.

7 THE COURT: You may step down, thank you. Ladies
8 and gentlemen, it is 10 til 1:00. Let's be back about
9 2:15, okay.

10 (The jury exits at 12:48 p.m., and the
11 following is heard out of the presence of the jury.)

12 THE COURT: We're at ease in until 2:15.

13 (A lunch recess was taken.)

14 MS. LIVESAY: Could we take up the amendment of
15 the indictment as to attempted murder?

16 THE COURT: Mr. Long, you do realize to disallow
17 an amendment would result in their issuance of a new
18 indictment and retrial.

19 MR. LONG: Possibly.

20 THE COURT: A second trial, have you thought in
21 terms of that?

22 MR. LONG: Which one? It was kidnapping?

23 THE COURT: Attempted murder.

24 MS. LIVESAY: Yes, sir.

25 MR. LONG: Well, the indictment copy I've got

KATRINA DANIELS - REDIRECT EXAMINATION

1 says Jamal Daniels with intent to kill Katrina
2 Daniels, you are saying Conklin should be substituted
3 for that?

4 MS. LIVESAY: Yes, sir.

5 MR. LONG: With a TIA, I don't like to consent to
6 give anything like that, but I understand your ruling.

7 THE COURT: I'll allow the amendment. You'll
8 provide the information. You know what we're talking
9 about. I don't think it comes as a surprise. I'll
10 allow it. If I'm reversed on that, you will be tried
11 again, your client, okay.

12 MR. LONG: We were on notice who the victim was.

13 THE COURT: Yeah. Okay.

14 MS. LIVESAY: I did want to address a scheduling
15 issue. If we need to, can we go a little later
16 tonight?

17 THE COURT: We have a problem with that. I don't
18 like to keep them later than 5 o'clock or 5:30. We
19 have several more witnesses, and then we have
20 arguments and charge and the deliberations, and you
21 are talking about going late? You know, we'll go to
22 about 5:00 or 5:30, but that is as late as we'll go.

23 (The jury enters at 2:32 p.m., and the
24 following is heard in the presence of the jury.)

25 THE COURT: We have everyone back. Ms. Livesay.

LAURA CONKLIN - DIRECT EXAMINATION

1 MS. LIVESAY: At this time the State calls Laura
2 Conklin to the stand.

3 (LAURA CONKLIN, having been duly sworn, testified
4 as follows:)

5 THE CLERK: State your full name and spell your
6 last for the Court.

7 THE WITNESS: Laura Conklin, C-O-N-K-L-I-N.

8 DIRECT EXAMINATION

9 BY MS. LIVESAY:

10 Q How old are you?

11 A 55.

12 Q Where are you currently living? And I hate to
13 even ask that question about age.

14 A

15 Q How long have you been there?

16 A Long time, 20 years now.

17 Q Who, if anyone, lives in that house with you or
18 that condo?

19 A Katrina Daniels.

20 Q And have you all lived in that condo together for
21 sometime?

22 A Yes, ma'am.

23 Q If you don't mind, tell this jury where you work.

24 A At the time -- right now I work for Joey's
25 Painting.

LAURA CONKLIN - DIRECT EXAMINATION

1 Q And tell them about your education and work
2 experience.

3 A I graduated high school and went to some college,
4 moved from California to North Carolina to run a
5 business for my father, didn't really like it, so I
6 started my own. Now that closed a couple years ago,
7 and now I'm working for another painter.

8 Q And in 2013 were you living in that condo on
9 Jefferson Place?

10 A Yes, ma'am.

11 Q And at that time, who was living in the
12 apartment?

13 A Katrina Daniels.

14 Q Just the two of you?

15 A Yes, ma'am.

16 Q At that time, where were you working?

17 A I had my own business, Colors, Incorporated.

18 Q And that -- during that time of February 28th of,
19 did you have an occasion to talk to the police?

20 A Can you repeat the question?

21 Q If you don't mind, tell this jury what happened
22 in February of 2013.

23 A That day?

24 Q Yes.

25 A I was working. Like I said, I owned my own

LAURA CONKLIN - DIRECT EXAMINATION

1 company. I got paid that day and went to the bank,
2 cashed a check and had money and went to Racepath to
3 purchase drugs -- excuse me for a second (witness
4 crying) sorry. Sorry about that. Excuse me, kind of
5 an embarrassing part of my life. I purchased drugs.
6 Katrina Daniels was driving, and I was sitting in the
7 passenger seat. She pulled up and rolled the window
8 down. At that time, Polo approached the car. We made
9 a purchase and we left. I went home and did those
10 drugs and decided to make another phone call to Polo to
11 acquire another purchase.

12 At that time, he said over the phone that don't
13 come there, I'll come there to your house and it would
14 be safer. So, of course, we allowed it. He came over
15 and he knew what we wanted. We wanted \$400 worth, and
16 he only brought two. We took the two, gave him \$200,
17 he left. Katrina walked him out, let him outside of
18 the door, shut the door, locked it and came back
19 upstairs. I don't know, seemed like a second, but a
20 minute later the phone rang and it was him, he found
21 more drugs in the car, were we interested. Of course
22 we were because we ordered 400, not 200. He came in,
23 knocked at the door, let him in, came back upstairs.
24 I was very, very nervous. I mean, in my gut at the
25 time, you know, something wasn't right. There was a

LAURA CONKLIN - DIRECT EXAMINATION

1 knock. At that time, I knew it wasn't going to be
2 good because he ran downstairs to open it, and I knew
3 that wasn't going to be good, so I ran down after him.
4 We kind of fought for the door a little bit because he
5 beat me to the door, but I was trying to shut it even
6 though he was trying to open it. I just kept shutting
7 it. He won, and the door was opened. There was a
8 masked man with a bandanna over his face with a hoody
9 pulled over his head with a gun. He didn't say
10 anything to me, whatsoever, and just shot me in the
11 head.

12 Q What did you see when the shot was fired?

13 A I saw a gun pointed at me, and it happened so
14 fast that I don't know if I saw sparks come out of the
15 gun, but I heard a noise, and instantly my ears were
16 just ringing.

17 Q Ears were ringing?

18 A So bad. I couldn't hear anything, didn't know
19 anything. I went back and fell -- we have a pantry
20 behind me, fell against the pantry and slid down the
21 door. At that time, I just kept saying, I can't
22 believe you shot me in the head, I can't believe I have
23 been shot in the head. My ears were ringing so bad
24 that I couldn't really know what was going on from that
25 point on. All I remember is seeing my girlfriend run

LAURA CONKLIN - DIRECT EXAMINATION

1 down the stairs, and the gentleman with a gun hit her
2 in the face, and then she went out. I'm like, oh,
3 great. This is great. I'm shot in the head, and now
4 my girlfriend is out.

5 I don't remember Polo trying to get me up, but at
6 the time, you know, he was having problems, and of
7 course the guy with the gun was having problems
8 getting her up, because she was knocked out, too.
9 They struggled, and finally got us both up by the back
10 of the shirt or whatever he could pick me up with and
11 forced us upstairs. At that time, they were looking
12 for money. He kept cussing and threatening us and
13 saying where is the money, where is the money, where
14 is the money. I went directly -- he already shot me
15 in the head, so I went directly and stood in front of
16 the -- it was my payroll money, and even though I was
17 making bad decisions doing drugs, I didn't want my
18 payroll money to go to these drug people. So I was
19 standing in front of the money, and the man with the
20 gun when -- looked for a little while, but he was
21 scared. He just stood there and pointed the gun at
22 both of us saying, You son of a bitches, I'll kill you
23 both. Polo was running around the room flipping up
24 the mattress, but he wasn't flipping up the side I was
25 on, but he went everywhere else in the whole room

LAURA CONKLIN - DIRECT EXAMINATION

1 looking for the money. My girlfriend was saying,
2 Please give him the money. At that point in time I
3 thought of something quick, The money is in the car,
4 here are my car keys, go get the money out of the car.
5 I didn't know if they were going to go for that or
6 not, but they did. Polo grabbed the car keys and ran
7 outside. I don't know what he was doing out there,
8 but the whole time the guy with the gun never stopped
9 pointing the gun at my girlfriend's head, at me.

10 Excuse me (witness crying). I was glad that one
11 of them was out of the house, I know that. That
12 meant, to me, I only had one left. He was the one
13 with the gun, so there was a lot of things going
14 through my head, but at that time, I don't know, 10,
15 15 minutes seemed like a long, long time, but he
16 started backing out of the house. I don't know if he
17 got a text, but he looks at his phone, but I don't
18 know if his partner said come on, I'm not going back
19 in there or what. It is just an assumption. He
20 started backing out, and he turned around and ran down
21 the stairs. My girlfriend said, I don't know if they
22 are coming back to get us or not, but we have to jump.
23 So we open the window and pretty much I'm going first.
24 I jumped out the window, and nothing happened to my
25 feet or anything. I was still having problems with my

LAURA CONKLIN - DIRECT EXAMINATION

1 head. I couldn't really see by then because all the
2 blood was in my eyes. I was able to crash through
3 this barricade, like a partition fence, homemade fence
4 made by my neighbor. I crashed through there and
5 banged on the door. I could see my girlfriend hanging
6 from the curtains trying to get out. Then I heard her
7 screaming saying that she crushed her heel when I was
8 banging on the door. At this particular time, I
9 didn't know if he was going to come back with a gun
10 and pull me back in the house and go through all of
11 this again, but at that time -- that is why I
12 frantically banging on this guy's door, please let me
13 in, please, and he wouldn't. I understand now. At
14 the time, I didn't understand why he wouldn't let me
15 in his house, but now I understand. But he called the
16 police, and the police came.

17 Q Did you tell the police what happened?

18 A At the hospital I did.

19 Q Is what you told the police just what you told
20 these people?

21 A Yes, ma'am.

22 Q Do you remember what you were wearing that night?

23 A Yes, ma'am.

24 Q Would you recognize it if I showed it to you?

25 (State's Exhibit 6 marked.)

LAURA CONKLIN - DIRECT EXAMINATION

1 Q (MS. LIVESAY) I'm showing you what is marked as
2 State's 6. Do you mind looking and telling the Court
3 what is in there?

4 A The shorts I wear to bed, a T-shirt.

5 Q Are those the clothes you had on that night when
6 this happened?

7 A Yes, sir.

8 MS. LIVESAY: The State wishes to put State's 6
9 in evidence and publish it.

10 MR. LONG: No objection.

11 A This is the shirt I had on.

12 (State's Exhibit 6 admitted and published to
13 the jury.)

14 Q (MS. LIVESAY) And those clothes are ripped, when
15 were they ripped?

16 A In the ambulance. They cut them off in the
17 ambulance.

18 Q So before, they were intact?

19 A Yes, ma'am.

20 Q But this is what you had on when Polo came in and
21 throughout the incident?

22 A Yes, ma'am.

23 Q Okay. During that time you reached him through
24 phone calls; is that right?

25 A Yes, ma'am.

LAURA CONKLIN - DIRECT EXAMINATION

1 Q Would you recognize your phone number if you saw
2 it at that time?

3 A Yes, ma'am.

4 (State's Exhibit 7 marked.)

5 Q (MS. LIVESAY) Ms. Conklin, I'm showing you
6 State's Exhibit No. 7. If you don't mind, look
7 through this list of contacts and tell this jury if
8 you see your phone number.

9 A Yes, ma'am, it is No. 26.

10 Q If you don't mind, tell this jury -- if you don't
11 mind, put your initials by your phone number.

12 A (Witness complies.)

13 Q Tell it.

14 A

15 Q And what name is listed as your phone number?

16 A "New Jack."

17 Q Is that your name or the lady's name you were
18 living with?

19 A No, ma'am.

20 Q And do you go by that as a nickname?

21 A No, ma'am.

22 Q And does Katrina Daniels go by that as a
23 nickname?

24 A No, ma'am.

25 Q Have you ever known Polo other than that one day?

LAURA CONKLIN - CROSS-EXAMINATION

1 A No.

2 Q Have you seen him since then?

3 A No.

4 MS. LIVESAY: Nothing further.

5 CROSS-EXAMINATION

6 BY MR. LONG

7 Q Do you remember what day of the week this
8 happened?

9 A I don't recall.

10 Q You said you had gotten paid that day, what day
11 did you normally get paid?

12 A Fridays, but I was a contractor, so it depended
13 on the checks I received in the mail or otherwise. It
14 didn't mean Friday or Monday.

15 Q You got paid on that day?

16 A Excuse me?

17 Q You said you got paid on that day?

18 A Yes, sir.

19 Q And decided to go party, blow some of it on
20 drugs, right?

21 A Yes, sir.

22 Q You said Katrina was driving the vehicle,
23 correct?

24 A Yes, sir.

25 Q And you worked that day. What time was it,

LAURA CONKLIN - CROSS-EXAMINATION

1 approximately, when you went to buy drugs?

2 A About 4 o'clock.

3 Q And bought some drugs and went home, and you and
4 Katrina smoked it up?

5 A Yes, sir.

6 Q How long was it after that that you all decided
7 to get more drugs?

8 A I'm not quite sure, but 8:30-ish I made the phone
9 call. I'm not sure.

10 Q And the plans were for you to go back down and
11 meet to buy \$400, \$500 -- a larger amount of drugs,
12 correct?

13 A That was our plan, yes.

14 Q What type of gun do you own?

15 A I don't own a gun.

16 Q You don't own any?

17 A No.

18 Q You had \$5,450 in cash in your bedroom for
19 payroll, I believe it was testified to earlier that was
20 payroll; is that correct?

21 A Yes, sir.

22 Q And you don't carry or own a firearm?

23 A No, sir.

24 Q In 2011, weren't you -- didn't you have to go
25 through this same type of ordeal over a drug deal?

LAURA CONKLIN - CROSS-EXAMINATION

1 A I'm not quite sure where you are going. I don't
2 know what you are talking about.

3 MS. LIVESAY: I have an objection, Your Honor.

4 THE COURT: All right. Take the jury out.

5 (The jury exits at 2:49 p.m., and the
6 following is heard out of the presence of the jury.)

7 THE COURT: What is your objection?

8 MS. LIVESAY: Your Honor, the first objection is
9 as to relevance. That was 2011, different defendant,
10 and that was completely different circumstances.

11 THE COURT: Let's see what he offers it for.

12 MS. LIVESAY: I can tell you.

13 THE COURT: Let me let him tell me what he's
14 offering it for.

15 MR. LONG: In an incident report -- and I'll read
16 the paragraph, I looked up the victim Laura in our
17 RMS. She was actually a victim of another incident
18 that was similar to this. In December 2011, the
19 victim was on Orange Street trying to buy drugs. The
20 report indicated she was speaking with the offender in
21 that case trying to make a deal on drugs when the
22 offender began punching her in the face. The victim
23 ended up fleeing the scene.

24 That is all it was. This is when the officer was
25 speaking to her, and I thought she relayed that

LAURA CONKLIN - CROSS-EXAMINATION

1 information to the officer. The officer put it in
2 asterisks and said I looked it up and found it. I
3 simply want to inquire about whether she thought it
4 would be prudent to own or possess a gun if she was
5 already robbed or mugged once before, that was the
6 extent of the question.

7 MS. LIVESAY: For one, it is not relevant. Two,
8 even if it was somehow relevant, which relevance means
9 it shows a tendency that Jamal Daniels is guilty of
10 these charges or is not. So I'm not sure what the
11 fact that he is a victim in another case has any
12 weight on that.

13 THE COURT: I don't know what we're arguing
14 about. It doesn't reflect on this defendant one way
15 or the other. She was a victim twice, but why do you
16 want to ask her about whether she had thought she
17 should have a gun?

18 MR. LONG: Your Honor, information from my client
19 was that nobody had a gun, nobody shot a gun. I put
20 as much credibility on that as need be; however, that
21 is what was presented to me. If he says he didn't
22 have a gun or the other person didn't have a gun,
23 somebody in that residence had a gun, and I want to
24 inquire whether or not this witness could have
25 possibly had a gun in that residence that was used.

LAURA CONKLIN - CROSS-EXAMINATION

1 THE COURT: I'll let you pursue it, okay.

2 MR. LONG: Simply a matter of --

3 THE COURT: Okay. * It seemed like you just asked
4 her, but if you want to do it that way, that is fine.
5 Bring them in.

6 (Whereupon, the jury enters at 2:54 p.m., and the
7 following is had in the presence of the jury.)

8 THE COURT: You can proceed, Mr. Long.

9 Q (MR. LONG) Ms. Conklin, I was asking if you were
10 the victim of a drug robbery in 2011 as well?

11 A Yes.

12 Q And that was when you were attempting to buy
13 drugs?

14 A Yes.

15 Q And someone robbed you, I believe it was strong
16 arm robbery, they punched you in the face or something
17 like that?

18 A Yes.

19 Q And you have your own business?

20 A Yes.

21 Q And you also are carrying around payroll in cash?

22 A Sometimes.

23 Q For the business?

24 A Sometimes, sometimes not.

25 Q And there are two females living in an apartment.

LAURA CONKLIN - CROSS-EXAMINATION

1 You had been there quite some time, correct?

2 A Yes, sir.

3 Q Did you ever consider -- haven't you, in fact,
4 owned a gun?

5 A No, sir, scared of them.

6 Q Never owned a gun?

7 A No, sir.

8 Q What about any of your employees or relatives or
9 things of that nature, have they ever given you a gun?

10 A No, sir.

11 Q So no weapon in that home, you are saying?

12 A Absolutely not.

13 Q Now, on this day in question, you said 4 o'clock
14 or so, you went down and met with Polo, whatever the
15 case may be, and then within three, four hours you were
16 inviting him into your house; is that correct?

17 A If you want to call it invite, okay, yes.

18 Q You gave him your address, correct?

19 A Yes.

20 Q And you told him you had some money, correct?

21 A Yes.

22 Q And you told him you wanted to buy some drugs,
23 correct?

24 A Yes.

25 Q And you gave him directions how to get to your

LAURA CONKLIN - CROSS-EXAMINATION

1 house, correct?

2 A Yes, sir.

3 Q And you just met him at 4 o'clock that afternoon?

4 A That's right.

5 Q All right. When he came to the house, he knocked
6 on the door?

7 A Yes, sir.

8 Q Who opened the door?

9 A The first time?

10 Q Yes.

11 A Katrina.

12 Q And let him in?

13 A Yes.

14 Q Why did you take him up to the bedroom to do a
15 drug sale?

16 A You asked that question before, to my roommate.
17 For one, there was a lot of reasons why we always did
18 transactions in the bedroom. One, it was upstairs in
19 case the police was following and they knocked on the
20 door, we could get rid of it. Two, people knocking on
21 the door and coming in right behind them, I mean all
22 kinds of things. Two women decided over a period of
23 time the best thing to do it was to do it upstairs,
24 bedroom, hallway, bathroom, whatever.

25 Q Did you consider the possibility of being raped

LAURA CONKLIN - CROSS-EXAMINATION

1 inviting a strange man up to your bedroom?

2 A There was always two of us, so. Your thought
3 process while you are on drugs is not the best, so.

4 Q So you are kind of out of your mind when you made
5 these decisions?

6 A Not necessarily, just bad decisions.

7 Q You weren't out of your complete mind?

8 A Bad decisions.

9 Q So then he was invited up to the bedroom, had
10 \$200 worth of drugs, you gave him \$200, he said he
11 would have to go back and get more; is that correct?

12 A Yes.

13 Q And he walked out, or did you all escort him out?

14 A No, he walked out.

15 Q You stayed in the bedroom?

16 A No. Katrina -- someone walks the person
17 downstairs. Katrina took him downstairs and let him
18 out and saw him leave in the car and truck, white
19 vehicle, and then locked the door and came back
20 upstairs.

21 Q And came back upstairs for the purpose of what?

22 A To do drugs.

23 Q Okay. So then had you already started using the
24 drugs when there was another knock on the door or phone
25 call?

LAURA CONKLIN - CROSS-EXAMINATION

1 A There was no time. I mean, that is how quick the
2 phone call was.

3 Q So then the phone call was a
4 checked-in-the-car-and-I-saw-more, and he came back and
5 knocked on the door again?

6 A Yes, sir.

7 Q He came in with an additional quantity of drugs,
8 didn't he?

9 A Yes, sir.

10 Q Who opened the door the second time?

11 A It was three years ago. You know, to the best of
12 my recollection -- I'm not sure. I think it was me.
13 I'm not quite sure.

14 Q Either you or Katrina?

15 A Right.

16 Q But you opened the door and let him in?

17 A Right.

18 Q You let him in the living room, or did you go
19 straight up to the bedroom?

20 A Bedroom.

21 Q And you saw he had the drugs, correct?

22 A You are acting like he had a baggy. He had it in
23 his hand fidgety.

24 Q It was in the package, looked the same as what
25 you previously purchased, right?

LAURA CONKLIN - CROSS-EXAMINATION

1 A Yes.

2 Q Otherwise, you wouldn't have let him in if he had
3 shown you a bag of brown sugar or something?

4 A Right.

5 Q So then what was the price on the second bag?

6 A 200.

7 Q 200. It wasn't 250, 300, it was 200?

8 A At the time, we hadn't seen exactly what he
9 brought in his hand, but like we said before, we
10 ordered 400. He brought two and said he would get the
11 other two, and he had some in his car, so we assumed it
12 would be two more.

13 Q Okay. How much money was upstairs for him for
14 that second bag of drugs?

15 A 200 was left on the bed, to the best of my....

16 Q Did you tell the police it was \$220?

17 A I don't believe so. I was shot in the head when
18 I was speaking to the police. I don't remember exactly
19 what I said, but I believe it was 200.

20 Q Okay. You testified that there was a knock on
21 the door -- did the actual sale take place a second
22 time before the knock on the door, or was the knock on
23 the door after the sale took place?

24 A Can you repeat that question, please?

25 Q He came back up with what you assumed was \$200 in

LAURA CONKLIN - CROSS-EXAMINATION

1 drugs?

2 A Yes, sir.

3 Q You had \$200 in the bedroom upstairs to pay him?

4 A Yes, sir.

5 Q Did that transaction take place? Was there an
6 exchange?

7 A No, sir.

8 Q -- or did the --

9 A No, sir.

10 Q Did the knock on the door happen before the
11 exchange?

12 A It happened before the exchange.

13 Q So from the time he came in, you would estimate
14 it was 30 seconds or so until there was a knock on the
15 door?

16 A No. It was longer than that. It took a while to
17 get back upstairs. He was fidgeting around and acting
18 nervous, so there was a knock on the door, so all of
19 that took more than 30 seconds.

20 Q A minute?

21 A Well, it is a guess.

22 Q Did you ever tell police there was a knock on the
23 door and he ran downstairs and you had to run after
24 him?

25 A Sounds about right.

LAURA CONKLIN - CROSS-EXAMINATION

1 Q You are saying you told that to police?

2 A You know, like I said, sir, I was shot in the
3 head. When the police questioned me, it was in the
4 hospital when I was shot in the head, so exactly what I
5 told the police, I don't remember, but I told you the
6 story. There was a knock at the door, he ran
7 downstairs, and I ran after him.

8 Q Did you ever tell police that?

9 A Like I said, sir, I don't recall exactly what I
10 told the police.

11 Q Has the Solicitor provided you with an incident
12 report for you to review prior to your testimony today?

13 A Yes, sir.

14 Q When did you last look at those?

15 A Yesterday.

16 Q Now, you are saying he ran down the stairs to
17 open the door, and you ran down behind him and you
18 tried to stop him from opening the door, a struggle
19 happened at the door, they were successful in getting
20 the door opened, and you were immediately shot right
21 then; is that correct?

22 A That's correct, sir.

23 Q Did you tell police about a struggle at the door,
24 he was trying to open the door and you were trying to
25 prevent the door from opening?

LAURA CONKLIN - CROSS-EXAMINATION

1 A Don't remember exactly what I told police, but
2 there was a struggle.

3 Q Was the door opened when you say the shot was
4 fired?

5 A No, it was closed I believe.

6 Q So the door was pushed opened, he came in with
7 the gun and closed the door, and then shot you?

8 A I didn't -- they were both at the door at the
9 time when the door was opened. All I know is I saw a
10 masked man with a hoody on his head with a gun
11 pointing at me, and I was shot. The door being opened,
12 closed, you know, like I said, I was going through a
13 very serious problem at the time.

14 Q I understand. I just want to ask whether the
15 door was opened when you say the pistol was fired or
16 not?

17 A You know, best of my recollection, the door had
18 been shut.

19 Q How many apartments are in this complex,
20 Jefferson Place, how many units?

21 A Quiet a few. There is buildings, there is like
22 six, seven buildings and like five to each building,
23 maybe six.

24 Q So 30 to 35 units?

25 A Yes, sir.

LAURA CONKLIN - CROSS-EXAMINATION

1 Q How close is the door to the next couple of units
2 to your door?

3 A 15 feet maybe, 20.

4 Q So the doors are all in the front, correct?

5 A Yes, sir.

6 Q And the doors are all facing the same direction
7 with a sidewalk?

8 A Yes, sir.

9 Q And they would be 15, 20 feet or so apart?

10 A Yes, sir.

11 Q And is yours in the middle, or on the end?

12 A Second to the end.

13 Q So you had one on either side of you, correct?

14 A Yes, sir.

15 Q And this happened at roughly 9 o'clock at night?

16 A Yes, sir.

17 Q And how many cars were in the parking lot, do you
18 recall?

19 A No, sir.

20 Q Do you remember seeing a white Ford Explorer -- I
21 mean white Ford pickup truck?

22 A No, sir.

23 Q Didn't you testify that you saw him go out to --
24 she testified?

25 A She did.

LAURA CONKLIN - CROSS-EXAMINATION

1 Q You never looked out the window, the door, and
2 saw how crowded the parking lot was?

3 A No, sir.

4 Q Did the person you know as Polo ever have a gun
5 in his possession?

6 A You are talking about in my house?

7 Q Yes.

8 A Oh, no.

9 Q Did he ever enter your home when you all didn't
10 open the door and let him in?

11 A No.

12 Q He came in twice, right?

13 A Yes, sir.

14 Q Did he have consent to come in each time?

15 A I opened -- she opened the door, yes.

16 Q Did the person you identified as Polo ever strike
17 you, hit you?

18 A He was roughing me up some trying to get me up to
19 get me upstairs.

20 Q Did the person identified as Polo ever strike
21 you, hit you in any way?

22 A Roughing me up. I mean, I don't know exactly,
23 striking, hitting -- he was roughing me up.

24 Q Roughing you up, you mean grabbing and pulling?

25 A Grabbing me, shaking me, whatever he could.

LAURA CONKLIN - CROSS-EXAMINATION

1 Q So he never struck you?

2 A Okay, so, no, he never struck me.

3 Q Grabbed you and --

4 A Yes, sir.

5 Q Did you ever see the person identified as Polo
6 ever strike Katrina?

7 A No.

8 Q So the principal or the main bad guy in this was
9 the guy with the gun that shot you, hit you with the
10 gun, that may have punched you in the jaw -- or punched
11 her in the jaw or struck each of you; is that correct?

12 A That is not how I look at it.

13 Q I'm going through this again. Did Polo have a
14 gun?

15 A No.

16 Q Did Polo ever not have permission to enter your
17 property?

18 A No, we let him in.

19 Q Did Polo ever strike you or hit you?

20 A No.

21 Q Did Polo fire a gun at your head or across your
22 forehead?

23 A No.

24 Q Did Polo ever strike or hit Katrina?

25 A No.

LAURA CONKLIN - REDIRECT EXAMINATION

1 Q Which means the other person did all of that?

2 A Yes.

3 Q Can you describe the pistol that the second
4 person had?

5 A It was a -- it had a long thing on it. It
6 looked, to me, like a silencer.

7 Q You said it had a silence on it?

8 A It looked to be something, because it was long.

9 Q Did you tell police it was a long pistol with a
10 silencer on it?

11 A Sir, I just -- if you want to ask me the question
12 and I'll try to answer the best I can. I don't
13 remember what I said exactly.

14 Q That is an appropriate answer.

15 A Okay. Thank you.

16 Q Was it a semi-automatic or revolver?

17 A Don't know what one is from the other.

18 Q How loud was it?

19 A It sounded like a pop, and my head went back and
20 my ears were ringing.

21 Q How long did your ears ring?

22 A Oh, I don't -- a long time. I'm not sure.

23 Q Hours, days?

24 A No, hours.

25 MR. LONG: No further questions.

LAURA CONKLIN - REDIRECT EXAMINATION

REDIRECT-EXAMINATION

1

2

BY MS. LIVESAY:

3

Q Who knew where you lived, Polo or the other guy?

4

A Polo.

5

Q Did you ever tell the other guy where you lived?

6

A Nerve met him before.

7

Q Let me ask you something. Who let that guy in,

8

you or Polo?

9

A Polo.

10

Q And did he indicate that he knew who that guy

11

was?

12

A He knew who he was.

13

Q Would you have ever consented to let him in if

14

you knew he was planning to rob you?

15

A Oh, no.

16

Q Would you have ever let him in if you knew he was

17

inviting his friend over with a gun that shot you in

18

the head?

19

A No.

20

Q Now, what is interesting is did he start going

21

through your stuff prior to his friend coming over?

22

A No, ma'am.

23

Q So he didn't start cussing you and dragging you

24

up the steps until this guy --

25

MR. LONG: I object to the line of questioning.

LAURA CONKLIN - REDIRECT EXAMINATION

1 I want the witness to testify rather than Ms. Livesay.

2 THE COURT: No leading. Ask her what happened.

3 Q (MS. LIVESAY) I'll rephrase. Did he ever --
4 prior to the guy coming in with a handgun, did he ever
5 put his hands on anybody and drag them up the steps?

6 A No, ma'am.

7 Q Prior to him letting the guy in, was he ever
8 going through your stuff upstairs and lifting up the
9 mattress?

10 A No.

11 Q Prior to that other guy coming in, who Polo let
12 in, did you ever feel the need to jump out of the
13 second floor window?

14 A No.

15 Q So things went bad when Polo let this other guy
16 in; is that correct?

17 A Yes, ma'am.

18 Q Now, Mr. Long asked you did you not open the door
19 and let Polo in; is that correct?

20 A Yes.

21 Q At that time, did you have any idea he was coming
22 in to rob you of anything?

23 A Oh, no.

24 Q Did you have any idea that he was coming to put
25 his hands on you?

LAURA CONKLIN - REDIRECT EXAMINATION

1 A Oh, no.

2 Q If you had known that, if he walked up to the
3 door and said, look, I'll rob you, would you have let
4 him in?

5 A No. No. No.

6 Q Mr. Long asked you some questions about do you
7 own a gun; do you own a gun?

8 A No.

9 Q Did you have a gun anywhere in that apartment?

10 A No.

11 Q If you had a gun, would you have had to jump out
12 of the second floor window?

13 A No.

14 Q You showed those clothes to the jury earlier; do
15 you remember that?

16 A Yes.

17 Q And tell them, again, what kind of clothes they
18 were that you were wearing that night?

19 A Bedtime clothes.

20 Q Did that have any place in it to put a gun?

21 A Oh, no.

22 Q Have you ever had a gun in that house?

23 A No.

24 Q And how many times did Polo come in before he
25 brought his friend over there with him, once or twice?

LAURA CONKLIN - REDIRECT EXAMINATION

1 A Twice.

2 Q And when he was in your home those two times,
3 could he see the inside of your house?

4 A Yes.

5 Q Were the lights on?

6 A Yes.

7 Q Did you take him upstairs?

8 A Yes.

9 Q If he had a gun during that time, you would have
10 seen it?

11 A I'm sure.

12 Q Did you ever tell him you had a gun?

13 A Oh, no.

14 Q Now, Mr. Long also hit on something that happened
15 in 2011; do you remember that?

16 A Yes.

17 Q Did what happen in 2011 have anything to do with
18 this incident?

19 A No. No, ma'am.

20 Q Was that the same person in 2011 that was
21 involved in this incident?

22 A No, ma'am.

23 Q Did it happen at the same place?

24 A No, ma'am.

25 Q Same type of incident?

AMY STEPHENS - DIRECT EXAMINATION

1 A No.

2 Q So it had nothing to do with what happened on
3 February 2013?

4 A That's correct.

5 Q At any point did Polo tell you he was bringing
6 someone over to the house?

7 A No, ma'am.

8 MS. LIVESAY: Nothing further.

9 MR. LONG: No further questions.

10 THE COURT: You may step down.

11 MS. LIVESAY: This is the next witness, Amy
12 Stephens.

13 (AMY STEPHENS, having been duly sworn,
14 testified as follows:)

15 THE CLERK: State your name and spell the last.

16 THE WITNESS: Amy Stevens, S-T-E-P-H-E-N-S.

17 DIRECT-EXAMINATION

18 BY MS. LIVESAY:

19 Q Ms. Stephens, tell this jury where you're coming
20 from?

21 A I'm employed with the South Carolina Law
22 Enforcement Division, as known as SLED.

23 Q And is that in Columbia?

24 A It is.

25 Q Thank you for driving down here, we know it is an

AMY STEPHENS - DIRECT EXAMINATION

1 inconvenience. Tell the jury and Court a little bit
2 about what you do at SLED?

3 A I'm a forensic technician in the Evidence Control
4 Department, and our daily duties are to log in, package
5 and transfer evidence for forensic analysis in criminal
6 cases.

7 Q I'm going to show you State's Exhibit 8 and 9,
8 which have the agency number on it. Could you tell me
9 whether or not you recognize these items?

10 (State's Exhibits 8 and 9 marked.)

11 A The lab number core attached to each of these
12 items corresponds with the chain of custody I have for
13 this case which is L13-06311, Items 1 and 2.

14 Q And if you don't mind, could you tell this jury
15 what those are?

16 A These are two GSR kids. SLED Item 1 was
17 collected from Laura Conklin, and No. 2 was collected
18 from Katrina Daniels.

19 Q And do you mind telling this jury what GSR stands
20 for?

21 A Gunshot residue.

22 Q And when did you take these items in?

23 A I received these items on May 15, 2013 at 11:11
24 a.m. from Melinda Shendoan (phonetic) of the Myrtle
25 Beach Police Department.

AMY STEPHENS - DIRECT EXAMINATION

1 Q If you don't mind, will you tell the jury when
2 you received those items, were they sealed and did they
3 appear to be tampered with in any form or fashion?

4 A They were sealed, and they did not appear to be
5 tampered with.

6 Q If they appeared to be tampered with, would SLED
7 have accepted those items?

8 A We would have made a note in the case file and it
9 is up to the analyst as to whether or not analysis
10 would have been performed.

11 Q These items, there was no note that they were
12 tampered with?

13 A Not to my knowledge, no.

14 Q When you got this item in from Melinda, did you
15 break the seal or open the kit?

16 A No, I did not.

17 Q If you don't mind, tell the jury what you did
18 next with those two kits.

19 A Once I enter the case information and a unique
20 lab number was created, I transferred the evidence to
21 our evidence room and the trace evidence intake
22 storage.

23 Q So you transferred them into evidence for
24 somebody else to get them out?

25 A Correct.

PATRICIA CROOKS - DIRECT EXAMINATION

1 Q And at no time while they were in your custody
2 and control did you tamper with them or break the seal?

3 A No, I did not.

4 Q And when you received it from Melinda, it was
5 sealed and not tampered with?

6 A That is correct.

7 MS. LIVESAY: Nothing further.

8 MR. LONG: No questions, Your Honor.

9 THE COURT: Any need for this witness to remain?

10 MS. LIVESAY: Yes, sir, the next two are from
11 SLED and should be quick.

12 THE COURT: Do you want her to stay?

13 MS. LIVESAY: No, sir.

14 THE COURT: You are released from your subpoena.

15 (PATRICIA CROOKS, having been duly sworn,
16 testified as follows:)

17 THE CLERK: State your name and spell your last
18 Patricia Crooks, C-R-O-O-K-S.

19 DIRECT-EXAMINATION

20 BY MS. LIVESAY:

21 Q Where are you currently employed?

22 A I'm currently unemployed; I'm retired.

23 THE COURT: Good for you.

24 Q (MS. LIVESAY) If you don't mind, tell this jury
25 where you retired from?

PATRICIA CROOKS - DIRECT EXAMINATION

1 A From the South Carolina Law Enforcement Division,
2 also known as SLED.

3 Q And if you don't mind, tell this jury what you
4 did while at SLED?

5 A Just the last job I had?

6 Q Yes, ma'am.

7 A I was there about 30 years. I worked in evidence
8 control, and I worked strictly in the evidence room.

9 Q If you don't mind, look at what is marked as
10 State's 8 and State's Exhibit 9 and tell me if you
11 recognize a lab number on those two kits?

12 A Yes, I do.

13 Q If you don't mind, tell this jury what lab number
14 is that?

15 A That is Lab Number L13-6311, Item 1, and this is
16 Item 2 for the same lab number.

17 Q If you don't mind, tell this jury at any point
18 did you touch those items?

19 A I touched these packages, yes.

20 Q And when you received them or got these two
21 items, had they been tampered with in any way?

22 A No, they had not.

23 Q If you don't mind, tell the jury what you did
24 with those items?

25 A On September the 25th of 2013, I removed these

PATRICIA CROOKS - DIRECT EXAMINATION

1 two items from storage in the evidence room and I
2 transferred those items to Lieutenant Jennifer M.
3 Nates.

4 Q And when you transferred those items, did you at
5 any form or fashion tamper with the items?

6 A No, I did not.

7 Q And if you don't mind, tell the jury -- are you
8 looking at a chain of custody?

9 A Yes, I am. This is our electronic chain of
10 custody.

11 Q If you don't mind, tell this jury what exactly a
12 chain of custody is.

13 A Okay. When evidence is logged in, each case has
14 its own laboratory number. In this case it is
15 L13-6311, and it will also state whether it is an item
16 number, or if it is just one item. It would have a
17 number. If it was a container with multiple items, it
18 would have a letter such as A, B or C. This is unique
19 to this case. It has a bar code, and that is how
20 evidence is tracked at SLED, on a bar code. We have a
21 handheld scanner, and you scan yourself to say that you
22 are taking custody, which is what I would do in the
23 evidence room. I would go to the particular shelf
24 where this was stored, I would scan my bar code, which
25 is unique to me, and scan this container. That would

PATRICIA CROOKS - DIRECT EXAMINATION

1 transfer this container from where it was stored on the
2 shelf in the evidence room, to me. In turn, this was
3 picked up by Lieutenant Stone about four minutes after
4 it was -- I took it off the shelf, and when she came to
5 pick it up, I scanned her bar code and scanned this
6 evidence, and it tracks this evidence from me to her.

7 Q And is that chain to protect the integrity of the
8 items at SLED?

9 A Yes, it is.

10 Q And if an item has been tampered with at SLED,
11 would SLED laboratory test that item?

12 A No, they would not.

13 Q And these items were not tampered with when you
14 received them, and you never tampered with them?

15 A No, they were.

16 MS. LIVESAY: Nothing further.

17 Q (MS. LIVESAY) Oh, one question. Is that the
18 chain you have with you from these items?

19 A Yes, it is.

20 Q I'm going to show it to Mr. Long since you were
21 reading off of it.

22 MS. LIVESAY: Thank you. No further questions.

23 MR. LONG: No questions.

24 THE COURT: You may step down. Thank you for
25 your testimony. Do you need her further?

JENNIFER NATES - DIRECT EXAMINATION

1 MS. LIVESAY: No, sir, she's free, retired.

2 THE COURT: You are released from your subpoena.

3 (JENNIFER NATES, having been duly sworn,
4 testified as follows:)

5 THE CLERK: State your full name and spell your
6 last.

7 THE WITNESS: Jennifer Nates, N-A-T-E-S.

8 DIRECT-EXAMINATION

9 BY MS. LIVESAY:

10 Q If you don't mind, tell this jury and the Court
11 where you are currently employed?

12 A By the South Carolina Law Enforcement Division in
13 Trace Evidence.

14 Q And how long have you been at SLED?

15 A I've been at SLED for 18 years.

16 Q If you don't mind, tell them what your training
17 and education is to work at SLED in your position.

18 A I received a bachelor's of science from
19 California University of Pennsylvania. Upon
20 completion, I was hired in the drug analysis section at
21 SLED where I completed the training program. After a
22 year of working drug cases, I transferred to case
23 evidence. At that time, I began a four-year training
24 program that was headed by the department lieutenant
25 and the senior analyst in the department. The training

JENNIFER NATES - DIRECT EXAMINATION

1 included shadowing them, watching them work cases,
2 attending classes and course work in the types of
3 analyzes I would perform. After I completed that
4 training, I worked in the lab analyzing evidence,
5 testifying in court and collecting evidence from crime
6 scenes. I was eventually promoted to the lieutenant of
7 that department, which is my current position. So I
8 have to supervise the day-to-day activities of the
9 department, in addition to analyzing evidence,
10 testifying in court and performing miscellaneous
11 duties.

12 Q And currently you test GSR kits, gunshot residue
13 kits?

14 A That is one of the examinations I do perform.

15 Q If you don't mind, I'm showing you what is marked
16 as State's 8 and 9. Do you recognize those lab numbers
17 of the kits?

18 A I do. These are the -- this is a sticker that I
19 put on the GSR kits after I open the sealed container.
20 It has the unique lab number given to the case in
21 addition to the item number. I print the label so I
22 don't have to write everything, and I initial and date
23 when I open the evidence.

24 Q Are those the kits you tested?

25 A These are the two kits from Katrina Daniels and

JENNIFER NATES - DIRECT EXAMINATION

1 Laura Conklin that I performed testings on in this
2 case.

3 Q So you have tested two gunshot residue kits from
4 Laura Conklin and Katrina Danes?

5 A Yes.

6 Q If you don't mind, tell this jury how many GSR
7 kits you have tested over the years?

8 A I've probably tested in excess of a thousand
9 samples of GSR, well over a thousand. Each contains
10 four samples of gunshot residue. In this month alone,
11 I think I've done six cases already.

12 Q And how many reports have you completed regarding
13 your results on GSR kits?

14 A In excess of 500 for GSR.

15 Q Tell this jury how many times you have been
16 qualified as an expert?

17 A This will be my 98th testimony.

18 Q And if you don't mind, tell them what you are
19 qualified in?

20 A I'm qualified in trace evidence, in drug
21 analysis, in paint analysis, fiber analysis, explosive
22 analysis, arson analysis, gunshot residue and gun
23 powder analysis.

24 MS. LIVESAY: The State offers Lieutenant Naves
25 as an expert in trace evidence.

JENNIFER NATES - DIRECT EXAMINATION

1 MR. LONG: No objection.

2 THE COURT: Trace evidence, she is so qualified.

3 Q (MS. LIVESAY) For the record, you have been
4 qualified, you know, multiple times in GSR trace
5 evidence?

6 A Yes, ma'am.

7 Q If you don't mind, I would like you to take a
8 look at Laura Conklin's GSR kits and your examination
9 of it.

10 A The kit itself?

11 Q No. When you received it, had it been tampered
12 with?

13 A No, ma'am.

14 Q If it had been tampered with, would you have
15 tested it?

16 A It depends what the tampering is. When we look
17 at the evidence, it comes normally in a manila envelope
18 that is sealed and dated by the submitting officer. If
19 there is a tiny slit in the seal where the evidence
20 could not have come out of, we'll still test it, just
21 document it. We document that the kit was actually
22 sealed. If it is not sealed or not initialed, we
23 document it and still do the analysis. If we open the
24 kit up and the samples are compromised in any way, we
25 do not perform the analysis. We do documentation and

JENNIFER NATES - DIRECT EXAMINATION

1 we can't perform the analysis if the samples are
2 compromised.

3 Q Did it appear that either one of these was
4 compromised in any way?

5 A No.

6 Q If you don't mind, tell this jury and this Court
7 what you found on Ms. Conklin's kit?

8 A On the GSR from Laura Conklin -- I'm going to
9 read what I found because the report is -- tells what I
10 did find. I found particles associated with gunshot
11 residue, they are known to come from a variety of
12 environmentally, occupational and recreational sources;
13 however, these particles may also be associated with
14 the residue produced by a firearm when it is
15 discharged.

16 Q If you don't mind, did you also test Katrina
17 Daniels' kit?

18 A I did.

19 Q And did you include in your report what you found
20 on that kit?

21 A I did.

22 Q And if you don't mind, tell this jury and this
23 Court what you found in regards to Katrina Daniels' GSR
24 kit.

25 A In the kit from Katrina Daniels, I found

JENNIFER NATES - DIRECT EXAMINATION

1 particles associated with gunshot residue. These
2 particles associated with gunshot residue are known to
3 come from a variety of environmental, occupational and
4 recreational sources; however, they may be associated
5 with the residue associated from a firearm when it is
6 discharged.

7 Q Now, did you do a report?

8 A I did this report, yes.

9 MS. LIVESAY: Your Honor, can I mark this as a
10 State's exhibit, and then I'll move it into evidence?

11 MR. LONG: Without objection.

12 THE COURT: All right. It's submitted. You have
13 two reports?

14 MS. LIVESAY: It's one. It's two pages.

15 (State's Exhibit 10 marked and admitted.)

16 Q (MS. LIVESAY) I'm showing you, for the record,
17 State's Exhibit 10. For purposes of the record, is
18 that the report you did?

19 A A copy.

20 Q Is your name signed on that report?

21 A It is.

22 Q And that report includes your findings?

23 A Yes.

24 (State's Exhibit 11 marked.)

25 Q (MS. LIVESAY) This is State's 11; do you

JENNIFER NATES - DIRECT EXAMINATION

1 recognize that?

2 A This is a certified chain of custody that the
3 agency will provide upon request that lists each item
4 of evidence and each person that it past through while
5 it was at SLED.

6 Q Is that chain of custody for these two GSR kits?

7 A The chain for the GSR kit from Laura Conklin, and
8 the GSR kit from Katrina Daniels.

9 MS. LIVESAY: At this time the State wishes to
10 move State's Exhibit No. 11 into evidence, chain of
11 custody.

12 MR. LONG: No objection.

13 THE COURT: Without objection, so admitted.

14 (State's Exhibit 11 admitted.)

15 Q (MS. LIVESAY) So I'm clear, and we're clear, as
16 to Katrina Daniels and Laura Conklin, the findings
17 that you found on your report are that particles
18 associated with gunshot residue were found on their
19 kits; is that correct?

20 A That is correct.

21 Q And if you don't mind, tell this jury a little
22 bit about gunshot residue as far as what are you
23 looking for?

24 A Gunshot residue is the residue produced when a
25 gun is fired. It is a high heat high temperature

JENNIFER NATES - DIRECT EXAMINATION

1 environment, so the particles we look for is molten --
2 they look molten. For gunshot residue, it has to
3 contain barium, antimony and lead. If I find a
4 particle that contains these three elements, it's
5 unique to gunshot residue. I can tell you if I find
6 that on your hands, you were near a weapon when it was
7 fired, you fired one or handled something with gunshot
8 residue on it. We see particles also that we classify
9 as consistent or associated. These particles contain
10 either one or two of the elements that are present in
11 the gunshot residue when it is discharged. Normally,
12 you can find these things in the environment. It is
13 not likely to find them, but it is possible. Sometimes
14 if you look at cable sheaths on wiring, you can have
15 lead particles on that, but you don't find the molten
16 characteristics on those so we can differentiate from
17 any particles are considered associated or consistent
18 with gunshot residue.

19 In this case, I found particles associated, which
20 means I found particles, brown lead particles and
21 round antimony particles. They were molten and the
22 size we look for for gunshot residue and what we see
23 when we look for gunshot residue. Due to the fact
24 that there is a possibility it may have occurred in
25 the environment, we have to put the disclaimer on our

JENNIFER NATES - CROSS-EXAMINATION

1 report. In this case -- antimony doesn't occur
2 naturally in the environment. It is found in
3 different things. It is found as a fire retardant,
4 but yet, again, it will be triangular in shape and it
5 won't have the molten characteristics in the particles
6 I found. Lead can be found in fishing tackle, but it
7 is not going to be molten, as I found in this case.

8 Q And you found what particles again, I'm sorry?

9 A I found round lead particles and round antimony
10 particles.

11 Q Now, when you say you found particles or GSR,
12 does that mean that somebody fired the gun or that they
13 were in close proximity of a gun being fired?

14 A Whenever we find gunshot residue, particles
15 consistent with gunshot residue or associated with
16 gunshot residue, that means that person either fired a
17 weapon, near a weapon when it was fired or handled an
18 object that had gunshot residue on it. We're not able
19 to determine which of the three scenarios are more
20 likely because all three can produce gunshot residue on
21 your hands.

22 MS. LIVESAY: Nothing further.

23 CROSS-EXAMINATION

24 BY MR. LONG:

25 Q I know enough just enough to be dangerous on this

JENNIFER NATES - CROSS-EXAMINATION

1 topic so I want to ask you a couple of questions and if
2 I'm wrong, please stop me and let me know.

3 A Okay.

4 Q Is there any quantitative test for determining
5 the amount of gunshot residue?

6 A We do not perform a quantitative test. We, in
7 the past, performed one. It was with different
8 instrumentation, and with that instrumentation, you
9 were not able to conclusively say it was gunshot
10 residue, you would just look at a quantity of metals
11 that were present. In this case, we performed a
12 scanning electron microscope test, which just gave you
13 a number of particles that were found, but we do not
14 quantitate it.

15 Q So that is what I was getting at, would your test
16 tell us there was 115 found on one, and 330 found on
17 another?

18 A It could tell you that, but we when we look at --
19 the instrument will map how many particles are found on
20 each area of the hands. In the kit, you have a sample
21 from the right palm, right back, left palm and left
22 back. The instrument goes through and classifies
23 particles. We only have to verify a certain amount to
24 determine if it is positive or not.

25 Q How many particles is it necessary to determine a

JENNIFER NATES - CROSS-EXAMINATION

1 positive result?

2 A If we find one particle of gunshot residue, we
3 report as one particle of gunshot residue found.

4 Q So there is no way knowing whether one or 30,000
5 were found on each of these two kits?

6 A In this case I can tell you how many particles
7 were found, but I did not verify all of them. Like I
8 was saying, if there -- it can say 50 particles of
9 lead. If I go through and verify five, I can't tell
10 you if the other 45 were what I was looking for.

11 Q It is not necessary? Once you verify five, the
12 test is positive?

13 A That's correct.

14 Q Now, gunshot residue tests are done with the
15 hands mostly?

16 A Mostly they are done on the hands.

17 Q You said they are from how many different areas,
18 wipes on the hands?

19 A They are particle lift dabs from the right palm,
20 right back, left palm, and left back.

21 Q So four locations?

22 A Yes, sir.

23 Q Are those swabs kept distinctive and separate in
24 every kit so you know if it is right palm, left palm,
25 et cetera?

JENNIFER NATES - CROSS-EXAMINATION

1 A They are not swabs. We no longer use swabs.
2 They are particle lifts and they are kept distinctive.
3 They are each in their own container in these kits and
4 they have a cover on them.

5 Q On which portion of the particle lifts -- which
6 portion of the hands did the positive results come
7 from?

8 A For which person?

9 Q Both of them.

10 A For the kit from Katrina Daniels, the right palm
11 and right back and the left palm were positive.

12 Q So that is right palm, right back and left palm,
13 but not left back?

14 A Right. Laura Conklin, they were found on the
15 left back.

16 Q Left back?

17 A Yes.

18 Q All right. Who does the particle lifts?

19 A It is either the coroner or the investigating
20 officer.

21 Q And what training do they have to have to do a
22 particle lift?

23 A There really is no formal training. Each kit has
24 a set of instructions that are simple. It labels what
25 you need to do for the collection, how to seal the kit

JENNIFER NATES - CROSS-EXAMINATION

1 and then it is submitted.

2 Q How sensitive are these kits? For example, if I
3 had just left the gun range two hours ago and washed my
4 hands and I came and shook your hand, how are you
5 doing, glad to see you, and you had particle lifts done
6 on your hands, would you be positive?

7 A You should not if you washed your hands.

8 Q If I washed them thoroughly?

9 A Yes, sir.

10 Q What if I rinsed my hands quickly, is there still
11 residue on you?

12 A It depends on the caliber of the gun, how many
13 times you fired it, what the conditions were in the
14 environment. There is the possibility after four to
15 six hours when you fire a weapon, you don't expect to
16 find anything on your hands after that.

17 Q Because, simply, just from wear, washing or not?

18 A Yes.

19 Q Gunshot residue on clothing lasts a lot longer?

20 A It will last on the clothing until it is washed.

21 Q And there are two packages of clothing in this
22 case. Were those submitted to you for SLED for gunshot
23 residue?

24 A I only received the gunshot residue kits.

25 Q If this clothing was taken off of the victims in

JENNIFER NATES - CROSS-EXAMINATION

1 the ambulance or in the hospital, would those be useful
2 for determining gunshot residue on any portion or
3 aspects of the clothing?

4 A Usually with clothing, our policy is we collect
5 from the hands first, because anything found on the
6 hands is more probative because it has a time frame
7 associated with it.

8 Q As to whether someone shot a gun?

9 A No. Or was near a weapon when it was fired or
10 potentially handled something.

11 Q Why only the hands then? Wouldn't the clothing
12 tell if I was near someone who shot a gun better than
13 my hands? If I'm standing like this and someone --

14 THE COURT: Let her answer the question.

15 A If I collect samples from the clothing and
16 analyze it, I can come into court and testify I found
17 gunshot residue on the clothing, but I can't give you a
18 time frame when it was deposited. It could have been
19 three days earlier, and the clothes weren't washed and
20 still worn, so I can give you no time frame. On hands,
21 I know that I have a six-hour time frame, from the time
22 of the incident to the time of when it was deposited on
23 the hands.

24 Q (MR. LONG) I'm not trying to trick or trap you,
25 I'm giving you examples. If Ginger Pop, who is a

JENNIFER NATES - CROSS-EXAMINATION

1 proficient marksman fired a gun right beside me, there
2 would not be particles on my hands?

3 A If your hands are in your pockets?

4 Q Yes.

5 A No, sir.

6 Q There are particles all over my clothing?

7 A Depends on the caliber. It can be, or it may not
8 be.

9 Q If I was standing this close when she shot a gun?

10 A With your hand out, it is on your hand and
11 clothing. Once we find it on the hands, we don't go to
12 the clothing because we found it.

13 Q But the clothing was not submitted?

14 A It was not.

15 Q So we cannot say whether or not the clothing was
16 near when a gunshot was fired?

17 A I did not test it. I can't say anything about
18 the clothing.

19 Q The procedure for applying the particle lifts, is
20 the person required to be gloved?

21 A There is gloves in the kit for the officer or
22 corner to wear while they collect.

23 Q Is the person required to be gloved?

24 A We don't have any requirements whether they
25 should be or not. The instructions provide them, and

TRACY SMITH - DIRECT EXAMINATION

1 they state they should be.

2 Q Is there any procedure on how the gloves should
3 be placed on before taking a particle lift?

4 A Once again, there is a collection sheet that has
5 information on what to do for the kit.

6 Q Does it tell you not to touch the outer surface
7 of the glove when putting the gloves on your hands?

8 A I do not know.

9 MR. LONG: Thank you. No further questions.

10 MS. LIVESAY: Nothing further.

11 THE COURT: You may step down. Thank you for
12 your testimony.

13 MS. LIVESAY: The next witness is Tracy Smith.

14 THE COURT: Do you need this witness?

15 MS. LIVESAY: I do not.

16 THE COURT: You are released from your subpoena.

17 (TRACY SMITH, having been duly sworn,
18 testified as follows:)

19 THE COURT: Tracy Lynn Smith, S-M-I-T-H.

20 DIRECT EXAMINATION

21 BY MS. LIVESAY:

22 Q Hey, Ms. Smith, how are you? If you don't mind,
23 tell this jury how old you are.

24 A I'll be 42 this month actually.

25 Q And where are you currently working?

TRACY SMITH - DIRECT EXAMINATION

1 A I work in Georgia. I work for a hospital. I'm
2 the director of environmental services.

3 Q And if you don't mind, tell this jury where you
4 drove from today?

5 A From Winder, Georgia.

6 Q Thank you for coming, we appreciate that. If you
7 don't mind, tell this jury where you lived in February
8 of 2013?

9 A I lived off of Jefferson Place and Colony Club.

10 Q Do you know Katrina Daniels and Laura Conklin?

11 A I don't them. They were neighbors of mine. I
12 lived there for a couple of years. I originally moved
13 two doors from them, and later moved to the front of
14 the complex.

15 Q How long had you lived in Jefferson Place?

16 A When I moved out, I was there almost two years.

17 Q Where were you working in February of 2013?

18 A I was laid off in November of 2012 and I hadn't
19 started working yet. I interviewed at Grand Strand
20 Regional for the company I work for now.

21 Q On February 28, 2013, did you have an occasion to
22 tell the police what you saw that night?

23 A I did.

24 Q If you don't mind, tell this jury what you saw
25 out in Jefferson Place that night.

TRACY SMITH - DIRECT EXAMINATION

1 A It was about dark and I came home from purchasing
2 groceries with my son and pulled up in front of my
3 apartment which was right beside the road, and I
4 noticed when I pulled in that on the right side of the
5 road there was -- I noticed that on the right side of
6 the road there was a truck parked in the opposite
7 direction facing the opposite direction it should have
8 been, which was kind of strange for a truck to be
9 parked there, so I pulled into my house.

10 Q Can you describe that truck; do you remember?

11 A It was a light color truck, white maybe, light
12 silver, really, really light silver, a Ford Sport Trac
13 I think it was, chromed out, had rims on it. It was
14 strange, never seen it in the neighborhood before.
15 Pulled into my drive, and as I was getting out with my
16 son to get the groceries, I heard this boom, which I
17 immediately looked to my left to the direction of where
18 the trash dumpster was, and I saw a gentleman coming
19 from behind the trash dump, ran across the road and got
20 into the driver's side of the truck.

21 Q When you say the driver's side of the truck, you
22 mean the white sport truck?

23 A Yes.

24 Q And you never seen that in the two years but that
25 night?

TRACY SMITH - DIRECT EXAMINATION

- 1 A No, hadn't seen it before.
- 2 Q You say it ways around -- after 9 o'clock?
- 3 A It was around dark.
- 4 Q So it was dark out?
- 5 A Uh-huh.
- 6 Q Could you see the man running to the white truck?
- 7 A I could tell it was a slender black male with
- 8 white shirt on and dark pants, that is about all I
- 9 could see.
- 10 Q And if you don't mind, tell this jury about how
- 11 close approximately you were from the truck where he
- 12 was running to?
- 13 A From when I seen him at the dumpster, I would say
- 14 probably maybe to outside of the doors to the side of
- 15 the building here, like out to the stairs where we went
- 16 downstairs earlier, probably about that far. There is
- 17 a light at the dumpster, because that is where we took
- 18 our trash. We didn't have trash cans outside of the
- 19 houses, so we had to walk, so it was lit up.
- 20 Q I know you said it was male, slender, tall; could
- 21 you tell if he was black or white?
- 22 A He appeared to be black to me, because this
- 23 sounds bad, but I couldn't see anything other than is
- 24 white shirt he had on.
- 25 Q Did you talk to the police that night?

TRACY SMITH - DIRECT EXAMINATION

1 A I did.

2 Q Did you tell them what you told me?

3 A Yes.

4 Q And did you tell them what you told this jury
5 today?

6 A Yes.

7 Q When you saw him running, he got into the white
8 sport truck, how did he take off, fast, slow?

9 A I heard the truck -- I assumed the truck was
10 cranked and running because I didn't hear it turn over
11 or anything of that nature.

12 Q So you didn't hear it crank up?

13 A No, I didn't. I just heard it take off.

14 Q So when he jumped in, the car was already
15 running?

16 A That is what I would assume.

17 Q You saw him first at the dumpster?

18 A Yes.

19 Q When he went from the dumpster to the truck,
20 describe that to the jury; was he walking, running,
21 jogging?

22 A He was kind of not a full run, but not a jog,
23 kind of in between. There was a row of hedges there
24 and a couple other vehicles, so I seen him go across
25 the dumpster part of the road and go around the truck

TRACY SMITH - DIRECT EXAMINATION

1 to get into the driver's side.

2 Q Now, when you saw him, had you ever seen him
3 before? Was that someone you recognized?

4 A No. But then again, I didn't see him up close,
5 so I don't know if he ever had been in the neighborhood
6 or not.

7 Q You say you did know Katrina Daniels and Laura
8 Conklin?

9 A Only from seeing them living there. I spoke as
10 neighbors coming in and out, but I didn't know their
11 names until today.

12 Q So you never had been to their house, they had
13 never been to your house?

14 A They had never been to my house. I walked by and
15 stood on their front area there. The tall lady told me
16 one time they had done some remodeling, and I looked at
17 a bathroom. In all of the apartments, right when you
18 step in the main door there is a small half bath to
19 your left, and I had seen where they put tile and stuff
20 there, but that is as far as I had seen, but I didn't
21 know their names at that time.

22 Q Tell this jury and the Court, had you talked to
23 anyone before you talked to the police that night?

24 A I spoke to my landlord, who owned a place there
25 when -- I guess when all of this started happening, he

TRACY SMITH - DIRECT EXAMINATION

1 came. I guess he is also property management of that
2 development or those apartments, and I had told him
3 that I had seen somebody leaving, and he went with me
4 to approach the officers that night so that I could
5 tell them what I had seen.

6 Q Had you talked to Laura or Katrina before you
7 talked to the police?

8 A No, I never spoke to them since that time.

9 Q Did you talk to anyone about what you saw before
10 you talked to the police other than this property
11 manager?

12 A No.

13 Q Had he seen anything?

14 A No, he wasn't there. He immediately came up to
15 check on his place, which was the place I lived in, and
16 to check to see what was going on, and that is when I
17 told him I had seen someone leaving and I needed to try
18 to get to speak to one of the officers.

19 Q And tell them what happened?

20 A Yes.

21 Q Had you ever seen anything like that before that
22 night?

23 A No, not there.

24 Q Do you know Jamal Daniels?

25 A (Witness shakes head.)

TRACY SMITH - CROSS-EXAMINATION

1 THE COURT: Witness indicated negatively.

2 CROSS-EXAMINATION

3 BY MR. LONG:

4 Q You said it was approximately dark when you saw
5 the truck?

6 A Yes, sir. I drove by the truck.

7 Q How was the parking lot situated for those
8 apartments or condos in relation to the building? I
9 mean, did you have parking lots for each individual
10 unit in front of the units?

11 A Yes.

12 Q Is there guest parking or like a center area
13 parking where overflow parking takes place within the
14 parking lot?

15 A All of the parking places are in front of all of
16 the buildings and you get -- each unit has one or two
17 parking spots, and they are numbered where you park. I
18 was parked directly in front ever my front door.

19 Q Was this vehicle in a parking lot?

20 A No. It was actually parked on the left side --
21 coming in, it was parked on the right side, wrong side
22 of the road, facing the wrong direction in front of the
23 very first set of apartments that were there, which is
24 not part of Colony Club, on the right-hand side of the
25 road.

TRACY SMITH - CROSS-EXAMINATION

1 Q If you were standing, for example, in Ms. Conklin
2 and Ms. Daniels' front door -- let me do that. If you
3 were standing, their front door is behind you, where
4 would the truck have been in relation to the front door
5 of their apartment?

6 A From the front door of their apartment they
7 stayed on this side, so from the front door, if my back
8 was facing them, the truck would have been all the way
9 down across the road.

10 Q Would it have been visible at 12 o'clock?

11 A Yes.

12 Q So it would have been directly in line with the
13 door of the apartment?

14 A No. It would have been on the side of the
15 building, so if the building were turned this way, the
16 doors would have been facing this way, and the truck
17 was parked on the road at the far end.

18 Q So the truck would not have been visible from the
19 front door of their condominium?

20 A If they were standing outside they could see it.

21 Q But if they were inside the door, they would not
22 have seen it?

23 A No.

24 Q You say you heard a boom and then a man came out
25 from behind the dumpster, and I have to admit, I've

TRACY SMITH - CROSS-EXAMINATION

1 thrown stuff in a dumpster, is that the kind of boom
2 that you heard?

3 A That is kind of what I heard, which is caused me
4 to look there. It sounded more like the lid shut on
5 the dumpster, and I thought it was strange seeing
6 someone there and hearing the lid.

7 Q How far from the dumpster was the truck parked?

8 A Maybe from here to the back of the courtroom
9 across the road.

10 Q And you thought the truck was running because you
11 didn't hear it starting?

12 A I never heard it start, no.

13 Q So the person came from behind the dumpsters, got
14 in the driver's side of the truck?

15 A Yes.

16 Q Was there any other person you saw with him?

17 A I didn't see anyone running with him or walking
18 with him. From there, I couldn't see inside the truck.
19 The truck would have been parked here, and I'm back
20 here where my automobile was here in the parking lot.

21 Q So you didn't see him get into the vehicle?

22 A I seen him get in the vehicle and door open, and
23 I wouldn't have seen him get in, but I saw the door
24 open and shut.

25 Q When the door open, the light came on and you

THE COURT AND ATTORNEYS

1 didn't see anyone else in the vehicle?

2 A Not that I remember, no.

3 MR. LONG: Nothing further.

4 REDIRECT-EXAMINATION

5 BY MS. LIVESAY:

6 Q Have you talked to Katrina or Laura about this
7 white sport truck or what you saw that night?

8 A No.

9 MS. LIVESAY: Nothing further.

10 MR. LONG: Nothing.

11 THE COURT: You may step down, thank you.

12 MS. LIVESAY: I have another witness, but I have
13 an issue we may need to bring up.

14 THE COURT: Mr. Ropp, take the jury back and have
15 a break.

16 (The jury exits at 3:56 p.m., and the
17 following is heard out of the presence of the jury.)

18 MS. LIVESAY: Before we call Mr. Jasiak to the
19 stand, I know Mr. Long has a supplemental report we
20 did and turned over to him, but before we came up
21 here, when we were talking to this witness about
22 coming to testify this afternoon, he told us at that
23 time that when he left the courthouse yesterday, he
24 saw Jamal Daniels and Jamal was waiting by his truck,
25 and Jamal told him to come up here and get the phone

THE COURT AND ATTORNEYS

1 numbers from the victims. At that time, Cory told
2 him, no, he wouldn't get involved and was definitely
3 not doing that. Cory says ever since then he's been
4 constantly calling him trying to get in touch with
5 him. I believe the statement that Mr. Daniels made to
6 Cory would be a statement by a party opponent --

7 THE COURT: I'm not going there. We talked about
8 it, Ms. Livesay. I'm not going there. That does not
9 pass a 403 test. It does nothing but confuse the
10 jury. It has no probative value, great prejudicial
11 value. I'm not going there with it, just not going
12 there with that. I know exactly what we're talking
13 about. The fact that he asked some other third-party
14 for a phone number of a witness has nothing to do with
15 what happened back in February of 2013, nothing to do
16 with it, and I'm not going to --

17 MS. LIVESAY: If I may, for purpose of the
18 record, I think what our position is is that it goes
19 towards the fact that Mr. Daniels is obviously trying
20 to get in touch with the victims to either intimidate
21 them or ask them not --

22 THE COURT: Well, charge him with it. Charge
23 with him if he's intimidating. It has nothing to
24 do with what happened back in 2013, nothing.

25 MS. LIVESAY: I think it also shows that he knows

CORY JASIAK - DIRECT EXAMINATION

1 the victims if he is in here asking for their phone
2 number, obviously.

3 THE COURT: Shows he doesn't know them. I'm not
4 going there. We're not getting into that. I'm
5 telling you, that is the end of it. Not getting in
6 that, period. It has great prejudicial value and
7 little or no probative value, and I'm not going to
8 admit it, and I don't think it is relevant anyway.

9 MS. LIVESAY: The only relevance is that it
10 shows --

11 THE COURT: Ms. Livesay, over. We're not going
12 there. Thank you.

13 (A recess was taken.)

14 (Whereupon, the jury enters at 4:15 p.m., and
15 the following is had in the presence of the jury.)

16 MS. LIVESAY: State calls Cory Jasiak to the
17 stand.

18 (CORY JASIAK, having been duly sworn,
19 testified as follows:)

20 THE CLERK: State your name and spell your last.

21 THE WITNESS: Cory Anthony Jasiak.

22 DIRECT-EXAMINATION

23 BY MS. LIVESAY:

24 Q Tell the jury, how old you are?

25 A 29.

CORY JASIAK - DIRECT EXAMINATION

1 Q Are you currently working anywhere?

2 A Yeah, I work with my father at Recommend
3 Collision.

4 Q Where do you live?

5 A 2410 Windmill Way, Myrtle Beach.

6 Q In Horry County?

7 A Yes.

8 Q Are you from Horry County?

9 A No. I'm from New Jersey originally.

10 Q How long have you lived in Horry County?

11 A About six years, maybe a little longer than that.

12 Q If you don't mind, tell this jury about your
13 education.

14 A High school, I have some college. I went to
15 Horry County Georgetown for awhile for business, but I
16 didn't finish.

17 Q And if you don't mind, do you remember what kind
18 of car you were driving in February of 2013?

19 A Yes, ma'am. It was my grandfather's. It is a
20 Ford Sport Trac. It was white.

21 Q During that time frame, did you loan that car out
22 to anyone?

23 A Yes, ma'am.

24 Q Where were you -- where would you go to loan the
25 car out?

CORY JASIAK - DIRECT EXAMINATION

1 A Racepath.

2 Q Is that in Myrtle Beach?

3 A Yes, ma'am.

4 Q And if you don't mind, tell this jury who you
5 loaned that car out to?

6 A Polo and a couple other people. June and a guy
7 named Juice, they were all dealers who would loan -- I
8 would loan the car to.

9 Q And if you don't mind, tell this jury a
10 description of Polo.

11 A He was a tall, skinny, well built, but skinny,
12 short hair, real short buzz cut. Sometimes he had gold
13 teeth, and sometimes he didn't. They were the pulled
14 out ones. He was nicely dressed.

15 Q Was he black male or white?

16 A Black male.

17 Q And do you remember about how tall he was?

18 A Yeah. I think he was a little taller than me, so
19 probably 6'3".

20 Q Would you loan your white Sport Trac on a pretty
21 regular basis?

22 A Yes, very regular basis.

23 Q Now, would you -- did you see Polo on a regular
24 basis?

25 A Yes, ma'am.

CORY JASIAK - CROSS-EXAMINATION

1 Q And you just described him. Would you recognize
2 him today if you saw him?

3 A Yes, ma'am, definitely.

4 Q If you don't mind looking around in this jury and
5 in the courtroom, tell them whether or not you see Polo
6 in the courtroom?

7 A No, I do not.

8 Q Okay, but if he was in here, you would recognize
9 him?

10 A Without a doubt.

11 Q And could point him out?

12 A Yes, ma'am.

13 MS. LIVESAY: Nothing further.

14 CROSS-EXAMINATION

15 BY MR. LONG:

16 Q Mr. Jasiak?

17 A Yes.

18 Q May I call you Cory?

19 A Yes.

20 Q Who did you loan it to on February 25, 2013?

21 A Can't say exactly who I gave it to that day.
22 There was a couple people I gave names to before. I
23 couldn't tell you exactly which one was on that day.

24 Q Who did you loan it to on April 14, 2013?

25 A I can't tell you.

CORY JASIAK - CROSS-EXAMINATION

1 Q May, June, July, August?

2 A No. It would be one of the three or four, you
3 know.

4 Q How many times a day did you do this?

5 A Well, usually it would be at night. Like I
6 would, you know, work during the day, and at night --
7 because I was an addict -- so I would drop my truck
8 off, just go to Racepath and, you know, there was
9 someone almost always willing to trade.

10 Q Trade drugs for use of the car?

11 A Right. Exactly.

12 Q Did this happen daily, monthly? How often did
13 this happen?

14 A Probably three -- three days a week, four days a
15 week.

16 Q And it was your dad's car?

17 A Grandfather's.

18 Q He didn't object to drug dealers riding in a car?

19 A He didn't know to the extent what I was doing.
20 Because when I wasn't home, he didn't know that I
21 didn't have the car in my possession.

22 Q All right. You have two drug convictions; is
23 that correct?

24 A Yes.

25 Q And the last one was 2014?

CORY JASIAK - CROSS-EXAMINATION

1 A Yes.

2 Q How many times in 2014 did you loan your vehicle
3 to --

4 MS. LIVESAY: I'll object just as to those drug
5 convictions being relative.

6 MR. LONG: I think he's admitted he is an addict
7 and buying drugs.

8 THE COURT: Credibility, I'll allow it.

9 Q (MR. LONG) How many times in 2014 did you loan
10 your vehicle to Polo?

11 A Truthfully, I couldn't tell you when it stopped.
12 We got -- once my grandfather found out about what I
13 was doing, he got rid of the car. He just didn't want
14 to be involved with anything. I can't exactly remember
15 when he got rid of it, but after he got rid of the
16 truck, I didn't loan cars anymore.

17 Q Have you gotten rid of your habit?

18 A I've been clean for -- totally clean for about
19 six months now.

20 Q Congratulations. Stick to it.

21 A Yes. Thank you very much.

22 Q So you can't say exactly when it was that your
23 grandfather took the truck and your three dealers would
24 not have had use of it?

25 A Right. Can't tell you exactly.

ANTHONY HUMES - DIRECT EXAMINATION

1 Q Let's try for a year.

2 A It was in 2014. He sold it and he got a Subaru,
3 and at that point I wasn't allowed to have the car
4 anymore.

5 Q So you would have continued to loan it to Polo up
6 to that time that your grandfather took it away from
7 you in 2014?

8 A Yes. Yes.

9 Q You're pretty sure of that?

10 A Yes.

11 Q Would it surprise you that Polo was arrested
12 April of 2013 and was in jail until February of 2015?

13 A No. Like I said, I don't -- I was just guessing.

14 MR. LONG: Nothing further.

15 MS. LIVESAY: No further questions.

16 THE COURT: Step down. No further need for this
17 witness?

18 MS. LIVESAY: I don't have anything else.

19 MR. LONG: No.

20 THE COURT: You are released. Thank you, sir.

21 MR. LONG: Good luck. Stick to it.

22 THE WITNESS: Thank you very much.

23 MS. LIVESAY: The next witness is going to be
24 Anthony Humes.

25 (ANTHONY HUMES, having been duly sworn,

ANTHONY HUMES - DIRECT EXAMINATION

1 testified as follows:)

2 THE CLERK: State your name and spell your
3 last.

4 THE WITNESS: Anthony Humes, H-U-M-E-S.

5 (State's Exhibits 12 through 31 marked.)

6 DIRECT-EXAMINATION

7 BY MS. LIVESAY:

8 Q Tell us where you currently are employed.

9 A Currently employed with the City of Myrtle Beach
10 Police Department.

11 Q And if you don't mind, tell them how long have
12 you been employed there?

13 A A little over eight years.

14 Q What kind of experience and training have you
15 undergone?

16 A Graduated the South Carolina Criminal Justice
17 Academy to become a Class 1 police officer.

18 Q Just training throughout the time you have been
19 there?

20 A Yes.

21 Q And what are your current responsibilities?

22 A I'm currently assigned to the Crime Scene Unit.

23 Q If you don't mind, tell this jury a little bit
24 about what crime scene investigators do in Myrtle
25 Beach.

ANTHONY HUMES - DIRECT EXAMINATION

1 A We respond to a multitude of calls, could be from
2 burglary auto to burglary residency to a business,
3 death, gangs, homicides, shootings, vending machines
4 that get broken into.

5 Q How long have you been specifically in crime
6 scene?

7 A A little over four years.

8 Q Are you familiar with the case we are here today
9 for?

10 A Yes, sir.

11 Q Did you go to the scene of Jefferson Place on
12 February 28?

13 A Yes, ma'am.

14 Q And when you went there, did you document that
15 apartment by photographing it?

16 A Yes, ma'am.

17 Q And before you went in, to your knowledge, had
18 anyone tampered with anyone at the crime scene?

19 A Not to my knowledge, no.

20 Q And when you went in, did you ever tamper with
21 anything?

22 A No, ma'am.

23 Q And did you document the inside and outside of
24 the victims' condo?

25 A Yes.

ANTHONY HUMES - DIRECT EXAMINATION

1 Q And did you also document by pictures their
2 vehicle and pictures inside their vehicle?

3 A Yes.

4 Q If you don't mind, I'll show you State's 12
5 through 31. Would you look through them and tell this
6 Court whether or not you recognize the photograph and
7 if you took that photograph?

8 MR. LONG: I think we can speed this up, Your
9 Honor. I think this officer in his report took all of
10 the photographs, those are the copies, and we
11 stipulate.

12 THE COURT: You have seen them and have no
13 objection?

14 MR. LONG: No objection.

15 THE COURT: There we have it.

16 (State's Exhibits 12 through 31 admitted.)

17 Q (MS. LIVESAY) 12 through 31 are put in evidence,
18 are those the photographs you took?

19 A (Witness examines documents.) Yes, ma'am.

20 Q And could you tell this jury what those are
21 photographs of?

22 A Photographs of the scene.

23 Q Could you, yes or no?

24 A Yes.

25 Q Wonderful.

ANTHONY HUMES - DIRECT EXAMINATION

1 MS. LIVESAY: Your Honor, I'll ask Anthony Humes
2 to step down to go over the photographs and publish to
3 the jury.

4 THE COURT: Certainly.

5 Q (MS. LIVESAY) Thank you. Do you mind stepping
6 down? Was this a one-story or two-story condo?

7 A Two-story condo.

8 Q I'm showing you State's Evidence No. 12; is that
9 door the front door to their condo?

10 A Yes, ma'am.

11 Q What are we looking at in this picture?

12 A The kitchen area was off to the right of the
13 front door, so that is the kitchen area where the
14 closet is.

15 Q So this is as soon as you open the front door,
16 you snapped this picture?

17 A Yes, ma'am.

18 (Published to the jury.)

19 THE COURT: Do you want to hand them to the jury,
20 Ms. Livesay, as he goes through them and let them pass
21 them, I think that helps.

22 MS. LIVESAY: Yes, sir, Your Honor.

23 Q (MS. LIVESAY) This is State's Evidence No. 13;
24 what is that a pictures of?

25 A That is the entranceway of the condo at the front

ANTHONY HUMES - DIRECT EXAMINATION

1 door, kitchen closet and trash can and items on the
2 floor.

3 Q What is this on the floor?

4 A Blood.

5 Q Did you see this -- see blood anywhere downstairs
6 except the area by the front door?

7 A There is also a bathroom off on the left-hand
8 side of the kitchen and right after the bathroom is a
9 staircase, there was blood on the staircase.

10 Q Okay. So was there any blood further into the
11 apartment in the hallway or living area?

12 A No, ma'am.

13 Q Okay. What are we looking at on State's Evidence
14 14?

15 A Kitchen floor area outside of the closet.

16 Q What is that a picture of?

17 A Blood on the floor and window pane.

18 Q Is this right as you enter into the front door?

19 A Yes, ma'am.

20 Q I'm showing you what is marked as State's Exhibit
21 No. 3 -- sorry, 15 and 16; what am I looking at here as
22 to 15 first?

23 A 15 is the entrance area with the trash can
24 looking towards the staircase in the bathroom on the
25 left.

ANTHONY HUMES - DIRECT EXAMINATION

- 1 Q What am I looking at State's Evidence 16?
- 2 A 16 is the bathroom.
- 3 Q And what do you see going again into that
- 4 bathroom?
- 5 A Blood on the floor.
- 6 Q Is this the front door we're looking at?
- 7 A Yes, ma'am.
- 8 Q If you don't mind, Anthony, step up and show us
- 9 again where the front door is.
- 10 A The front door is here. This is the screen door.
- 11 Q What room is this to the left?
- 12 A The bathroom.
- 13 Q Is that right as you walk in the front door?
- 14 A Yeah, on the left-hand side.
- 15 Q What do you see on the floor?
- 16 A Blood on the floor.
- 17 Q This is State's 17; what is that?
- 18 A Floor of the bathroom.
- 19 Q What is on the floor of the bathroom that you
- 20 see?
- 21 A Blood and a curling iron.
- 22 Q Is that the room, again, as soon as you walk in
- 23 the front door to the left?
- 24 A Yes, ma'am.
- 25 Q Is that the hinge to the front door?

ANTHONY HUMES - DIRECT EXAMINATION

1 A No. That is the bathroom door itself.

2 Q I'll show you what is State's 18 and 19; what are
3 we looking at?

4 A Further in the room the staircase. In 18 is on
5 the left, and it looks into the living room and dining
6 room area. State's Exhibit 19 is more of the living
7 room area with the fireplace on the left and sliding
8 glass door in the back and computer stand on the right.

9 Q Is there any blood on the floor further into the
10 apartment on 18 and 19?

11 A 18, there is on the staircase going up the
12 stairs, but not 19.

13 Q So there is no blood in that room as you walk
14 through the condo?

15 A No, ma'am.

16 Q This is State's 18 and 19. So all the blood you
17 found was in the kitchen and bathroom, which was by the
18 front door; is that correct?

19 A The staircase.

20 Q And the staircase.

21 A And the master bedroom.

22 Q Nothing further into the apartment?

23 A Not on the grounds floor, no.

24 Q I'll show you State's 20 and 21; what is this a
25 picture of?

ANTHONY HUMES - DIRECT EXAMINATION

1 A The staircase going upstairs from the first floor
2 to second.

3 Q What do you see on the staircase?

4 A Blood.

5 Q Okay. And do you see it on the banister?

6 A Yes, ma'am.

7 Q I'm showing you State's Evidence No. 22 and 23;
8 what is this a picture of?

9 A Pair of white pants that were on the master
10 bedroom bed that have blood on them.

11 Q Was the master bedroom upstairs or downstairs?

12 A Upstairs.

13 Q (MS. LIVESAY) That was upstairs in the master
14 bedroom?

15 A Yes, ma'am.

16 Q I'm showing you 24 and 25. Tell this jury what
17 we're looking at.

18 A There is one window in the master bedroom, and
19 that is the windowsill and curtain.

20 Q And what are we looking at here on the curtain
21 area, shade?

22 A Red in color, blood type of substance on the
23 window curtain and also on the windowsill.

24 Q And how about right here; is that the windowsill?

25 A Yes, ma'am, that is the interior.

ANTHONY HUMES - DIRECT EXAMINATION

1 Q So State's Evidence 24 and 25 that I published to
2 the jury is the window in the upstairs master bedroom?

3 A That's right.

4 Q There was blood on the kitchen floor and the
5 bathroom right by the front door?

6 A Yes, ma'am.

7 Q And blood going up the stairway?

8 A Yes, ma'am.

9 Q Blood in the master bedroom and blood in the
10 curtain and window on the master bedroom?

11 A Yes.

12 Q I'll show you State's Exhibit 26; what is this?

13 A This is the same bedroom window and curtain, just
14 a taller portion of it.

15 Q And 27?

16 A 27 is the exterior side of the window taken from
17 Apartment , and it looks to the residence of
18 where you see the curtains and blinds and so forth
19 hanging outside of the window.

20 Q So 26 is the curtain inside, and 27 is that same
21 curtain outside of the window?

22 A Yes, ma'am.

23 Q And this curtain is from the same windowsill with
24 the blood on it?

25 A Yes, ma'am.

ANTHONY HUMES - DIRECT EXAMINATION

1 Q I'm showing you 29 and 30; what is this a picture
2 of?

3 A The victim's vehicle parked in the parking lot.

4 Q Is that how you found it when you saw it?

5 A Yes, ma'am.

6 Q That is State's Evidence 29, the outside, and 30
7 is the inside of the same vehicle?

8 A Yes, ma'am.

9 Q So when you found the vehicle, there were items
10 on the ground around it?

11 A Yes, ma'am.

12 Q And items shuffled around inside the vehicle; is
13 that correct?

14 A Yes. Yep.

15 THE COURT: I'm showing you 31; what is this a
16 picture of?

17 A Passenger's side floor of the same vehicle.

18 Q What are those envelopes marked?

19 A Bank envelopes by BB&T.

20 Q This is in the victim's car like this?

21 A Yes, ma'am.

22 Q State's Evidence 31. You can have a seat. I
23 have a few more questions. So you documented the
24 inside of the house, as well as the vehicle?

25 A Yes.

ANTHONY HUMES - DIRECT EXAMINATION

1 Q And why did you process the vehicle?

2 A It appeared that someone went through it as the
3 back hatch was opened and items were laying on the
4 ground outside of the vehicle, so a search warrant was
5 obtained by a detective to process the vehicle.

6 Q Now, the only area that you really documented any
7 blood was by the front door, the steps and the master
8 bedroom?

9 A And the bathroom downstairs, yes.

10 Q The bathroom downstairs?

11 A Yes.

12 Q When you are processing the condo, did you find
13 any cash or anything to indicate that there was cash in
14 the house?

15 A Yes. I received a phone call from Crime Scene
16 Officer McSpadden, who was at the hospital, and she
17 requested I look underneath the master bedroom bed
18 mattress for an envelope that contained money. We
19 looked under the bed mattress and located an envelope
20 that contained cash money inside.

21 Q So you did find an envelope with cash in it under
22 the mattress in the master bedroom?

23 A Yes, ma'am.

24 Q Do you remember if there was an amount written on
25 the envelope?

ANTHONY HUMES - DIRECT EXAMINATION

1 A Yes.

2 Q What was the amount written on the envelope?

3 A It appeared to say \$5,450. The fives -- I can't
4 tell if they were fives or sixes, but looked like fives
5 to me.

6 Q Around \$5,000?

7 A Yes, ma'am.

8 Q Did you search the entire apartment?

9 A Yes.

10 Q And did you find any guns in the apartment?

11 A No, ma'am.

12 Q And what, if any, damage did you find in the
13 apartment?

14 A I didn't locate any damage.

15 Q Now, when you went to the apartment, did you
16 collect any sort of shell casing or bullet?

17 A No, ma'am.

18 Q And did you look for one?

19 A Yes.

20 Q Did you collect any other evidence from the
21 house?

22 A Yes.

23 Q If you don't mind, tell this jury what evidence
24 you collected from the house.

25 A From the beginning of Unit B-1, the neighbor's,

ANTHONY HUMES - DIRECT EXAMINATION

1 there was a black in color sock at the sliding glass
2 door at the rear of the residence. Marker 1 was placed
3 at that, and that was collected. Upon walking up to
4 the front door of the apartment, there was a small
5 Ziploc bag with dollar signs on it that contained a
6 green leafy substance, and Marker 2 was placed at that
7 and that was collected. Upstairs in the master bedroom
8 in the dresser near the window was a green in color
9 like a wallpaper utility knife, that was collected.
10 Marker No. 4 was a -- Marker 4 was a narcotic pipe that
11 looked like glass or aluminum, and what we originally
12 thought might have been like a crack cocaine cookie,
13 but later determined to be a Poptart.

14 Q So you didn't find any drugs in the house?

15 A No, ma'am.

16 Q Now, did you process the scene for fingerprints?

17 A Yes.

18 Q And were you able to get any fingerprints
19 belonging to anyone other than the victims?

20 A No, ma'am. They all belonged to the victims.

21 Q And how about on the car?

22 A Same thing, the victims' prints.

23 Q Did you find any kind of weapon in that vehicle
24 or in the residence itself, any kind of weapon?

25 A Just the utility knives.

ANTHONY HUMES - DIRECT EXAMINATION

1 Q Now, after you processed the condo through
2 documentation of pictures and taking fingerprints and
3 the vehicle, what else did you do to further your
4 investigation as a crime scene investigator?

5 A Once back at the annex, the next evening I
6 processed the utility knife, the small Ziploc bag with
7 green leafy substance, and collected four bank
8 envelopes out of the vehicle. I processed those in the
9 lab, and they all received negative results for latent
10 fingerprints. I completed a gunshot residue kit
11 request for SLED processing to complete.

12 Q Did you ever make any contact with the victims?

13 A No, ma'am.

14 Q Did you ever make any contact with any witnesses
15 at the scene?

16 A No. The only person I might have talked to was
17 the neighbor at B-1.

18 Q Sorry?

19 A The neighbor at B-1 I might have talked to, but
20 if I did, it was very vague and very brief. I took
21 photos of the interior of his apartment because one of
22 the victims went through, I took photos of the first
23 floor to document it just in case there was any
24 evidence inside, which I didn't observe any blood or
25 anything like that, and that would have been the only

ANTHONY HUMES - CROSS-EXAMINATION

1 person I would have talked to.

2 Q Did you collect a witness statement?

3 A No, ma'am.

4 Q And you never saw the victims?

5 A No.

6 Q And so your part of this investigation as crime
7 scene investigator was just to collect evidence from
8 the condo and the car?

9 A Yes, ma'am.

10 Q And the pictures that I just showed were the
11 pictures where you were documenting the crime scene?

12 A Yes, ma'am.

13 Q And you never found a gun or any other kind of
14 weapon or any drugs there at the condo?

15 A No.

16 MS. LIVESAY: Nothing further.

17 CROSS-EXAMINATION

18 BY MR. LONG:

19 Q What time did you arrive on the 28th to process
20 the scene?

21 A Approximately 10 o'clock at night.

22 Q And the offense or incident occurred
23 approximately 9 o'clock that evening, so you were an
24 hour after, approximately?

25 A Yeah.

ANTHONY HUMES - CROSS-EXAMINATION

1 Q There was not a crime scene log completed or
2 filled out at that point in time to let you know who
3 had gone in before you got there, correct?

4 A Not to my knowledge.

5 Q Now, fingerprints are a tricky matter, aren't
6 they?

7 A Yes.

8 Q And you are trained to try to recover full
9 prints, partial prints anywhere you can, and they are
10 pretty easily left behind, aren't they?

11 A Depends on circumstances.

12 Q Depends on the surface and the temperature and
13 weather, and all of that stuff?

14 A True.

15 Q Door knobs and doors and papers and any hard
16 surface, any smooth surface will readily accept a
17 fingerprint usually, correct?

18 A Normally, yes.

19 Q And you fingerprinted all of the places that --
20 speaking with officers, who had spoken to the
21 victims -- would have been touched by any suspects in
22 this case, correct?

23 A Yes.

24 Q Because you didn't want to print the whole
25 apartment, you just wanted to know where they were and

ANTHONY HUMES - CROSS-EXAMINATION

1 where they went?

2 A Yes. Yeah. I printed what they would advise,
3 and also if something seemed like it could have been
4 out of place to myself.

5 Q And vehicles are especially a good place to
6 recover prints because of the number of hard, smooth
7 surfaces on a vehicle?

8 A On the outside, yes.

9 Q And all of the places that were reported by the
10 victims to other officers that were brought to your
11 attention where the suspects went, you printed all of
12 those places and couldn't find one print connected to
13 any suspect in this case?

14 A No, sir. All the prints I had came back to the
15 victims.

16 Q Was there any smudge prints of a type made by any
17 leather gloves, cotton gloves, anything of that nature
18 that you would determine, yeah, that is a glove print,
19 not a fingerprint?

20 A Not that I can recall, that I could tell a
21 difference between the two. I remember seeing outlines
22 or something on the back of the vehicle or maybe
23 smudges on some of the closet doors or something, but
24 there wouldn't be enough detail.

25 Q Smudges happen as a matter of course, don't they?

ANTHONY HUMES - CROSS-EXAMINATION

1 A Yes, sir. It is a grip factor. Whenever your
2 hand touches an item and the hand moves or the object
3 moves, it smears over everything in its path.

4 Q Was there any information provided to you from
5 other officers from victims that either of the suspects
6 were wearing gloves?

7 A That was not known to me, no.

8 Q Now, one of the officers called you from the
9 hospital and said there may be a large envelope with a
10 large amount of money under the mattress; is that
11 correct?

12 A She said there could -- wanted me to check and
13 see if there was an envelope with money. She didn't
14 specify large, small or medium or quantity, just to
15 check if it was there.

16 Q What size mattress, do you remember, queen, king?

17 A Queen or King. It was big. It wasn't like a
18 double.

19 Q And under the left side of the mattress is where
20 you discovered the envelope?

21 A Yeah. If you are facing the foot of the bed, it
22 is on the left side.

23 Q On the left side?

24 A Yes, sir.

25 Q So you would have lifted it up from the left

ANTHONY HUMES - CROSS-EXAMINATION

1 side. Was it in the center, or on the center of the
2 left side?

3 A On the edge area. It wasn't too far off of the
4 edge.

5 Q And printed on the envelope was either 6,450 or
6 \$5,450, but you could tell there was cash in there,
7 correct?

8 A Yes, sir.

9 Q There was also something else on that envelope as
10 well?

11 A Yes, a phone number.

12 Q written on the envelope with the
13 amount of money on the envelope as well, correct?

14 A , If you want me, I can check my notes, but.

15 Q I'm not asking you to verify the phone number.

16 A There was a phone number, yes.

17 Q And it was a complete 10 digit telephone number
18 or nine -- 10 digits?

19 A Yes.

20 Q Did Myrtle Beach ever verify or attempt to
21 establish who that phone number belonged to?

22 A That, I don't know.

23 Q So you just simply put that information in your
24 file in your report, and that is up to someone else to
25 determine who that phone number belongs to?

ANTHONY HUMES - CROSS-EXAMINATION

1 A Yes, sir.

2 Q Now, Officer, just a hypothetical. If I'm
3 standing inside a door, this is the outside behind this
4 door, and I'm on the inside --

5 A Okay.

6 Q And I fire a firearm here in this courtroom.
7 What are the odds going to be that you are going to
8 find a bullet hole?

9 A Should be pretty good.

10 Q And it wouldn't be a hundred percent because
11 there is a chance it may go in a crack or wherever
12 where you can't determine, and depending on the caliber
13 as well, correct?

14 A That's correct.

15 Q But, for you, as a crime scene investigator, if I
16 were to fire a semi-automatic handgun here, there is
17 three items right away that you could uncover or
18 recover to tell this jury I fired this firearm right
19 here, isn't there?

20 MS. LIVESAY: If I may, my objection is this
21 witness is obviously in crime scene investigation.

22 THE COURT: That's what he is asking. Thank you.
23 Go ahead.

24 A Not necessarily, no.

25 Q (MR. LONG) Would there be a bullet or bullet

ANTHONY HUMES - CROSS-EXAMINATION

1 hole somewhere you could recover?

2 A Okay.

3 Q Especially if someone saw me and described where
4 I was shooting it, correct?

5 A Okay, bullet, yes.

6 Q Second, there would be a shell casing somewhere
7 from the eject --

8 A That is not accurate.

9 Q If it was a semi-automatic.

10 A Oh, yes.

11 Q So that is what I said. If I shot a semi-auto
12 pistol --

13 A Yes.

14 Q -- bullet hole somewhere, casing somewhere,
15 ejected somewhere, and there is gunshot residue all
16 over the door frame?

17 A Potentially.

18 Q And there probably will be gunshot residue in the
19 ceiling, because gunshot powder burns for a period of
20 time and collects on whatever surface the barrel is
21 pointed at, correct?

22 A That, I don't know.

23 Q So you could -- you don't know if you could wipe
24 there and --

25 A I'm not an expert in how gunshot residue

ANTHONY HUMES - CROSS-EXAMINATION

1 transfers.

2 Q Well, you collect it all the time on crime
3 scenes, don't you?

4 A Using a kit on people.

5 Q You say you only collect gunshot residue on
6 people?

7 A Well, we do on other surfaces at times, but if
8 you are asking what the distance is that it could
9 travel, I don't know that.

10 Q But anywhere fired around the gun could possibly
11 deposit gunshot residue where the gun was fired?

12 A Right.

13 Q Now, you were not the only crime scene specialist
14 at that location that night, correct?

15 A I was there, yes.

16 Q You were not the only one called there as well?

17 A I don't recall anyone else going there.

18 Q How many other officers attempted to assist you
19 in locating a bullet hole or a shell casing?

20 A I can recall at least two.

21 Q At least two, including you?

22 A Yes.

23 Q So the three of you were looking in this
24 apartment trying to locate a bullet hole, shell casing,
25 anything of that nature connected with what was

ANTHONY HUMES -- REDIRECT EXAMINATION

1 reported as a gunshot inside the apartment, correct?

2 A Correct.

3 Q And I don't want to say that you all were doing
4 the Sherlock Holmes with a big magnifying glass going
5 over every square inch, but if there was a gunshot hole
6 somewhere in that vehicle -- I mean in the apartment,
7 or a shell casing, you almost likely would have found
8 it, correct?

9 A Normally, yes.

10 Q And nothing was recovered?

11 A No, sir.

12 MR. LONG: Nothing further.

13 REDIRECT-EXAMINATION

14 BY MS. LIVESAY:

15 Q I won't ask you any detailed questions, just some
16 basics to follow up on what Mr. Long said.

17 A Okay.

18 Q First of all, are there two types of, guns,
19 semiautomatics and revolvers?

20 A Yes.

21 Q Tell this jury, does a revolver kick out a shell
22 casing of any kind?

23 A No, ma'am.

24 Q Is it possible that if somebody fired a gun in a
25 residence that it did not cause any kind of hole, that

ANTHONY HUMES - RECROSS-EXAMINATION

1 it bounced off whatever it hit in the residence?

2 A As far as like in the steps or somewhere like
3 that, it could.

4 Q Now, when you were in there, did you look for a
5 bullet?

6 A Yes.

7 Q Is it possible that a bullet was in that
8 residence and you didn't find it?

9 A Yes.

10 MS. LIVESAY: Nothing further, Your Honor.

11 RECROSS-EXAMINATION

12 BY MR. LONG:

13 Q A revolver doesn't eject a shell, but it does
14 shoot a bullet, doesn't it?

15 A Affirmative, yes.

16 THE COURT: Any further need for this witness?

17 MS. LIVESAY: No, sir. He's excused from our
18 aspect.

19 THE COURT: You are released from your subpoena.
20 Ladies and gentlemen, that will be it for today. Mr.
21 Ropp, take them to their jury room. Remember, don't
22 do any independent investigations, don't discuss it
23 with anyone. Be back in your jury room about 9:30 in
24 the morning. What will you have for them?

25 MR. ROPP: Biscuits.

ANTHONY HUMES - RECROSS-EXAMINATION

1 (The jury exits at 5:01 p.m., and the
2 following is heard out of the presence of the jury.)

3 THE COURT: We're at east until tomorrow
4 morning at 9:30.

5 (WHEREUPON, THE PROCEEDINGS FOR APRIL 12, 2016
6 CONCLUDED. THE FOLLOWING WAS HAD APRIL 13, 2016 OUT
7 OF THE PRESENCE OF THE JURY.)

8 THE COURT: Good morning. Are we ready? Mr.
9 Long, Mr. Daniels is not here today either?

10 MR. LONG: Correct, Your Honor.

11 (State's Exhibits 32-37 marked.)

12 THE COURT: Bring them in. Nancy, have you given
13 Taylor your E-mails?

14 MR. LONG: I have not, but I'll be glad to.

15 THE COURT: If you will be sure she has your
16 E-mails. You know my policy about the charge. She
17 will E-mail you right now.

18 (A brief pause in the proceedings.)

19 THE COURT: If the jury is ready, let's bring
20 them.

21 (The jury enters at 9:43 a.m., and the
22 following is heard in the presence of the jury.)

23 THE COURT: Good morning. Did Mr. Ropp have
24 something for you this morning?

25 THE JURY: He did.

MICHELLE McSPADDEN - DIRECT EXAMINATION

1 THE COURT: Plenty of coffee and all? If he
2 doesn't, let me know. Mr. Ropp went to high school
3 with me and he became a bailiff about the time I
4 became a judge. No one would have him, not a soul,
5 and now I have to fight to keep him. He made a great
6 bailiff. If you need anything, let him know.

7 Are you ready, Ms. Livesay?

8 MS. LIVESAY: I am, Your Honor.

9 THE COURT: You may continue.

10 MS. LIVESAY: At this time the State calls
11 Michelle McSpadden to the stand.

12 (MICHELLE McSPADDEN, having been duly sworn,
13 testified as follows:)

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

16 THE WITNESS: Michelle McSpadden,
17 M-C-S-P-A-D-D-E-N.

18 DIRECT-EXAMINATION

19 BY MS. LIVESAY:

20 Q Ms. McSpadden, if you don't mind, tell this jury
21 where you currently work.

22 A I'm one of the deputy coroners with the Horry
23 County Coroner's Office.

24 Q And where did you work before that job?

25 A Until 2014 -- middle of 2014 -- I worked for

MICHELLE McSPADDEN - DIRECT EXAMINATION

1 Myrtle Beach Police Department, started at dispatcher
2 and then patrol officer, and then a crime scene officer
3 for nine years.

4 Q If you don't mind, tell them what you were doing
5 at Myrtle Beach Police Department in February of 2014
6 -- sorry, 2013?

7 A I was crime -- senior crime scene officer.

8 Q And as part of crime scene, what were your --
9 some of your responsibilities?

10 A We responded to all kinds of crimes from your car
11 getting broken into, to a homicide. Anything where
12 there was evidence, we responded. Our job was to
13 collect and process any of the evidence we found there.

14 Q Are you familiar with the case we're here today
15 for with Jamal Daniels?

16 A I am.

17 Q Tell this jury how you were involved in that
18 case.

19 A I was working that night. So when the call came
20 out, we were told that victims were taken to the
21 hospital. I went to the hospital, and my partner went
22 to the scene.

23 Q And when you went to the hospital, who did you
24 meet with?

25 A First I met with another police officer named

MICHELLE McSPADDEN - DIRECT EXAMINATION

1 Mark Landi. Mark had collected some clothing from the
2 victims. So when EMS took the victims to the hospital,
3 their clothing was cut off as part of the medical
4 treatment, so Mark collected those clothes. So I first
5 met with Mark and took possession of the clothes.

6 Q While at the hospital, did you have occasion to
7 come into contact with Katrina Daniels and Laura
8 Conklin?

9 A I did. I first met with Laura. They were both
10 treated in the emergency room when I got there. I met
11 with Laura, spoke to her, asked if I could take
12 pictures of her injuries, which she agreed to. I
13 collected a gunshot residue kit from her hands, which
14 is standard whenever. We have a shooting and we have
15 victims or suspects, we collect a gunshot residue kit,
16 and I also collected a DNA standard from her.

17 Q If you don't mind, I'll show you what is in
18 evidence as State's No. 8 and 9.

19 A Yes.

20 Q Tell the jury what that is.

21 A These are gunshot residue kits from Laura and
22 Katrina Daniels. So these are the kits that were
23 collected that night.

24 Q Are those the kits you used for the two victims
25 in this case?

MICHELLE McSPADDEN - DIRECT EXAMINATION

1 A Yes.

2 Q You don't analyze any of this GSR kit, is that
3 correct, you just do the swabs?

4 A Right. They are like little sticky pads. You
5 stick them all over the hands. There is four pads, one
6 for each of the back of the hand, and one for the front
7 for each hand, for each victim. So you stick them all
8 over the hands, and those sticky pads go into the kits.
9 The analysis is done by SLED with a scanning electron
10 microscope. At Myrtle Beach Police Department, we
11 didn't have the money, really, for that huge type of
12 equipment.

13 Q So basically you collected that type of evidence
14 and send it to SLED for the laboratory results?

15 A That's correct.

16 Q Now, after you collected it did you seal it up?

17 A Yes.

18 Q And did you put it in evidence?

19 A I did.

20 Q Now, did you document the victims' injuries of
21 Laura and Katrina Daniels?

22 A I did.

23 Q I'll show you 32 through 37. If you don't mind,
24 look through and tell me if those are the pictures you
25 took of the victims?

MICHELLE McSPADDEN - DIRECT EXAMINATION

1 A They are.

2 Q Have they been tampered with in any form or
3 fashion?

4 A Does not appear to be, no.

5 MS. LIVESAY: Your Honor, at this time the State
6 wishes to move 32 through 37 into evidence and publish
7 to the jury.

8 THE COURT: Mr. Long, have you seen them?

9 MR. LONG: I have, Your Honor.

10 THE COURT: Any objection?

11 MR. LONG: No objection.

12 THE COURT: Without objection admitted, Nos. 32
13 through 37.

14 (State's Exhibits 32 through 37 admitted.)

15 Q (MS. LIVESAY) If you don't mind, step down and
16 we'll publish them to the jury. Tell them what they
17 are pictures of. Tell this jury what this is a
18 picture of?

19 A Laura Conklin, and there are a couple of reasons
20 I took this picture, one is to show her face. We
21 photograph the face of the victim, and then she does
22 have an injury up in her hairline where she's bleeding
23 a little bit.

24 (Published to the jury.)

25 Q (MS. LIVESAY) I'll show you what is marked as

MICHELLE McSPADDEN - DIRECT EXAMINATION

1 State's Evidence 34; what is that?

2 A Another picture of Laura from the side. You can
3 see a little better the injury she has in her hairline.

4 Q I'm showing you 34 and 35, tell me what they are
5 pictures of?

6 A Basically the same picture just taken with and
7 without a scale. We always scale injuries, so what you
8 are seeing is a photographic scale in this one, and you
9 can see the injury -- this is actually slightly bit
10 clearer. You can see the injury runs this way.

11 (Published to the jury.)

12 Q (MS. LIVESAY) Now I'm showing you what is marked
13 as 36 and 37, what are they looking at in these
14 pictures?

15 A The other victim, this is Katrina. At this point
16 she was telling me that her jaw was hurting, so she was
17 telling me that something was going on here. She had a
18 neck brace, so you can kind of see her jaw. She had
19 been splinted. The hospital told me she had a fracture
20 of the ankle, so she had been splinted before I got
21 there, so that is the picture.

22 Q This is the way the women appeared, and all of
23 these pictures were taken at the hospital?

24 A Yes, ma'am.

25 Q Now, Ms. McSpadden, I have a few more questions

MICHELLE McSPADDEN - DIRECT EXAMINATION

1 for you. Now, you did a GSR kit on both victims; is
2 that correct?

3 A I did.

4 Q And you documented the injuries of both victims;
5 is that correct?

6 A I did.

7 Q Tell this jury about how long total were you in
8 contact with these victims?

9 A Probably 60 to 90 minutes.

10 Q If you don't mind, tell this injury were they
11 able to respond to your questions?

12 A They were. So when I asked their names, they
13 were able to provide their names. That is all
14 documented in the gunshot residue kit. I asked them --
15 I would have to ask them, you know, show me your hands,
16 flip your hands one way or the other. They responded
17 appropriately as I asked. I would have asked
18 permission to collect a mouth swab for a DNA sample, so
19 they would have responded appropriately for that, and I
20 remember having a conversation with one of them -- and
21 I wish I remember which one, but I don't -- about how
22 they ran a painting company and that this was money in
23 the apartment for payroll that they were concerned
24 about, so they were able to explain that enough that I
25 could understand it, enough to call the police officers

MICHELLE McSPADDEN - DIRECT EXAMINATION

1 at the scene so they could secure that money.

2 Q So they were -- how would you describe their
3 demeanor?

4 A Upset, you know, but cooperative.

5 Q Do they appear to you at that time to be impaired
6 or unaware of what was going on?

7 A No. They responded to all of my questions
8 appropriately.

9 Q And did anything give you hesitation as to the
10 way that they were acting or responding to your
11 questions to believe that they didn't know what was
12 going on, or were they --

13 A No.

14 Q And were they able to convey all of the
15 information you needed?

16 A Yes, ma'am.

17 Q And whatever you asked them to do, were they able
18 to do it?

19 A They did.

20 Q Did you do anything else further to assist in
21 this investigation?

22 A The only other thing I was involved in with this
23 is their clothing was wet with blood on the night it
24 was taken, so it was -- when I got back to the crime
25 scene lab, it was placed into an evidence dryer and

MICHELLE McSPADDEN - CROSS-EXAMINATION

1 would have dried for a day or two, and then we would
2 have moved it -- whenever I took it out of the dryer,
3 at some point I packaged it up and later photographed
4 it, so that was the only other -- photographing the
5 clothes once they dried.

6 Q Were those clothing taken into evidence?

7 A They were.

8 Q Were these -- was Laura Conklin able to convey to
9 you how she got injured?

10 A I don't recall who told me, when I got to the
11 hospital someone told me --

12 MR. LONG: Objection, even if it came from the
13 victim that already testified.

14 THE COURT: I agree, that is hearsay.

15 MS. LIVESAY: No further questions.

16 THE COURT: Mr. Long, you may cross-examine.

17 CROSS-EXAMINATION

18 BY MR. LONG:

19 Q I'll refer you to Officer McSpadden, because at
20 the time you were?

21 A That is fine, thank you.

22 Q Did you have regular patrol duties in connection
23 with your crime scene duties as well?

24 A They are separate, so I did patrol a couple of
25 years before I went to crime scene, but at that point

MICHELLE McSPADDEN - CROSS-EXAMINATION

1 my duties was just crime scene.

2 Q At the time you were doing crime scene
3 investigations, did you wear a sidearm?

4 A I did.

5 Q The photographs that you took of Ms. Conklin, did
6 you see any powder burns or anything in that nature in
7 or around the wound?

8 A No.

9 Q I believe it was described as a contusion and
10 laceration, is that fair to say, that is what she had,
11 contusion being some bruising and laceration meaning a
12 cut on the skin?

13 A Yes, that is fair. Although thinking about it
14 now, contusion may have not be the best choice of words
15 because there was so much blood.

16 Q More laceration?

17 A More of a laceration.

18 MR. LONG: Thank you. No further questions.

19 MS. LIVESAY: Nothing further.

20 THE COURT: You may step down.

21 MS. LIVESAY: She can be excused.

22 MR. LONG: Without objection.

23 THE COURT: You are released from your subpoena.

24 Thank you for your testimony.

25 MS. LIVESAY: The State will call Mark Landi to

MARK LANDI - DIRECT EXAMINATION

1 the stand.

2 (MARK LANDI, having been duly sworn, testified
3 as follows:)

4 THE CLERK: State your full name and spell your
5 last name.

6 THE WITNESS: Mark Edward Landi, L-A-N-D-I.

7 DIRECT-EXAMINATION

8 BY MS. LIVESAY:

9 Q And Mr. Landi, where are you currently employed?

10 A Currently employed by the City of Myrtle Beach
11 and work for Myrtle Beach Police Department.

12 Q If you don't mind, tell this jury how long you
13 have been employed at the police department?

14 A This time, a little over five years,
15 five-and-a-half years.

16 Q And what were your responsibilities during
17 February of 2013?

18 A I was assigned to the nighttime waterfront area,
19 which is Ocean Boulevard area, and that particular
20 night, I believe it was the second or third night that
21 I was -- I'm a field training officer, and I was
22 training a new officer that had just graduated from the
23 academy.

24 Q And if you don't mind, are you familiar with the
25 case that we're here today for?

MARK LANDI - DIRECT EXAMINATION

1 A I am.

2 Q As to Jamal Daniels?

3 A Yes, ma'am.

4 Q Tell the jury how you became involved in this
5 case.

6 A Call came out, shots fired, victim I believe --
7 came out as victim shot in the head off of
8 67th Avenue, I believe it is, Jefferson Place
9 Apartments. I was familiar with that, and because of
10 where we were at the time, we responded, lights and
11 siren, and we arrived on scene.

12 Q Now, did you have occasion during the time you
13 were assisting in this investigation to go to Grand
14 Strand Hospital where the victims were located?

15 A I did.

16 Q And if you don't mind, tell this jury what you
17 did while you were at Grand Strand Hospital?

18 A Basically, once I arrived on scene, cleared the
19 residence. After the residence was secured, I was
20 informed by Sergeant Crosby, who was the supervisor on
21 scene at the time, he asked me to go up to Grand Strand
22 Regional Medical Center and make contact with the
23 victims of this incident and attempt to try to get
24 information as far as any type of suspect information,
25 suspect vehicle information and some of the particulars

MARK LANDI - DIRECT EXAMINATION

1 as far as physical description and that sort of thing
2 of the suspects involved.

3 Q If you don't mind, tell this jury, when you came
4 in contact with the victims, about how much time did
5 you spend with them at the hospital between talking to
6 them --

7 A Well, I know that -- I recall they were attending
8 to one of the victims, so I had the opportunity to
9 engage them in conversation just pretty much how are
10 you doing, how are you feeling type of thing, and
11 allowed the medical people to work. Once I was able to
12 speak with them, I probably spent 10 minutes or so with
13 each person, maybe 15 talking with them and getting the
14 information that we needed to proceed to try to get a
15 BOLO, which is be-on-the-look-out, for suspects and
16 suspect vehicle.

17 Q And if you don't mind, tell this jury a little
18 bit about the victims when they were in the hospital,
19 were they responsive to your questions, and how was
20 their demeanor?

21 A I mean, obviously, given the circumstances, they
22 were visibly shaken and upset, obviously. They were
23 lucid, very clear. The information they provided me
24 was very articulate, seemed to have their wits about
25 them given the traumatic circumstances that they just

MARK LANDI - DIRECT EXAMINATION

1 experienced, but they were pretty much just as lucid
2 and articulate as I am now.

3 Q And were they able to convey to you the
4 information you were looking for?

5 A Yes, ma'am.

6 Q If you don't mind, tell this jury what
7 information you gathered at the hospital that assisted
8 in this investigation?

9 A Okay. May I refer to my report?

10 Q Sure.

11 A Because I don't want to tell you something wrong.
12 Based on the report that I filed that night,
13 supplemental report that I filed that night -- excuse
14 me -- after speaking with both the victims I got a
15 description of the subjects involved, and the first
16 suspect was described as a black male about 6-foot,
17 160 pounds, had a white pull-over hoody with red script
18 writing on it, also had white hat with red letters that
19 was written in cursive writing and blue baggy jeans and
20 it had -- a big silver belt buckle. They explained
21 that he went by the nickname or street name of Polo.

22 Second subject described a black male, dark
23 complected skin, about 5'10" and dark blue bandanna
24 that covered -- excuse me, a dark blue hoody with a
25 blue bandanna that was covering his face, and they

MARK LANDI - DIRECT EXAMINATION

1 believe that he may have gone by the street name or
2 nickname of June.

3 Q So we're clear, you gathered information saying
4 there was two suspects?

5 A Correct.

6 Q One was a thin black male, somewhere around
7 6 feet tall, nickname was Polo?

8 A Correct.

9 Q And then there was a second suspect, and that was
10 a black male, darker skin, around 5'10", bandanna
11 around the face?

12 A Correct.

13 Q So two different suspects, and you only gained a
14 name for one, and that was Polo?

15 A No. They had mentioned that he may go by the
16 name of June, was the second suspect, but they didn't
17 have any more information.

18 Q Were you able to get a clear or any information
19 at the hospital regarding a vehicle that may have been
20 involved in the incident?

21 A Yeah. The best they could determine it was a
22 white -- what they described as a -- wasn't a full size
23 pickup, but a white Explorer or Sport Trac vehicle,
24 which is described like a white four-door pickup truck,
25 shorter bed on the back, pretty much like a four-door

MARK LANDI - DIRECT EXAMINATION

1 Ranger, first you understand what that type of vehicle
2 is.

3 Q Now, when you met with the victims at the
4 hospital, were they both in the same room?

5 A I don't recall. I can't recall if they were in
6 the same room or not. Normally not. They usually
7 separate when they are dealing with two different
8 victims or two different traumas, they usually have two
9 different rooms operating, but --

10 Q Do you remember if you talked to each of them
11 separately, or both of them at one time?

12 A I know that I spoke with them separately.

13 Q Was the information consistent with what you told
14 this jury?

15 A Yes, absolutely.

16 Q Do you remember how concerned you were at the
17 hospital collecting this information from the time the
18 incident was called out from dispatch?

19 A I don't have an exact time frame. When the call
20 came in, I remember being some place in the area of
21 37th Avenue and the bypass, and until we responded up
22 to the incident location, arrived on scene, the scene
23 wasn't safe yet because the residence wasn't cleared.
24 Myself and some other officers went in and cleared
25 downstairs and upstairs. After we secured the

MARK LANDI - CROSS-EXAMINATION

1 residence is when I came out and made sure the victim's
2 hands were bagged for gunshot residue, standard
3 procedure to preserve evidence. It was at that time
4 that Sergeant Crosby said I need you to run up to the
5 hospital. So what I described was mere seconds, but it
6 was probably 15, 20 seconds, I'm guessing, give or
7 take.

8 Q When you -- BOLO stands for what?

9 A Be-on-the-look-out.

10 Q Did you publish a BOLO with that description?

11 A Yes, I did that over the radio on Channel 1 to
12 dispatch, and then that was also relayed to other
13 agencies. It was put out over our laptops in the
14 vehicles, and there is a digital copy as well, I
15 believe.

16 Q So that BOLO went out to only individuals in the
17 police department?

18 A What I gave on the radio is whoever was listening
19 on our frequency Channel 1.

20 Q So that was just for officers to know please be
21 on the look out for this suspect and this vehicle?

22 A Yes.

CROSS-EXAMINATION

24 BY MR. LONG

25 Q Who was the lead detective in this case?

MARK LANDI - CROSS-EXAMINATION

1 A I believe Detective Clothier.

2 Q As a lead detective, are you required to --
3 whatever information you uncover, discover, whatever,
4 you kind of report it to him because he is basically
5 the supervisor over the investigation?

6 A I remember Detective Clothier was at the
7 hospital, and I briefed him when he arrived that night.

8 Q And when you prepared incident reports, those are
9 brought to his attention or made a part of his case
10 file for him as lead detective on the case, correct?

11 A When we do a report, they are submitted through
12 your supervisor and it goes into the system. It is
13 tracked by the report number, so it is collected
14 altogether. So I'm assuming that the way the system
15 works, that he has access to all of them.

16 Q And, certainly, he would use your, or any other
17 officers that does work on this case number, that would
18 be in his file or brought to his attention, and he
19 would use that in his investigations, correct?

20 A I can't answer how he works, to be honest with
21 you.

22 Q Doesn't it make sense to do it that way, though?

23 A I know how I would do it, but I -- every officer
24 has their own way of handling cases.

25 Q If you were lead detective, would other officers

MARK LANDI - CROSS-EXAMINATION

1 doing investigative work in that case assigned to you
2 as lead detective, wouldn't those reports be useful to
3 you and wouldn't you keep track of those and have them
4 in file or in your system for your use?

5 A Are you asking me to speculate?

6 Q You said that is not how you would do it. I'm
7 asking how you would do it. Would you use the other
8 investigative notes?

9 MS. LIVESAY: Your Honor, I have to object
10 because he's not the lead investigator, so I'm not
11 sure what is useful.

12 THE COURT: I'm going to let him ask the
13 question, because I'm not sure what he is asking. I
14 think he's saying if you wouldn't do it this way, how
15 would you have done it.

16 MR. LONG: Correct.

17 THE COURT: The officer testified I wouldn't have
18 done something in this way, Mr. Long is asking how
19 would you have done it; is that what you are asking?

20 MR. LONG: Yes.

21 THE COURT: I'll allow that.

22 A What I would do is if I'm -- I've done
23 investigations, worked in street crimes doing drug
24 investigations and so forth, and you make your case
25 file, and how I make my case file is anything

MARK LANDI - CROSS-EXAMINATION

1 associated with this incident with this report number,
2 incident report, supplemental reports, any type of
3 evidence, vouchers, so on and so forth, goes into that
4 case file.

5 Q You have no reason to believe that Detective
6 Clothier does not do that as well, correct?

7 A Again, like I said, I don't know how he handles
8 his case files, I just know how I do mine.

9 Q But it makes sense that he would want to see all
10 of your notes and summaries that is connected with his
11 case or his case file, correct?

12 MS. LIVESAY: Your Honor, again, we are
13 speculating on what Detective Clothier --

14 THE COURT: If he knows he can say yes; if he
15 doesn't, I don't know.

16 A I don't how Detective Clothier does his case
17 file.

18 Q You don't know if it makes sense or not to do it
19 that way?

20 A I don't know how he does his case file. I know
21 what makes sense to me, but I don't know makes sense to
22 someone else. I can't speculate on that.

23 Q Who is Officer A. Campbell?

24 A That would have been Officer Alton Campbell.

25 Q Alton Campbell?

MARK LANDI - CROSS-EXAMINATION

1 A Yes. He was the initial responding officer at
2 the scene that night. He's no longer with us.

3 Q That was my next question, was he on scene when
4 you arrived at the incident location that night?

5 A Yes. Yes, he was.

6 Q He was the first responding officer?

7 A The way I understood, he was the first one on
8 scene.

9 Q And can you tell us how long you arrived at the
10 scene after he was -- arrived at the scene?

11 A Without looking at the call log, I can't begin to
12 tell you. Within minutes, but that could be three
13 minutes to eight minutes to 10, but within minutes. I
14 can't recall.

15 Q Did you speak with him on the scene when you
16 arrived?

17 A I had a brief conversation with him. He was with
18 the victims, as I recall, and I believe I asked him if
19 the residence has been cleared and secured, and he said
20 it had not, that is when we proceeded to get together
21 and clear the residence. And when I say "clear the
22 residence," check for any other victims, suspects,
23 anything that could cause the emergency medical people
24 or other responding officers any type of injury or
25 threat.

MARK LANDI - CROSS-EXAMINATION

1 Q So the answer to my question is -- did you speak
2 with him?

3 A Yes, I did.

4 Q Now, he is no longer employed with the City of
5 Myrtle Beach?

6 A That's correct.

7 Q Approximately, when did he leave the employment?

8 A I don't know. It's been at least a year, maybe
9 longer. I can't recall when he left.

10 Q Do you know his whereabouts now where he's
11 employed?

12 A No, I don't.

13 Q Have you spoken to him since then or heard anyone
14 talk about where he is employed?

15 A No.

16 Q Now, the Solicitor asked you whether or not there
17 was a nickname or street name, or whatever, that the
18 suspect goes by, and you said it was Polo; is that
19 correct?

20 A Suspect No. 1, yes.

21 Q And that isn't how you spelled it in your
22 incident report, was it?

23 A No, I spelled it with two Ls, maybe I was
24 thinking how you spell chicken in Spanish. I don't
25 know, but I put two Ls for Polo.

MARK LANDI - CROSS-EXAMINATION

1 Q So if you would spell so that it would be
2 phonetically correct, it would be Pollo, correct?

3 A That is how I spelled it in the report.

4 Q But P-O-L-O, pronounce that for me?

5 A Polo.

6 Q And P-O-L-L-O, pronounce that?

7 A Polo.

8 Q P-A-U-L-O, pronounce that for me.

9 A P-A-U-L-O? Paulo.

10 Q At the time you interviewed at the hospital, and
11 that would have been an hour or two within the incident
12 report, within that hour or two, correct?

13 A Within an hour, I would say.

14 Q One or both of them told you and knew a nickname
15 or street name of Suspect No. 2 with a bandanna over
16 his face as June?

17 A Correct.

18 Q So at the hospital, they knew Suspect 2's street
19 name?

20 A Yes.

21 MR. LONG: Thank you. Nothing further.

22 MS. LIVESAY: Nothing further.

23 THE COURT: You may step down.

24 MS. LIVESAY: He can be excused.

25 MR. LONG: Without objection.

MELINDA SHADOAN - DIRECT EXAMINATION

1 THE COURT: Thank you. You are released from
2 your subpoena.

3 MS. LIVESAY: We call Melinda Shadoan.

4 (MELINDA SHADOAN, having been duly sworn,
5 testified as follows:)

6 THE CLERK: State your name and spell your last
7 for the Court.

8 THE WITNESS: Melinda Sue Shadoan, S-H-A-D-O-A-N.

9 DIRECT-EXAMINATION

10 BY MS. LIVESAY:

11 Q Where do you correctly work?

12 A Myrtle Beach Police Department.

13 Q How long have you been there?

14 A Nine years in July.

15 Q And what are your current responsibilities?

16 A I am the property and evidence technician for the
17 city. I process the evidence that comes in along with
18 property that gets found within the city limits and I
19 house them in a secure location.

20 Q And what position did you have back in February
21 of 2013?

22 A I was the property and evidence technician.

23 Q So you have taken the evidence for all of the
24 cases?

25 A I do.

MELINDA SHADOAN - DIRECT EXAMINATION

1 Q Now, how do you know them, by name or case
2 number?

3 A Only by case number.

4 Q Now, are you familiar with Case No. 1303022?

5 A Only the evidence that comes in, I don't know
6 anything about the incident at the time.

7 Q So you only take the evidence in from that case
8 number?

9 A Correct.

10 Q Now, if I showed you evidence, would you
11 recognize whether or not you took that in under that
12 case number?

13 A Yes, ma'am.

14 (State's Exhibit 38 marked.)

15 Q (MS. LIVESAY) This is State's 38; do you
16 recognize that?

17 A Yes, ma'am.

18 Q If you don't mind, does it indicate on the
19 package what the case number is?

20 A Yes.

21 Q So you know to put everything with that case
22 number together?

23 A Correct.

24 Q If you don't mind, tell this Court and the jury
25 what case number that is?

MELINDA SHADOAN - DIRECT EXAMINATION

1 A 13003022.

2 Q And if you don't mind, tell the jury -- will you
3 look inside and tell the Court what that is?

4 A Looks like a black T-Mobile cell phone.

5 Q Was that taken into Myrtle Beach evidence on that
6 particular case?

7 A It was.

8 MS. LIVESAY: At this time the State wishes to
9 place State's 38 into evidence.

10 MR. LONG: I would object at this time.

11 THE COURT: Send the jury out.

12 MR. LONG: May we approach before they go
13 outside, I think we can resolve this.

14 THE COURT: Yes.

15 (Whereupon, a bench conference was had.)

16 THE COURT: It will be marked for identification.

17 Q (MS. LIVESAY) When you place evidence in the
18 evidence room, is it tampered in any form or fashion?

19 A Absolutely not.

20 Q Is there a record kept for that evidence coming
21 in and coming out?

22 A Yes, ma'am.

23 Q And if you don't mind, do you have your evidence
24 chain with you?

25 A I do.

MELINDA SHADOAN - DIRECT EXAMINATION

1 Q Tell this Court and jury who brought that piece
2 of evidence in to you.

3 A I believe the officer was McSpadden, and we
4 processed it in on March 18 of 2013 at 10:46 in the
5 morning.

6 Q And when you say "processed it," what does that
7 mean?

8 A It means I basically took it from one of the
9 lockers or from their hands, and then we bin it to the
10 correct location in the property and evidence room, and
11 I put a sticker on it so that I could go find it
12 exactly if I needed it for another reason.

13 Q And when it is in your custody and control, does
14 anyone else have access to it?

15 A We have two other co-workers within that room
16 there, but nobody else would have access to it.

17 Q And if you don't mind, do you have that chain of
18 custody with you? I'll show Mr. Long. That is what
19 you were reading off of?

20 A That was there, and then all of them -- then I
21 had the actual custodies.

22 Q So this doesn't have the name of who turned it
23 in?

24 A No, ma'am. No, ma'am.

25 Q Do you have that with you?

MELINDA SHADOAN - DIRECT EXAMINATION

1 A It doesn't look like I have that one, no. I have
2 one for the GSR kits.

3 THE COURT: Do you know where you got that
4 device?

5 THE WITNESS: Probably from one of the lockers,
6 because they usually worked overnights.

7 THE COURT: Do you know who brought it to you?

8 THE WITNESS: Within the lockers, it would be
9 Michelle McSpadden. Everything else was coming
10 through Michelle McSpadden at that time.

11 Q (MS. LIVESAY) Do you have -- just so we're sure,
12 do you have documentation? I think what the Judge is
13 asking do you have the actual documentation showing
14 who put that into evidence for the first time?

15 A I don't have that particular one on hand. It is
16 a voucher they create, and what I get is a normal
17 property sheet like this. It wasn't printed out for
18 that particular one, but any other time that I actually
19 do something with the evidence, then I get something
20 different. So like for the GSR kits, they are
21 different (indicates).

22 Q Okay. Okay. So you don't know who turned that
23 phone into evidence?

24 A No. No.

25 MS. LIVESAY: Nothing further.

TRACY RUSSELL - DIRECT EXAMINATION

1 MR. LONG: No questions.

2 THE COURT: You may step down. Thank you. Will
3 you need this witness?

4 MR. LONG: No objection.

5 THE COURT: You are released from the subpoena.

6 MS. LIVESAY: At this time the State calls Tracy
7 Russell to the stand.

8 (TRACY RUSSELL, having been duly sworn,
9 testified as follows:)

10 THE CLERK: State your name and spell your last
11 for the Court.

12 THE WITNESS: Tracy Russell, R-U-S-S-E-L-L.

13 DIRECT-EXAMINATION

14 BY MS. LIVESAY:

15 Q Where are you currently employed?

16 A City of Myrtle Beach Police Department.

17 Q How long have you been employed there?

18 A 26 years.

19 Q What are your current responsibilities?

20 A I'm a detention sergeant.

21 Q What were your responsibilities back in February
22 of 2013?

23 A I was detention supervisor.

24 Q At the detention center, do you keep records and
25 documentation?

TRACY RUSSELL - DIRECT EXAMINATION

1 A Yes, we do.

2 Q Is that documentation kept in the usual course of
3 business?

4 A Yes, it is.

5 Q And does that documentation include items that
6 are brought in by the inmates?

7 A Yes, it is.

8 Q And if someone checks that item out, is that also
9 documented?

10 A Yes, it is.

11 (State's Exhibit 39 marked.)

12 Q If you don't mind, tell the Court what we're
13 looking at, State's 39?

14 A Inmate property report.

15 Q And is it regarding an inmate's items that he
16 came in with?

17 A It is personal belongings taken from the inmate
18 and put into a property room.

19 Q If you don't mind, tell this jury what inmate
20 that is.

21 A The inmate is Jamal Marquises Daniels.

22 Q If you don't mind, tell this Court what items are
23 listed on that --

24 MR. LONG: Object. Until the document is in
25 evidence, I don't think she's permitted to read from

TRACY RUSSELL - DIRECT EXAMINATION

1 it.

2 MS. LIVESAY: He's right. At this time we wish
3 to place it in evidence.

4 THE COURT: She identified the property sheet?

5 Q (MS. LIVESAY) What is that document exactly?

6 A This document lists the items removed from the
7 person at the time of booking when they come into jail.

8 Q Is it kept in the usual course of business?

9 A Yes, it is.

10 Q Has it been tampered in any form or fashion?

11 A What I'm reading, no, except one piece of
12 property looks like it was removed.

13 THE COURT: Mr. Long?

14 MR. LONG: I would imagine under the Business
15 Records Act we have no objection.

16 THE COURT: Without objection, 39.

17 (State's Exhibit 39 admitted.)

18 Q (MS. LIVESAY) At this time State's 39, you
19 testified earlier that that is the belongings off of
20 Jamal Daniels; is that correct?

21 A Yes, it is.

22 Q And if you don't mind, tell this jury what items
23 or belongings were taken into custody.

24 A He had an earring, Chapstick, lighter, a brown
25 belt and cell phone.

TRACY RUSSELL - DIRECT EXAMINATION

1 Q And if you don't mind, tell this Court and the
2 jury what, if anything, was taken out of his belongings
3 for further investigation?

4 A What was removed was a cell phone.

5 Q And who took that cell phone?

6 A Detective Clothier.

7 Q And it was given to him; is that correct?

8 A Yes, it was.

9 Q And during the time it was being held by the
10 Myrtle Beach Detention Center, did anyone tamper with
11 that phone in any form or fashion?

12 A No, they did not.

13 Q So it went from Jamal Daniels to the detention
14 center to Steven Clothier?

15 A Yes, it did.

16 Q Now, as part of records, do you also take
17 photographs -- would you also have taken a photograph
18 of Jamal Daniels?

19 A Yes, I would have.

20 Q And if I showed you that photograph, would be
21 able to tell me whether or not that was documentation
22 from the Myrtle Beach Police Department?

23 A Yes.

24 Q Could you tell me if it is kept in the ordinary
25 course of business?

TRACY RUSSELL - DIRECT EXAMINATION

1 A Yes.

2 (State's Exhibit 40 marked.)

3 Q (MS. LIVESAY) I'm showing you State's 40; do you
4 recognize that?

5 A Yes, I do.

6 Q Is it documented who that person is?

7 A Yes, it does.

8 Q And is it documented their appearance when they
9 came in on that date?

10 A Yes, it does.

11 Q And is this kept in the normal course of
12 business?

13 A Yes, it is.

14 MS. LIVESAY: At this time the State wishes to
15 place State's 40 into evidence.

16 MR. LONG: Without objection.

17 THE COURT: Without objection, 40.

18 (State's Exhibit 40 admitted.)

19 Q (MS. LIVESAY) If you don't mind, describe how
20 this person appears, or describe the way they look.

21 A It is a booking photo of their face.

22 Q Is it black person or white?

23 A Black male.

24 Q Do you notice anything about that black male that
25 is unique?

TRACY RUSSELL - DIRECT EXAMINATION

1 A He has -- looks like he has gold teeth and maybe
2 the eyebrows shaved.

3 Q Is this a picture of Jamal Daniels?

4 A Yes, it is, a booking photo.

5 MS. LIVESAY: I'll publish 40 to the jury at this
6 time.

7 (Published to the jury.)

8 Q (MS. LIVESAY) This is Jamal Daniels?

9 A Yes, it is.

10 THE COURT: Ms. Livesay, can I see that exhibit?
11 Counsel.

12 (Whereupon, a bench conference was had.)

13 THE COURT: Let the record reflect on the reverse
14 side is -- one side is color, one is in black and
15 white, and Counsel has no objection to it being
16 introduced as one exhibit.

17 Q (MS. LIVESAY) That picture of Jamal Daniels, is
18 that Jamal Daniels that had the cell phone when he
19 entered the detention center?

20 A Yes, it is.

21 Q And is that the same inmate that Steven Clothier
22 took the phone out for further investigation?

23 A Yes, it is.

24 MS. LIVESAY: No further questions for this
25 witness, Your Honor.

TRACY RUSSELL - CROSS-EXAMINATION

1 THE COURT: Any questions?

2 MR. LONG: Yes, Your Honor, briefly.

3 CROSS-EXAMINATION

4 BY MR. LONG:

5 Q The teeth, were they implants or covers?

6 A I can't answer that.

7 Q Were they an item that should have been logged in
8 on the inmate property form when someone -- I mean if
9 he could remove them, they should have been removed and
10 logged in?

11 A Not necessarily. They would remove jewelry and
12 personal items. We do medical screening, and if they
13 answer okay to the medical and mental screening, they
14 don't have to remove something like that if it is
15 removable.

16 Q Removable teeth you deal with on occasion, it is
17 like covers at the jail?

18 A No, we don't.

19 Q You don't deal with that? Are you familiar with
20 cosmetic or jewelry teeth that people put on their
21 teeth?

22 A I have seen them, yeah.

23 Q Those are made of gold, I would assume, or some
24 gold color metal?

25 A Could be.

WILLIAM "BILL" STAIR - DIRECT EXAMINATION

1 Q When they are logged in with these, do you have
2 to ask if they are removable or if they are jewelry?

3 A In our standard practice, we don't.

4 Q So if the cover is gold, true gold, you don't
5 think it is advisable that he not have gold while in
6 custody?

7 A We don't.

8 Q You don't do that, okay. So as far as you know,
9 you don't know whether they were implants or just
10 covers?

11 A That's correct.

12 MS. LIVESAY: No further questions, and this
13 witness can be excused.

14 MR. LONG: Without objection.

15 THE COURT: You may step down. Thank you for
16 your testimony, and you are released from your
17 subpoena.

18 MS. LIVESAY: We call Bill Stair.

19 (WILLIAM STAIR, having been duly sworn,
20 testified as follows:)

21 THE CLERK: State your name and spell your last.

22 THE WITNESS: William Stair, S-T-A-I-R.

23 DIRECT-EXAMINATION

24 BY MS. LIVESAY:

25 Q Mr. Stair, if you don't mind, tell this Court

WILLIAM "BILL" STAIR - DIRECT EXAMINATION

1 where you are currently employed.

2 A City of Myrtle Beach Police Department.

3 Q How long have you been employed there?

4 A Almost 10 years.

5 Q And what are your current responsibilities?

6 A Currently assigned to the Crime Scene Unit.

7 Q Where were you working back in February of 2013?

8 A I was assigned to the Crime Scene Unit at that
9 time.

10 Q If you don't mind, tell this jury about what your
11 responsibilities were in that position.

12 A In the Crime Scene Unit I'll respond to any crime
13 scene, photograph, search for fingerprint DNA, any
14 trace evidence, I download video surveillance, cell
15 phone extractions, scan the scenes with scanner.

16 Q Are you familiar with the case we are here for
17 today?

18 A Yes.

19 Q And if you don't mind, in this case tell this
20 jury what, if anything, you did to assist in the
21 investigation.

22 A In this case I was provided a cell phone and
23 search warrant for the cell phone to extract the
24 contents, and I did a fingerprint examine.

25 Q Now, who did you get the cell phone from?

WILLIAM "BILL" STAIR - DIRECT EXAMINATION

1 A Detective Clothier.

2 Q I'll show you what is marked as State's Exhibit
3 38, would you look in there and tell me if you
4 recognize what that is?

5 A Appears to be a T-Mobile ZT cell phone.

6 Q When you download a cell phone using Cellebrite,
7 does it indicate what kind of phone it is on that
8 report?

9 A Yes, it does.

10 Q And did you in this particular case download the
11 defendant's cell phone?

12 A Yes, I did.

13 Q I'll show you what is marked as State's Exhibit
14 No. 7. Take a look and tell this Court if you
15 recognize what that is.

16 A Appears to be the cell phone report that was
17 created when I extracted the data.

18 Q Is that the report that Cellebrite created for
19 you?

20 A Yes, it is.

21 Q Has it been, to your knowledge, tampered with in
22 any form or fashion?

23 A Does not appear to.

24 Q And you can breeze through it if you want, look
25 through it.

WILLIAM "BILL" STAIR - DIRECT EXAMINATION

1 A (Witness examines document.) Appears to be the
2 same kind of report that prints out, and I see the data
3 showing the number for the phone.

4 MS. LIVESAY: At this time the State wishes to
5 place State's 7 into evidence.

6 MR. LONG: I don't think the report is
7 appropriate, Your Honor. I think the witness can
8 testify what was -- what happened as a result of his
9 investigation without putting the actual report in
10 evidence.

11 THE COURT: I think, Ms. Livesay, we need to have
12 him give us information, because there is a question
13 as to whether it is even relevant. What did he get
14 that is relevant?

15 MS. LIVESAY: Yes, sir, Your Honor. He can look
16 at the report and indicate what phone it was.

17 THE COURT: Certainly.

18 Q (MS. LIVESAY) If you don't mind, look at the
19 report and tell us whether or not that indicates to
20 you which phone and which case that download was in
21 reference to.

22 A On the front page of the report it shows which
23 model was detected, which is the same model phone I
24 downloaded, a Brand ZTE, Model V768 cell phone. It has
25 a unique number, IMEI number. It is different from

WILLIAM "BILL" STAIR - DIRECT EXAMINATION

1 every phone, like a serial number. It is a match to
2 the phone I saw in question the day I downloaded it.

3 Q Can you look at that phone that I just handed you
4 and tell me whether or not that was the phone that you
5 Cellebrited?

6 A Yes. I have to check under the battery.

7 THE COURT: What is on it that is relevant to
8 this case, is where I'm going?

9 MS. LIVESAY: Your Honor, I think what I'm trying
10 to do for the Court is to establish that that is,
11 indeed, Jamal Daniels' phone that he downloaded, which
12 is that information in the report.

13 THE COURT: All right.

14 MS. LIVESAY: I wanted to be sure.

15 THE COURT: He can testify to that if it tells
16 him whose phone it is, that is good, if it does.

17 A Yes, it is the same cell phone.

18 Q (MS. LIVESAY) Okay. So the report that is
19 marked as State's Exhibit 7 is the report from that
20 phone?

21 A Yes.

22 Q And if you don't mind, tell this Court what is on
23 that report.

24 A Phone downloaded the contact list, images and
25 videos off the phone. In the contact list saved,

WILLIAM "BILL" STAIR - DIRECT EXAMINATION

1 Contact No. 26 was one of the victims' cell phone
2 numbers.

3 MS. LIVESAY: Your Honor, the State wishes to
4 place Item 7 and the phone, 38, into evidence.

5 THE COURT: Thank you. Now, Mr. Long?

6 MR. LONG: I don't think still there is an
7 appropriate chain of custody on the phone. The report
8 is not necessary. This witness can testify what was
9 extracted from the phone.

10 THE COURT: I think he has. I believe it meets
11 401 and 403 as well, and I'll allow it.

12 (State's Exhibits 7 and 38 admitted.)

13 Q (MS. LIVESAY) So this Court understands, how is
14 that report generated from that particular phone?

15 A When we attached a phone to Cellebrite, it is a
16 device, small box, you attach a phone on one side, and
17 any kind of storage device on the other, such as a
18 thumb drive. When you select the model to download,
19 anything it can retrieve, in this case the contact
20 list, images and videos, it extracts that data and
21 makes a copy on the a thumb drive and makes it in a
22 report form like this.

23 Q So that report is a copy of all the contacts in
24 that phone?

25 A Yes, it is.

WILLIAM "BILL" STAIR - CROSS-EXAMINATION

1 Q Did you do anything else, Investigator, to assist
2 in this case other than just download the defendant's
3 phone?

4 A The only thing I did with this case was I'm also
5 one of the fingerprint examiners for the department,
6 and I entered fingerprints for Crime Scene Officer
7 Humes.

8 Q Did any of those match up to anyone other than
9 the victim?

10 A No.

11 MS. LIVESAY: Nothing further.

12 CROSS-EXAMINATION

13 BY MR. LONG:

14 Q When was it that you did the download of the
15 phone?

16 A April 26, approximately 13:30 hours.

17 Q So the incident was February 28, so this was
18 almost two months from the incident date, correct?

19 A I believe so, yes.

20 Q And the contact list on the cell phone, for those
21 of us who don't know or don't use it, whatever, it is
22 something created by the person using the phone to save
23 a telephone number or name or message or something of
24 that nature, correct?

25 A Yes.

WILLIAM "BILL" STAIR - CROSS-EXAMINATION

1 Q And so you can't tell us who saved that
2 information, can you?

3 A No.

4 Q You really can't even tell us whose phone that
5 was any time prior to April 26 or April 28, whenever
6 the phone was taken from someone, correct?

7 A I was provided the phone that date from Detective
8 Clothier.

9 Q So you don't know who owned the phone, who used
10 the phone, who set up contacts or anything, you only
11 know what was on the phone?

12 A I was informed that it was taken from the
13 defendant.

14 Q But you don't know who used the phone over the
15 previous two months, what they did with it, et cetera?
16 You can't say whose phone it was or who entered the
17 contact information, correct?

18 A Correct.

19 Q When was this contact information created or
20 saved on the phone?

21 A I do not know that data, I just have the data
22 downloaded that day.

23 Q And if you had looked at the data, doesn't it
24 have a create date or save date when that contact
25 information was saved to the phone?

WILLIAM "BILL" STAIR - CROSS-EXAMINATION

1 A I would have to check the contact list. It does
2 not tell me that information, when it is downloaded.

3 Q I'm curious, I assume you have to be computer
4 savvy to run this or know what you are doing when you
5 are using this?

6 A On the Cellebrite device, you have to plug the
7 phone in, pick a model and hit start. It does all the
8 work.

9 Q But you have to interpret the results, don't you?

10 A It puts it into a form and shows you everything
11 that comes off of the phone.

12 Q If you save a file on a computer, it immediately
13 will save when it was created, et cetera, things of
14 that nature, correct?

15 A Correct.

16 Q Cell phones are no different -- they are
17 computers, aren't they?

18 A Yes.

19 Q So on that cell phone there is a date and time
20 when that contact was saved to the phone?

21 A Should be, but you have to check the phone. On
22 the report it does not tell you that.

23 Q Doesn't tell you that, or you didn't look for
24 that?

25 A It just lists the contacts.

WILLIAM "BILL" STAIR - CROSS-EXAMINATION

1 Q But you can open the contact and determine when
2 it was created, et cetera, things of that nature?

3 A Possibly.

4 Q How many total contacts were on this telephone?

5 A I have to check the list. 143.

6 Q How does one become Contact No. 26? Is it done
7 by day it was created, alphabetized or assigned Contact
8 26?

9 A Should be the 26th contact he did on his list in
10 whatever order he has them listed.

11 Q So are you saying the list can be modified to be
12 listed by date or by alphabet or by various whatever
13 means?

14 A I'm not familiar with the phone model, but you
15 can adjust them. Usually it goes by alphabet, but it
16 can go by date, however you want to set it up. It
17 varies from phone to phone.

18 Q If it was done by alphabet, the contact's name I
19 believe on this was "New Jack"?

20 A New Jack R-I-2.

21 Q So "N" would be the operative letter for it to
22 alphabetized?

23 A If it was set that up way.

24 MR. LONG: Thank you.

25 MS. LIVESAY: Nothing further for this witness.

WILLIAM "BILL" STAIR - CROSS-EXAMINATION

1 He can be excused.

2 MR. LONG: Without objection.

3 THE COURT: You are released from your subpoena.

4 Thank you for your testimony.

5 MR. LONG: Since we didn't take our morning break
6 earlier and kept going, is it appropriate to take a
7 break?

8 THE COURT: Sure. Sure we can take a break.

9 MR. LONG: Thank you.

10 THE COURT: Mr. Ropp, take the jury.

11 (The jury exits at 10:43 a.m., and the
12 following is heard out of the presence of the jury.)

13 THE COURT: All right. We're at ease for 15
14 minutes.

15 (A recess was taken.)

16 THE COURT: How many do you have?

17 MS. LIVESAY: We have two more witnesses, Judge.

18 THE COURT: Mr. Helms wanted to work in a plea.

19 (The jury enters at 11:09 a.m., and the
20 following is heard in the presence of the jury.)

21 THE COURT: Call your witness.

22 MS. LIVESAY: The State calls Todd MacPherson to
23 the stand.

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

TODD MacPHERSON - DIRECT EXAMINATION

1 THE WITNESS: Todd Christopher MacPherson,
2 M-A-C-P-H-E-R-S-O-N.

3 DIRECT EXAMINATION

4 BY MS. LIVESAY:

5 Q If you don't mind, tell this jury where you are
6 currently employed?

7 A Myrtle Beach Police Department.

8 Q How long have you been employed there?

9 A Approximately 18 years.

10 Q And what kind of training have you undergone
11 since with the police department?

12 A I went to South Carolina Criminal Justice Academy
13 in 1998, had homicide investigation, domestic homicide
14 investigation, theft investigation classes, just a
15 lot --

16 Q Have you had consistent training throughout the
17 18 years you've been there?

18 A Yes. We go to in-service training yearly, and I
19 had a lot of additional training on top of that.

20 Q And if you don't mind, tell them what your
21 current responsibilities are at the police department.

22 A I'm a detective assigned to the investigation
23 division.

24 Q And if you don't mind, tell them what your
25 responsibilities were in February of 2013?

TODD MacPHERSON - DIRECT EXAMINATION

1 A I was a detective assigned to the investigative
2 division.

3 Q If you don't mind -- we are here for a case
4 against Jamal Daniels --

5 A I'm sorry, can you give me the day on the last
6 question? What was the day on the last question?

7 Q What were you currently employed doing in
8 February of 2013?

9 A In February I was assigned to beach patrol. I
10 didn't go to investigations until March, so the next
11 month.

12 Q So in February of 2013 you were not in an
13 investigator?

14 A No. I was assigned to the beach patrol.

15 Q But you would assist as necessary in
16 investigations?

17 A I was totally reassigned to investigations in
18 March.

19 Q Now, in February of 2013 did you happen to have
20 an occasion to assist in the case against Jamal
21 Daniels?

22 A I did in April. It was April 23rd, 2013 by the
23 time I assisted in this case.

24 Q Now, I'm showing you what is marked as State's
25 Evidence No. 1; do you recognize that?

TODD MacPHERSON - DIRECT EXAMINATION

1 A I do.

2 Q What is it?

3 A It is a photo line-up. First sheet is photo
4 line-up advisory, and the second is a six photo
5 line-up.

6 Q And is your signature anywhere on that?

7 A It is on the first sheet of the photo line-up
8 advisory.

9 Q And were you the one that showed Katrina Daniels
10 the photo line-up?

11 A I was.

12 Q If you don't mind, tell this jury how that goes.
13 What is that procedure?

14 A In this particular case, Detective Clothier sent
15 out an E-mail to all detectives stating he was going to
16 be out of the office, that he was going to have a
17 visitor come and view a line-up, and that the line-up
18 was on a refrigerator in our office. I was working the
19 office. A police cadet came and said a visitor for
20 Detective Clothier was at the office and was there to
21 view a line-up. When I got the line-up off of the
22 refrigerator, how we do it is this photo line-up
23 advisory is on the outside of a manila envelope. On
24 the inside of the manila envelope is an actual line-up.

25 Q If you don't mind, tell this jury what date you

TODD MacPHERSON - DIRECT EXAMINATION

1 met with Katrina Daniels?

2 A April 23, 2013.

3 Q When you met with her was she with anyone, or by
4 herself?

5 A She was alone.

6 Q When she looked at the photo line-up tell this
7 jury was anyone present other than you and her looking
8 at this documentation?

9 A No. It was just her -- me and her.

10 Q Now, did you know at that time anything about the
11 case?

12 A No, I knew nothing about the case.

13 Q Did you know whether or not the defendant was
14 even in the line-up?

15 A No.

16 Q Okay.

17 A That is one of the things that we read also in
18 this advisory before we show it to them.

19 Q So you had not even seen the line-up?

20 A No, I took no interest. I was new to
21 investigations. It wasn't my case. I was assigned my
22 own cases. I really had no interest in it. It
23 happened while I was on beach patrol, and on beach
24 patrol we had a total different assignment.

25 Q Did you even know which one in that photo line-up

TODD MacPHERSON - DIRECT EXAMINATION

1 was Jamal Daniels?

2 A No.

3 Q If you don't mind, tell this jury what happened
4 once you showed Katrina Daniels the line-up?

5 A Okay. Basically I read this -- can I read this?

6 Q You can show it to them if you want to.

7 A This is the front part of the manila envelope,
8 and I would read this. First I would have her sign and
9 date right here, and I would do the same underneath it,
10 and then I read this: I'm going to show you a group of
11 photographs. This group of photographs may or may not
12 contain a picture of the person who committed a crime
13 now being investigated. Keep in mind that hair styles,
14 beards and mustaches may be easily changed. Also,
15 photographs may not always depict the true complexion
16 of a person. When you have looked at all of the
17 photos, tell me if you recognize any individual in this
18 line-up. Do not discuss this line-up with other
19 witnesses.

20 So I read that to her and I handed her the closed
21 envelope. She opened it and she immediately started
22 crying. She said, Oh, my God, I didn't think I would
23 ever see him again. And I said, Are you making a
24 positive identification? She said, Yes. I said, You
25 need to circle and either sign or initial next to the

TODD MacPHERSON - CROSS-EXAMINATION

1 picture. She said, That is him. That's him. I'm a
2 hundred percent sure.

3 Q Did she sign and circle anybody that she said she
4 was 100 percent certain was him?

5 A Yes.

6 Q What number was that?

7 A No. 2.

8 Q And is her signature on that picture?

9 A Yes. You can see it right there.

10 Q That is her signature?

11 A Yes.

12 Q At any point did you suggest any particular
13 picture to this victim?

14 A No.

15 Q How long did it take her to pick out No. 2?

16 A It seemed instantaneous.

17 Q Was there anyone else even around to suggest a
18 particular picture?

19 A No.

20 Q Was it just you and her in the police department
21 when this happened?

22 A Yes. In the police annex.

23 MS. LIVESAY: Nothing further.

24 CROSS-EXAMINATION

25

TODD MacPHERSON - CROSS-EXAMINATION

1 BY MR. LONG:

2 Q Detective McPherson, you will be celebrating your
3 third year anniversary this month, is that correct, of
4 being detective?

5 A Yeah, I guess last month.

6 Q So you are now three years into being a
7 detective?

8 A Correct, but I had a previous stint, assigned to
9 detectives, but then reassigned.

10 Q How many total years do you have being a
11 detective?

12 A I would say roughly about seven or eight.

13 Q Are you assigned as lead detective on any cases
14 now?

15 A Yes. We are assigned by our supervisors. You
16 just pick up cases as they come along. They are either
17 assigned to you, or when you are on duty and they
18 occur, you take them yourself.

19 Q And is the correct term you become the lead
20 investigator, or is it just your case?

21 A You can use either one, they are interchangeable.

22 Q Either lead or that is your case means you are
23 the chief or top investigator on the case, correct?

24 A Correct.

25 Q Now, either not being lead investigator on other

TODD MacPHERSON - CROSS-EXAMINATION

1 cases you are working, or being the lead investigator
2 on cases you are working, other officers also assist
3 you in investigation, correct?

4 A Correct.

5 Q When those other officers either at your request
6 or other officers' request or something pops up covers
7 something for your case, then they would prepare
8 supplemental reports, incident reports, things of that
9 nature and make notes for your file; is that correct?

10 A Correct.

11 Q And if it is not your case, a lead investigator
12 asks you go check this out for me, I don't have time,
13 I'm doing this, go find out this, then you'll prepare a
14 supplemental report or investigative report that goes
15 into his file -- his or her file, correct?

16 A Correct.

17 Q You use those supplemental reports in the other
18 investigator's duties in your case all the time
19 correct?

20 A Correct.

21 Q And those supplemental reports, are they
22 maintained computer records and things at the police
23 department? Do you type them in on a computer and they
24 are saved to computer?

25 A Correct.

TODD MacPHERSON - CROSS-EXAMINATION

1 Q Do you alert in any way -- when you type up, say,
2 lead detective Joe Blow, if you are doing something on
3 his case and you type up the report on that, do you
4 have an alert or something, whatever, that is sent to
5 him as far as this is what you asked me to do and this
6 is what I did and found?

7 A No. In this particular case, I sent Detective
8 Clothier an E-mail telling him, hey, this is what
9 occurred, because no alert pops up.

10 Q Certainly you would have done or could have done
11 a supplemental report or something that would have gone
12 into this case file, correct?

13 A Correct.

14 Q This is assigned to that person?

15 A Correct.

16 MR. LONG: Nothing further.

17 MS. LIVESAY: Nothing from the State.

18 THE COURT: You may step down. Thank you very
19 much for your testimony. You are excused and released
20 from your subpoena.

21 MS. LIVESAY: The State calls Detective Clothier
22 to the stand.

23 (STEVEN CLOTHIER, having been duly sworn,
24 testified as follows:)

25 THE CLERK: State your full name and spell your

STEVEN CLOTHIER - DIRECT EXAMINATION

1 last for the Court.

2 THE WITNESS: Steven Clothier, C-L-O-T-H-I-E-R.

3 DIRECT-EXAMINATION

4 BY MS. LIVESAY:

5 Q Tell this jury a little bit about how long you
6 have been with Myrtle Beach Police Department?

7 A September of this year I'll be employed with the
8 City of Myrtle Beach 17 years.

9 Q If you don't mind, tell them a little bit about
10 your current responsibilities.

11 A My current responsibilities are as a sergeant on
12 the waterfront division, which is right on the
13 Boulevard by the Sky Wheel, from Third South to 21st
14 South. I was promoted to sergeant back in December.

15 Q What were your responsibilities in February of
16 2013?

17 A In 2013 I was assigned to the investigative
18 division in violent crimes section.

19 Q And at that time, did you have an occasion to
20 work on the case that we're here for today against
21 Jamal Daniels?

22 A Yes.

23 Q If you don't mind, tell this Court and jury how
24 you became involved in this case?

25 A I was off duty at the time. I don't remember if

STEVEN CLOTHIER - DIRECT EXAMINATION

1 I was already home working previously, but I received a
2 call from my lieutenant that morning, or that evening,
3 on the 28th around 9:55. My lieutenant at the time
4 was Lieutenant Furlong. He asked me to respond to
5 Grand Strand Hospital to assist another detective that
6 was already on scene up there, and he asked me to just
7 help him out.

8 Q And when you went to the hospital, what
9 information did you gain at that time?

10 A I'm not sure if I met up with the reporting
11 officer or met up with the detective, but I was just
12 kind of giving an overview of what happened on
13 Jefferson Place. We don't go into extreme details
14 because it is important for me to go to the victim and
15 try to get the information from them, but I did know
16 there was a shooting, two victims involved. I can't
17 recall if a description of the suspects were given to
18 me, but that is what I obtained from the victims.

19 Q And when you were at the hospital assisting, were
20 you able to gain information to lead you to believe who
21 the suspects were in this case?

22 A I was. I spoke to Katrina Daniels first. She
23 was in a room by herself. If I could read my notes
24 that I have?

25 Q Yes. Yes.

STEVEN CLOTHIER - DIRECT EXAMINATION

1 A She said that her and Laura went to Racepath
2 earlier in the evening to buy some drugs, and she said
3 she met a guy named Polo. She stated that Polo -- I
4 don't know how to spell it, so in my notes I spelled it
5 P-O-L-L-O. She didn't spell it for me, that is just
6 the way I spelled it. She stated that they bought five
7 crack rock for a hundred dollars, and that that was the
8 first time she ever saw him. They went back home to
9 Jefferson Place, smoked it up and wanted some more, so
10 they made a phone call to him. They didn't want to go
11 there, so he came to their residence.

12 She further advised that once he was inside, they
13 didn't get the same quantity that they ordered, that
14 he advised that he would get the rest of it. She said
15 that he left. Then she said a short time later he
16 came back and stated that he found some in his car.
17 They went upstairs to make a deal, and a short time
18 later they heard a knock at the door. Laura followed
19 the defendant named Polo downstairs, and that is when
20 Katrina heard a shot.

21 Q Now, were you able to get a description of who
22 Polo was?

23 A Yes. I didn't put it in my narrative, but it is
24 in the interviewed recording, interview as well. I'm
25 not sure who I spoke to, but he was described as clean

STEVEN CLOTHIER - DIRECT EXAMINATION

1 cut, black male, tall, slender, droopy eyes, short
2 cropped hair is the description that I got.

3 Q Were you able on further investigation to
4 determine who goes by Polo?

5 A I did. After interviewing both victims, I
6 actually responded to Jefferson Place to see if they
7 needed anything. I didn't know if I was going to be
8 the case manager or not, so I responded kind of wanted
9 to take a look around the house. A search warrant was
10 done, and I actually was one of officers that helped
11 Crime Scene look for casings or bullet holes. I may
12 have spent maybe an hour or so at the scene, and then I
13 went back to the office. We have a computer system set
14 up called RMS, I don't know what it really stands for,
15 but it keeps track of everybody we've arrested, keeps
16 track of anybody that has a traffic accident, anyone
17 that has been a victim or a suspect or any information
18 about anyone, we can go in and look and see if they are
19 in our computer. So what I did is -- you can type
20 in -- it is called a moniker, kind of an AKA, per se,
21 and I typed in Polo, and Jamal Daniels popped up.

22 Q At that time did you immediately just go out and
23 detain Jamal Daniels?

24 A No. What I did was -- after receiving the
25 information that there was a subject named Polo --

STEVEN CLOTHIER - DIRECT EXAMINATION

1 Q Let me ask you this, Detective Clothier, I'm
2 sorry --

3 A Okay.

4 Q When Jamal Daniels popped up and you saw him, was
5 that picture consistent with the description that the
6 victims gave you?

7 A Yes.

8 Q And then what did you do?

9 A I can't say that a picture popped up. I don't
10 recall how his name popped up. If his name popped up
11 from a traffic accident, it won't show a picture, but
12 his name popped up somehow.

13 Q Okay.

14 A So what I did was I sent out just kind of like an
15 information BOLO to the police officers, just police
16 E-mail and just asked is anyone familiar with a guy
17 named Polo who drives a white in color Sport Trac,
18 because that is all the information I had, I didn't
19 have anything else.

20 Q At that time, without telling me what the officer
21 said, did you learn any further information about who
22 Polo was?

23 A I learned from another officer who thought he
24 knew who Polo was, but that information didn't turn
25 out. The name Jamal Daniels I think was -- really not

STEVEN CLOTHIER - DIRECT EXAMINATION

1 sure how it came about, but there was a J. Reuben
2 picture that had his picture and a photo of him.

3 Q And then once you figured it out at that time, or
4 suspect that Jamal Daniels was Polo, what did you do?

5 A I went ahead and submitted a photo line-up
6 request to SLED, and I did that on March 27th.
7 Because there was no photo that we had -- let me
8 reverse. When you request a photo through SLED, it is
9 through an E-mail. There is a specific address that is
10 secure. They give us a form to fill out, and what
11 they'll do is they'll go ahead and use a person's
12 driver's license picture, that is the normal. However,
13 he didn't have a driver's license picture. So what I
14 did is I cut out the J. Reuben picture and I sent it to
15 SLED on the 27th, and I said use this picture,
16 because that is all the picture I had. I submitted the
17 form to SLED along with that pictures, and then they
18 sent me a line-up back.

19 Q I'm going to show you what is marked as State's
20 Evidence No. 1; do you recognize that?

21 A Yes, ma'am, I do.

22 Q And is that the line-up that SLED sent you back?

23 A Yes, ma'am.

24 Q And is that the line-up that you put out for
25 Katrina Daniels to use to pick out whether or not she

STEVEN CLOTHIER - DIRECT EXAMINATION

1 saw the suspect?

2 A Yes, that is the one I left out. I don't really
3 recall where I left it, but I do recall leaving an
4 E-mail because I was going to be gone for several days
5 and requesting whoever was working to please show the
6 line-up. I wasn't really sure who would show up, I was
7 hoping at least one of them would show up.

8 Q And once the line-up was showed, did you get it
9 back or get information as to who was picked out?

10 A I received an E-mail from Detective McPherson
11 that stated, hey, I met with Katrina and she picked out
12 No. 2, that is the E-mail I received.

13 Q And he didn't know who No. 2 was?

14 A No.

15 Q If you don't mind, stand up and show that line-up
16 to the jury real quick.

17 A (Indicates.)

18 Q Which picture is Jamal Daniels?

19 A Jamal Daniels is going to be in the top middle,
20 and that is No. 2 (indicates).

21 Q Is No. 2 the picture that was --

22 A It is initialed right on his picture and circled
23 No. 2.

24 Q Thank you. Did that confirm that Jamal Daniels
25 was Polo?

STEVEN CLOTHIER - DIRECT EXAMINATION

1 A Yes.

2 Q Did you continue to investigate the case?

3 A I did. Once I received confirmation that Katrina
4 did pick out No. 2, when I came back to work I went
5 ahead and got warrants, they were signed and then I
6 prepared a BOLO for Jamal Daniels and sent out to all
7 police.

8 Q Now, was any picture sent out prior to her
9 picking him out of the line-up? Was any pictures
10 published to the public? Was any pictures of Jamal
11 Daniels published to the public?

12 A No, because I had no idea who Polo was until she
13 confirmed it.

14 Q Now, once he had been detained, were you able to
15 gain access to a cell phone that was on him?

16 A Yes. I found out that after the warrants were
17 signed, that Jamal Daniels was actually picked up close
18 to the police department. I'm not sure the reason why
19 he was close by, but he was picked up a short time
20 later.

21 Q Did you gain access to the cell phone on him at
22 that time?

23 A I did. I wasn't the investigator that actually
24 talked to him, but Detective Kitelinger -- I don't know
25 if it was by E-mail or phone -- but advised me, hey, I

STEVEN CLOTHIER - DIRECT EXAMINATION

1 spoke to him, he has a phone in evidence, you may want
2 to retrieve it.

3 Q Did you go get the phone?

4 A I did.

5 Q Once you got the phone, what did you do with it?

6 A I went ahead and grabbed it. It is customary for
7 us to -- in order to take someone's phone, we have to
8 get a search warrant. So I got a search warrant from
9 our Clerk of Court. I retrieved the phone -- I think I
10 retrieved it first because you need to put specific
11 information on it, phone number, type, color, IEM
12 number, like Officer Humes advised, so it is specific.
13 You can't say a cell phone, because the Clerk of Court
14 is not going to know if this is the phone you are
15 talking about.

16 So once I got it, search warrant signed, I took
17 the phone directly from the police department to the
18 Myrtle Beach Police Annex, maybe a 10-minute drive
19 from Joe White to the Market Common area where their
20 crime scene office is, and gave it to Officer Stair.

21 Q And did that officer download any information off
22 of the phone?

23 A Yes, ma'am.

24 Q And once he downloaded that information, did you
25 review the information as part of your investigation?

STEVEN CLOTHIER - DIRECT EXAMINATION

1 A I did. I reviewed the report printed out.

2 Q I'll show you what is marked as State's Evidence
3 No. 7. This is the phone examination. When you
4 reviewed that, did you recognize any of the phone
5 numbers in that contact list?

6 A I did. I was specifically looking for the phone
7 number for the victim just to see if they had any
8 contact, because she did say that, you know, they spoke
9 by phone, so I was hoping that her number would be in
10 there. So when I was scrolling down, the report
11 started with No. 1, and then made it to No. 26, and
12 that was the victim's phone number.

13 Q If you don't mind, show this jury what you looked
14 through as far as those numbers, and which one you saw
15 as the victim's number?

16 A So this is the photo examine report that is
17 printed from the Cellebrite, but we have several
18 different ones, but I believe that is from Cellebrite.
19 So I kind of looked it over to make sure it was the
20 correct phone and just started going through the
21 contacts looking at everyone's phone numbers and kept
22 going down and kept going down until I got to 26, and
23 No. 26 is the victim's phone number.

24 (Published to the jury.)

25 A It is listed under "New Jack R" -- I don't know

STEVEN CLOTHIER - DIRECT EXAMINATION

1 if that is an "I" or a "1" or "2" under it.

2 Q (MS. LIVESAY) When you looked through that
3 contact list, tell this jury, are the names in
4 alphabetical order?

5 A It doesn't appear there is any order to it. Some
6 of the numbers are not even in alphabetical order, and
7 even the names are not in order. It looks random
8 because you have "V" on this page and then "M" and "R."
9 there is no order to it. I don't know about cell
10 phones, so I don't know why it would do that.

11 Q So none of the names are in alphabetical order?

12 A No, ma'am.

13 Q So "New Jack" was not in any sort of odd place?

14 A No. Everything is out of order.

15 Q And when you looked through the contact list, did
16 you notice if any of the names had symbols associated?

17 A There is a bunch of symbols that had money
18 symbols in front of it.

19 Q Walk through and show the jury.

20 A I don't want to speculate what the dollar signs
21 is, but there would be a dollar sign here and dollar
22 sign here, couple dollar signs.

23 (Published to the jury.)

24 A There is a few dollar signs, but everything is
25 all over the place.

STEVEN CLOTHIER - DIRECT EXAMINATION

1 Q (MS. LIVESAY) So they were not in alphabetical
2 order, and some of them had -- some of the names had
3 money symbols; is that correct?

4 A Yes, ma'am.

5 Q So this is the list you were looking at. Like on
6 the first page it has Darrell, Stilk, Nay (phonetics),
7 none of those are in alphabetical order?

8 A No, ma'am.

9 Q And some for some reason have dollar sign symbol
10 marks on them?

11 A Yes, ma'am.

12 (Published to the jury.)

13 Q (MS. LIVESAY) The number you had for the
14 victims, you saw that in this contact list?

15 A Yes, ma'am.

16 Q Is that the number you were using to contact them
17 about this incident in February all the way up until
18 April?

19 A That is the only number I used.

20 MR. LONG: Could we move back to the witness
21 stand so I can see and hear?

22 THE COURT: Yes, please. Detective Clothier, if
23 you would, return to the stand.

24 Q (MS. LIVESAY) Detective, you looked at the
25 line-up and you say the one that was picked out was

STEVEN CLOTHIER - DIRECT EXAMINATION

1 No. 2, who was, indeed, Jamal Daniels?

2 A Correct.

3 Q And No. 2 is the picture you sent of Jamal
4 Daniels to SLED?

5 A The same one.

6 Q Did you do anything else to further your
7 investigation in this case?

8 A Yes. Jamal had a bond hearing and --

9 Q Mr. Clothier, you can't tell us something that
10 somebody else said. I know what you were going to say.

11 A Okay.

12 Q Other than that, did you collect any other
13 evidence or do anything else?

14 A I collected the bond hearing recording. I
15 prepared search warrants to send to the actual cell
16 phone carrier, because they can give you numbers
17 dialed, called, called numbers, numbers that came in.
18 I was getting the run-around by the cell phone company,
19 one company said it wasn't the number. I would send
20 one to another company, so I never got his cell phone
21 records based on that. That looks pretty much like
22 what I did.

23 Q And, Detective Clothier, when did you become the
24 lead investigator?

25 A I don't really know, because I wasn't the first

STEVEN CLOTHIER - CROSS-EXAMINATION

1 one on scene. Usually the first one on scene is the
2 lead or chief case officer or in charge, however you
3 want to say it. Probably when I was assigned the case.
4 I assume that when I went to the hospital to help
5 interview, I was helping just to interview for the
6 detective just -- they just assigned me the cases.

7 Q So you go out to assist not knowing, and then at
8 some point someone comes to you and says this is your
9 case, follow up on it?

10 A Yeah. Generally, the supervisor of our division,
11 once these reports come in, it could be several days,
12 few days maybe, even up to a week. Once they come into
13 -- the report has to get done, sent to a supervisor,
14 and however long it takes a supervisor to sign it off,
15 and once they sign it off, it either stays within their
16 division, or comes to investigations. In this case, it
17 was a pretty serious case, so it came to
18 investigations. So I'm not sure how long it sat there
19 before it got assigned. Each detective has their own
20 -- it is called a dashboard. So if I sign in, I can
21 see where my cases are. That case popped up, so I knew
22 it was mine.

23 MS. LIVESAY: Nothing further.

24

25

CROSS-EXAMINATION

STEVEN CLOTHIER - CROSS-EXAMINATION

1 BY MR. LONG:

2 Q Detective Clothier, there were multiple
3 inconsistencies of the statements of the witnesses as
4 investigated by the City of Myrtle Beach Police
5 Department; were there not?

6 A There is a couple of differences.

7 Q You, as chief investigator, once you were
8 assigned the case, then all the other interviews of the
9 witnesses done by other officers all became part of
10 this case file, correct?

11 A They eventually get filed in, yes.

12 Q And do you recall reading a report from Officer
13 Campbell who interviewed the victims on the scene, did
14 you review that report as part --

15 A I have a copy of it.

16 Q I'm referring to Page 5, Reporting Officer
17 Campbell A., first full paragraph. Officer Campbell
18 said after speaking with her -- referring to
19 Victim 1 --

20 MS. LIVESAY: Your Honor, if he's reading off a
21 report, I believe that is hearsay. That officer said
22 this --

23 THE COURT: He's on cross-examination, I'm going
24 to give him leeway. Go ahead.

25 Q (MR. LONG) Officer Campbell reported after

STEVEN CLOTHIER - CROSS-EXAMINATION

1 speaking with her, Victim 1, he took cover at the edge
2 of Apartment because he saw a white female, later
3 identified as Victim 2, trying to climb out of the
4 kitchen window. Was that reported --

5 A I'm on Page 5 and I don't see that on here.

6 Q Let me show you the reporting officer narrative I
7 have. I have it highlighted by a star. Is that what
8 Officer Campbell reported? He was the first responding
9 officer there, wasn't he?

10 A This is Page 3 on this original. What is your
11 question?

12 Q Did Officer Campbell report that he was first on
13 scene -- or when he got on scene, after speaking with
14 Victim 1, that he saw a white female climbing out of
15 the kitchen window of the incident location that was
16 later identified as Victim 2?

17 A That is what he has in his report.

18 Q Also, he first spoke with the victims there, and
19 did he not ask them -- they reported they did not know
20 who it was that robbed their house, and it was two
21 black males wearing masks?

22 A That is what he has in his report, yes.

23 Q And later it changes from one black male that
24 they knew something of, and another black male that
25 came in wearing a mask later.

STEVEN CLOTHIER - CROSS-EXAMINATION

1 A That's correct.

2 Q And the story further developed that it was a
3 black male that they bought drugs from that later then
4 came to the house, things of that nature?

5 A Correct.

6 Q When you interviewed the victims, witnesses, I
7 believe it was told to you that Polo and Laura went
8 downstairs after a knock was heard at the home. Polo
9 advised it was his homeboy, so he and Laura went to
10 open the door. Katrina then heard a shot. That was
11 reported to you by the victims; is that correct?

12 A Yes. That is what I wrote in my follow-up, but
13 it would be more specific if you listened to the
14 interview. But I'm pretty sure that that is what the
15 interview stated.

16 Q And at that point in time, neither of them told
17 you, I tried to holler to say, no, they can't let any
18 one else in, or, no, we're not opening the door to let
19 anyone else in, because that would have been in your
20 report, correct?

21 A I don't recall them saying that to me.

22 Q And, of course, when they are talking about Polo
23 and Laura went downstairs, Katrina remained upstairs,
24 didn't she?

25 A Correct.

STEVEN CLOTHIER - CROSS-EXAMINATION

1 Q And Katrina had gunshot residue taken from her
2 hand; is that correct?

3 A I don't know. I wasn't there when it was done.

4 Q But she was upstairs when she heard the shots,
5 supposedly?

6 A Correct.

7 Q You assisted officers in looking for bullet
8 holes?

9 A Correct.

10 Q And shell casings?

11 A Yes.

12 Q And any other evidence of gunshots, correct?

13 A Correct.

14 Q How long after the incident did you arrive on
15 scene?

16 A I was probably at Grand Strand, I would say,
17 probably no more than an hour, and then probably took
18 me maybe 10 minutes to get down to the scene.

19 Q Two hours?

20 A That is probably a good estimate.

21 Q So Officer Campbell was first on scene, and two
22 other officers arrived as backup, correct?

23 A I'm not sure who was there.

24 Q Is there a crime scene log that is kept about who
25 entered the property, when and what time they arrived?

STEVEN CLOTHIER - CROSS-EXAMINATION

1 A I don't recall seeing one.

2 Q Would it -- would you think this is incorrect if
3 Officer Campbell arrived five to eight minutes after
4 the 911 call?

5 A Correct.

6 Q And then the other officers arrived within five
7 minutes of Officer Campbell arriving?

8 A Shortly after, yes.

9 Q Prior to the officers arriving or being notified
10 by the 911 call, someone went back in the residence,
11 correct?

12 A I can't answer that.

13 Q The person identified as Victim 2 was seen trying
14 to get out the kitchen window. That is a downstairs
15 window, correct?

16 A Kitchen window would be downstairs, yes.

17 Q And later, after attempting to get out of the
18 kitchen window, she came out the front door?

19 A I don't know where she came out.

20 Q So she was in the house when Officer Campbell
21 arrived or when Officer Campbell was there?

22 A If that is what his report says.

23 Q Now, we all have trouble with cell phone
24 companies, don't we?

25 A Some do.

STEVEN CLOTHIER - CROSS-EXAMINATION

1 Q And if we need any customer service or support or
2 special attention from phone companies, we run into
3 difficulties, correct?

4 A Some companies.

5 Q As a police officer, you kind of have a little
6 more direct line into, hey, we need these records and
7 we need them now, it is a criminal investigation, send
8 us this stuff, you have a little more pull than the
9 average person, correct?

10 A We have a direct line; I wouldn't say pull.

11 Q The phone records maintained by, I believe it is,
12 T-Mobile, is that the company that had the service on
13 the phone? Who had the service?

14 A I never came to the conclusion who had the
15 service.

16 Q One of those companies would have records that
17 show what time a call was made on February 28 from what
18 number to what number; is that correct?

19 A Correct.

20 Q But you are saying we don't have this, so you
21 just quit and gave up?

22 A I can tell you exactly what I said in my notes.

23 Q You got the run-around, so you quit?

24 A On May 3, I received an E-mail from T-Mobile
25 compliance. I was advised the number, which would be

STEVEN CLOTHIER - CROSS-EXAMINATION

1 Jamal Daniels' --

2 Q What you knew to be Jamal Daniels' number,
3 correct?

4 A The number on the phone I received. Is not
5 associated with a T-Mobile subscriber.

6 How we can obtain a number from anybody -- a cell
7 number -- there is a Website we go to. We type in the
8 number and it states who the carrier is. I typed the
9 number, it comes up as T-Mobile. So I went ahead and
10 submitted a search warrant to T-Mobile. I got an
11 E-mail back that stated it is not associated with a
12 T-Mobile number. Then, somehow an AT&T number popped
13 up, so I called AT&T -- no, it says I sent a subpoena
14 to AT&T. I got an E-mail from AT&T advising me the
15 number was not theirs. I have T-Mobile saying it is
16 not theirs, and I have AT&T saying it is not theirs.
17 So I don't have any idea whose number it is.

18 Q So at that point, you quit?

19 A Probably.

20 Q But there was no question that you had
21 information that the victims had supposedly called him
22 about bringing them drugs, and the dates and times, and
23 things of that nature, would be relevant, germane, in
24 this investigation?

25 A Absolutely. Like I said, the number came back as

STEVEN CLOTHIER - CROSS-EXAMINATION

1 T-Mobile. I submitted a search warrant to T-Mobile,
2 and it says this is not our number, when, in fact, the
3 Website says it is theirs. So then I submit one to
4 AT&T, they say it is T-Mobile's number, but T-Mobile is
5 saying it is not theirs, so I don't know where else to
6 go with that.

7 Q So you quit?

8 A Yes.

9 Q When you interviewed the victims, and I believe
10 you testified they called for Polo because they did not
11 want to go to Racepath, so he agreed to bring drugs to
12 them, correct?

13 A I believe that is what they told me.

14 Q When you arrived on scene back at the incident
15 location, after the hospital, you were there when Crime
16 Scene investigators did a complete search of the
17 property and took photographs and looked for evidence,
18 and things of that nature?

19 A They were already there, so I'm not sure what
20 they did prior to my arrival, but I know that when I
21 responded that I helped them look for a bullet or
22 bullet fragments or holes in the walls.

23 Q Was \$400 crack found at this residence?

24 A I'm not sure. It wouldn't surprise me seeing how
25 it was a drug deal.

STEVEN CLOTHIER - CROSS-EXAMINATION

1 Q As the lead investigator, did you receive any
2 information from Crime Scene officers that they
3 recovered \$400 worth of crack at this residence?

4 A I don't recall, I'm sorry.

5 Q Didn't happen, did it?

6 A I just don't know. It could have, but I don't
7 want to say yes or no.

8 Q If there was \$400 of crack belonging to the
9 victims, would they have been charged with a drug
10 charge?

11 A Not necessarily.

12 Q Why is that?

13 A It is up to the officer. I wasn't the responding
14 officer, so I -- I've seen people get charged, and I've
15 seen people not get charged.

16 Q So the law says it's illegal to possess a
17 controlled substance unless the officer decides not to
18 charge?

19 A It is officer discretion. I wasn't there. If it
20 was found, I can't tell you what the officer did or did
21 not do.

22 Q Does the law state it is illegal to possess a
23 control substance unless an officer decides not to
24 charge you with it?

25 A The law also states it is illegal to speed, but

STEVEN CLOTHIER - CROSS-EXAMINATION

1 people still speed.

2 Q I'm asking if an officer -- if the law says it is
3 illegal to possess a controlled substance unless an
4 officer decides he doesn't want to charge you?

5 A I don't think that is what the law states.

6 Q Thank you, sir. When you spoke to the victims,
7 how did they tell you that they left the residence?
8 Did they both tell you that they jumped out of a second
9 floor window?

10 A I don't recall.

11 Q Is it in your report that they told you that they
12 both exited the second floor bedroom window?

13 A My report is basically a summary of what they
14 stated, but I recall them stating that -- because she
15 had a splint on her leg, that she broke her leg from
16 falling from the second floor.

17 Q I'm looking at Detective Hall's, Page 2, The
18 subject with the gun then left, and Laura jumped out of
19 the bedroom window followed by Katrina. He told them
20 most likely; is that correct?

21 A If that is what he wrote, I assume that that is
22 what he was told.

23 Q They probably both told you the same thing, that
24 they jumped out of the bedroom window?

25 A I would assume they told me that.

STEVEN CLOTHIER - CROSS-EXAMINATION

1 Q Did either victim tell you that they were knocked
2 out by the pistol?

3 A No, sir.

4 Q Unconscious at any time?

5 A I don't recall that, no, sir.

6 Q Did either of the victims tell you that while
7 Polo went out to the car, that the suspect with the gun
8 either got a text message or information on his cell
9 phone or looking at the cell phone while upstairs with
10 them?

11 A No, sir.

12 Q If they had, you would put that in your report?

13 A Not necessarily, but it would be in my interview.
14 This is just basically a quick summary of the gist of
15 what happened. That is why we do an audio recorded
16 interview, those are all the specific details. We
17 don't do transcripts, that would take forever. So this
18 is basically a summary of kind of the gist of what
19 happened.

20 Q Understood. Because you can't type it all?

21 A Correct.

22 Q Did they tell you that when Polo came out to the
23 car and came back up, that he, in fact, had drugs in
24 his possession, the additional drugs they wanted?

25 A After he left the first time?

STEVEN CLOTHIER - CROSS-EXAMINATION

1 Q Correct.

2 A I believe so.

3 Q What amount was it, as best you can remember,
4 that was stated by the victims to have been taken from
5 their residence?

6 A I wrote in my report \$220.

7 Q Was there anything else missing from the home of
8 value, cell phones, TVs, computers, laptops, other
9 money, anything of value? Anything else taken from the
10 home?

11 A I don't believe either victim said additional
12 items were taken.

13 Q Either when you saw them at the hospital, or
14 afterwards in your continuing investigation, they never
15 reported anything else stolen?

16 A I don't believe so.

17 Q In fact, Katrina Daniels, you stated, pretty good
18 contact with her, as I would expect you to concerning
19 what she knows, what she found out, things of that
20 nature, correct?

21 A Yes, sir.

22 Q She continued to do investigation on her own,
23 didn't she?

24 A I'm not sure what she did.

25 Q I'll refer to your incident report or report of

STEVEN CLOTHIER - REDIRECT EXAMINATION

1 March 24, 2013. Did she call and leave a voice message
2 on your phone that she may have information in relation
3 to her case? She was continuing to investigate,
4 correct?

5 A Yes. Would you like me to read it?

6 Q If you need to, I mean.

7 A I don't need to read it.

8 Q The phone number written on the \$5,450 that was
9 found under the mattress in the master bedroom, was any
10 investigation done as to who that phone number belonged
11 to?

12 A No, I don't believe so. I don't think that is
13 really relevant to the money. It was -- I was told it
14 was payroll. I would see no reason to call that
15 number.

16 Q How many companies do you know handle their
17 payroll in cash?

18 A I can't answer that, I don't know.

19 Q Do you know of any?

20 A I'm sure there are some. I don't know. The
21 victim advised she cashed a check, if I recall
22 correctly.

23 MR. LONG: Nothing further.

24

25 REDIRECT-EXAMINATION

STEVEN CLOTHIER - REDIRECT EXAMINATION

1 BY MS. LIVESAY:

2 Q Do you remember earlier Mr. Long talking to you
3 about Mr. Campbell's report?

4 A Yes.

5 Q And what was reported on that report?

6 A Yes.

7 Q Is this Mr. Campbell's report here?

8 A It is.

9 Q And if you don't mind, tell this jury whether or
10 not in that report that victim notifies the first
11 person that responds to the apartment, who entered the
12 apartment?

13 A Could you repeat that?

14 Q Sorry?

15 A Could you repeat that?

16 Q Did the first responder, Mr. Campbell, indicate
17 who the victim said broke into their house that night?

18 A Black males.

19 Q And were they able to give you any sort of
20 nickname, or were they able to give Mr. Campbell, the
21 first responder, a nickname?

22 A Victim 1 stated it was a black male known as --
23 he had it as Paulie, Suspect 1, that robbed her.

24 Q Were they able to give a description of who
25 entered the house that night?

STEVEN CLOTHIER - REDIRECT EXAMINATION

1 A Yes.

2 Q And if you don't mind -- so they were able to
3 give a suspect's name that he has in there as Paulie?

4 A Paulie, yeah.

5 Q If you don't mind, what was the description of
6 the suspect that they gave with that nickname to the
7 first responder to the scene?

8 A Light skin, black male, approximately 6-foot, 150
9 to 160, wearing a white hoodie with red script
10 lettering and blue jeans.

11 Q Were they able to describe the other black male
12 that entered into the condo that night?

13 A Light skinned, black male wearing a dark blue
14 bandanna over his face.

15 Q So the first responder is Mr. Campbell; is that
16 correct?

17 A Correct.

18 Q He was the first person to talk to the victims
19 that night, and the first person to respond to the
20 scene; is that correct?

21 A Yes.

22 Q And right away the victims gave that information;
23 is that correct?

24 A That would be correct.

25 Q I want you to look on the report and tell this

STEVEN CLOTHIER - REDIRECT EXAMINATION

1 jury and the Court, were they able to give any sort of
2 description of the vehicle?

3 A White, four-door SUV with small bed and black
4 trim that was parked near the dumpsters.

5 Q As soon as the first officer arrives on the
6 scene -- 911 has been called, the first officer
7 arrives. Immediately that victim is giving information
8 as to two suspects breaking into the house; is that
9 correct?

10 A Correct.

11 Q And does she say -- or does Mr. Campbell put in
12 his report whether the victim says or not she's been
13 robbed?

14 A It says they were looking for money while inside.

15 Q Sorry?

16 A The report states they were looking for money
17 inside the residence.

18 Q Okay. So right away those victims reported a
19 nickname that he put down in his report as Paulie; is
20 that correct?

21 A Correct.

22 Q Which was a skinny, black male, slim; is that
23 correct?

24 A Yes, ma'am.

25 Q With a hat. Did she say he had dreadlocks?

STEVEN CLOTHIER - REDIRECT EXAMINATION

1 A No.

2 Q And immediately she described a second male; is
3 that correct?

4 A Correct.

5 Q Black male, bandanna over the face; is that
6 correct?

7 A Yes.

8 Q And that is what she told the first person that
9 arrived on scene; is that correct?

10 A Yes.

11 Q Now, is that consistent with the description that
12 you took from them at the hospital?

13 A Yes.

14 Q Are you aware of any time or any report that says
15 anything other than these two women reported two black
16 males breaking into their condo that night, one of them
17 that had already met and had gone by the name of Polo
18 or Pollo?

19 A No, ma'am.

20 Q Now were you here when they testified?

21 A Yes.

22 Q Did they say anything in here that completely
23 shocked you or took you off guard?

24 THE COURT: That's bolstering.

25 MR. LONG: Objection, Your Honor.

STEVEN CLOTHIER - REDIRECT EXAMINATION

1 Q (MS. LIVESAY) Is the information they gave this
2 jury --

3 MR. LONG: Objection, same thing.

4 THE COURT: I'll allow that.

5 A All consistent information.

6 Q (MS. LIVESAY) So at no time did she ever report
7 that it was a white guy or a guy with dreads, anything
8 other than this description they gave in the very
9 beginning?

10 A No, ma'am.

11 Q Now, Mr. Long told you about the phone records;
12 do you remember that?

13 A Yes.

14 Q Tell this jury a little bit about phones and
15 phone records. Is it as easy to get phone records for,
16 say, a track phone that you buy at the gas station as
17 it is like someone like me who has had the same phone
18 and carrier for 10 years?

19 A No, ma'am. It is very difficult to get anything
20 off a track phone.

21 Q So those phones are almost impossible to get
22 phone records from?

23 A Correct.

24 Q When you looked -- I'm showing you State's
25 Evidence No. 7. This is the last of the report. What

STEVEN CLOTHIER - RECROSS-EXAMINATION

1 are those last two lines?

2 A Text check is Line 142, and balance check is 143.

3 Q That is a balance check on how many minutes are
4 available on the phone?

5 A Correct.

6 Q That would indicate it was some sort of phone
7 that you had to pay to put minutes on as you are using
8 it?

9 A Yes.

10 Q Which indicates it is a track phone, is what they
11 were called, or drop phone?

12 A I would assume so.

13 Q Are those phone numbers harder to track than
14 someone who had the same phone number and carrier for
15 10 years?

16 A Yes, ma'am.

17 MS. LIVESAY: No further questions, Your Honor.

18 RECROSS-EXAMINATION

19 BY MR. LONG:

20 Q Officer Campbell spelled Paulie P-A-U-L-I-E, is
21 that correct, in his incident report?

22 A That's what he says.

23 Q And when he interviewed either the victims, or
24 any time when you interviewed either of the victims,
25 did they mention either of the suspects having gold

MOTIONS

1 teeth?

2 A I don't recall that.

3 MR. LONG: Nothing further.

4 THE COURT: All right. You may step down.

5 MS. LIVESAY: He's excused for our purposes.

6 MR. LONG: Without objection.

7 THE COURT: You are released from your subpoena.

8 Thank you for your time.

9 MS. LIVESAY: At this time the State rests.

10 THE COURT: Mr. Ropp, I'll let you take the jury
11 back in the jury room. They are going to release them
12 for lunch. We have things we have to do in reference
13 to this before we continue. Let's have them come back
14 at 2 o'clock. Thank you.

15 (The jury exits at 12:10 p.m., and the
16 following is heard out of the presence of the jury.)

17 MR. LONG: We move for a directed verdict on
18 several of the charges. First, the testimony from the
19 State -- taken in the light most favorable to the
20 State -- that Jamal Daniels did not enter the
21 residence without consent. He entered it each time
22 with consent, and I know the State will argue that he
23 did so for a fraudulent purpose.

24 THE COURT: I don't think we have to go that far.
25 I think there is certainly enough evidence to meet the

1 test, that is the scintilla^{MOTIONS} rule, evidence that he
2 assisted the second individual with that individual's
3 entry, and if he did so, that would constitute an
4 illegal non-consensual entry. What do you say about
5 that?

6 MR. LONG: I say that there is conflicting
7 evidence of the State; however, even conflicting
8 evidence has a scintilla of evidence, that the second
9 individual entered without consent.

10 THE COURT: All right.

11 MR. LONG: Same thing for the kidnapping charge,
12 Your Honor. The codefendant was the one who stayed
13 upstairs with the victims as the defendant went
14 downstairs to go through the car, I move for a
15 directed verdict, he did not commit a kidnapping;
16 however, understanding the-hand-of-one-hand-of-all and
17 there is a scintilla of evidence.

18 THE COURT: Yes.

19 MR. LONG: Same thing with the armed robbery,
20 Your Honor. The defendant was not armed, did not
21 possess a firearm, did not strike or hit any of the
22 victims, according to their testimony; however, did
23 say that he roughed them up, taking them up the
24 stairs, there is a scintilla --

25 THE COURT: Under the

1 hand-of-one-and-hand-of-all^{MOTIONS}, aiding and abetting the
2 person with the gun would certainly rise above the
3 threshold.

4 MR. LONG: Lastly, on the attempted murder, same
5 way, he was not armed, not possessed. He
6 participated, according to the evidence, in a robbery,
7 but there is nothing to show intent, criminal intent,
8 as far as malice. As far as an attempted murder
9 charge, he did not fire a handgun. There is no proof
10 of any conspiracy or agreement between the suspects
11 that murder was to be committed.

12 THE COURT: All right. Well, I'm going to deny
13 your motions respectively as to all charges. I think
14 there is evidence to submit this to a jury. I would
15 make an inquiry as to -- Mr. Long, do you intend to
16 put up a case?

17 MR. LONG: I do not, Your Honor.

18 THE COURT: Would there be a request for charge
19 on lesser includes?

20 MR. LONG: Yes, sir.

21 THE COURT: What?

22 MR. LONG: Strong arm robbery as a lesser
23 included of armed robbery, if the jury were to find no
24 evidence of hand-of-one-hand-of-all, then the
25 defendant's actions, from the State's testimony, was

MOTIONS

1 that he strong armed the victims upstairs and did take
2 their property, so we feel a lesser included of strong
3 arm.

4 MS. LIVESAY: No objection to strong arm as a
5 lesser included of armed robbery.

6 MR. LONG: Secondly, on attempted murder, assault
7 and battery first and/or second. If from the State's
8 evidence, from the victims' testimony that he did
9 rough them up in taking them upstairs. The jury could
10 find it as a lesser included that he did not intend to
11 murder them, but, in fact, did rough them up during
12 the process.

13 THE COURT: What is the State's position on that?

14 MS. LIVESAY: Your Honor, on the attempted murder
15 there was evidence put in by the victim that she was
16 shot, and there was evidence put in about SLED that
17 there was GSR on the victim. But if Mr. Long is
18 asking for a lesser included of A&B first --

19 THE COURT: Why would you want that, Mr. Long?

20 MR. LONG: Your Honor, these are all tactical
21 decisions.

22 THE COURT: If there was no evidence of intent,
23 you might be inviting the jury for a lesser --

24 MR. LONG: Your Honor, it is darned if you do;
25 darned if you don't. You never until too late that

JURY INSTRUCTION CONFERENCE

1 you should have, could have, would have.

2 THE COURT: Behind the eight ball, and all of
3 that.

4 MR. LONG: Yes, sir. Might I have lunchtime or
5 additional time to mull over the possibilities
6 procedurally whether that is appropriate or not?

7 THE COURT: All right. I don't think the State
8 cares. We will be back at 2 o'clock, okay.

9 (A lunch recess was taken.)

10 THE COURT: Have you considered a lesser?

11 MR. LONG: We would, and I understand the State
12 consents to that.

13 THE COURT: Assault and battery in the first?

14 MR. LONG: Yes, Your Honor.

15 MS. LIVESAY: I've got no objection to it under
16 the circumstances.

17 THE COURT: And armed robbery will be common law
18 robbery?

19 MR. LONG: Yes, sir.

20 THE COURT: Actually, I have been working on that
21 and Taylor is printing it up right now, and I will --
22 she'll be here momentarily -- let you look at it and
23 see if that is agreeable.

24 MR. LONG: Yes, sir, Your Honor. In the interim,
25 would you like to bring the jury out, defense rest and

JURY INSTRUCTION CONFERENCE

1 send them and take care of those matters?

2 THE COURT: Let's do that, and if you are going
3 to rest, let's just -- since you are not putting up
4 anything, let's just -- for the sake of the record,
5 you made your -- renewed all of your motions.

6 MR. LONG: Yes, sir, Your Honor.

7 THE COURT: Same grounds?

8 MR. LONG: Yes, sir, Your Honor.

9 THE COURT: And my ruling is exactly the same.

10 MR. LONG: Yes, sir.

11 THE COURT: So that is a matter of record, and
12 we'll do it now in the interest of time rather than
13 sending the jury in and out after saying you rest,
14 just rest when they come in. By then, I should have
15 the things -- I think Mr. Grooms has located his -- we
16 can go off the record.

17 (A discussion was had off the record.)

18 THE COURT: You're going to do assault and
19 battery in the first degree, Taylor. Send that to
20 Mr. Long and to Ms. Livesay.

21 MR. LONG: I won't have the ability to access it
22 in the courtroom.

23 THE COURT: Do you want to look at the assault --
24 she also has second degree, but we'll do first. If
25 you want to look at that, we'll inject that into the

1 charge.

2 MR. TAYLOR: I have another copy.

3 THE COURT: Here is another copy. That is your
4 assaults, and we have -- do I have robbery? If you
5 find that the State has failed to prove that the
6 defendant was armed with a deadly weapon, you may
7 consider whether the State proved beyond a reasonable
8 doubt that the defendant committed robbery. Also
9 include within the offense of armed robbery is a
10 lesser included offense of robbery. In order to prove
11 robbery, State must prove beyond a reasonable doubt
12 all of the elements I just explained except that the
13 defendant was armed with a deadly weapon. Okay. All
14 right. She'll put that in.

15 MR. LONG: Yes, sir.

16 MS. LIVESAY: Yes, sir.

17 THE COURT: While she's sticking that in. We're
18 ready to bring the jury in, I think.

19 (The jury enters at 2:15 p.m., and the
20 following is heard in the presence of the jury.)

21 THE COURT: All right. We have everyone here.
22 Mr. Long, the State has rested?

23 MR. LONG: The defense would rest also.

24 THE COURT: Ladies and gentlemen, you have heard
25 the State has rested as well as the defense. We're a

1 little late bringing you in because there was
2 something that was discussed, I anticipated that and
3 we have been doing the final adjustments to my charge
4 on the law.

5 First, we will hear from the State and the
6 defense. As I said, they have an opportunity to make
7 a closing remark in which they may address not only
8 the law, but the facts and the evidence in this case,
9 as well as a closing argument or summation, which is
10 merely to point out, from their perspective, their
11 position on the case and what they believe the
12 evidence might show and what might be justified in the
13 way of a verdict.

14 If they say something or talk about evidence --
15 and I'm sure that they would not intentionally do
16 so -- that you have not heard from the witnesses
17 stand, ignore that because you can only consider the
18 evidence that came from the witness stand. What the
19 attorneys say is not evidence.

20 Also, I don't believe that they would misquote
21 the law intentionally, but I will be the final judge
22 of the law. You must be guided by the law as I give
23 it to you irregardless of anything the attorneys might
24 say if it deviates from what I tell you what the law
25 is. Are we ready?

CLOSING STATEMENT - MS. LIVESAY

1 MS. LIVESAY: Yes, sir, Your Honor.

2 THE COURT: All right. Ms. Livesay.

3 MS. LIVESAY: Thank you. I did this so you can
4 follow along with me. I want to review the evidence
5 we heard. This has been a relatively short trial and
6 many witnesses, but what every witness has to say is
7 equally important, and sometimes by the time we're on
8 the eighth witness, we forget what the first witness
9 says, so I want to review the evidence that we've
10 taken in, because the only evidence in this case is
11 what you heard from the witness stand, that's it, and
12 these items introduced into evidence.

13 When you go back to the jury room, you will have
14 every piece of paper and every picture that was put
15 into evidence. When you go back to the jury room,
16 this woman here is taking down everything that is said
17 by everybody, attorneys and every witness. If you
18 want to rehear anyone's testimony, this lady here can
19 replay back whatever testimony you need to be heard,
20 so everything is available to you. All of the
21 evidence is what came from the witness stand and what
22 was introduced.

23 First person we heard from was Cathy Rhodes. She
24 was the 911 tape, and she introduced the notes. The
25 911 tape is so important because that is the first

CLOSING STATEMENT - MS. LIVESAY

1 thing that happens. That is the moment when they are
2 on the phone saying this is what is going on. There
3 is no time to reflect back on anything. This is that
4 moment in time. This, to me, is always some of the
5 most crucial evidence, because what happens and what
6 we immediately say when it happens, there is no time
7 to reflect back. That is our first thought. That is
8 our description of what is going on.

9 The neighbor called the police, if you remember.
10 What did he say? She's on my porch. She has been
11 shot, I believe in the head, because she is bleeding
12 from the head. This is what this man is saying. You
13 actually hear him talking to her. You hear him say,
14 no, I'm not letting you in my house. She's out there
15 on the patio. I'm inside, she's outside. So right
16 from the get-go, we know that she is on the back patio
17 beating on that door, help me, help me. This guy is
18 saying she's bleeding from the head. So we know that.

19 Now, you also hear Katrina Daniels in the tape.
20 When you listen to that tape, as the police are moving
21 these women through to get them to the front of the
22 house to EMS, you hear her say she's been shot in the
23 head and we've been robbed. That is the first thing
24 she says when the police get there. Not a split
25 second to think and fabricate any story. She's in the

CLOSING STATEMENT - MS. LIVESAY

1 heat of the moment. Her friend is bleeding from the
2 head. She's immediately looking for help. We know
3 right off the bat that we have a shooting, and we know
4 right off the bat that this woman is bleeding from the
5 head on his back patio. So right off the bat, from
6 that 911 tape, we have that evidence.

7 Katrina Daniels is the woman you heard from on
8 the tape saying she's been shot in the head. She told
9 you, I met this guy named Polo. This is what he
10 looked like, black male, slender, clean cut, tall guy.
11 She met him twice, met him once on Racepath at
12 4 o'clock in the morning, and met him again twice at
13 her apartment. Every time she saw him, it was in a
14 well lit area. She got a good look at him every
15 single time. She saw him that night three times, once
16 at Racepath, he comes to the house, which I'm going to
17 suggest to you that first inference was to scope the
18 place out. When he walked in, what did he see? Two
19 older women, 50 years old. One is in sleeping pants
20 and a T-shirt, and the other one in boxer shorts and a
21 T-shirt. No one else in the apartment. So he's
22 already scoped out that situation. He sees no threat.
23 He sees this -- these women are not going to be a
24 problem. They are so relaxed and so vulnerable, they
25 are in boxer shorts and sleeping pants. So then he

CLOSING STATEMENT - MS. LIVESAY

1 leaves them.

2 He's not confident enough because there is two
3 women and only one of him. It is a two-story condo,
4 so it would be very easy for things to get out of
5 control very quick. So he goes out -- and I'll
6 suggest at that time is when he calls his friend and
7 says, look, I scoped it out. He's not gone long
8 enough for anyone to go in or out of the victims'
9 condo. He calls up and says, look, I'll suggest to
10 you, let's go in there, this is easy. This is a new
11 jack. This is going to be some easy cash for us. So
12 then he goes back in, makes sure everything is still
13 the same, tries to scope the area.

14 Then there is that tap, tap on the door. He
15 knew -- he already knew that guy was coming, because
16 as soon as that tap, tap came on the door, he
17 immediately ran downstairs. He would not complete
18 that transaction. She said he was kind of moving
19 around and she said, let's do it, let's do it, and he
20 kept moving around. He did not want to leave that
21 apartment until that second guy tap, tapped on the
22 door.

23 He could have done that transaction and left, and
24 that would have been it. That would have been it.
25 There was no need for all of this to take place.

CLOSING STATEMENT - MS. LIVESAY

1 These two women were not a threat. They had no money.
2 There was no need to shoot these women or do anything
3 to them or ever put their hands on them, but he chose
4 to anyway. He chose not to do that transaction. He
5 chose I'm waiting for that tap, I'm following this
6 through to the end. When that tap, tap came down, he
7 knew who was at the door. He immediately goes to the
8 door and lets the guy in.

9 There is some struggle. She didn't want him to
10 come in. Bam, as soon as he comes in, he shoots the
11 gun, fires, bam. Laura tells you that ringing in my
12 ear when that gun went off. Mr. Long wants you to
13 believe that no gun was ever found. The problem is,
14 if you have ever been to a gun range, if everyone in
15 this courtroom has ever been to a gun range, which I
16 have, the first thing they do is issue you glasses and
17 muffles. First thing they do. They won't even let
18 you on the range without glasses and muffles. Those
19 muffles are because that bang makes people's ears
20 ring. It is to protect their hearing. She said it
21 sounded like a bunch of books, and immediately my ears
22 were ringing. He wants you to believe that she was
23 smart enough to fabricate all of that, right down to
24 the ringing of her ears.

25 She says I was immediately shot. They drug us

CLOSING STATEMENT - MS. LIVESAY

1 upstairs looking for money, looking for money. Then
2 they go to the car. They say, look, the money is in
3 the car, please leave us alone. He goes to the car.
4 There is information on the phone or something happens
5 with the phone, he immediately runs down, and the two
6 of them jump out of the window.

7 There was not a bullet found. Now, I don't know
8 if it got overlooked. I don't know what happened, but
9 it did not be denied that the lady from SLED came back
10 and told you there were particles on the victims'
11 hands that are consistent with gunshot residue.
12 Gunshot residue, which means a gun was fired in close
13 proximity to these women. If I came up, it is
14 commonsense if I struck Investigator Pop, that doesn't
15 cause gunshot residue particles. Even if she's
16 injured, these gunshot particle residue is not in the
17 air. That residue is what is in the bullet, that is
18 what is causing the explosion. This nonsense about
19 questioning whether or not this woman was shot, is
20 ridiculous. There is no reason to make it up.

21 The first thing that came out of the mouth to the
22 neighbor when he's on 911 is she's been shot. Was
23 there any physical evidence? Yes, there is something
24 called gunshot residue, which shows that a gun was
25 fired in close proximity. Also, the woman is injured

CLOSING STATEMENT - MS. LIVESAY

1 here, going across her head, where a bullet grazed
2 her. We know there is gunshot residue. We know she's
3 been shot. We know there was ringing in the ears, and
4 we know she has an injury consistent with a bullet
5 grazing her head.

6 Now, these pictures are so important, and here is
7 why. A, I want you to look at this woman. This
8 wound, just like Michelle McFadden said, it is going
9 right along on here on this victim. It is the same
10 victim that saw the gun fire, the same victim that
11 heard the ringing, and the same victim that had
12 gunshot residue on her. He wants you to believe that
13 in a matter of seconds this woman has fabricated such
14 a story and somehow corroborated it with physical
15 evidence. It is unbelievable.

16 This woman's foot is fractured, neck brace from
17 where she was hurt around here where she said she was
18 hit. Again, he wants you to believe that this is a
19 fabricated story. These women just happened to have
20 physical injuries that corroborate everything they
21 said.

22 Now, the evidence at the house -- I'll show you
23 not all of these pictures. Here is that front area of
24 that house where she says I'm shot as soon as he walks
25 in the front door. Blood right by the front door in

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1 the kitchen and in the bathroom, both places, right by
2 the front door. If you look at this blood, this spot
3 here is smeared, but for the most part, he wants you
4 to believe a hundred people came in that house, but
5 yet that blood is not smeared all over the place.
6 There is not a shoe print, not a track mark in it
7 where someone has stepped in it. This is the way it
8 looked when that woman left the house. All in those
9 front two areas right by the front door, right by the
10 front door, exactly where she said.

11 Then she said she was taken up the steps. Well,
12 lo and behold, there is blood right there on the
13 stairway going up the steps, just like she said. She
14 was bleeding at this point, obviously heavily at that
15 point. So everywhere she went, because she's bleeding
16 from the head, there is going to be blood. When they
17 are dragging her up the steps, there is blood
18 dripping.

19 The next place she said she was drug is the
20 master bedroom, and I showed you all the pictures of
21 those jeans from the master bedroom, right here,
22 Evidence 22 and 23. This is the bed, jeans laying on
23 the bed with blood on them. She was bleeding after
24 that gunshot went off, so everywhere she went, she was
25 dropping blood. So you can trace her tracks through

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1 that house from the blood drops, right there on those
2 jeans. Then she says we climbed out the window out of
3 fear to get away, jumped out the second story window.
4 Lo and behold, look at Evidence 25 and 26. On 25,
5 when you look close, I'm going to suggest that that
6 looks like three fingers where someone was grabbing
7 hold to that windowsill. There is blood here on the
8 blinds.

9 Again, she says I jumped out the window to save
10 my life. A woman who is bleeding from the head, and
11 lo and behold, there was blood on the exact windowsill
12 she said she jumped out of. Not only that, when you
13 look from the outside, the curtain is hanging from the
14 outside of the window where they were trying to use it
15 to climb out of the window.

16 Now, the next person you heard from Jennifer
17 Nates. She said, yeah, there is gunshot residue. Gun
18 was fired in close proximity, no way around that,
19 physical evidence.

20 Anthony Humes took all of those pictures. I put
21 all of the pictures in evidence that showed some sort
22 of blood, which is by the front door. I went over
23 with him three times, you go back and listen to the
24 testimony, the blood was by the front door, steps,
25 master bedroom? Yes. No one said anything about any

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1 blood on any kitchen window or anywhere else in the
2 house, and that's because there was no blood anywhere
3 in the house, but that area. If that woman had been
4 anywhere else in that apartment, she would have
5 dropped blood there. The only place there was blood
6 was by the front door where she said I was originally
7 shot up the steps, master bedroom and then out the
8 window, corroborating exactly what she said.

9 Now, Michelle McSpadden told you when she went to
10 see these victims at the hospital, they want you to
11 believe, oh, how many drugs did you use, how much
12 drugs did you use. These women were just out of it,
13 had no idea what they were saying, what they were
14 doing, which is completely fabricated. There is not
15 one person that says anything close to that. She
16 tells you she complies with everything I asked. When
17 I told her to turn her hand over, she turned her hand
18 over. She was responsive. She was upset, but able to
19 communicate with me clearly. Not even at the
20 hospital, but when the first responder showed up, she
21 immediately was telling them two black males, a guy
22 named Polo, slender, clean cut. Immediately, when the
23 police showed up she was giving the same description
24 as she has every single time. These were not two
25 women out of it. They knew exactly what was going on.

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1 They were able to comprehend everything that was going
2 on. Cory Jasiak was the young white man that came in.
3 This idea they didn't know what they were talking
4 about, trying to indicate they didn't even see the
5 white truck, it wasn't even somewhere where they could
6 see it. The problem is this witness comes in, who
7 doesn't know Katrina Daniels or Laura Conklin. He
8 wants you to believe that these two women don't know
9 what they are talking about. They never saw white
10 Sport Trac. They couldn't even see where it was
11 parked, is what Mr. Long was trying to indicate to
12 you. The only problem is this guy comes in, doesn't
13 know the victims, never has seen the victims, never
14 met them. Lo and behold, what in the world but Cory
15 said I loaned my white Sport Trac out to one of the
16 people, lo and behold, is a guy named Polo. Isn't
17 that something? Isn't that something? The same guy
18 with the same description as these two women said,
19 black male, Polo, clean cut hair, slender guy. That
20 is what Cory tells us. Where did you loan it out?
21 Could it be Racepath? Could it be the same place
22 these two women first met Polo? Lo and behold, it
23 was. Go back and listen to the testimony. I would go
24 to the Racepath and loan my truck out. One of the
25 people was Polo. Both of these people said I can pick

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1 him out. Yeah, I know Polo, I can pick him out. This
2 guy said I saw him regularly, I can pick him out. Lo
3 and behold, white Sport Trac, exact description as
4 these women gave. He said sometimes Polo wears gold
5 teeth, sometimes he wears gold teeth. Lo and behold,
6 when Polo is detained and take the first picture of
7 him, he's a black male, slim, clean cut wearing gold
8 teeth, exact description that Cory gave you as to who
9 Polo was. Exact description that Katrina Daniels told
10 you.

11 Now, the victim told you this description, and
12 she said I can pick him out. She looked at this
13 line-up, six black males, all clean haircuts, none of
14 them having any real distinct characteristic to point
15 one out over the other one. She looked at the
16 six-pack and immediately picked out -- can you believe
17 it -- the same description that Cory gave for Polo,
18 same description. Lo and behold, who is he? Jamal
19 Daniels.

20 I want you to take this line-up back there and
21 look, because it shows this woman knew exactly who she
22 was looking for, and she told you, and Detective
23 MacPherson told you, immediately when she opened up
24 this line-up and saw him, immediately she got upset
25 and said, I never thought I would see him again. I'm

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1 a hundred percent sure that's him. Never hesitated.

2 Now, Mr. Long is going to tell you basically they
3 didn't know who they were looking at. These are a
4 couple of women, drug addicts, don't know what the
5 hell is going on. They are just up here circling
6 names and talking gibberish. That is all fine and
7 good, and probably would have been maybe, somewhat,
8 some tread, but the only problem with that is we got
9 his phone and Cellebrite -- the company he was telling
10 you about that downloads these phones, the reason
11 Cellebrite came about is because there is so much
12 information, and for so many years people would say we
13 had this transaction, I called this person, we called
14 this person, and we couldn't get the phone records.
15 Track phones, no one could get phone records. No one
16 could get that information we needed, years and years
17 ago. We came a long way since then.

18 Cellebrite created a software that you just plug
19 the phone in, and we'll tell you what is in it, track
20 phone, any kind of phone. Lo and behold, what a
21 surprise, the same man that they told you they met up
22 with and they called and robbed them, their phone
23 number is in his phone.

24 She initialed it right there when asked to pick
25 him out. Steven Clothier said that was the phone.

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1 number I used to contact them. So all of these things
2 of they don't know, they don't know what they are
3 talking about, they don't know Polo, they don't know
4 Polo. But lo and behold, the guy we know as Jamal
5 Daniels, the victim's phone number is in his phone.
6 Lo and behold, after he robs them, we figure out it is
7 in the phone under "New Jack."

8 This nonsense about is it in order, isn't that
9 one out of order -- this is going back with you. Go
10 back, look at the names and see if they are in order.
11 Look at the symbols. Most of everything in here has
12 some nickname or some other way to identify this
13 person. This one just happened to be "New Jack," the
14 same phone number belonging to the same woman that he
15 just happened to jack and rob.

16 Steve Clothier -- before we had all of that
17 testimony about this ID, she said I pick that guy out,
18 right there. She didn't know his real name. Todd
19 MacPherson says I didn't know anything about the case,
20 I don't know who is in the line-up. I called
21 Detective Clothier to tell you who is this person, and
22 it is Jamal Daniels, the same person who just happened
23 to have a phone with the victim's phone number. What
24 is he charged with. We know this is all unfolding.
25 We know this is evidence to corroborate every step of

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1 the story. What is he charged with? Attempted
2 murder, burglary first, armed robbery and kidnapping.

3 You heard Mr. Long go through did Polo shoot you?
4 No. Did Polo beat through the door? No. He didn't
5 do those things. He did take the money and was
6 looking for more money. So he wants you to believe
7 that this guy is less responsible than the actual
8 shooter, but in South Carolina we recognize something
9 called the-hand-of-one-is-the-hand-of-all. We do that
10 because when you bring somebody in who you know has a
11 weapon, when you bring that person in, make that
12 decision, you are then saying we are in this together,
13 you and I are acting together. We are acting now as
14 one. That is what that law says.

15 If myself and Ginger Pop go in and rob a bank,
16 okay. She's the one holding everyone at gunpoint, and
17 I'm the one scraping up the money, and something goes
18 wrong and she shoots somebody. I am in there equally
19 with her. We are acting together as one. I am just
20 as guilty as she is. If I brought over -- if I show
21 up to Ms. Pop's house and I bring a pitbull waiting at
22 the door, and I go in the house and scope it out and
23 say, hold on, I hear a bark at the door and I open it
24 up and that dog immediately jumps on her, I know the
25 dog is out there, I opened it up, I've opened the

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1 door, I know this dog as soon as he comes in is going
2 to attack Ms. Pop. Is anybody wondering if I have any
3 responsibility in that? Is there ever a question that
4 I'm less responsible? I am the one that brought the
5 dog over there. I am the one that opened the door and
6 let it in knowing what was going to happen. While the
7 dog is holding someone down, I'm cleaning out all her
8 cash and leave. Is anyone wondering am I as
9 responsible? I am. I am. I am the one that created
10 that plan and put it into place. I am just as guilty.
11 I did not have to open that door. I did not have to
12 bring a second person. I didn't have to make a plan
13 with someone else. If you notice, when Polo went in
14 by himself, he wasn't grabbing crap. He wasn't
15 wearing anything. He wasn't grabbing Laura then or
16 putting his hands on anyone then. It took two, both
17 of them acting together -- together -- to give him
18 that power and authority. If that wasn't the case, he
19 never needed the second guy to bang on the door. He
20 would have grabbed the money right there, but he
21 couldn't. It took both of them acting together to
22 execute. It took that guy with a gun holding them at
23 gunshot to give Polo the authority to grab that money
24 and go through the bedroom looking for more money.
25 They are both equally responsible. That is a plan

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1 they both came up with. He brought that boy over
2 there, so they were both acting as one.

3 Under the hand-of-one-is-the-hand-of-all, he is
4 just as guilty as the guy that pulled the trigger. He
5 brought him over, opened the door. As soon as that
6 guy came in and pulled the trigger, that is attempted
7 murder. There is no doubt about it. I think that is
8 commonsense. If I fired a gun right now at Ms. Pop,
9 whether it hits her or not, commonsense, I am
10 attempting to take this woman's life. I have used a
11 deadly weapon, something that takes people's lives.
12 So I miss, I miss. I don't mean to, but in the
13 struggle, I miss. I don't get away. It is not a
14 get-away-free card. No, you missed. There is no
15 punishment? No. As soon as you pull the trigger --
16 actually even steps before that, as soon as you walk
17 in and you have the gun and it is loaded, you have
18 intent. As soon as you point it and pull the trigger,
19 by then there is no doubt it is attempted murder.
20 Whether you pull the trigger or the guy was standing
21 at the door and you were fighting like hell to open
22 the door to let him in, you are guilty.

23 The second charge is burglary first. Burglary
24 first is breaking into a house at night with a weapon.
25 The fact that it is at night has been cleared up. It

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1 was 9 o'clock at night, definitely dark outside. As
2 soon as they made that plan and he went downstairs and
3 opened that door and the guy came in and fired a shot,
4 that was burglary first. Now, Mr. Long wants to tell
5 you that, well, didn't you voluntarily open the door
6 for him, didn't you voluntarily let him in? So I
7 guess that shouldn't be burglary. Well, the law says
8 if I show up to Ms. Pop's house, or if I show up to
9 Mr. Long's house or Judge Hyman's house and I have a
10 gun on me, I go in under the pretense -- which used to
11 happen all the time, people would drop phone books off
12 and check people's doors. If I went under the
13 pretense of I'll send you some magazines, let's go in
14 and talk, but the whole time I'm armed with a weapon
15 and the whole time I have intent to rob you. When I
16 come in and he lets me in, come on in, talk about
17 these magazines, and I take the gun out and I commit a
18 crime at night, that is burglary first. It is
19 absolutely crazy to think that anyone, any citizen in
20 South Carolina who lets someone in under a
21 misconception or false misrepresentation and they go
22 in and steal from them, put their hands on them or
23 take their life, that it is okay because they opened
24 the door not knowing that was going to happen. It is
25 absolutely ridiculous to think that because I

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1 voluntarily let you in thinking -- not knowing you had
2 this evil intent, then it is not burglary. Absolutely
3 ridiculous.

4 When someone comes into someone's home in South
5 Carolina, and they have construed some plan, and the
6 whole time they know they are going to rob them and
7 construe some plan, thought it out to get into the
8 house, that doesn't mean that it's any less of a
9 crime. It is still a crime. Just because they come
10 in under deception because they thought out some plan
11 doesn't mean it is not a crime. It is still burglary
12 first.

13 So as soon as Polo went out there and had this
14 intent to rob these ladies, and came into that house
15 with that intent, that was burglary first. As soon as
16 he let that guy in with that weapon to rob them and
17 execute this plan, that was burglary first. It
18 doesn't make a difference that this victim had no idea
19 and was vulnerable and let him in. We don't let
20 people off because you construed some sort of plan and
21 you just preplanned it better than the guy that
22 knocked the door. There is no deception. You don't
23 get away with good planning.

24 Armed robbery is just what you think it is,
25 someone with a handgun taking your stuff or taking

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1 anyone's stuff. When this guy came in and he was
2 armed with a gun and they tote them upstairs, and Polo
3 swipes that money off the bed, that is armed robbery.
4 I'll tell you, to me, it seems so commonsense because
5 he didn't swipe that money beforehand. He waited
6 until his friend had the gun on these victims, then he
7 swiped the money. See, that is the thing about armed
8 robbery, it is hard to take something from someone
9 unless you have a way to threaten him. He never took
10 anything until he had a way to threaten them. That
11 makes all the difference. So they were robbed as soon
12 as he took that money off the bed. Mr. Long wants to
13 tell you what if he left some drugs, would it not have
14 been armed robbery then? It is absolutely ridiculous.
15 As soon as they took the money off the bed and the
16 ladies were held at gunshot, it was armed robbery.

17 Kidnapping is what you think it is, someone
18 basically holding you, not allowing you to leave,
19 seizing you, controlling you in some form or fashion,
20 that is kidnapping. As soon as a person is held at
21 gunshot and not free to leave, they are currently
22 being kidnapped. It is not I put my hands on someone,
23 that is not kidnapping. It is anything I do or I'm
24 taking control over your freedom to leave. That is
25 kidnapping. Once anyone feels like I'm not free to

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1 leave, that is kidnapping. As soon as they felt they
2 couldn't leave, that is kidnapping.

3 Of course we know they jumped out of the window.
4 If these women felt that they could leave, they would
5 have walked out of the front door. Most people aren't
6 choosing jumping out of a second floor window to leave
7 their residence. That is not a common exit and
8 entrance for most people. The fact they jumped out of
9 the window shows the fear that those two women had,
10 not just fear, but desperate to save their own lives.
11 That's what shows you all that happened. People don't
12 jump out of windows unless they are terrified and in
13 survival mode to save their own lives.

14 Mr. Daniels made a lot of decisions throughout
15 this. This never had to take place, ever. These
16 women were two women 50 years old, unarmed in their
17 home. You saw the pictures of the inside of their
18 house. These are not a couple of women -- these are a
19 couple of women that live in the condo, don't own a
20 gun, and apparently until this, didn't believe bad
21 things happened. They were two women that had a bad
22 addiction, no doubt about it. It led them down a bad
23 path, and that was Racepath where they came across
24 Jamal Daniels. There is no doubt about it. They were
25 addicts. There is no doubt about it. They had a

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1 problem.

2 Here is the deal, Mr. Long wants to talk about 20
3 minutes about how many drugs they used. Yes, they are
4 drug addicts. I told you they are. They told you
5 that. But there is no exception in the rule book for
6 if you are a drug addict and someone shoots you or
7 robs you or kidnaps you, it is any less of a crime.
8 Unfortunately, those people are the easiest and most
9 vulnerable for these things to happen to. This man
10 picked two women for no other reason other than they
11 were completely vulnerable. The victims were not some
12 6 foot 5 big guy that carries a weapon. That it is
13 not who they chose. That is not who they chose. They
14 could have. They could have, but they didn't. They
15 picked two of the most vulnerable people that they
16 could, that they thought that they could get away
17 with, there is no -- zero -- danger for us. Two women
18 sitting in their night clothes.

19 I'm asking you to find them guilty of every
20 single one of these charges. Every single one. This
21 man absolutely plotted and planned this entire scheme
22 and brought in someone else to help him to make sure
23 that it was executed. Absolutely plotted and planned
24 this entire thing. He knew that that guy was coming.
25 He knew to run down the steps and go get him. There

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1 is no reason for that. No reason. Whether they are
2 drug addicts or not, that doesn't make it any
3 different. He had so many times to turn around and
4 make a different decision, but he didn't. The more he
5 saw how vulnerable they were with every meeting, the
6 more empowered he felt. The more he saw this was
7 possible and could be pulled off, the more empowered
8 he felt. This was absolutely planned and plotted out,
9 and the physical evidence corroborates every single
10 thing those women told you.

11 Now, I'm asking you to find him guilty, because
12 he is guilty. Mr. Long told you some things in the
13 beginning in his opening statement, the only testimony
14 that matters is the testimony that came from this
15 stand. If you didn't hear it from a witness in this
16 case, it is not evidence. Thank you for your time.

17 THE COURT: Mr. Long.

18 MR. LONG: Thank you, Your Honor. Your Honor --

19 THE COURT: Will you need the board?

20 MR. LONG: I'll move it, Your Honor.

21 I'm not going to go through every witness and
22 tell you what they testified to, because the 14 of
23 you are at least 14 times more capable than I am of
24 remembering what was said, how it was said in
25 response, than for me to tell you what came from that

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1 witness stand because I'm worrying about other things
2 thinking about the next question or next witness, so I
3 won't tell you what each witnesses said. I won't tell
4 you what the law means. I'll go briefly over the
5 elements of the law, but His Honor will tell you,
6 because he's at least 14 more times capable than I am
7 of telling you the law. All I can tell you is what I
8 think the evidence suggests could have happened in
9 this case. I wasn't there. I didn't want it on
10 video. I didn't take statements from the victims,
11 witnesses, et cetera, and this, that and the other.
12 So, really, what I think happened doesn't matter.
13 What the Solicitor thinks happened doesn't matter.
14 The possibilities and what you find to be the
15 probabilities of what the evidence suggests happens,
16 that is what matters. That is why your job is
17 difficult. I apologize. That it is hard work. We
18 have picked you, chosen you and selected that these
19 are the people that we trust will do it, so.

20 An example, I have a car worth \$10,000. I list
21 it wherever. You see the car, picture of the car,
22 read all the description and you say, yeah, that is
23 pretty good, you call me. I say bring \$10,000 to my
24 house, I'll sell you the car. Are you going to come
25 alone with \$10,000 in your pocket? No. You may bring

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1 a buddy, even maybe a weapon. I won't let this guy
2 steel my \$10,000, I don't know him. Does this apply
3 in this case? Possibly. Jamal brought a buddy. I'm
4 not going to go to this place to sell someone drugs
5 where I don't know who is there. When I knock on the
6 door, I may open the door and there may be three, four
7 people with shotguns on me. I am not going to be a
8 victim. I have to take precautions, too.

9 So you heard the testimony of how the drugs were
10 purchased, et cetera, things of that nature, and what
11 happened. Well, I think the evidence suggests some
12 things we agree on, but some things we widely differ
13 on. Yeah, they went down and brought a hundred
14 dollars worth of drugs, smoked it up, said it was good
15 stuff, let's get more, called him up. There is a
16 discrepancy whether he volunteered and said I'm going
17 to bring it to you, or whether they requested it,
18 because I think they told the officers first off that
19 they requested if they could bring it to them because
20 they didn't want to go back and make another street
21 find, so then the second buy takes place.

22 There's a guy sitting in the car. Jamal,
23 everything okay? Cool. Takes the \$200. They say,
24 No, no, no, we wanted \$400. Okay, I don't have that
25 on me. He's not walking with \$400 worth of drugs.

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1 Let me see what I have, goes back to the car, here you
2 go, came back with it. At that point in time, I don't
3 think the victims are going to tell you everything
4 that took place. I'll tell you why I think the
5 evidence suggests what happens. Drug addicts run out
6 of money. Drug addicts have a habit that cost them a
7 lot of money. Drug addicts sometimes have to sell to
8 support their habit. Drug addicts a lot of times ask
9 for drugs to be fronted to them, give that to me, I'll
10 sell a little bit and I'll give you money next week
11 and we'll do it all over, this, that and the other.
12 Some sort of disagreement or argument took place there
13 about how much they were going to get for how much
14 money and when it was to be paid. That is what I feel
15 happened, because actions speak louder than any words
16 you can hear from this witness stand. He came back in
17 with the drugs. Thereupon, some disagreement took
18 place. The guy came and knocked on the door, hey,
19 man, everything okay? What's going on? Whatever the
20 case may be. Here is where it is improbable
21 (indicates). The door opens, bam, in a crowded
22 apartment complex, all right, and then five to eight
23 minutes, six minutes seem like a year, may only be two
24 minutes of going upstairs and routing around and give
25 me the keys to the car, and you all stay up there, you

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1 with the gun, you stay there with the victims, and I'm
2 going to rummage around in the car a little bit,
3 parking lot in an apartment complex. Nope, I didn't
4 find money. They are supposed to pay me the money.
5 How much is on the bed? \$220. Well, that is about
6 what we were supposed to get paid, get the money,
7 let's go. Is that an armed robbery when nothing else
8 of any value was taken, no TVs, no computers, no
9 jewelry, no this, no that, no this, that and the
10 other. They got the money that was supposed to be for
11 the drugs, and they left. How does it seem
12 improbable? (Indicates), creek, bam. There is no
13 bullet hole in the house. There is no shell casing
14 around. The gunshot residue that the officers claimed
15 they got from both victims -- what do the victims tell
16 you, we were upstairs and he said that's my homeboy, I
17 have to go let me homeboy in. He went downstairs and
18 Laura went with him to let the guy in, or whatever.

19 Now, it changed a little bit. She said I was
20 hollering down the stairs, no, we're not letting
21 anyone else in. They didn't tell the police that, but
22 it sounds better, No, no, no, don't let anyone else
23 in. So they get to the bottom of the stairs and open
24 the door and supposedly this gunshot happens right
25 there. Is it believable to think they are going to

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1 stick around for another however long it takes to do
2 whatever it is they intended to do when they came
3 there, as the State would lead you to believe?

4 How did the gun residue get on the girl upstairs
5 in the bedroom who said Laura and Polo went downstairs
6 and opened the door and I heard a gunshot? She's up
7 in the bedroom and she has gunshot residue on her
8 hands. How does that happen? I don't know. I can't
9 tell you. I wasn't there. I didn't control the
10 evidence. I didn't control the crime scene. I didn't
11 do testing. I didn't do the bagging. I didn't do
12 anything connected with any of that. I can't tell
13 you, but I did scratch my head and wondered, huh, how
14 the heck did it happen. I asked the one female
15 officer who said she did the sticky pats on the palms
16 whether she carried a firearm. Yep. If she's got a
17 firearm on her, does she have firearm particles about
18 her person? Officers have to go to a range. I don't
19 know. We don't have the results of gunshot residue on
20 her. Can't tell you how she in the bedroom got
21 gunshot residue on her. I don't know.

22 I feel sorry for what the victims had to go
23 through that day. If I said anything or did anything
24 you considered harsh, please understand, I mean
25 nothing like that. Cross-examining a victim is always

CLOSING STATEMENT - MR. LONG

1 hard, because my responsibilities is not to them, it
2 is to my client. When they say these things happen,
3 and I have to simply scratch my head and say, How?
4 What benefit would they receive for saying it the way
5 they said it? One aspect, Officer Campbell didn't
6 testify. They brought someone from Georgia and
7 Columbia, but not Officer Campbell, because that one
8 little thing made a huge difference. Victims claim
9 they jumped through a window, crawled through a
10 barricaded, went to a neighbor's house, beat on his
11 back door, wouldn't let him in, but you heard the
12 neighbor calling 911. Where is Victim No. 2? She
13 went back in the house. How do I know that? When
14 Officer Campbell got there 5, 6, 7, 8 minutes later,
15 whatever, he saw Victim 2 trying to climb out the
16 kitchen window, the downstairs kitchen window.
17 Whether she saw police pull up with blue lights
18 flashing, we've been shot, we don't know if the people
19 are still there, she's trying to climb out the window,
20 and he saw her, someone trying to climb out the
21 window. Shortly after that, she came out of the front
22 door and she's saying I don't know if the guy is still
23 in there or not. So the officer had to wait on backup
24 to clear the residence. What was she doing in the
25 house if she thought the armed robbers are still in

CLOSING STATEMENT - MR. LONG

1 the house? I'll tell you what is probable, she was
2 flushing stuff down the toilet.

3 You heard the officer testify and whether or not
4 it is going through their mind or not, I don't know,
5 but it turns out that way. Were they charged with
6 possession with intent to distribute cocaine or
7 attempting to purchase crack cocaine, or whatever
8 charges could be involved? I mean, there was a crack
9 pipe, were they charged with paraphernalia? I doubt
10 it. Because they are victims of robbery and law
11 treats them differently and they know that sympathy
12 can go a long way. I hope I never ever have to face
13 hand-of-one-is-hand-of-all. I used to consider doing
14 a good deed was a good thing, and my Dad used to tell
15 me no good deed goes unpunished. I would scratch my
16 head, what does that mean? That's funny. What are
17 you talking about? If I see someone standing on the
18 side of the road hitchhiking, I'm heading that way,
19 sure, hop in. I get stopped for speeding and it turns
20 out he smells like weed. The officer pulls us out of
21 the car and pats him down and doesn't find nothing on
22 me, pats him and finds 8 grams of cocaine on him.
23 Guess who is charged with cocaine? And say when the
24 cop pulls me over he puts it under the seat, it ain't
25 me. Guess who gets charged? I hope I'm not facing

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1 the-hand-of-one-hand-of-all. That means if you are
2 with someone and they do something wrong, then you are
3 going to pay the cost for it. Thankfully, the law is
4 not like that. The law doesn't say you are guilty for
5 your brother's crimes or your father's crimes or
6 neighbor's crimes, things of that nature. It goes
7 further than that. Listen to the law as His Honor
8 tells you, but the State has to prove beyond a
9 reasonable doubt knowledge and some sort of criminal
10 agreement or conspiracy.

11 What Ms. Livesay told you is correct, if she and
12 I agreed to rob a bank, I'm the get-away driver, I'm a
13 fast driver, I can drive like a fool. I'm sitting out
14 there by the curb and she runs in and shoots and kills
15 a security guard and dives into the car and I floor it
16 and peel rubber and we take off. Yeah, I'm guilty of
17 murder because I have a conspiracy and an agreement
18 with her that we're going to commit an armed robbery
19 during the commission of an armed robbery. It can
20 happen. It can happen. But unless or until the State
21 can prove a criminal conspiracy beyond a reasonable
22 doubt or knowledge, things of that nature, then there
23 is no hand-of-one-hand-of-all liability. The State
24 claimed that Jamal Daniels did in Horry County, while
25 armed with a deadly weapon, take and carry away

CLOSING STATEMENT - MR. LONG

1 personal property of Katrina Daniels, property that
2 belonged to her with the intent to deprive her of its
3 use and ownership, whatever, by use of force, threats,
4 this, that and the other.

5 The State must prove each and every element of
6 those offenses to you beyond a reasonable doubt. His
7 Honor will explain reasonable doubt, but it means
8 firmly convinced. If I make a decision today when I
9 go to bed tonight or tomorrow night or next week, or
10 whenever else I decide -- think about it -- would I
11 feel the same way then saying, yeah, okay, I'm
12 convinced, I made the right decision. I firmly
13 believe I made the right decision. That is what he is
14 talking about.

15 Attempted murder, Jamal Daniels did with criminal
16 intent, malice aforethought, intend to kill Katrina
17 Daniels by the wounds she had on her forehead. Was
18 there any medical testimony to say, yep, that is a
19 gunshot wound? Yeah, there is powder burns. No
20 medical testimony, whatsoever. Scalp wounds bleed,
21 and I'm sorry, she had a scalp wound. I don't know
22 how it happened, I can't tell you because I wasn't
23 there. It could have been by a corner of a door,
24 climbing in and out of a window. It could be tripping
25 and falling over anything in the house. It could be

CLOSING STATEMENT - MR. LONG

1 from the unknown codefendant hitting her in the head
2 with something. I don't know. There is no testimony
3 to say that it is a gunshot wound. You have to prove
4 each one of those beyond a reasonable doubt.

5 Burglary first degree, that Jamal Daniels did
6 enter the dwelling of Katrina Daniels without consent.
7 He had consent. The State can say that is not what we
8 mean by consent, if you intend to go there to do
9 something else under a pretense, then you didn't
10 really give them consent to see what they were going
11 to tell you to do. What did Jamal Daniels, Polo, go
12 there to do? Sell her drugs. What kind of false
13 pretense is that? It is not there.

14 Kidnapping, I don't know what happened. I wish I
15 could watch it on videotape. I wasn't there, but what
16 I think the evidence suggested is there was some
17 argument or disagreement. There was some dispute
18 about the money, homeboy was involved in it, give us
19 the money, get the money, get the money, let's go,
20 whatever, and that took place. We're not leaving
21 until we get the money. Now, kidnapping, held against
22 the will, things of that nature. Going back in the
23 house, things of that nature. Just doesn't make
24 sense. The person who the victims claim held them at
25 gunpoint in the bedroom while Jamal went down and

CLOSING STATEMENT - MR. LONG

1 rummaged through the car looking for the money, came
2 up and took the money off the bed and left. What,
3 beyond a reasonable doubt, proof or evidence beyond a
4 reasonable doubt did he hold them against the will? I
5 have been with the Public Defender's Office for four,
6 five years now, and I've been a defense lawyer for 28.
7 I've lived here all my life, and drugs are a blight.
8 I mean, they are an absolute blight on society, and it
9 is not just us, it is everywhere. The problem is
10 there is money involved in buying drugs, buying,
11 selling, whatever. As long as there is money in
12 drugs, we'll continue to see it flourish, but being
13 where I am and seeing the people I'm involved with and
14 seeing what it does to the victims, seeing what it
15 does to Mr. Jasiak and Mr. Daniels, and see what it
16 does to us, the costs we incur, stuff we need about in
17 newspapers. These poor neighbors to these people. I
18 mean, I came home with my kid from grocery shopping
19 and saw someone running out, next thing there was
20 police and a shooting, robbery, burglary. I mean,
21 these people live next door to you, involved with
22 drugs and bring it into the neighbors. I wish I could
23 snap my fingers and it would disappear and be gone,
24 get back a decent country. Until that happens, we'll
25 continue to involve ourselves with this type of thing.

CLOSING STATEMENT - MR. LONG

1 Seeing what I see, how it happens to people and how it
2 affects their judgment, wisdom, their desire to work,
3 own a job have a family, et cetera, this, that and the
4 other, it kills me. The only reason I tell you is,
5 you can have sympathy to the victims but for the
6 involvement of drugs, they would not be here, okay.

7 Likewise, Mr. Daniels is entitled to sympathy,
8 but for money he can make with drugs. He wouldn't be
9 here today either. I promised I would be brief,
10 probably haven't been. Once I get up -- after I sit
11 down, I'm sure there is a thing or two I forgot to
12 mention. The thing I like and trust about each of you
13 is that you will remember what comes from that witness
14 stand, and if I fail to comment on something, I trust
15 that you will be able to remember it, recall it and
16 take it into account when you decide.

17 If you want to say that Jamal Daniels took
18 through threat or force or use of force -- in other
19 words, common law robbery -- what he otherwise wasn't
20 entitled to, I have no objection to that. He probably
21 doesn't either. He probably knows he deserves
22 something, but when it comes to kidnapping and armed
23 robbery and attempted murder and burglary first, he
24 says I'm not guilty. I didn't do that. That was not
25 it. So we're asking you to find him not guilty on

JURY CHARGE

1 those, because the State failed to prove him guilty.

2 Thank you.

3 THE COURT: Ladies and gentlemen of the jury, I
4 told you at the beginning of the trial it is now time
5 for me to charge you on the law, and as is my
6 practice, I have prepared a written charge. I'm
7 required to give you that charge verbatim, that means
8 I have to read it to you. I will read it to you
9 verbatim and give it to you when you go in to
10 deliberate, because the charge in this case is rather
11 complex. It is rather lengthy, and I think it is only
12 fair for you to have it. I ask you to do this for me.
13 Don't isolate any one part of the charge. Don't take
14 out any one sentence without looking at that sentence,
15 without looking at that part of the charge in the
16 context of the whole charge, because the whole charge
17 is what is important. The tenor of the whole charge
18 is what you should accept, so let me remind you that
19 during this trial you and I have certain duties to
20 perform, and as the trial judge, it is my
21 responsibility to preside over the trial of the case.
22 I also have the duty to rule on the admissibility of
23 the evidence offered during this trial, and you are to
24 consider only the evidence, the competent evidence
25 before you. If there was any testimony ordered

JURY CHARGE

1 stricken from the record in this case during this
2 trial, you must disregard that testimony. You are to
3 consider only the testimony which has been offered or
4 presented from this witness stand, any exhibits which
5 have been made a part of this of the record in this
6 case and any stipulations, agreements, of counsel.

7 I have the additional duty to charge you the law
8 applicable to this case. As the presiding judge, I am
9 the sole judge of the law of this case, and it is your
10 duty as jurors to accept and apply the law as I now
11 state it to you. If you already have an idea as to
12 what the law is and what the law ought to be, and it
13 doesn't agree with what I tell you the law is, you
14 must abandon than idea because you are sworn to accept
15 the law and apply the law exactly as I state it to
16 you. In every case tried in this court before a jury,
17 the jury becomes the soul and exclusive judge of the
18 facts in the case.

19 A trial judge cannot intimate, state, comment on
20 or make any statement to a trial jury about the facts
21 in a case. Since you are -- you, the jury, are the
22 sole judge on the facts in this case, you are not to
23 infer from what I have said during the progress of the
24 trial in ruling in the admissibility of evidence or
25 otherwise, or anything I say now during the course of

JURY CHARGE

1 this instruction to you, that I had any opinion on the
2 facts in this case. The law does not allow me to have
3 an opinion about the facts in this case. This is a
4 matter solely for you, the jury, to determine.

5 As jurors, it is your duty to determine the
6 effect, value, weight and the truth of the evidence
7 presented during this trial. The indictments charged
8 the defendant with one count of armed robbery, one
9 count of kidnapping, one count of burglary in the
10 first degree and one count of attempted murder. I
11 remind you that the fact that the defendant was
12 arrested, charged and indicted in this case is not
13 evidence in this case and cannot be considered by you
14 as evidence of guilt in the case, nor does it create
15 any presumption or inference of guilt. These
16 documents, the indictments, are simply the formal
17 written instruments which contain the charges made
18 against the defendant. They are the formal documents
19 by which the case is brought into this court.

20 The indictments in this case allege, as I said,
21 four different offenses against the defendant. The
22 charges are all 2013 indictments, Indictment 2393,
23 armed robbery; 2391, kidnapping; 2394, attempted
24 murder; and 2715 first degree burglary. Each
25 indictment charges a separate and distinct offense.

JURY CHARGE

1 You must decide each indictment separately on the
2 evidence and the law applicable to it uninfluenced by
3 your decision as to any other indictment.

4 The defendant may be convicted or acquitted on
5 any or all of the offenses charged. You will be asked
6 to write a separate verdict of guilty or not guilty
7 for each indictment. Now, the defendant has pled not
8 guilty to these indictments, and that puts the burden
9 upon the State to prove the defendant guilty. A
10 person charged with committing a criminal offense in
11 South Carolina is never required to prove himself
12 innocent. I charge you that it is an important rule
13 of the law that the defendant in a criminal trial, no
14 matter what the seriousness of the charge may be, will
15 always be presumed to be innocent of the crime for
16 which the indictment was issued unless guilt has been
17 proved by evidence satisfying you of that guilt beyond
18 a reasonable doubt.

19 This presumption of innocence does not end when
20 you begin your deliberation, but it accompanies the
21 defendant throughout the trial until you reach a
22 verdict of guilt based on evidence satisfying you of
23 that guilt beyond a reasonable doubt. The presumption
24 of innocence is like a robe of righteousness placed
25 upon the shoulders of the defendant, which remains

JURY CHARGE

1 with the defendant until it has been stripped from the
2 defendant by evidence satisfying you, again, of the
3 defendant's guilt beyond a reasonable doubt. The
4 presumption of innocence is not a mere legal theory.
5 It is not just a legal phrase. It is a substantial
6 right to which every defendant is entitled unless you,
7 the jury, are satisfied from the evidence of his guilt
8 beyond a reasonable doubt.

9 I instruct you and emphasize that the fact that
10 the defendant did not testify is not a factor to be
11 considered by you in any way in your deliberation and
12 in your consideration of the question of the guilt or
13 the innocence of the defendant. It must not be
14 considered by you in any manner, whatsoever. A
15 defendant has the Constitutional right to remain
16 silent, and the assertion of this right must not be
17 considered by you in your deliberations. I repeat,
18 under your oath you are to draw no conclusions,
19 whatsoever, from the fact that the defendant in this
20 case did not testify. The fact that this defendant
21 did not testify should not even be discussed in the
22 jury room.

23 The burden of proof, as I have said, is on the
24 State. The defendant is not required to prove his
25 innocence. The burden of proof remains on the State

JURY CHARGE

1 to prove guilt beyond a reasonable doubt. Under the
2 law of this state, a defendant may be tried even if
3 the defendant does not attend the trial. The fact
4 that the defendant is not present may not be
5 considered against the defendant in any manner,
6 whatsoever. The State, as I have said, has the burden
7 of proving the defendant guilty beyond a reasonable
8 doubt.

9 Now, some of you may have served as jurors in
10 civil cases where you were told it is only necessary
11 to prove that a fact is more likely true than not
12 true, such as the greater weight or the preponderance
13 of the evidence. In criminal cases, the State's proof
14 must be more powerful than that. It must be beyond a
15 reasonable doubt. Proof beyond a reasonable doubt is
16 proof that leaves you firmly convinced of the
17 defendant's guilt. There are very few things in this
18 world that we know with absolute certainty, and in
19 criminal cases, the law does not require proof that
20 overcomes every possible doubt.

21 If based on your consideration of the evidence
22 you are firmly convinced that the defendant is guilty
23 of the crime charged, you must find the defendant
24 guilty. If, on the other hand, you think there is a
25 real possibility that the defendant is not guilty, you

JURY CHARGE

1 must give the defendant the benefit of the doubt and
2 find him not guilty.

3 What is a reasonable doubt? Reasonable doubt is
4 the kind of doubt that would cause a reasonable person
5 to hesitate to act. There is two types of evidence
6 generally presented at trial: Direct evidence and
7 circumstantial evidence. Direct evidence is the
8 testimony of a person who claims to have actual
9 knowledge of a fact, such as an eyewitness. It is
10 evidence which immediately established the main fact
11 to be true. Circumstantial evidence is proof of a
12 chain of facts and circumstances indicating the
13 existence of a fact. It is evidence that immediately
14 establishes collateral facts from which the main fact
15 may be inferred. Circumstantial evidence is based on
16 inference, and not on personal knowledge or
17 observation. However, the law makes no absolutely no
18 distinction between the weight or the value to be
19 given to either direct or circumstantial evidence, nor
20 is a greater degree of certainty required of
21 circumstantial evidence than of direct evidence.

22 You should weigh all of the evidence in this
23 case. After weighing all of the evidence, if you are
24 not convinced of the guilt of the defendant beyond a
25 reasonable doubt, you must find him not guilty.

JURY CHARGE

1 Necessarily, you must consider or determine the
2 credibility of witnesses who have testified in this
3 case, and credibility simply means believability. It
4 becomes your duty as jurors to analyze and evaluate
5 the evidence and determine which evidence convinces
6 you of its truth. In determining the believability of
7 witnesses who have testified in this case, you may
8 believe one witness over several witnesses, or several
9 witnesses over one witness. You may believe a part of
10 a testimony of a witness, and reject the remaining
11 part of the testimony of that same witness. You may
12 believe the testimony of a witness in its entirety, or
13 you may reject the testimony of a witness in its
14 entirety. You may consider whether the witness has
15 exhibited to you any interest, bias, prejudice or
16 other motive in this case. You may consider the
17 appearance and manner of a witness while on the
18 witness stand.

19 The rules of evidence ordinarily do not permit a
20 witness to testify as to an opinion or a conclusion.
21 There is an exception to this rule which exists for
22 witnesses we call "expert witnesses." A witness who
23 by education and experience becomes an expert in some
24 art, science, profession or calling may state an
25 opinion as to relevant material matter which the

JURY CHARGE

1 witness claims to be an expert, and may also state the
2 reasons for the opinion. You should consider any
3 expert opinion received in evidence in this case, and
4 like any other evidence, give it the weight you think
5 it deserves. If you decide that the opinion of an
6 expert witness is not based on sufficient education
7 and experience, or you conclude that the reasons given
8 in support of the opinion are not sound, or that the
9 opinion is outweighed by other evidence, you may
10 disregard the opinion entirely. A expert witness'
11 testimony is to be given no greater weight of other
12 witnesses simply because the witness is an expert.
13 Further, you are not required to except an expert's
14 opinion even though it is not contradicted.

15 If a crime is committed by two or more persons
16 acting together in committing a crime, the act of one
17 is the act of all. A person who joins with another to
18 commit an unlawful act is criminally responsible for
19 everything done by the other person which happens as a
20 probable and natural consequence of the acts done in
21 carrying out the common plan and purpose. If two or
22 more people are together, acting together, assisting
23 each other in committing the offense, the act of one
24 is the act of all, or as it is sometimes said,
25 the-hand-of-one-is-the-hand-of-all. Prior knowledge

JURY CHARGE

1 that a crime is going to be committed without moral is
2 not sufficient to make a person guilty of that crime.
3 Mere knowledge that another person is going to commit
4 a crime, even if the defendant is present when the
5 crime is committed, is not sufficient to convict the
6 defendant as a principal.

7 Guilt as a principal is shown by actual or
8 constructive presence at the scene as a result of a
9 prior arrangement. Therefore, a finding of a prior
10 arranged plan or common scheme is necessary for
11 finding of guilt as a principal. The State must prove
12 beyond a reasonable doubt by competent evidence, the
13 theory of hand-of-one-is-hand-of-all. A principal in
14 a crime is one who either actually commits the crime,
15 or who is present in aiding, abetting or assisting in
16 committing the crime. When a person doesn't act in
17 the presence of and with the assistance of another,
18 the act is done by both. Where two or more acting
19 with a common plan or intent are present at the
20 commission of a crime, it does not matter who actually
21 commits the crime, all are guilty, the hand of one is
22 the hand of all.

23 Presence at the commission of a crime means to be
24 sufficiently near to aid and abet and assist in the
25 commission of a crime. However, as I said, near

JURY CHARGE

1 presence at the scene of a crime is not sufficient to
2 convict one as a principal on the theory of aiding and
3 abetting. Intent is also a necessary element, for
4 there must have been a common design or intent to
5 commit the crime, and the crime must have been
6 committed pursuant thereto with the person aiding and
7 abetting or by some -- by some overt act.

8 Intent means intending the result which actually
9 occurs, not accidentally or involuntarily. Intent may
10 be shown by acts and conduct of the defendant and
11 other circumstances from which you may naturally and
12 reasonably infer intent. The State must prove these
13 elements beyond a reasonable doubt. Let me reiterate,
14 near presence at the scene is not sufficient to prove
15 someone guilty of a crime. A defendant's presence
16 where a crime is being committed or mere association
17 with a person who commits a crime does not make a
18 defendant an accomplice or an aider and abettor of the
19 person committing the crime.

20 The burden is on the State to prove every element
21 of the crime charged. If you find after reviewing all
22 of the evidence that the State proved that the
23 defendant was only present at the scene of the crime,
24 and they have not proven beyond a reasonable doubt any
25 other participation in the crime, you must find the

JURY CHARGE

1 defendant not guilty. The law is that proof of
2 presence at the scene of the crime is not sufficient
3 to find someone guilty.

4 The defendant is charged with armed robbery. In
5 order to prove this offense, the State must first
6 prove beyond a reasonable doubt that the defendant
7 took personal property from the person or in the
8 presence of another, properties in the presence of
9 another, and if it is within the person's reach,
10 inspection, observation or control, if the person
11 could not overcome with violence or prevented by fear
12 to keep possession of his property. The State must
13 also prove beyond a reasonable doubt that the
14 defendant carried away the property intending to
15 permanently deprive the owner of the property and to
16 keep the property for the defendant's own use. The
17 slightest removal of the property, or the complete
18 possession of the property, even for an instant by the
19 defendant, is sufficient to show a taking and carrying
20 away of the property. The taking and carrying away of
21 the property must also have been done with violence or
22 by putting the owner of the property in fear of
23 violence. Finally, the State must prove beyond a
24 reasonable doubt that the defendant was armed with a
25 deadly weapon during the robbery. A deadly weapon is

JURY CHARGE

1 any article, instrument or substance which is likely
2 to cause death or great bodily harm. Whether an
3 instrument has been used as a deadly weapon depends on
4 the facts and circumstances of each case.

5 The following examples of instruments which may
6 be deadly weapons are things like a pistol, a shotgun,
7 rifle, a dirk, a dagger, a knife, slingshot, metal
8 knuckles, razor, gasoline, fire bomb, Molotov
9 Cocktail, lighter fluid. A gun may be a deadly weapon
10 even if it is not operating. If you find that the
11 State has failed to prove that the defendant was armed
12 with a deadly weapon, you may then consider whether
13 the State has proved beyond a reasonable doubt that
14 the defendant committed robbery.

15 Also included in the offense of armed robbery is
16 the lesser offense of robbery. In order to prove
17 robbery, the State must prove beyond a reasonable
18 doubt all of the evidence that I have just explained
19 to you, except that the defendant was armed with a
20 deadly weapon. The State must prove beyond a
21 reasonable doubt that the defendant knowingly and
22 unlawfully ceased, confined, inveigle, decoyed,
23 kidnapped, abducted or carried away another person
24 without authority of law.

25 To do a thing unlawfully is to do it willfully

JURY CHARGE

1 and against the law. Knowingly means with knowledge,
2 consciously, not accidentally. Seize means to take
3 hold of suddenly or forcibly. Confine means to limit,
4 restrict or enclose within bounds, imprison or shut in
5 or keep in a person. Inveigle means to lure, entice,
6 lead astray by false representations, promises or
7 other deceitful means. Decoy means to lure, buy or as
8 if by decoy, a decoy is something to entice a person
9 into a trap. Kidnap is to remove a person against
10 their will by unlawful force or fraud. Abduct means
11 to carry off secretly or by force for an illegal
12 purpose. Carry away simply means to remove.

13 The State does not have to prove that the
14 defendant did all of these things. Instead, if you
15 find beyond a reasonable doubt that the defendant did
16 any of these things, you may find the defendant guilty
17 of kidnapping. Something done without authority of
18 law is something which the law does not sanction,
19 permit, allow, condone or provide justification for.

20 Kidnapping does not have to be for any personal
21 or monetary gain for any illegal purpose, but may be
22 for any reason, whatsoever. The defendant is also
23 charged with first degree burglary. The State must
24 prove beyond a reasonable doubt that the defendant
25 entered a dwelling without consent. A dwelling is any

JURY CHARGE

1 building or portion of a building in which a person
2 ordinary sleeps. A building constructed as dwelling
3 that has never been occupied cannot be considered a
4 dwelling for purposes of burglary, but a building is a
5 dwelling even if the residence are temporarily absent
6 from the building.

7 In order to prove that the defendant entered the
8 dwelling, the State does not have to show that the
9 defendant's entire body entered the dwelling. The
10 smallest entry is sufficient. It may be any part of
11 the body such as a hand or foot, or even an instrument
12 such as a hook or other instrument. In addition, the
13 State does not have to prove that force was used to
14 gain entry. If a person enters a building by using
15 deception, artifice, trick or misrepresentation to get
16 consent to enter, this is an entry without consent.

17 Next, the State must prove beyond a reasonable
18 doubt that the defendant intended to commit a crime,
19 either a felony or misdemeanor, at the time of the
20 injury. The mere entry into a dwelling without
21 consent is not burglary. If the intent to commit a
22 crime is formed after the entry, it is not burglary.
23 On the other hand, if the defendant intended to commit
24 a crime at the time of the entry, it is a burglary
25 even if the intent was abandoned after the entry. It

JURY CHARGE

1 does not matter that the intended crime was not
2 completed. Intent may be shown by acts and conduct of
3 the defendant and other circumstances from which you
4 may naturally and reasonably infer intent.

5 Finally, the State must prove beyond a reasonable
6 doubt, one, when entering while in the dwelling or
7 when fleeing, the defendant or the accomplice was
8 armed with a deadly weapon or explosive. A deadly
9 weapon is any article, instruments or substance which
10 is likely to cause death or great bodily harm.

11 Whether an instrument has been used as a deadly weapon
12 depends on the facts and circumstances of each case.
13 I've already instructed you as to some examples of
14 instruments that may be deadly weapons.

15 Two, when entering while in the dwelling or when
16 fleeing, the defendant or accomplice caused physical
17 injury to anyone not participating in the crime.

18 Three, when entering while in the dwelling or
19 when fleeing, the defendant or accomplice used or
20 threatened to use a dangerous object.

21 Four, when entering while in the dwelling or when
22 fleeing, the defendant or an accomplice displayed what
23 appeared to be a knife, pistol, a revolver, a rifle, a
24 shotgun, machine gun or other firearm.

25 Cr, Number 5, the defendant entered or remained

JURY CHARGE

1 in the dwelling in the nighttime. The nighttime is
2 the period between sunset and sunrise during which
3 there is not enough daylight to recognize a person's
4 face except by artificial light or moonlight.

5 The defendant is charged also with attempted
6 murder. In order to prove this crime, the State must
7 prove the defendant attempted to kill another person
8 with malice aforethought, either expressed or implied.
9 Malice is hatred, ill-will, hostility towards another
10 person. It is the intentional doing of a wrongful act
11 without just cause or excuse, and with the intent to
12 inflict an injury, or under circumstances the law will
13 infer an evil intent. Malice aforethought does not
14 require that malice exists for any particular time for
15 any particular time for that to be committed, but
16 malice may exist in the mind of the defendant just
17 before and at the time of the act or when the act is
18 committed; therefore, there must be a combination of
19 the previous evil intent, malice, and the act.

20 Malice aforethought may be expressed or inferred.
21 In these terms, expressed and inferred, do not mean
22 different kinds of malice, but merely the manner in
23 which the malice may be shown to exist, that is either
24 by direct evidence or by inference from the facts and
25 circumstances which are proved. Expressed malice as

JURY CHARGE

1 shown when a person speaks words which expresses
2 hatred and ill-will for another, or when a person
3 prepared beforehand to do the act which is later
4 accomplished; for example, lying in wait for a person
5 or any other act of preparation going to show that the
6 deed was within the defendant's mind would be
7 expressed malice.

8 Malice may be inferred from conduct showing a
9 total disregard for human life. Inferred malice may
10 arise when the deed is done with a deadly weapon. A
11 deadly weapon is any article, instrument or substance
12 which is likely to cause death or great bodily harm,
13 and whether an instrument is being used as a deadly
14 weapon depends on the facts and circumstances of each
15 case. I have already instructed you as to examples of
16 instruments which may be deadly weapons.

17 If facts are proved beyond a reasonable doubt
18 sufficient to raise an inference of malice to your
19 satisfaction, this inference would be simply an
20 evidentiary fact to be considered by you, the jury,
21 along with all other evidence in the case, and you
22 will give it the weight you decide it should receive.
23 A specific intent to kill is not an element of
24 attempted murder. There must be a general intent to
25 commit serious bodily injury. Intent means intending

JURY CHARGE

1 the result which actually occurs not accidentally or
2 involuntarily. Intent may be shown by acts and
3 conduct of the defendant and other circumstances from
4 which you may naturally and reasonably infer intent.

5 Evidence of the character of the act, the
6 character of the instrument used, the manner which it
7 was used, the purpose to be accomplished and resulting
8 wounds or injuries may be considered in determining
9 the intent which the act -- with which the act was
10 committed. Intent may also be inferred where it is
11 demonstrated that the defendant voluntarily and
12 willfully commits an act that is a natural consequence
13 or tendency of which is to destroy another's life.

14 If you find that the State failed to prove the
15 defendant failed to commit attempted murder, you may
16 then consider whether the State has proved beyond a
17 reasonable doubt that the defendant committed assault
18 and battery in the first degree. Also included within
19 the offense of attempted murder is the lesser offense
20 of assault and battery in the first degree. A person
21 commits the offense of assault and battery in the
22 first degree if the person unlawfully injures another,
23 and the act either involves the nonconsensual touching
24 of the private parts of an adult, either above or
25 under the clothing with lewd and lascivious intent, or

JURY CHARGE

1 occurred during the commission of a robbery, burglary,
2 kidnapping or theft. Private parts means the
3 genitalia area or buttocks of a male or female, or the
4 breasts of a female.

5 A person may also commit the offense of assault
6 and battery in the first degree if a person unlawfully
7 offers to injure another person with the present
8 ability to do so, and the act either is accomplished
9 by means likely to produce death or great bodily
10 injury, or occurred during the commission of a
11 robbery, burglary, kidnapping or theft. Great bodily
12 injury simply means bodily injury which causes a
13 substantial risk of death or which causes serious
14 permanent disfigurement or protracted loss or
15 impairment of the function of a body member or organ.

16 Ladies and gentlemen, there are two possible
17 verdicts which you may find on each indictment in this
18 case, either guilty or not guilty, and there is no
19 significance, whatsoever, to the order in which I
20 state these possible verdicts. It just means I have
21 to say one first and one second. Your verdict must be
22 as to each indictment unanimous. Madam foreperson,
23 when you agree on a verdict, what I would ask you to
24 do is mark that verdict on the verdict forms which I
25 am providing for you. Then you will simply knock on

JURY CHARGE

1 the door of your jury room signaling Mr. Ropp or one
2 of the deputies who is present that you, in fact, have
3 reached a verdict.

4 Now, I'm going to just take a few moments to go
5 over the verdict forms with you. As you see here, I
6 have a verdict form that says: As to the charge of
7 attempted murder, we, the jury, unanimously find the
8 defendant -- and it says circle one, and I have guilty
9 and not guilty. Again, it's the order, I'm not
10 suggesting one thing in the world to you, we just have
11 to put one first, so that is what we do.

12 Under that, it says that if you found the
13 defendant guilty of attempted murder, stop your
14 deliberations here. If you found the defendant not
15 guilty of attempted murder, you may consider the
16 charge of assault and battery in the first degree.
17 What that means is if he was found guilty, if that
18 were your verdict of attempted murder, you do not need
19 to go any further because you would not consider
20 assault in the first degree because you are not guilty
21 of both. But if you found him not guilty of attempted
22 murder, you could move down and consider the lesser
23 included offense, and you will see: As to the charge
24 of assault and battery in the first degree, we
25 unanimously find the defendant -- and you could find

JURY CHARGE

1 him guilty or not guilty. You don't even have to go
2 that far if, in fact, your verdict -- and, again, I'm
3 not suggesting one -- were guilty in the attempted
4 murder.

5 On the armed robbery, very similar situation. I
6 instruct you that if you find him guilty of armed
7 robbery, stop there. If you found him not guilty, you
8 could consider just common law robbery, and I
9 instructed you on that. You can move on to that and
10 find him guilty or not guilty. Again, please, I'm not
11 suggesting by the form of my verdict or my verdict
12 forms any verdict on your part. Please don't think
13 I'm suggesting it.

14 Of course we have kidnapping, that is simpler.
15 There is no lesser includes, just we unanimously find
16 the defendant guilty or not guilty.

17 Burglary as well, guilty or not guilty.

18 Now, as I promised you -- first of all, you can
19 see, these charges are rather complicated and
20 complexed, and that is why I have always followed the
21 practice of giving the jury a written copy for you to
22 follow. I will give you that. I may have to bring
23 you back and give you some other charge on the law.
24 There may be something I left out, and these attorneys
25 will tell me if I have. If I do not bring you back

JURY CHARGE

1 out and I send in my charge and I send in the verdict
2 forms and I send in the exhibits, that is your signal
3 to proceed with your deliberations to begin. Do not
4 begin until I do that or I bring you back and give you
5 further charges. When you receive the charge and
6 exhibits means to proceed.

7 Mr. Ropp, would you segregate our alternates,
8 take the jury back to the jury room and let me take up
9 these matters with the attorneys.

10 (Whereupon, the jury exits at 3:59 p.m., and the
11 following is had out of the presence of the jury.)

12 THE COURT: Ms. Livesay, additions?

13 MS. LIVESAY: No, sir.

14 THE COURT: Mr. Long?

15 MR. LONG: One, Your Honor. Burglary first
16 degree, the breaking and entering of a dwelling
17 without consent with the intent to commit a crime;
18 isn't there a requirement that the crime that is
19 intended to be committed either be against a resident
20 occupant or owner of that residence?

21 THE COURT: I don't think so. There is case law
22 that says it can even be trespass.

23 MR. LONG: If I were to break into your home and
24 call up the White House and say, I'm going to kill
25 President Obama, that is a crime I committed. Have I

JURY CHARGE

1 committed a burglary in doing so?

2 THE COURT: I think so. If you commit any crime,
3 felony or misdemeanor, while therein.

4 MR. LONG: What if I sold drugs to the occupants
5 of the home, and it is not charged as a crime? In
6 this circumstance, the crime is against the victims,
7 but it is not necessarily against the victims, it is a
8 crime against society for drugs.

9 THE COURT: I know -- and we have the charges
10 right here. I know of no requirement that the
11 offense -- either felony or misdemeanor -- be against
12 an occupant or owner of a home. I know of nothing.
13 Suppose I broke into your house to get a better
14 vantage point to shoot your neighbor with a rifle, you
15 know, I was going to be a sniper. It's not against
16 you or your home, but I committed an offense against
17 that person. I know of no authority that would
18 require the offense to be against the owner or
19 occupant.

20 MR. LONG: Thank you, Your Honor. That is good
21 enough. I agree.

22 THE COURT: Is that it? It is noted for the
23 record.

24 Let's get together your exhibits and get together
25 the things that should go in, and let's send them out

JURY CHARGE

1 to the jury.

2 (The court reporter and attorneys go through the
3 evidence to be presented to the jury.)

4 (Court's Exhibit 3 marked.)

5 THE COURT: I'm going back and excusing the
6 alternates.

7 (Whereupon, deliberations begin at 4:09 p.m.)

8 (The jury enters at 6:54 p.m., and the
9 following is heard in the presence of the jury.)

10 THE COURT: All right. Mr. Foreman, it is my
11 understanding you reached a verdict?

12 FOREPERSON: We have, Your Honor.

13 THE COURT: Very well. Would you give the
14 verdict to Mr. Ropp. Mr. Ropp, will you deliver it to
15 me, please? Madam clerk.

16 THE CLERK: Indictment 2013-GS-26-2391, the State
17 of South Carolina, County of Horry versus Jamal
18 Daniels. As to the charge of kidnapping, we, the
19 jury, unanimously find the defendant not guilty.

20 Indictment 2013-GS-26-2715, State of South
21 Carolina, County of Horry versus Jamal Daniels as to
22 the charge of burglary first degree. We, the jury,
23 unanimously find the defendant not guilty.

24 2013-GS-26-2393, State of South Carolina, County
25 of Horry versus of Jamal Daniels. As to the charge of

JURY CHARGE

1 armed robbery, we, the jury, unanimously find the
2 defendant not guilty.

3 As to the charge of robbery, we, the jury,
4 unanimously find the defendant guilty.

5 2013-GS-26-2394, the State of South Carolina,
6 County of Horry versus Jamal Daniels. As to the
7 charge of attempted murder, we, the jury, unanimously
8 find the defendant not guilty.

9 As to the charge of assault and battery in the
10 first degree, we, the jury, unanimously find the
11 defendant guilty.

12 Signed by Kevin Miller, dated 4/13 of 2016.

13 Ladies and gentlemen of the jury, if this is your
14 verdict, so signify my raising your right hand.

15 THE COURT: Let the record reflect that they all
16 answered affirmatively.

17 Any request for polling?

18 MR. LONG: No, Your Honor.

19 MS. LIVESAY: No, sir.

20 THE COURT: Thank you. Ladies and gentlemen of
21 the jury, thank you so much for your service. We have
22 a message for the jury to return tomorrow, but I'm not
23 going to make you come back. We'll let the rest of
24 them come. We can get by with that, can't we,
25 Natalie?

JURY CHARGE

1 THE CLERK: I'm make sure that they are taken
2 off.

3 THE COURT: They have been working hard this
4 week. I tried to impress how important what you do is
5 and how this system would not work without you. We
6 realize this has been a great inconvenience to you,
7 and all we can do is offer our thanks for you being
8 here. This case would not be resolved were you not
9 here. I can assure you, it would still be on the
10 books and still be pending. So, again, let me thank
11 you, each and every one of you, for being here.

12 I'm a local guy, I told you that. There is no
13 telling where I'll turn up. If you see me, I love to
14 be approached by jurors and people on my jury.
15 Unfortunately, I can't remember everybody, but if you
16 see me, don't hesitate if you would like to speak to
17 me about your jury service or experience or anything
18 else. You just approach me. I usually can be found
19 on Saturday morning at Lowe's. If you do get a chance
20 to see me, don't hesitate. I love to hear from you,
21 about your experience. You are excused for the week.
22 Thank you very much.

23 (The jury exits at 6:58 p.m., and the
24 following is heard out of the presence of the jury.)

25 THE COURT: All right. Anything further?

JURY CHARGE

1 MS. LIVESAY: Nothing from the State.

2 THE COURT: Do you have sentencing sheets? My
3 understanding is there is a conviction for common law
4 robbery and --

5 MR. LONG: Assault and battery first.

6 MS. LIVESAY: Give us two minutes.

7 THE COURT: If you would, when you get it, bring
8 it to chambers. It is going to be sealed. You have,
9 no objection, do you, Mr. Long?

10 MR. LONG: No, Your Honor. I mean, you've heard
11 everything about the case, you know everything
12 involved in it. The only thing you haven't heard is
13 personal information, and there is not a whole lot I
14 can offer because I'm not prepared and got information
15 as far as sentencing purposes are concerned.

16 THE COURT: Would you like to make any post-trial
17 motions? Do you have any?

18 MR. LONG: No, Your Honor, we do not. The only
19 thing I can tell you is I believe he has a prior
20 record for simple possession of marijuana and possibly
21 some motor vehicle offenses like DUIs or whatever. He
22 has no prior record, Your Honor.

23 THE COURT: All right. And he's how old?

24 MR. LONG: 23. Born in '94, so makes him 22.

25 THE COURT: Okay. Anything further from the

JURY CHARGE

1 State.

2 MS. LIVESAY: Nothing from the State.

3 THE COURT: Very well, I will. If you will get
4 me sentencing sheets, I'll be back in the office and
5 I'll fill out the sentencing sheets, impose the
6 appropriate sentences and I will seal the sentences.

7 MR. LONG: For the record, if I could say, I
8 spoke to Scott Bellamy at lunchtime today and he said
9 that Mr. Daniels had been calling him wanting an
10 update of the trial, and Scott told me possibly he may
11 show. I can contact him and try to tell him that he
12 needs to come forward for sentencing. Will you be
13 here tomorrow if I were able to get to be in touch
14 with him or Mr. Bellamy for sentencing tomorrow, if I
15 can get him in?

16 THE COURT: I have no problem with going ahead
17 and sentencing him, if he shows up. Now, what I will
18 do is --

19 MR. LONG: I don't mean not sealing the sentence,
20 just go ahead and issue the sentence you deem
21 appropriate.

22 THE COURT: If he's going to appear, I will
23 sentence him when he appears. I will hear from him,
24 I'll give him the opportunity to make a statement. I
25 would ask that you do this, I have a very pressing

JURY CHARGE

1 matter first thing in the morning, but I would
2 anticipate being here about 11 o'clock. I'll be
3 available on my cell phone. Taylor will be here.
4 Taylor knows how to get in touch with me. There is a
5 matter I need to talk with some folks in Columbia
6 about tomorrow, so I'm going to come in. I can
7 arrange it, just let me know. Nancy, if you will,
8 prepare the sentencing sheets, deliver them to Taylor.
9 We will -- I'll hold off and see if he shows tomorrow.

10 (Whereupon, the proceedings for the case of State
11 of South Carolina versus Jamal Daniels concluded.)
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1 CERTIFICATE OF REPORTER

2
3 State of South Carolina)

4 County of Horry)

5
6 I, Natalie Dahl, Official Court Reporter for the
7 State of South Carolina, do hereby certify that the
8 foregoing is a true, accurate and complete Transcript
9 of Record of the proceedings had and evidence
10 introduced in the trial of the captioned case,
11 relative to appeal, in the Court of General Sessions
12 for Horry County, South Carolina, on the 11th through
13 the 13th days of April, 2016.

14 I do further certify that I am neither of kin,
15 counsel, nor interest to any party hereto.

16
17 April 18, 2017

18
19 

20 Natalie Dahl, RPR

21 Court Reporter
22
23
24
25

1 State of South Carolina) Court of General Sessions
2 County of Horry) 2013-GS-26-02393
3 2013-GS-26-02394

4 State of South Carolina)
5 vs.) Transcript of Record
6 Jamal Marquis Daniels)
7

8
9 ORIGINAL

January 18, 2017
Conway, South Carolina

10
11 BEFORE:

12 Honorable Larry B. Hyman, Judge.

13 APPEARANCES:

14 Nancy R. Livesay, Esq.
15 Attorney for the State

16 James Galmore, Esq.
17 Attorney for the Defendant

18)

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Teresa J. F. Bautz, RPR
Official Court Reporter

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1 E X H I B I T S

2 NO.	DESCRIPTION	ID	EV

3	No exhibits submitted.		

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22	Exhibits retained by Clerk of Court.		

23			

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25			

1 (The hearing commenced at approximately
2 11:08 a.m.)

3 MS. LIVESAY: Judge, this is Jamal Daniels. His
4 original attorney was Mr. Long, now it's James Galmore.
5 He was tried back in April for attempted murder and
6 armed robbery, it came back A and B first and strong
7 arm. We're just here today for the sentence. He was
8 tried in his absence, and it was a sealed sentence.

9 THE COURT: I only see a verdict form for assault
10 and battery first. I see, okay, I got another trial,
11 another file here. All right.

12 I have two files indicating a verdict form of
13 guilty for the robbery and guilty on the assault and
14 battery first degree. But I only have one sentence
15 sheet.

16 MS. LIVESAY: It came back guilty, Your Honor.
17 There were several indictments, but it came back
18 guilty. It was originally attempted murder, and they
19 came back guilty on A and B first, the lesser --

20 THE COURT: I have that, I have that right here,
21 okay, assault and battery first degree. But I do not
22 have the sentencing sheet or form for the...

23 MS. LIVESAY: Strong arm?

24 THE COURT: For the strong arm.

25 MR. GALMORE: Your Honor was the presiding judge

1 in that.

2 THE COURT: I was.

3 MR. GALMORE: Yes, sir.

4 THE COURT: If they were on the same day.

5 MS. LIVESAY: Judge, I can get you another
6 sentencing sheet.

7 THE COURT: Well, I could do that, impose sentence
8 on the strong arm. Strong arm carries what, ten?

9 MS. LIVESAY: I'm sorry, Your Honor?

10 THE COURT: Strong arm is 10 or 15?

11 MR. GALMORE: 15.

12 THE COURT: 15, okay.

13 MR. GALMORE: But, Your Honor, I am concerned if
14 the original sentence sheet is missing. I understand
15 Your Honor was the trial judge. It might not be a big
16 issue to resentence on that issue, but that is a
17 concern if the original sentence sheet is missing.

18 THE COURT: Well, I have the sentencing sheet on
19 the assault and battery first degree. It's just that
20 the envelope is missing from the -- the clerk's
21 checking to see where that may be. But I only have the
22 one envelope with the sealed sentence, and that's for
23 the assault and battery in the first degree. And the
24 other file has the verdict form indicating not guilty
25 on the armed robbery but guilty on the robbery.

1 MR. GALMORE: How would Your Honor like to
2 proceed?

3 THE COURT: Well, what I'd like to do is pronounce
4 the sentence on the assault and battery in the first
5 degree charge. I understand that he was found guilty.
6 Excuse me, assault and battery in the first degree,
7 have the sentencing sheet for that. I will impose the
8 sentence for that, and we'll try to find out what
9 happened with the other sentencing sheet.

10 MR. GALMORE: Yes, sir.

11 THE COURT: Okay. All right, as to the finding of
12 the jury as to assault and battery in the first degree
13 which he was found guilty, the Court imposed a sentence
14 of ten years in the State Department of Corrections.
15 And that was on indictment 2013-GS-26-2393. Okay..

16 MR. GALMORE: And yes, Your Honor. We would
17 just --

18 THE COURT: Wait, excuse me, 2394. And there
19 should be a sentence there, because I very clearly
20 marked that it was concurrent with indictment no.
21 2013-GS-26-2393, which was the indictment for the
22 robbery. So it was a concurrent sentence, whatever it
23 was, I just don't have the envelope containing the
24 sentencing sheet..

25 MR. GALMORE: May we approach?

1 THE COURT: Certainly.

2 (Discussion off the record.)

3 MR. GALMORE: May I have a moment to confer?

4 THE COURT: Yes.

5 (Discussion off the record.)

6 MR. GALMORE: Your Honor, we would ask that the
7 Court impose a sentence on the common law robbery
8 conviction at this time.

9 THE COURT: All right. The State have any
10 objection?

11 MS. LIVESAY: No, sir, Your Honor.

12 THE COURT: Okay. And very clearly on the
13 sentencing sheet for the assault and battery in the
14 first degree sentenced him to ten years and marked that
15 it was concurrent with the strong arm robbery
16 indictment. And I would impose a sentence of ten years
17 on the strong arm and run it concurrent with the
18 sentence that he received on the assault and battery.
19 Okay?

20 MR. GALMORE: Yes, sir.

21 THE COURT: All right.

22 MS. LIVESAY: Thank you, judge.

23 MR. GALMORE: Yes, sir. Thank you, sir.

24 THE COURT: All right.

25 (The hearing adjourned at approximately

1 11:16 a.m.)

2 THE COURT: Mr. Galmore, for the record, just let
3 me say that I do have my sentencing sheet from the
4 original, and that was precisely the sentence that I
5 gave concurrent with the other indictment, ten years.

6 MR. GALMORE: Yes, sir. Thank you, sir.

7 THE COURT: I'd just like for the record to be
8 clear on that; okay?

9 MR. GALMORE: Yes, sir.

10 MS. LIVESAY: So we don't need to bring him back
11 out?

12 THE COURT: No, we don't need to bring him back
13 out. I just wanted to make sure that the record was
14 complete on that.

15 MS. LIVESAY: Thank you, judge.

16 (The hearing concluded at approximately

17 11:34 a.m.)

18 (End of Transcript of Record.)

19 - - -

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1 CERTIFICATE OF REPORTER

2

3 STATE OF SOUTH CAROLINA)

4 COUNTY OF HORRY)

5

6 I, TERESA J.F. BAUTZ, Official Court

7 Reporter for the Fifteenth Judicial Circuit of the

8 State of South Carolina, do hereby certify that the

9 foregoing is a true, accurate and complete Transcript

10 of Record of the proceedings had and evidence

11 introduced in the trial of the captioned case, relative

12 to appeal, in the Court of Common Pleas for Horry

13 County, South Carolina, on the 13th day of March, 2017.

14

15 I FURTHER CERTIFY that I am neither of

16 kin, counsel nor interest to any party hereto.

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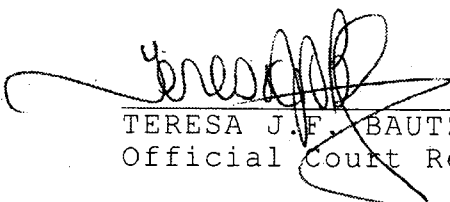
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TERESA J.F. BAUTZ, RPR
Official Court Reporter

CITY OF MYRTLE BEACH

Event Report

Event ID: 1302-06948

Call Ref #: 106

Date/Time Received: 02/28/13 21:08:57

Rpt #: 13-003022

Prime 288

Services Involved

Call Source: E911

Unit: CAMPBELL, ALTON

LAW

Location: 6703 JEFFERSON PL

APT B2

X-ST: 67TH AVE N

Jur: MBPD Service: LAW Agency: MBPD

St/Beat: LN District: RA:

GP: LN

Business: 6703 JEFFERSON PL

Phone:

Nature: BURGLARY RESIDENCE

Alarm Lvl: 1 Priority: P

Medical Priority:

Reclassified Nature: SHOOTING INCIDENT

Caller: MALE, NEIGHBOR

Alarm:

Addr:

Phone: (843) 655-7621

Alarm Type:

Vehicle #:

St: SC

Report Only: No

Race:

Sex:

Age:

Call Taker: QWISE

Console: CT04

Geo-Verified Addr.: Yes Nature Summary Code:

Disposition: IR

Close Comments:

Notes:

See Event Notes Addendum at end of this report

Times

Call Received: 02/28/13 21:08:57

Time From Call Received

Call Routed: 02/28/13 21:09:38

000:00:41

Unit Reaction: 000:00:12 (1st Dispatch to 1st Arrive)

Call Take Finished: 02/28/13 21:09:38

000:00:41

En-Route: 000:00:30 (1st Dispatch to 1st En-Route)

1st Dispatch: 02/28/13 21:09:50

000:00:53 (Time Held)

On-Scene: 004:35:20 (1st Arrive to Last Clear)

1st En-Route: 02/28/13 21:10:20

000:01:23

1st Arrive: 02/28/13 21:10:02

000:01:05 (Reaction Time)

Last Clear: 03/01/13 01:45:22

004:36:25

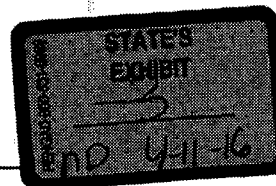
Radio Log

Unit	Empl ID	Type	Description	Time Stamp	Comments	Close Code	User
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330	8248	D	Dispatched	02/28/13 21:09:5	Stat/Beat: P		SMETALLO
251	8234	D	Dispatched	02/28/13 21:09:5	Stat/Beat: P		SMETALLO
311	7831	D	Dispatched	02/28/13 21:09:5	Stat/Beat: PN		SMETALLO
311	7831	A	Arrived	02/28/13 21:10:0			Unit:311
311	7831	X	Canceled	02/28/13 21:10:1			SMETALLO
311	7831	D	Dispatched	02/28/13 21:10:2	Stat/Beat: PN		SMETALLO
311	7831	E	En-Route	02/28/13 21:10:2	Stat/Beat: PN		SMETALLO
336	8129	E	En-Route	02/28/13 21:10:2			SMETALLO
291	7326	D	Dispatched	02/28/13 21:10:3	Stat/Beat: WFP		SMETALLO

Report Generated: 02/10/2016 15:00:14 | User ID: CRHODES

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Page 1 of 4



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226	7285	D	Dispatched	02/28/13 21:10:4	Stat/Beat: P	SMETALLO
226	7285	E	En-Route	02/28/13 21:10:4	Stat/Beat: P	SMETALLO
333	6966	D	Dispatched	02/28/13 21:10:5	Stat/Beat: SCP	SMETALLO
333	6966	E	En-Route	02/28/13 21:10:5	Stat/Beat: SCP	SMETALLO
330	8248	E	En-Route	02/28/13 21:10:5		SMETALLO
251	8234	E	En-Route	02/28/13 21:10:5		SMETALLO
288	8020	D	Dispatched	02/28/13 21:11:4	On Evt: [A] at 7800 N KINGS HWY	SMETALLO
288	8020	E	En-Route	02/28/13 21:11:4	On Evt: [A] at 7800 N KINGS HWY	SMETALLO
288	8020	A	Arrived	02/28/13 21:13:0		SMETALLO
330	8248	A	Arrived	02/28/13 21:15:2		Unit:330
251	8234	A	Arrived	02/28/13 21:15:3		SROYAL
291	7326	A	Arrived	02/28/13 21:16:5		Unit:291
311	7831	A	Arrived	02/28/13 21:17:0		Unit:311
226	7285	A	Arrived	02/28/13 21:20:0		SMETALLO
211	6199	D	Dispatched	02/28/13 21:20:5	Stat/Beat: P	SMETALLO
211	6199	A	Arrived	02/28/13 21:20:5	Stat/Beat: P	SMETALLO
333	6966	A	Arrived	02/28/13 21:21:1		SMETALLO
336	8129	A	Arrived	02/28/13 21:21:5		SMETALLO
330	8248	L	Location Change	02/28/13 21:30:3	GSR	SMETALLO
251	8234	L	Location Change	02/28/13 21:30:3	GSR	SMETALLO
403	5124	D	Dispatched	02/28/13 21:36:5	Stat/Beat: P	SMETALLO
403	5124	A	Arrived	02/28/13 21:36:5	Stat/Beat: P	SMETALLO
453	6783	D	Dispatched	02/28/13 22:01:2	Stat/Beat: P	SMETALLO
453	6783	A	Arrived	02/28/13 22:01:2	Stat/Beat: P	SMETALLO
456	7847	D	Dispatched	02/28/13 22:01:2	Stat/Beat: P	SMETALLO
456	7847	A	Arrived	02/28/13 22:01:2	Stat/Beat: P	SMETALLO
453	6783	L	Location Change	02/28/13 22:11:4	GSR	SMETALLO
412	6572	D	Dispatched	02/28/13 22:21:1	Stat/Beat: P	SMETALLO
412	6572	E	En-Route	02/28/13 22:21:1	Stat/Beat: P	SMETALLO
291	7326	C	Cleared	02/28/13 22:37:0		AU Unit:291
412	6572	A	Arrived	02/28/13 22:38:0		SMETALLO
412	6572	L	Location Change	02/28/13 22:38:0	GSR	SMETALLO
336	8129	C	Cleared	02/28/13 22:54:0		AU Unit:336
211	6199	C	Cleared	02/28/13 23:09:4	AU	AU YRODRIGUEZ
330	8248	C	Cleared	02/28/13 23:12:0		AU Unit:330
251	8234	C	Cleared	02/28/13 23:38:5	AU	AU YRODRIGUEZ
226	7285	C	Cleared	02/28/13 23:47:1		AU Unit:226
288	8020	ENT	Entered Vehicleid	02/28/13 23:49:0	[Vin:] 1FMYU60E02UC98837 [licpl_no:]	Unit:288
453	6783	L	Location Change	03/01/13 00:11:2	6703 JEFFERSON PL	YRODRIGUEZ
412	6572	C	Cleared	03/01/13 00:27:3	AU	AU YRODRIGUEZ
288	8020	C	Cleared	03/01/13 01:44:4		IR Unit:288
311	7831	C	Cleared	03/01/13 01:44:5		AU Unit:311
456	7847	C	Cleared	03/01/13 01:44:5	AU	AU YRODRIGUEZ
453	6783	C	Cleared	03/01/13 01:45:0	A	AU YRODRIGUEZ
333	6966	C	Cleared	03/01/13 01:45:1	AU	AU YRODRIGUEZ
403	5124	C	Cleared	03/01/13 01:45:2	AU	AU YRODRIGUEZ

Event Log

Unit	Empl ID	Type	Description	Time Stamp	Comments	Close Code	User
		TR	Time Received	02/28/13 21:08:57	By: PHONE		QWISE
		ENT	Entered Street	02/28/13 21:09:16	JEFFERSON PLACE		QWISE
		DLS	Duplicate List	02/28/13 21:09:21	Potential Duplicate Events Listed (1)		QWISE
		CHG	Changed Street	02/28/13 21:09:24	JEFFERSON PLACE --> 6703 JEFFERS		QWISE
		ENT	Entered AddtSt	02/28/13 21:09:29	APT B2		QWISE
		ENT	Entered Remarks	02/28/13 21:09:35			QWISE
		ENT	Entered Nature	02/28/13 21:09:37	WEAPON LAW VIOLATION		QWISE
		FIN	Finished Call Taking	02/28/13 21:09:38			QWISE
		ARM	Added Remarks	02/28/13 21:10:30			SMETALLO
		ARM	Added Remarks	02/28/13 21:10:47			SMETALLO
		CHG	Changed CallSource	02/28/13 21:11:35	PHONE --> E911		SMETALLO
		ARM	Added Remarks	02/28/13 21:11:44			SMETALLO
		ARM	Added Remarks	02/28/13 21:11:46			YRODRIGUEZ
		ARM	Added Remarks	02/28/13 21:11:53			SMETALLO
		CHG	Changed PrimeUnit	02/28/13 21:12:04	251 --> 288		SMETALLO
		ARM	Added Remarks	02/28/13 21:12:06			YRODRIGUEZ
		ARM	Added Remarks	02/28/13 21:12:26			YRODRIGUEZ
		CHG	Changed Nature	02/28/13 21:12:29	WEAPON LAW VIOLATION --> SHOOT		SMETALLO
		RSC	RADIO SILENCE CALL	02/28/13 21:13:06			SMETALLO
		ARM	Added Remarks	02/28/13 21:13:07			SMETALLO
		ARM	Added Remarks	02/28/13 21:13:23			YRODRIGUEZ
		ARM	Added Remarks	02/28/13 21:13:24			SMETALLO
		VCH	Viewed Call History	02/28/13 21:14:00	Location Information		SROYAL
		VPR	Viewed Premise	02/28/13 21:15:24	Location Information		SROYAL
		ARM	Added Remarks	02/28/13 21:15:41			YRODRIGUEZ
		ARM	Added Remarks	02/28/13 21:15:59			SMETALLO
		ARM	Added Remarks	02/28/13 21:16:44			SMETALLO
		VCH	Viewed Call History	02/28/13 21:17:02	Location Information		SROYAL
		ARM	Added Remarks	02/28/13 21:18:04			SMETALLO
		VPR	Viewed Premise	02/28/13 21:18:23	Location Information		SROYAL
		VCH	Viewed Call History	02/28/13 21:18:26	Location Information		SROYAL
		RSL	RADIO SILENCE LIFTE	02/28/13 21:20:47			SMETALLO
		ARM	Added Remarks	02/28/13 21:20:47			SMETALLO
		ARM	Added Remarks	02/28/13 21:21:05			SMETALLO
		VCH	Viewed Call History	02/28/13 21:23:05	Location Information		SMETALLO
		ARM	Added Remarks	02/28/13 21:26:32			SMETALLO
		VCH	Viewed Call History	02/28/13 21:26:42	Location Information		SMETALLO
		ARM	Added Remarks	02/28/13 21:29:17			SROYAL
		ARM	Added Remarks	02/28/13 21:30:48			SMETALLO
		ARM	Added Remarks	02/28/13 21:31:19			SROYAL
		ARM	Added Remarks	02/28/13 21:32:08			SMETALLO
		RPT	Requested Report#	02/28/13 21:37:26	MBPD Report #13-003022 Unit:288		Unit:288
		ARM	Added Remarks	02/28/13 21:44:00			SROYAL
		CES	COMMAND EMAIL SEN	02/28/13 21:46:51			SMETALLO
		ARM	Added Remarks	02/28/13 21:46:51			SMETALLO

VSO	Viewed SOP	02/28/13 21:47:14	SOP for SHOOTING INCIDENT	QWISE
VCH	Viewed Call History	02/28/13 21:47:39	Location Information	QWISE
VCH	Viewed Call History	02/28/13 21:47:46	Location Information	YRODRIGUEZ
VCH	Viewed Call History	02/28/13 21:49:37	Location Information	SROYAL
ENT	Entered CallerPh	02/28/13 21:57:07	8436557621	YRODRIGUEZ
ENT	Entered CallerNm	02/28/13 21:57:31	MALE, NEIGHBOR	YRODRIGUEZ
VCH	Viewed Call History	02/28/13 21:58:53	Location Information	SROYAL
ARM	Added Remarks	02/28/13 22:17:21		SMETALLO
VPR	Viewed Premise	02/28/13 23:41:23	Location Information	QWISE
VCH	Viewed Call History	02/28/13 23:41:29	Location Information	QWISE
ENT	Entered VehState	03/01/13 00:04:06	SC	QWISE
VCH	Viewed Call History	03/01/13 00:50:49	Location Information	QWISE

Event Notes Addendum

Notes: {330} UPDATED SUSPECT INFO: 1-LIGHT SKINNED BM, GOES BY PAULO, LIVES IN THE RACEPATH AREA. 600/150-160. WEARING A WHT CAP WITH RED LETTERING, WHT HOODIE WITH RED SCRIPT LETTERING, BLUE JEANS. 2- DARK SKINNED BM, WEARING A DRK BLUE BANDANA OR SCARF, DRK BLUE HOODIE, PRESENTED A SILVER SEMI AUTOMATIC PISTOL. INCIDENT OCCURRED INSIDE OF THE RESIDENCE AND \$220 WAS TAKEN FROM ONE VIC. [02/28/13 22:17:21 SMETALLO]
 UDS: COMMAND EMAIL SENT [02/28/13 21:46:51 SMETALLO]
 MED30 ALSO TX 1 PT TO GSR [02/28/13 21:44:00 SROYAL]
 {226} UPDATE ON VEHICLE: POSSIBLY A FORD SPORT TRAC, NEWER MODEL, SHORT BED [02/28/13 21:32:08 SMETALLO]
 MED62 TRANSPORTING 1 PT TO GSR [02/28/13 21:31:19 SROYAL]
 {330} FOLLOWING EMS TO GSR [02/28/13 21:30:48 SMETALLO]
 HCPD NOTIFIED OF BOLO FOR SUSPECT VEHICLE [02/28/13 21:29:17 SROYAL]
 {226} SUSPECT VEHICLE IS A NEWER MODEL 4DR WHITE TRUCK, OCCUPIED BY 1-2 BM, ONE MALE GOES BY THE NAME OF PAULO OR POLO. KNOWN TO FREQUENT THE RACEPATH AREA [02/28/13 21:26:32 SMETALLO]
 {288} LOCATION IS SECURED [02/28/13 21:21:05 SMETALLO]
 UDS: RADIO SILENCE LIFTED [02/28/13 21:20:47 SMETALLO]
 {330} INCOMING UNITS CAN RESPOND NORMAL RESPONSE [02/28/13 21:18:04 SMETALLO]
 {288} EMS CAN GO IN. BOTH FEMALE RESIDENTS ARE OUTSIDE OF THE HOUSE [02/28/13 21:16:44 SMETALLO]
 {288} ROOMMATE WAS SHOT IN THE HEAD. WAITING ON ANOTHER UNIT TO CHECK LOCATION [02/28/13 21:15:59 SMETALLO]
 CALLTAKER CAN HEAR A FEMALE SAYING THAT IT WAS AN ARMED HOUSE BREAK IN UNKNOWN IF THEY ARE STILL IN THE HOUSE [02/28/13 21:15:41 YRODRIGUEZ]
 THE PERSON WHO SHOT HER HAD A MASK [02/28/13 21:13:23 YRODRIGUEZ]
 EMS IS STAGING [02/28/13 21:13:24 SMETALLO]
 UDS: RADIO SILENCE CALLED [02/28/13 21:13:07 SMETALLO]
 UNSURE WHERE THE PERSON IS WHO SHOT HER [02/28/13 21:12:26 YRODRIGUEZ]
 THE VICTIM IS OUTSIDE HE DOESNT WANT HER IN THE HOUSE BC HE HAS KIDS [02/28/13 21:12:06 YRODRIGUEZ]
 {288} CODE 3 [02/28/13 21:11:53 SMETALLO]
 COMPL SAYING THE BLOOD IS COMING FROM HER HEAD THINKS SHE GOT SHOT THERE [02/28/13 21:11:46 YRODRIGUEZ]
 {336} CODE 3 [02/28/13 21:11:44 SMETALLO]
 {311} CODE 2 [02/28/13 21:10:47 SMETALLO]
 {330} CODE 2 [02/28/13 21:10:30 SMETALLO]
 NEIGHBOR GOT SHOT [02/28/13 21:09:35 QWISE]

DOCKET NO. 2013-GS-26-02715

WITNESSES

Alton Campbell Myrtle Beach Police Department

The State of South Carolina
County of Horry

George H. Debusk

13H02048

COURT OF GENERAL SESSIONS

JUNE, 2013 TERM

ARREST WARRANT NUMBER

013A2620600471

CDR: 0079 16-11-0311

DOA: 4/25/2013

THE STATE

vs.

Jamal Marquis Daniels
B/ M

ACTION OF GRAND JURY

TRUE COPY

Foreperson of Grand Jury
Date:

JUN 27 2013

VERDICT

ATTORNEY: Long, III, J. M. "Buddy"

Indictment for
BURGLARY 1ST

Jimmy A. Richardson, II, Solicitor

ORIGINAL

Foreperson of Petit Jury
Date:CLERK OF COURT
HORRY COUNTY, SC

2017 JAN 20 PM 2:25

CERTIFIED COPY

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

2017 JAN 20 PM 2:25

RECEIVED
CLERK OF COURT
HORRY COUNTY, SC

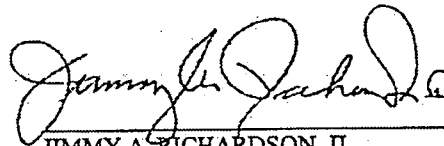
At a Court of General Sessions, convened on JUNE 27, 2013, the Grand Jurors of Horry County present upon their oath:

BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That Jamal Marquis Daniels did in Horry County, on or about February 28, 2013 enter the dwelling of Katrina Daniels without consent and with the intent to commit a crime therein and when in effecting entry or while in the dwelling or in immediate flight, displayed what was or appeared to be a knife or firearm, in violation of Section 16-11-0311(A), 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

DOCKET NO. 2013-GS-26- 02391

WITNESSES

Alton Campbell Myrtle Beach Police Department

The State of South Carolina
County of Horry

George H. Debusk

13H02048

COURT OF GENERAL SESSIONS

JUNE, 2013 TERM

ARREST WARRANT NUMBER

2013A2620600472

CDR: 0095 16-03-0910

DOA: 4/25/2013

THE STATE

vs.

Jamal Marquis Daniels
B/ M

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: *[Signature]*

JUN 27 2013

VERDICT

ATTORNEY: Long, III, J. M. "Buddy"

Indictment for

KIDNAPPING

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury
Date:

ORIGINAL

DEPT. OF CORRECTIONS
CLERK OF COURT
HORRY COUNTY, SC
2017 JAN 20 PM 2:25
CERTIFIED COPY

CERTIFIED COPY

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT 2017 JAN 20 PM 2: 25

RECEIVED
CLERK OF COURT
HORRY COUNTY, SC

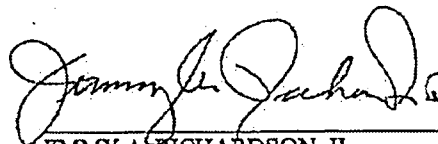
At a Court of General Sessions, convened on JUNE 27, 2013, the Grand Jurors of Horry County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That Jamal Marquis Daniels did in Horry County on or about February 28, 2013, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Katrina Daniels, without authority of law, in violation of Section 16-03-0910, 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

DOCKET NO. 2013-GS-26- 02314

WITNESSES

ilton Campbell Myrtle Beach Police Department

The State of South Carolina

County of Horry

George H. Dabusk

13H02048

COURT OF GENERAL SESSIONS

JUNE, 2013 TERM

ARREST WARRANT NUMBER

013A2620600469

DR: 3410 16-03-0029

IOA: 4/25/2013

THE STATE

VS.

Jamal Marquis Daniels
B/ M

CTION OF GRAND JURY

ATTORNEY: Long, III, J. M. "Buddy"

oreperson of Grand Jury
ate:

JUN 27 2013

ERDICT

Indictment for
ATTEMPTED MURDER

Jimmy A. Richardson, II, Solicitor

oreperson of Petit Jury
ate:

ORIGINAL

CERTIFIED COPY
2017 JAN 20 PM 2:25
CLERK OF COURT
HORRY COUNTY, SC

CERTIFIED COPY

2017 JAN 20 PM 2: 25
INDICTMENT

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

CLERK OF COURT
HORRY COUNTY, SC

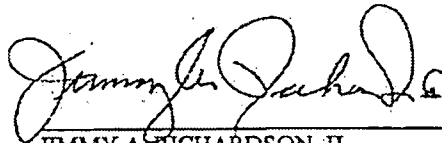
At a Court of General Sessions, convened on JUNE 27, 2013, the Grand Jurors of Horry County present upon their oath:

ATTEMPTED MURDER

CDR: 3410 16-03-0029

That Jamal Marquis Daniels did in Horry County on or about February 28, 2013 with intent to kill Katrina Daniels, attempt to kill the victim with malice aforethought, either expressed or implied in violation of Section 16-3-29, 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

DOCKET NO. 2013-GS-26- 02393

The State of South Carolina
County of Horry

George H. Debusk 13H02048

COURT OF GENERAL SESSIONS

JUNE, 2013 TERM

THE STATE

vs.

Jamal Marquis Daniels
B/ M

ATTORNEY: Long, III, J. M. "Buddy"

Indictment for
ARMED ROBBERY

Jimmy A. Richardson, II, Solicitor

ORIGINAL

WITNESSES

Alton Campbell Myrtle Beach Police Department

ARREST WARRANT NUMBER

2013A2620600470
CDR: 0139 16-11-0330(A)
JOA: 4/25/2013

ACTION OF GRAND JURY

Foreperson of Grand Jury:
Date:

JUN 27 2013

VERDICT

Foreperson of Petit Jury
Date:

2017 JAN 20 PM 2:25
 CLERK OF COURT
 HORRY COUNTY, SC
 CERTIFIED COPY

CERTIFIED COPY

2017 JAN 20 PM 2:25

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

CLERK OF COURT
HORRY COUNTY, SC

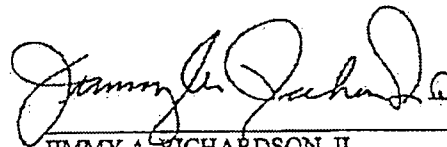
At a Court of General Sessions, convened on JUNE 27, 2013, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Jamal Marquis Daniels did in Horry County on or about February 28, 2013, while armed with a deadly weapon, to wit: a pistol, take and carry away personal property of Katrina Daniels from or in the immediate presence of Katrina Daniels with intent to deprive Katrina Daniels of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), 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.

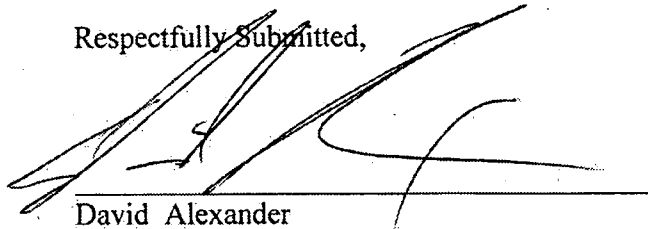


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

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."

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

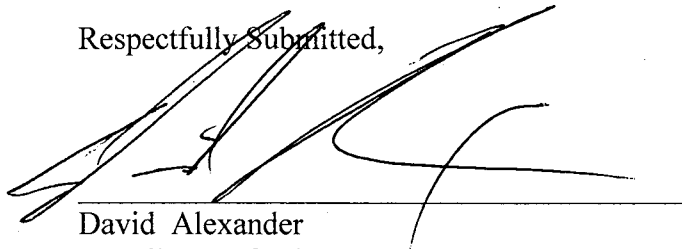
ATTORNEY FOR APPELLANT

This 23rd day of October, 2017.

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."

Respectfully Submitted,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 23rd day of October, 2017.

RECEIVED

OCT 23 2017

SC Court of Appeals